PPP Procurement

Review of Barriers to Competition and Efficiency in the Procurement of PPP Projects

May 2010

ADVISORY

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Contents

1 Executive summary

1.1 Introduction

Public Private Partnerships (PPPs) are a key form of procurement for the delivery of major infrastructure projects throughout Australia. Governments have used PPP procurement successfully to deliver many large and complex projects, achieving good value for money and superior whole of life outcomes.

Many aspects of the Australian PPP model are world leading. It has attracted strong interest from the domestic and international markets, evidenced by many other countries seeking to learn from the Australian experience and the desire of major international companies to bid for Australian PPP projects. A report by the OECD in 2007[1] ranked Australia as the world's most mature PPP market, ahead of the UK and Canada, though Canada has gained in reputation and number of transactions in recent years.

Australian Governments have worked consistently to develop and improve PPP procurement practices over the years. As part of this process, Infrastructure Australia has appointed KPMG to undertake a "*Review of Barriers to Competition and Efficiency in the Procurement of PPPs*". The purpose of this Review is to recommend potential strategies to Governments to resolve those key issues identified as important to the continued improvement of the Australian PPP market. The Review draws together:

- key themes raised during market consultations with existing and potential PPP market participants (Participants)
- lessons learnt from a review of other leading international jurisdictions that have active and mature PPP markets.

This Review looks only at the PPP market and potential improvements to its procurement processes. It does not consider broader issues such as a comparison with other methods for procuring infrastructure projects.

1.2 What are existing and potential PPP Participants saying?

In general, almost all Participants indicated a high level of confidence in the Australian PPP process. The procurement of most PPP projects is efficient and runs broadly to timetable. However, a majority of Participants noted that best practices in Australia do not always apply consistently across all jurisdictions or across all projects within a jurisdiction.

Bidding for PPP projects is expensive: typically $2.5 million at risk for projects with a capital value of $250 – 300 million, rising to $5 - 6 million for a $1 billion hospital and $30 million or more for a large $2 billion+ economic infrastructure project. Consequently, Participants are keen to improve efficiency where possible, and to improve process certainty to avoid unexpected additional bid costs that can be large in absolute terms.

1 OECD (2007). *Infrastructure to 2030, Volume 2, Mapping Policy for Electricity, Water and Transport*

1.2.1 Barriers to competition

Most Participants (both private and public sector) feel that there is good competition within the Australian market[2]. Projects generally deliver strong financial value for money and Government project teams see strong competition. However, factors that impact the level of competition within the PPP market can effect competition amongst existing Australian PPP players, as well as deter potential new domestic participants and experienced international participants from the Australian market.

The most common issues cited by Participants as barriers to competition are:

- a largely unknown pipeline of projects that is sporadic in nature (all Participants mentioned this issue)
- a perceived lack of commitment to PPPs consistently across all Australian jurisdictions (almost all)
- the magnitude of bid costs (most).

1.2.2 Procurement inefficiencies (high bid costs)

As noted above, bidding for PPP projects is expensive. Often, the largest component of bid costs is design, which can account for 50-60% of the total (up from approximately 40% in 2005). Legal fees on the other hand have become less significant, dropping from 40% in 2005 to 10-12% currently.

The efficiency of the procurement process can significantly impact both the level of transaction costs to Government and the bid costs incurred by market participants. Although Participants are largely happy with Australian PPP processes, the most important issues that Participants raised in relation to inefficiencies in the procurement process for some projects included:

- inefficient resourcing associated with the stop/start nature of the Australian PPP market, due to a number of factors including the uncertainty and lack of a clear project pipeline, delayed communication of decisions and protracted procurement processes (a majority)
- excessive requirements for information and documentation (almost all)
- inconsistencies in and reduced quality of tender processes and documentation (a majority)
- delayed communication of decisions to market and inefficient decision making processes (a majority).

The key factors cited by Participants as driving these inefficiencies are:

- the skill and expertise of the Government team managing the procurement process (almost all)
- the Government's level of commitment to the project and the PPP procurement model (a majority).

2 However, the Global Financial Crisis has led to some reductions in competition

These factors directly impact decision-making efficiency and the overall timeframes taken to complete procurement processes.

1.3 What are the key lessons from other countries?

Compared with some international jurisdictions, the number of PPP projects undertaken in any year and the announced pipeline of future PPP projects in Australia is limited. Australia has closed fewer PPP projects since 2005, and has a smaller announced pipeline of PPP projects, than the UK, Spain, Canada and France. Even after adjusting for Australia's smaller population, its pipeline falls well behind those of the UK and Canada. However, the average value of Australian PPP projects is substantially higher than that of both the UK and Canada, two comparable jurisdictions.

