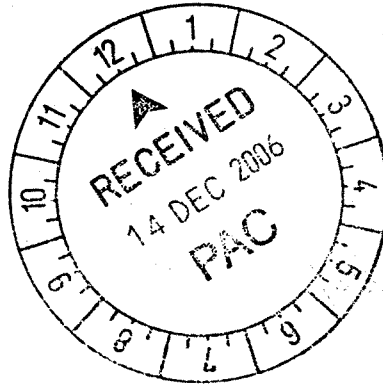




Treasurer
Minister for Infrastructure
Minister for the Hunter

PAC 274 & PAC 19
C06/3161

The Hon Noreen Hay MP
Chair
Public Accounts Committee
Parliament of NSW
Macquarie Street
Sydney NSW 2000



Contact: Nin Rejante
Telephone: (02) 9228 4252
Our Reference: M06/03711
Your Reference: PAC 274

11 DEC 2006

Dear Ms Hay

Inquiry into Public Private Partnerships

Thank you for inviting me to comment on the Public Accounts Committee's (PAC) report entitled *Inquiry into Public Private Partnerships*.

Please find attached my response to the recommendations made in the report.

A number of your recommendations are consistent with recommendations made in other recent inquiries and reviews of Privately Financed Projects (PFPs). Treasury has taken into account the recommendations from these reviews, including the PAC report, in the process of updating its *Working with Government: Guidelines for Privately Financed Projects* (the *Guidelines*) issued in December 2006.

The updated *Guidelines* include, among other things, reference to the very recently enacted legislation which sets out requirements for disclosure of government contracts with the private sector (addressing recommendations 1, 8 and 13). The *Freedom of Information Amendment (Open Government—Disclosure of Contracts) Act 2006* was assented to on 4 December 2006 and will commence on 1 January 2007.

The revised *Guidelines* address a number of the PAC's recommendations, including:

- strengthening approval processes (addressing recommendation 1);
- clarifying the timing and content for publishing contract summaries, including publication of the results of the Public Sector Comparator (addressing recommendations 1, 5, 9 and 10); and
- strengthening the public interest test by including value for money tests from the perspective of the user and taxpayer, and requiring updates of the test to be submitted to the Budget Committee of Cabinet throughout the tender process (addressing recommendations 12, 23, 25 and 26).

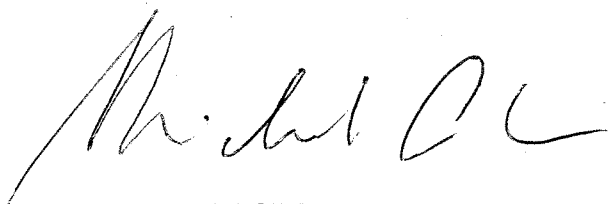
In addition, the Government is releasing two other documents:

- One document (*Risk Allocation and Commercial Principles*) is a Draft for Discussion Purposes, which outlines the preferred risk allocation and commercial principles to be used in most social infrastructure PFP contracts (addressing recommendation 20). Public comment on this draft is invited by 22 January 2007. This document will be released in conjunction with the *Guidelines*.
- The other document is a technical paper that provides guidance on choosing the appropriate discount rate (addressing recommendations 4 and 20). This document will be released shortly after the release of the *Guidelines*.

NSW Treasury has already issued a Policy and Procedures paper on the accounting treatment for PFPs - TPP06-08: *Accounting Policy – Accounting for Privately Financed Projects* - dated June 2006 (addressing recommendation 6).

Thank you for the opportunity to comment on the report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Costa', written in a cursive style.

MICHAEL COSTA

Public Accounts Committee: Inquiry into PPPs (June 2006)

