

Attachment A – Government Response

NSW Government Response to the LA Committee on Transport and Infrastructure - Inquiry into the Procurement of Government Infrastructure Projects

Recommendation	Government response
<p>1 That the NSW Government investigate whether it should establish a centre of procurement excellence to assist agencies with, amongst other things:</p> <ul style="list-style-type: none"> • consistent procurement practices across government; • improving the skills and capacity of the NSW Government; • maintaining best practice in procurement processes; and • sharing procurement lessons learned from projects across government. 	<p>Noted</p> <p>The Government considers existing governance arrangements around procurement to provide a sufficient level of expertise and oversight of the procurement process, including the Infrastructure Investment Assurance Framework, the NSW Procurement Board, and the Infrastructure and Structured Finance Unit and the Commissioning and Contestability Unit within Treasury.</p>
<p>2 That the NSW Government continue to promote unsolicited proposals as a means of developing and delivering innovative ideas and that it examines ways in which unsolicited proposals may be more easily made to government.</p>	<p>Supported</p> <p>The Unsolicited Proposals (USP) process is designed to encourage non-government sector participants to approach government with innovative infrastructure or service delivery solutions, where the government has not requested a proposal, and the proponent is uniquely placed to provide a value-for-money solution.</p> <p>The NSW Government's USP assessment process is very detailed and prescriptive including addressing criteria such as uniqueness, value for money and risk allocation. The NSW Government continues to encourage the submission of USPs.</p> <p>DPC is continually looking at ways to improve the USP framework. As such, it has undertaken two reviews of the USP framework. The reviews included analysis of proposals and their assessment, sought feedback from proponents and industry groups, and considered frameworks in other local and international jurisdictions. This has led to enhanced USP Guidelines in order to provide more direction and clarity for proponents.</p> <p>In the 2016 Performance Audit Report, "Managing Unsolicited Proposals in NSW," the acting NSW Auditor-General found that the USP Guidelines are clear,</p>

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	<p>comprehensive, and provide a sound framework for the governance of USPs.</p> <p>However, the Audit Office made some recommendations around providing greater clarity and public reporting. The NSW Government is in the process of considering those recommendations. It is hoped that this will make it easier for proponents to understand the requirements of USPs.</p> <p>The NSW Government, through the Department of Premier and Cabinet (DPC) received 26 USPs in the 2016-2017 financial year. <i>Of these 26 proposals, seven are current (as at 30 June 2017), 14 did not proceed past the initial assessment stage, one was withdrawn by the proponent, three were referred to other agencies for consideration and 1 was approved (partial long term lease of Ausgrid).</i></p>
<p>3 That the NSW Government should continue to eliminate unnecessary information requirement during bidding stages in order to reduce procurement bid costs.</p>	<p>Supported</p> <p>NSW Treasury has undertaken extensive consultation with participants in the PPP market on ways to reduce bid costs. Following this consultation process, NSW Treasury released a report, 'Reducing procurement bid costs', relating to outcome based procurement. Changes to bid processes are being implemented as a result of this review for all current and planned PPPs in NSW.</p> <p>DFSI and Infrastructure NSW are working with NSW Government agencies to build to the consultation undertaken by NSW Treasury and to implement more efficient bid processes.</p>
<p>4 That the NSW Government provide a consistent and transparent pipeline of infrastructure projects in order to minimise procurement bid costs and increase contestability in procurement.</p>	<p>Noted</p> <p>The NSW Government is continuing with record levels of investment in infrastructure, with \$72.7 billion committed over four years in the 2017-18 Budget.</p> <p>Infrastructure NSW prepares and publishes an annual State Infrastructure Plan and a State Infrastructure Strategy every 5 years. These documents are publicly available and as such they provide the market with visibility of the NSW government pipeline of major projects. These documents outline projects that are in the planning stages or are recommended to Government. Information is provided on the community need, project location, proposed delivery timing and ball-park estimated total cost. The Government will investigate cost effective</p>

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	ways to enhance this information, when there are appropriate opportunities.
5 That, following a review of procurement contracts across all government agencies, the NSW Government standardise contracts where practical.	<p>Noted NSW Government agencies are required to assess the appropriateness of utilising PPPs for projects valued in excess of \$100 million. NSW Treasury has prepared 'template' Expressions of Interest and Request for Proposal documents and a suite of standardised Project Documents for PPPs including a template Project Deed. These documents are available for use across all project sectors, including infrastructure projects. DFSI has published and maintains a standard contract, known as GC21, for design and construction projects undertaken by government agencies. Government agencies make extensive use of the GC21 standard contract, but may vary from it in some circumstances. Major transport infrastructure projects need bespoke project specific contracts which reflect the multi-billion dollar investment being made by the NSW Government.</p>
6 That the NSW Government include in the NSW Public Private Partnerships Guidelines clear principles for the allocation of project risk.	<p>Noted National PPP Guidelines provide agencies with guidance on allocating project risk in PPP transactions. The National PPP Guidelines Volume 2: A Practitioner's Guide, includes a section on risk allocation which covers both social and economic infrastructure. It outlines which risks are conventionally allocated to the private partners versus those which are allocated to the State. Volume 7 of the Guidelines provides detailed commercial principles for both social and economic infrastructure. The principles cover the conventional PPP risks such as; site, design, planning, construction, operation and maintenance, compensation, termination, etc. The NSW PPP Guidelines further define the risk allocation and a base risk allocation is included in the PPP toolbox.</p>
7 That the NSW Government assess whether contracting out of proportionate liability provisions should be prohibited across government contracts.	<p>Noted NSW Government agencies are entitled to contract out proportionate liability provisions when undertaking procurement. However, agencies need to be mindful of not exercising their rights in this regard in an inflexible manner, without proper assessment of whether the circumstances justify contracting out,</p>

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	<p>as outlined on the ProcurePoint website. The Government will require agencies to report to DFSI on the use of these contracting out provisions. This will enable an assessment of how frequently these provisions are used and in what circumstances.</p>
<p>8 That the government investigate the best possible means to ensure that in all government contracts and public private partnerships all steel used on government projects comply with the Australian standard.</p>	<p>Supported Board Direction 2016-03 requires government agencies to contractually require compliance with relevant standards for building products, construction materials and construction or manufacturing processes, including AS/NZS 1163: 2006 Cold formed structural steel hollow sections, AS/NZS 1594:2002 Hot rolled steel flat products, AS/NZS 3678: Structural steel – Hot rolled plates, floor plates and slabs, AS/NZS 3679.1: Structural steel – Hot rolled bars and sections, AS/NZS 3679.2: Structural steel – Welded I sections, AS/NZS 4671: Steel reinforcing materials, AS/NZS 4672: Steel prestressing materials and AS/NZS 5131 Structural steelwork – fabrication and erection.</p> <p>To complement these existing requirements, DFSI is reviewing the application of a “broader economic benefit” test of using Australian versus imported suppliers to ensure fairness between local and international suppliers when considering value for money assessment.</p>

Findings	Government response
<p>1. That the NSW Government has implemented positive reforms to its procurement processes and encouraged increased interest and competition in the public private partnership market.</p>	<p>The Government welcomes this finding recognising the positive reforms that have been implemented.</p>
<p>2. There is scope for innovation by extending the public-private partnership procurement model to smaller infrastructure projects through bundled public-private partnerships.</p>	<p>The Government notes the Committee’s finding.</p>