



# Premier & Cabinet

Ref: A3752135

Mr Greg Piper MP  
Chair  
NSW Legislative Assembly Public Accounts Committee  
By email: [pac@parliament.nsw.gov.au](mailto:pac@parliament.nsw.gov.au)

Dear Mr Piper,

Thank you for the opportunity to appear before the Public Accounts Committee on 27 July 2020, regarding the examination of the Auditor General's Performance Audit, "Unsolicited proposal for the lease of Ausgrid."

In addition, thank you for the list of Supplementary Questions. Please find attached the responses to those questions.

Should you or the Committee have any further queries, please do not hesitate to contact me on [REDACTED]

Yours sincerely,

Amy Brown  
Deputy Secretary  
Strategy and Delivery Group

10 August 2020

**Supplementary Questions – Unsolicited proposal process for the lease of Ausgrid**

**Recommendation 2 – The Department of Premier and Cabinet should ensure future Assessment Panels and Steering Committees considering a proposal to acquire a government business or asset rigorously consider all elements of the Unsolicited Proposals Guide when determining whether a proposal should be dealt with as an unsolicited proposal, and document these deliberations and all relevant evidence.**

1. The Department's response notes that the Assessment Panels and Steering Committees were briefed to emphasise that all elements of the Unsolicited Proposals Guide (UPG) should be complied with.
  - Has DPC revised the UPG to incorporate the intentions of recommendation 2?
  - Has DPC developed internal guidance to ensure that the briefings which DPC provide address the intent of recommendation 2?

ANSWER:

- No, the Audit Office did not recommend amending the UPG and has previously found that the UPG is clear, comprehensive, and provides a sound framework for the governance of Unsolicited Proposals. Further, the UPG already reflects the intentions of recommendation 2. In particular, Sections 2.3 and 3.6 explain that proposals must be assessed against all of the assessment criteria, and various sections outline the documentation required.
- No specific guidance has been developed as the UPG itself provides comprehensive instructions. Further, there are multiple controls in place to ensure that the proposals are rigorously assessed against all elements of the UPG and that deliberations and evidence are well documented. In particular, DPC participates in all Assessment Panels and Steering Committees and, as part of this role, ensures alignment with the UPG (the Audit Office has previously found that DPC effectively coordinates the USP process); multi-agency participation in assessment, combined with support from expert advisers, ensures that evaluation is rigorous; independent probity advisers ensure that the deliberations and evidence are rigorous and well documented; and oversight by Cabinet ensures DPC's accountability for a rigorous process.

**Recommendation 6 – Maintain separation between negotiation, assessment and review in line with the Unsolicited Proposals Guide**

2. The Department accepted the recommendation, noting that it relies on governance arrangements described in the Unsolicited Proposals Guide.
  - How does the Department intend to ensure that lead agencies adhere to the requirements of the Unsolicited Proposals Guide, in particular the separation of assessment, negotiation and review functions?

ANSWER:

DPC sits on all Assessment Panels and Steering Committees and is therefore able to provide guidance to lead agencies to ensure that all requirements under the UPG are adhered to. A key role for the Steering Committee is to approve the Governance plan for each Unsolicited Proposal, which includes endorsing the membership of the Assessment Panel, Steering Committee and negotiation team. In providing this endorsement, a key consideration is the adequacy of separation between these functions. In addition, a probity advisor is engaged for Unsolicited Proposals at Stages 2 and 3 and one of the probity advisor's core functions is to advise on appropriate governance arrangements.

**Recommendation 8 - Maintain separation between any probity audit services engaged and the probity advisory and reporting services recommended in the current Guide**

3. The Department accepted the recommendation, noting that it is not standard practice in NSW on major transactions to mandate a separation between probity advice and audit services.
- How does the Department interpret recommendation 8, against the background that the NSW Government Procurement Policy Framework requires agencies, when engaging probity advisors or auditors, ensure the engagement will not create a real or perceived conflict of interest arising from this or other work being performed by the probity advisor or auditor?
  - How does the Department respond to the Auditor-General's comments that it is not appropriate for a probity advisor (who has worked alongside the project team to provide assurance) to conduct a probity audit, as it creates a risk of self-review and therefore weakens the perception of independence?<sup>1</sup>

ANSWER: (Note: DPC did not 'accept' Recommendation 8 but rather 'noted' it).

- In circumstances where a probity audit is warranted, consideration would be given to whether a separate probity expert should be engaged to conduct the audit. This will depend on the circumstances of the individual case. Real or perceived conflicts of interest are considered as part of the engagement of any adviser.
- DPC will consider whether a separate probity auditor is required subject to the circumstances of the individual case.

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<sup>1</sup> Audit Office of NSW, Unsolicited proposal for the lease of Ausgrid, p21.