PAC Recommendation	Treasurer's Response
<p>RECOMMENDATION 1: That the framework for considering PPPs in NSW be strengthened, to include:</p> <ul style="list-style-type: none"> • a clearly defined PPP policy, principles and objectives; • governance and public disclosure arrangements; and • refined process guidelines addressing identified deficiencies. 	<p>The <i>Working With Government Guidelines for Privately Financed Projects (the Guidelines)</i> is being issued in December 2006.</p> <p>The <i>Guidelines</i> have been revised to strengthen and make clearer the approval and monitoring processes of privately financed projects (PFPs) and to improve disclosure requirements.</p> <p>The revised <i>Guidelines</i> note that all privately financed projects (PFPs) are subject to Ministerial Memorandum No.2000-11 (as amended or replaced from time to time) and the <i>Freedom of Information Amendment (Open Government—Disclosure of Contracts) Act 2006</i> in respect of public disclosure of Government contracts with the private sector.</p> <p>The Act requires, among other things, that:</p> <ul style="list-style-type: none"> • for contracts with a value of \$5m or more, the full contract be disclosed except for confidential information (eg, the contractor's financing arrangements, cost structure, profit margin and intellectual property), and that public disclosure be required within 60 days of the contract becoming effective; • if subsequent contract amendments change information already disclosed, the change will also need to be publicly disclosed within 60 days of the amendment becoming effective.
<p>RECOMMENDATION 2: That the Government implement the recommendation of the Auditor-General in relation to the publication of contract summaries, by making the <i>Working With Government Guidelines</i> mandatory.</p>	<p>The <i>Guidelines</i> are already mandatory.</p>
<p>RECOMMENDATION 3: That the practice of specifying procurement of PPPs at no cost to Government should be abandoned.</p>	<p>The Premier confirmed on 8 December 2005 that there is no policy of procuring PPPs at no cost to Government.</p>
<p>RECOMMENDATION 4: That NSW Treasury publish guidance on selection of a discount rate and other information about the PSC as part of improving guidelines for PPP projects.</p>	<p>The NSW Treasury will be releasing guidance on the discount rate shortly after the release of the revised <i>Guidelines</i>.</p>
<p>RECOMMENDATION 5: As the Committee found there was strong public interest in increased disclosure of the PSC, it recommends that NSW Treasury review the policy on disclosure of the PSC in consideration of the public interest in knowing that such projects achieved greater value for money than would be possible under traditional methods of procurement.</p>	<p>A summary of the PSC compared with the winning bid will be included in future published Contract Summaries for PFPs.</p>

PAC Recommendation	Treasurer's Response
<p>RECOMMENDATION 6: That NSW Treasury should develop material for public consumption about the current accounting treatment for PPPs.</p>	<p>In June 2006 NSW Treasury issued a Treasury Policy and Procedures paper on the accounting treatment for PFPs (TPP06-08: <i>Accounting Policy – Accounting for Privately Financed Projects</i>).</p> <p>Treasury has also added to its website other references on the accounting treatment of such transactions, based mainly on the UK experience.</p>
<p>RECOMMENDATION 7: Where the public pays commercial fees or tolls to private sector partners in a PPP, the public sector partner provides information in their reports about how the public can find information about the amount of revenue raised by private sector partners.</p>	<p>The amount of revenue can be calculated from two variables: the prevailing toll and the traffic flows.</p> <ul style="list-style-type: none"> • The updated Guidelines provide that the contract summary must contain the price to be paid by the public (ie, the toll), and the basis for future changes in this price. This should include a statement setting out the basis on which price is computed or projected (ie, indexation arrangements). • Private toll road operators typically report their traffic flows on their websites or in their reports to the Australian Stock Exchange.
<p>RECOMMENDATION 8: That the completion of contract summaries relating to PPPs should become mandatory for all agencies through the introduction of legislation, Premier's Memorandum or a Treasurer's Direction.</p>	<p>The preparation of contract summaries for PFPs is already mandatory in the <i>Guidelines</i>.</p> <p>The Government supported the passage of a private member's bill, the <i>Freedom of Information Amendment (Open Government—Disclosure of Contracts) Bill 2006</i>. The Act was assented to on 4 December 2006 and commences on 1 January 2007. It requires, among other things, that –</p> <ul style="list-style-type: none"> • For government contracts with the private sector having a value of \$5million or more, the entire contract is to be published except for commercial in confidence information. • For contracts of lesser value over \$150,000, certain summary information on the contract is required to be published.
<p>RECOMMENDATION 9: That the process of reporting contract summaries should be clarified through the inclusion in the Guidelines of specific steps and mandatory reporting deadlines, including,</p> <ul style="list-style-type: none"> • Reporting deadlines for providing the contract summary to the Audit Office and tabling in Parliament following the Audit Office's 'approval': • requiring tabling of contract summaries within 30 days of the Audit Office report being signed; • clarifying the process by which Ministers can table contract summaries when Parliament is not sitting; and 	<p>The updated <i>Guidelines</i>:</p> <ul style="list-style-type: none"> • clarify the reporting deadlines for Contract Summaries and • require contract amendments to be disclosed. <p>This is consistent with the provisions of the <i>Freedom of Information Amendment (Open Government—Disclosure of Contracts) Act 2006</i>.</p>

