

**Submission
No 6**

PROCUREMENT OF GOVERNMENT INFRASTRUCTURE PROJECTS

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Legislative Assembly Committee on Transport and Infrastructure

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Dear Ms Wood

With reference to the letter from Alister Henskens SC MP dated 25 November 2015, The Bank of Tokyo-Mitsubishi UFJ, Ltd. ("BTMU") is pleased to provide this submission to the *Inquiry into the procurement of government infrastructure projects* ("the Inquiry").

BTMU is an active participant in Australian Public Private Partnerships ("PPP"), as a sponsor, financial advisor and arranger of debt facilities. Most recently, the consortium advised by BTMU was announced as preferred bidder for the Capital Metro PPP in the ACT, and we are currently advising bidding consortia on the High Capacity Metro Trains PPP in Victoria and the Puhoi to Warkworth PPP in New Zealand. Across the team we have advised on over 25 PPPs in NSW and across Australia and New Zealand. This response is written from that perspective.

Over the last year BTMU has worked closely with the Infrastructure and Structured Finance Unit within NSW Treasury, participating in the study to understand relative public and private sector costs and cost drivers across the procurement lifecycle from planning, then EOI to financial close.

This response follows the structure set out in the Inquiry Terms of Reference. Where our organisation's expertise is not specifically relevant to an individual term of reference we have indicated as such.

BTMU's submission on the Terms of Reference

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

As a PPP market participant, BTMU does not usually become deeply involved in procurement processes until after the point at which they have been determined to be a PPP.

We are not aware of any particular issues with the decision making process adopted by NSW in this regard.

2. the best procurement process and documentation

We believe the best procurement practices feature the following key characteristics:

- A clear and realistic timetable that is adhered to by government;
- A government procurement team that is well prepared before approaching the market (having taken into account private sector feedback during market sounding phase);
- A well-resourced government team, with resourcing taking into consideration the complexity of the project and the number of shortlisted bidders;
- An interactive bid phase that seeks to ensure a meeting of minds with shortlisted bidders, work sensibly within probity arrangements to provide clear feedback to bidders and avoid unnecessary blind alleys being pursued by bidders;
- Binding submission requirements tailored to project with particular focus on omitting items from deliverables that can be deferred to preferred bidder phase or later without substantial risk or uncertainty. Some examples of this are discussed in our response to item 5 below; and
- A familiar, standardised process –this is further addressed in item 3 below.

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

As a general concept, BTMU welcomes all efforts made to standardise procurement processes and documentation, both within NSW and across all Australian jurisdictions.

In this regard we note the excellent work of the NSW Treasury Infrastructure and Structured Finance Unit during 2015, updating the standard Project Deed for use in NSW PPPs. Such efforts reduce uncertainty in procurement processes and save considerable time and cost for bidders in PPPs. Key to the success of such initiatives is ensuring that different government advisors such as law firms and accounting firms do not dilute standardisation by taking different approaches to formulating aspects of project documentation.

We would welcome further efforts between Australian states and territories to achieve greater standardisation across jurisdictions – variance across jurisdictions is one aspect of the Australian market that foreign participants find confusing when seeking to do business here.

In terms of procurement processes, we welcome the evolution of a standard process for PPPs, ie:

- Market sounding
- Expressions of Interest
- Request for Proposals
- Evaluation

- Preferred Bidder
- Financial Close

We see little need for this approach to vary, with only the time frames for each phase changing to reflect project specifics.

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

As stated above, BTMU welcomes all efforts made to standardise procurement processes and documentation cross Australian jurisdictions.

We believe that greater standardisation would reduce uncertainty in procurement processes, lower the cost of bidding and also allow bidders to focus on the core aspects of the infrastructure project in question. It would also encourage more participants (both domestic and foreign) to participate in PPPs. We note that variance across jurisdictions is one aspect of the Australian market that foreign participants find confusing when seeking to do business here.

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

As noted above, BTMU contributed to the 2015 study undertaken by the NSW Treasury Infrastructure and Structured Finance Unit that focused on reducing procurement bid costs. Please refer to Appendix 1, an excerpt from our submission made in July 2015.

The key additional observations we make in respect of bid cost minimisation are as follows:

- Requests for EOI often ask for information and detail that is not relevant to, or necessary for, shortlisting of bidders. Significant cost and time efficiencies may be available in that regard.
- The bulk of costs during the RFP phase are related to the design and construction elements of a project. This is perhaps the area for greatest potential savings and the views of specialists in that field should be examined particularly closely.
- Government reimbursement of bid costs for unsuccessful bidders encourages more parties to engage in PPP processes and usually comes at little or no cost to government, given bidders add premia to non-reimbursable at-risk costs, with the effect that the government pays additional costs to winning bidders.

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

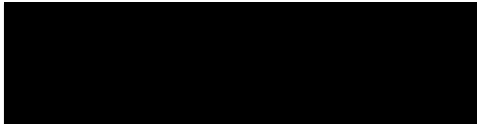
As our involvement in government infrastructure procurement is focused on the financial aspects of PPPs, we are not best placed to provide useful commentary in this regard.

7. any other related matter

None.

We hope that this submission is of value to the Inquiry and would be pleased to engage further on any of the above points.

Yours sincerely


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The Bank of Tokyo-Mitsubishi UFJ, Ltd.