Australian PPP processes compare very favourably with similar processes internationally. The average procurement time for social infrastructure of 17 months is significantly shorter than that in the UK (34 months) and only slightly longer than that in Canada (16 months).

Bid costs in Australia also compare favourably with those in the UK, though they are higher than those in Canada. Bid costs at risk have been 0.5 - 1.2% of project capital value in Australia, partly depending on the project size, with large projects generally costing proportionately less. A like-for-like comparison between countries is difficult, due to limited information, substantial variability in bid costs as a proportion of capital costs, and differences in project sizes. Canada's figures are lower in Australia, at 0.35 - 1% of capital value; but costs in the UK are higher, at 2 - 3% of capital value. This comparison is distorted to some extent by Australian projects on average being larger than those in Canada and the UK. For smaller projects, where a like-for-like comparison is possible, Australian bid costs are around 25 - 45% higher than those in Canada.

In contrast to some countries, Australian Governments do not approach PPPs in order to supplement public expenditure restrictions. Rather, they use PPPs only when they are the most suitable procurement approach for a project. The benefits that Australia seeks to obtain from PPPs result in a need to integrate design, construction, operation, maintenance and finance; and require extensive legal documentation. A focus on wider value for money, including that arising from design innovation, means that Australian PPP projects generally are more complex than those in other countries. Australia's federal political system leads to further complexity, with different laws, regulations and standards between States; and the country has a complex tax system relating to PPP projects. As a result of these factors, Australian procurement processes often are different from those of other countries and hence are not directly comparable.

1.3.1 Barriers to competition

Strategies used in other countries that reduce barriers to competition include:

- committing to the PPP procurement model as the default for major projects that meet certain minimum general criteria indicating that this model is likely to result in the best value for money, unless there are specific factors favouring another procurement method
- committing to a strong pipeline of PPP projects
- clear criteria, applied consistently, for determining whether projects become PPPs.

Committing to a strong pipeline of infrastructure projects generally is difficult in Australia, as it depends on Governments' budget capacities, as well as the need for and priority of projects within overall Governments' spending.

Utilising PPP as a default procurement model for some categories of projects conflicts with the National PPP Guidelines on procurement options analysis, which looks at projects individually to determine the most appropriate procurement method.

1.3.2 Procurement inefficiencies (high bid costs)

Strategies used in comparable countries (particularly Canada) that have improved procurement efficiency and reduced bid costs include:

- rigorous adherence to project timetables and the general avoidance of further bid stages
- less information requirements, relying more on the preferred bidder developing its proposal (both before and after commercial close) and on the protections within the project contract
- less of an emphasis on architectural design and design innovation
- some form of substantial contributions towards bid costs
- greater standardisation of contracts, with contracts being rolled forward to subsequent projects without substantive amendment
- less focus on third party income or development gains as a source of value for money

Although noting the above, Australian Governments value their emphasis on design in PPP projects (including operational efficiency) and potential third party income as key sources of wider value for money, so some of these strategies are not appropriate for Australia.

1.4 KPMG analysis and priority recommendations that Governments should consider implementing

Strategies to reduce barriers to competition

Competition for Australian PPP projects has been good and they generally achieve strong value for money. However, the complexity of Australian PPPs and the consequent cost to bidders of the procurement process means that the risk of being unsuccessful is high unless bidders can spread it across a number of projects. As noted above, compared with some international jurisdictions, the number of PPP projects undertaken in any year and the announced pipeline of future PPP projects in Australia is limited. Hence, bidders are reluctant to expand their teams without a clear pipeline of projects, may withdraw from the market, and will be selective about projects for which they bid, potentially reducing competition.

Although process inefficiencies and bid costs are in themselves a barrier to competition, the key issue identified within the Australian PPP market is the sporadic nature of the project pipeline and the current limited ability of existing and potential new market participants to undertake an informed assessment of likely PPP projects.

Accordingly, we recommend the implementation of processes that act to improve both the visibility and certainty as to the Australian PPP pipeline, including:

a. as early as possible announcement of potential future PPP projects

b. more consistent and rigorous application of the National PPP Guidelines on the criteria for determining whether PPP procurement is appropriate for a project

c. continued commitment and leadership from politicians and senior bureaucrats within the Commonwealth and each of the various jurisdictions in support of the use of PPPs in appropriate circumstances

d. where possible, continued focus on improving national co-ordination of the release of projects to the market by greater liaison between jurisdictions, acknowledging the difficulties in achieving this.