PAC Recommendation	Treasurer's Response
<ul style="list-style-type: none"> requiring Ministers to table revised contract summaries in Parliament in the event of any significant changes to the original document. 	
<p>RECOMMENDATION 10: That the Working With Government Guidelines should include a standard template outlining requirements for content and presentation of contract summaries.</p>	<p>The revised <i>Guidelines</i> include a standard template for preparing contract summaries.</p>
<p>RECOMMENDATION 11: That NSW Treasury strengthen the Working With Government Guidelines in light of lessons learned from the management of previous or current PPPs and clearly outline the form and standard by which it expects agencies to report on compliance with the guidelines.</p>	<p>The revised <i>Guidelines</i> incorporate clearer and strengthened approval and monitoring processes.</p>
<p>RECOMMENDATION 12: That the public interest test be given greater prominence in PPP assessment, including:</p> <ul style="list-style-type: none"> Refining criteria to better reflect public concerns; Strengthening links between public interest criteria more closely to Government policy; and Outlining processes by which public interest criteria can be given full and appropriate consideration at the assessment stage and throughout the life of a project. 	<p>The public interest test has been refined and elaborated on in the revised <i>Guidelines</i>.</p> <p>Furthermore, the revised <i>Guidelines</i> require that the public interest test be initially undertaken prior to the decision to procure the project as a PFP, and then updated prior to both the issue of the call for detailed proposals and the signing of final contracts.</p>
<p>RECOMMENDATION 13: In addition to contract summaries, all contracts relating to PPPs should be available in their entirety to the public in due course. The Auditor-General should recommend the timing of releasing sensitive documents and agencies should endeavour to meet this timeframe and explain any variations. Details of significant variations by either side to the contracts must be publicly available.</p>	<p>(See response to Recommendation 8 above.)</p>
<p>RECOMMENDATION 14: That NSW Treasury continue to review the process by which project risks are currently formulated to ensure the Government maximises value for money.</p>	<p>NSW Treasury, along with the procuring agency and relevant consultants, routinely undertake a detailed assessment of project risks for PFPs.</p>
<p>RECOMMENDATION 15: That the NSW Government take account of the experience of the UK Government and optimise the expertise currently available for PPP management in the NSW Treasury and other key agencies by incorporating elements of project planning and facilitation expertise into a NSW PPP framework.</p>	<p>NSW Treasury will continue to monitor publications and other information from the UK, other countries and other Australian jurisdictions.</p>
<p>RECOMMENDATION 16: That knowledge sharing between agencies is more effectively supported by senior management in agencies as a means of increasing level of skill regarding PPP</p>	<p>The Private Projects Branch of NSW Treasury facilitates knowledge sharing between agencies and consultants and supports secondment programs.</p>

