

**Submission
No 4**

PROCUREMENT OF GOVERNMENT INFRASTRUCTURE PROJECTS

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Inquiry into the Procurement of Government Infrastructure Projects

Terms of Reference

That the Committee inquire into, and report on, world's best practice with regard to the procurement of government infrastructure projects with particular reference to:

1. The best process of gateway decision making on the efficacy of public private partnerships compared to other procurement methods.

The GEO Group Australia Pty Ltd (GEO) believes the benefits of public private partnerships are proven.

Offering real accountability, optimal risk transfer for government, a track record of delivery (both in terms of construction and services), and demonstrated value-for-money, public private partnerships also offer a procurement method ready-made for the next generation of outcome-based/payment-by-results contracts.

Accordingly, gateway decisions as to a project's procurement method should routinely consider a public private partnership as an option at project inception, to be tested for its suitability against the project's objectives.

2. The best procurement process and documentation.

GEO believes the optimum procurement process involves an early market sounding followed by an expression-of-interest designed to result in the issue of a request-for-proposal to a minimal — but appropriate — number of tenderers.

The expression-of-interest is used to evaluate tenderer expertise, experience, capacity and capability as well as seeking its outline philosophical and operational solution to the project.

Additional to its primary role of selecting tenderers for the request-for-proposal stage, the expression-of-interest may also be used as a mechanism to explore with potential tenderers their position and potential solution to any significant and unresolved project issue.

If used in such a way, that section of the tenderer's response addressing the issue would not be used for evaluation and selection at the request-for-proposal stage, but used solely to help inform the government's consideration of options.

The request-for-proposal stage would be an interactive tender process, with workshops used extensively with each tenderer. These would generally adopt three streams (as applicable) — design, operational and legal/commercial. The legal and commercial stream would refine and reissue the project agreement during this stage.

GEO believes a best-and-final-offer stage should be avoided, with the request-for-proposal documentation being robust enough to allow a clearly preferred tenderer to be identified.

A fixed period of exclusive negotiations with the preferred tenderer would then follow, allowing outstanding areas of concern to be addressed and optimum value-for-money achieved, while maintaining a reserve preferred tenderer should an acceptable solution not be reached.

3. The desirability of the standardisation of procurement processes and documentation.

GEO believes that a standardised procurement process is extremely desirable.

Such an approach would assist potential tenderers with strategic and resource planning and the management of legal costs. Benefits to government would then flow from tenderers through their proposal price.

Such standardisation should also extend to the procurement schedule, with early visibility of — and adherence to — deadlines, especially for the initial stages of the procurement.

While standardised documentation is desirable, it should not introduce barriers to innovation or inflexibility in the procurement process that results in the need for an extended exclusive negotiation period.

Standardisation of project agreement terms should be on the basis of balanced terms, rather than positions of advantage for either government or the tenderer.

Additionally, GEO is observing in Australia and internationally a trend towards increasingly complex performance regimes and the payment arrangements linked to them.

GEO welcomes these developments allowing governments to take full advantage of the provider-accountability and performance-focused delivery public private partnerships offer.

However recent examples have been of such a complexity that they have also introduced opportunities for perverse incentives and unacceptable trigger points. These have had to be addressed in the exclusive negotiation period, adding delay and cost.

A degree of standardisation in such matters would be desirable.

4. The desirability of a standard national process and documentation for the delivery of government infrastructure within a federal structure.

Please refer above to GEO's comments regarding the adoption of balanced terms in project agreements.

5. Methods to minimise the cost of contractors tendering for the supply of services with respect to government infrastructure.

Please refer above to GEO's comments regarding the desirability of a robust expression-of-interest, resulting in as few tenderers as possible in order to reduce contractors' tendering costs.

Please refer above to GEO's comments regarding the inclusion, within a legal/commercial stream, of an interactive tender process in which the project agreement could be refined and reissued, and which would, as a result, reduce contractors' tendering costs.

Also please refer above to GEO's comments regarding the desirability of an adherence to procurement deadlines — and the earliest visibility of these to tenderers — to reduce contractors' tendering costs.

GEO believes that a high level of authority be vested in the government procurement team (or that an effective procedure achieves the same outcome), allowing swift, unambiguous and authoritative guidance to tenderers through the interactive tender process, to assist with the evolution of their solutions.

GEO suggests that a mechanism for the inclusion of a contractor's tendering costs as a request-for-proposal stage cost item be explored. This could also be coupled with tenderers retaining ownership of any intellectual property within their solutions. Unsuccessful tenderers would then have the option of recovering some/all of their tendering costs should government wish to have access to their intellectual property.

6. Methods to achieve optimal contestability in tendering for the supply of services with respect to government infrastructure.

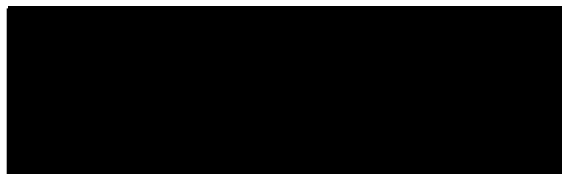
GEO believes unambiguous and transparent direction is required from government to tenderers as to what defines value-for-money for the project.

This might include clarifying any hierarchy of competing considerations in the government's evaluation of value-for-money, eg affordability v. maximised outcomes. Such an approach ensures that value-for-money retains a clear meaning within the project and so retains a central role in informing the development of optimum solutions from tenderers — solutions that offer a best match to the project's objectives.

7. Any other related matter.

GEO offers no comment.

SIGNED for **The GEO Group Australia Pty Ltd**
by its duly authorised officer



Pieter Bezuidenhout
Managing Director
The GEO Group Australia Pty Ltd
Date: 4/02/2016