Strategies to improve the efficiency of the PPP process and reduce bid costs

Although bid costs would become less of an issue following development of a stronger and more certain Australian PPP pipeline, inefficient processes continue to impact the value for money outcomes achieved by Governments. Accordingly, we recommend that initiatives to improve efficiency and reduce bid costs (as well as Government side transaction costs) remain a key priority, including:

e. rationalising information requested that is neither required to evaluate bids nor required for certainty at contractual close, particularly relating to some aspects of design and to general corporate processes

f. recruitment, development and retention of more high quality Government project team members, in particular the project director and key team members responsible for managing each of the various disciplines

g. ensuring governance structures empower the project team to deliver the project while enabling effective and efficient decision making so as to prevent unnecessarily protracted and uncertain timeframes

h. only using more than one bid stage where absolutely necessary, either because of changed market conditions or where no bidder has made an acceptable proposal.

Other strategies recommended

In addition to the above, we recommend consideration of a range of other initiatives that should provide incremental improvement in competition in the PPP market and the efficiency of PPP procurement processes. We have described these initiatives in more detail in Sections 6 and 7 of this report.

1.5 Next steps

The key next steps stemming from this report are:

- the consideration of this report by the jurisdictions
- consider further research on the quantum of the impact of our recommendations, particularly the rationalisation of information requested in the RFP stage
- the determination of the acceptability of the recommended strategies (both priority and other)
- the development of an implementation plan for the accepted strategies
- the implementation of the accepted strategies by the jurisdictions.

2 Background

2.1 Introduction

The private sector has been involved in the delivery of public infrastructure and supporting services for a long time. The UK established the (modern) PPP model, through the development of the Private Finance Initiative (PFI) in the 1990s, drawing on its own experiences of privatisation and contracting out some public services, and the Australian experience of full private sector delivery of some public services such as hospitals, prisons and toll roads. Australia refined its own model resulting in the establishment of the *Partnerships Victoria* policy and guidelines in 2000, the Working with Government Guidelines for Privately Financed Projects in NSW and similar policies in other jurisdictions. Increasingly, many more countries have started using PPPs, including France, Germany, Ireland, Portugal, Spain, South Africa and Canada. Many countries initially developed PPPs in the transport sector and later extended their use to other sectors such as education, health, Government accommodation, water and waste treatment.

One consequence of the rapid growth of infrastructure PPPs is that countries remain at vastly different stages of understanding and sophistication in using these innovative partnership models. The UK and Australia are the most mature adopters of the PPP model. In terms of deal flow, the top countries (both in terms of number and value of social infrastructure[3] and transport projects closed since 2005) are the UK, followed by France, Australia, Spain, the US and Canada.

PPP maturity and deal flow vary across countries due to differences in:

- legal and procurement frameworks
- institutional arrangements
- the level of political commitment and public acceptance
- experience and competence levels
- procurement approaches adopted.

The UK, Canada and Australia use broadly the same multi-stage procurement process, consisting of an EOI stage, an RFP stage involving interaction with bidders, selection of a preferred bidder and pre-award contract negotiations. In comparison, Portugal short-lists bidders (to two) and selects a preferred bidder (mainly on price) with limited negotiations (using a quasi-fixed contract framework). In Spain, there is a single stage process with no short-listing or pre-qualification: multiple bidders submit binding bids and the Government selects a winner mainly on price, with no contract negotiations.

3 For the purposes of this report, social infrastructure refers to all sub-sectors excluding transport and housing but including water and sewerage

2.2 Australian context

Public Private Partnerships are a key form of procurement for the delivery of major infrastructure projects throughout Australia. The current PPP model had its genesis in the Sydney Harbour Tunnel project in the mid 1980s. Although initially focusing on economic infrastructure and full private sector provision of public services, Governments have used PPPs over the last decade to procure social infrastructure assets and associated non-core services, with the public sector delivering core services.

The primary considerations driving PPP procurement in Australia have been the ability to achieve:

- value for money
- significant design innovation
- appropriate risk transfer
- superior whole of life outcomes.

These considerations contrast with those of some other international jurisdictions, where one of the key drivers for the use of PPP procurement models is the provision of an alternative funding source when public infrastructure capital is scarce. Partly as a result, such countries' procurement processes often are different from those in Australia and hence are not directly comparable.

Australian jurisdictions typically only commit to a project following the allocation of its full capital cost within the relevant Government budgetary cycle. If Government chooses PPP as the preferred model, it allocates that capital allocation to cover the future stream of service payments.

This approach (assuming there are capital constraints) can constrain the number of projects that Governments can fund at any one time when compared with some other international jurisdictions. The Australian approach can, therefore, delay the implementation of projects (and the accompanying improvements in service delivery) in comparison with the alternative approach though, in theory, it should not reduce the longer-term flow of projects.