PAC Recommendation	Treasurer's Response
<p>management, including:</p> <ul style="list-style-type: none"> • library resources (including on-line resources) • periodic workshops to discuss good practice and shared learning, and • programs of secondment from other agencies and/or the private sector. 	<p>The <i>Guidelines</i> provide the framework for a post implementation review of all PFPs. It functions as an interagency review mechanism to refine processes for reference in future projects.</p>
<p>RECOMMENDATION 17: That the Government consider adoption of a support structure for PPPs managed by Local Government along the lines of that developed and operated by 4Ps in the United Kingdom, which incorporates peer support, systems support and sharing of expertise.</p>	<p>The Government's procurement policy, which applies to all capital procurements, provides support to agencies for the conduct of Gateway reviews, accreditation and other elements of support during the procurement process.</p> <p>In regard to Local Governments, the Government passed legislation (<i>Local Government Amendment (Public Private Partnerships) Act 2004</i>) and issued guidelines via a Department of Local Government Circular in September 2005.</p> <p>Although local governments remain ultimately responsible for their decisions on PPPs, the legislation created a Project Review Committee to assist local governments in following appropriate due diligence procedures in the procurement of their PPPs.</p>
<p>RECOMMENDATION 18: That the Government discuss processes for implementing a more systematic approach to post period evaluation for PPPs to allowing for comparison across projects and administrative jurisdictions and to assist in practical application of 'lessons learned', thereby adding to 'value for money'.</p>	<p>The <i>Guidelines</i> provide a framework for post implementation reviews of projects. The National PPP Forum and other regular contact between Australian jurisdictions ensure that lessons learned in other jurisdictions are given due consideration in NSW.</p>
<p>RECOMMENDATION 19: That in the process of costing a project to be delivered as a PPP, agencies and NSW Treasury should give adequate attention to ensuring that transaction costs, particularly the costs of monitoring and evaluating delivery arrangements are accounted for, over the full life of the project.</p>	<p>Transactions costs are taken into account when analysing the options for procuring a project, whether it be by private finance, conventional delivery or alliance contracts.</p>
<p>RECOMMENDATION 20: That NSW Treasury expedite the use of standard forms and contracts for PPPs.</p>	<p>At the same time of issue of the <i>Guidelines</i>, the Government is releasing a publication entitled "<i>Risk Allocation and Commercial Principles</i>".</p> <p>This document is a Draft for Discussion Purposes, on which public comment is sought by 22 January 2007. This document outlines the Government's preferred risk allocation and the principles to be applied in most social infrastructure PPP contracts.</p>

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<p>RECOMMENDATION 21: That, in the consideration of procurement options, Government agencies and NSW Treasury explore and assess the advantages offered by a full range of models which can deliver optimum value for money and community benefit, including project alliancing.</p>	<p>The Government's Procurement Policy requires the preparation of a procurement strategy report, which analyses procurement options for all major infrastructure projects.</p>
<p>RECOMMENDATION 22: That NSW Treasury consider ways of reducing the need for bid bonds for PPPs.</p>	<p>NSW Treasury will continue to review the need for bid bonds on a case by case basis.</p>
<p>RECOMMENDATION 23: That NSW Treasury consider the social impact of PPP tolls and fees and consider using a process similar to that followed by IPART to set tolls and fees for PPPs in a monopoly situation.</p>	<p>The revised <i>Guidelines</i> include a revised public interest test which will require assessment of value for money from the perspectives of the user and the taxpayer.</p> <p>The public interest test also requires that the proposed project be assessed to ensure consistency with the agency's service objectives and delivery strategy.</p>
<p>RECOMMENDATION 24: That the amended WWG Guidelines take into account the impact on apprentice and trade positions during the term of a contract; designate ratios of apprentice-tradespersons within contracts and define 'local content' to include local labour content.</p>	<p>The Government's existing Procurement Policy already includes policies for apprentices and local content.</p>
<p>RECOMMENDATION 25: That in instances where hospital car parks are constructed through a PPP process, a public interest test should be applied to take into consideration the needs of parties such as hospital employees, visitors and outpatients in the setting of car park fees.</p>	<p>The revised <i>Guidelines</i> include a revised public interest test which will require assessment of value for money both from the perspectives of the user and the taxpayer.</p> <p>The public interest test also requires that the proposed project be assessed to ensure consistency with the agency's service objectives and delivery strategy.</p> <p>The revised Guidelines also require that at certain points throughout the tender process, updated public interest evaluations be prepared.</p>
<p>RECOMMENDATION 26: That NSW Treasury, agencies and private sector partners in PPP bids be required to address social and environmental considerations more fully in project objectives at the commencement of PPP contracts and reflect these considerations in project specifications and monitoring of outcomes.</p>	<p>Social and environmental considerations are required elements of the public interest test. Under the revised <i>Guidelines</i>, this test must be initially undertaken prior to the decision to procure the project as a PFP, and then updated prior to both the issue of the call for detailed proposals and the signing of the final contracts.</p> <p>Currently, planning approval consultations already contribute to addressing social and environmental considerations.</p>