The UK and some other jurisdictions that use PPP delivery as the default procurement model for certain projects often do not require the allocation of the full capital cost within the budgetary cycle. Rather, they assess the affordability of future service payment obligations and only allocate those payments in forward budget estimates.

Australia's budget approach is beyond the scope of this Review and we do not recommend any changes to it.

The benefits that Australia seeks to obtain from PPPs result in them being complex, needing to integrate design, construction, operation, maintenance and finance. They require extensive legal documentation, although the development of standard commercial principles by the key jurisdictions of NSW and Victoria, now incorporated within the National PPP Guidelines, have reduced legal costs considerably.

Australia's federal political system leads to further complexity, with different laws, regulations and standards between States, although the National PPP Policy and Guidelines, adopted by the Federal Government and the States and Territories, have standardised PPP processes. In addition, Australia has a complex tax system, not least because of the split between the Federal and State Governments. This complexity of itself places demands on the skills of Participants' teams and Government evaluation teams. Although taxation in relation to PPPs is less complex following the replacement of inefficient capital allowance provisions in the old tax law, there continue to be important tax issues that require careful management.

From 2005 to September 2009, Australia closed 29 social infrastructure and transport projects[4] of which the majority were in Victoria (9) and New South Wales (10). Victoria and NSW have constantly refined their procurement processes, with the development of the Interactive Tender Process Guidelines and a range of other updated guidance material as examples.

Individual Governments each provide guidance and information relating to procurement processes within their respective jurisdictions. In 2004, Australian Governments formed the National PPP forum amongst State, Territory and Federal Governments in recognition of the need for a national and co-ordinated approach to ensuring a competitive and efficient national market. Since then, COAG announced a new national approach to planning, funding and implementing the nation's infrastructure needs, with the *Infrastructure Australia Act* coming into effect in April 2008. This recent legislation facilitates the harmonisation of policies relating to the development of, and investment in, nationally significant infrastructure projects.

Since its establishment, Infrastructure Australia has published the National Public Private Partnership Policy and Guidelines. It undertook this work together with all jurisdictions to facilitate the harmonisation of PPP procurement processes nationally, encourage consistency and achieve efficiency for both Governments and market participants.

2.3 Purpose of this Report

In line with a maturing Australian market, Infrastructure Australia and its respective partner organisations in the Commonwealth, States and Territories are looking for further improvement in the procurement and delivery of PPP projects. Despite considering many aspects of the Australian PPP procurement process to be world leading, private sector participants continue to identify the efficiency of bid processes and high bid costs as areas of possible improvement. Additionally, several market participants, including some with significant international PPP experience, have expressed concern about perceived barriers to their participation in Australian PPP projects.

Accordingly, a priority next step for Infrastructure Australia in its role of facilitating continuing improvement in infrastructure delivery is to identify and address, where considered appropriate, barriers to competition and inefficiencies in the procurement of PPPs. This initiative is consistent with Infrastructure Australia's mandate *to identify any impediments to investment in nationally significant infrastructure and identify strategies to remove any impediments identified* as well as *promote investment in infrastructure*.

As part of this process, Infrastructure Australia has appointed KPMG to undertake a "*Review of Barriers to Competition and Efficiency in the Procurement of PPPs*".

4 Infrastructure Journal project database and KPMG analysis of data. The period of analysis included 1 January 2005 to September 2009. We have not included social housing and student accommodation projects in the analysis.

For the purpose of this Review, we have defined:

- “barriers to competition” as being factors that might reduce the competitiveness of the PPP procurement process such as to prevent Governments from achieving **best** value for money (even if they still achieve value for money in an absolute sense)

- “efficiency in procurement” as being the absence of excessive and unnecessary costs or delays in the PPP procurement process from the perspective of both Governments and bidders.

The purpose of this Review is to recommend potential strategies to Governments to resolve those key issues identified as important to the continued improvement of the Australian PPP market. The Review draws together:

- key themes raised during market consultations with existing and potential PPP market participants (Participants)

- lessons learnt from a review of other leading international jurisdictions that have active and mature PPP markets.

This Review looks only at the PPP market and potential improvements to its procurement processes. It does not consider broader issues such as a comparison with other methods for procuring infrastructure projects.

3 Approach

In order to identify the key factors impacting *Barriers to Competition and Efficiency in the Procurement of PPPs*, KPMG has undertaken both an industry consultation and desktop review of leading international jurisdictions. To facilitate feedback and co-ordination of issues, this report categorises the key factors identified as being either barriers to competition or procurement inefficiencies typically contributing to high bid costs (which are in themselves a barrier to competition). Several key factors are common to both categories.

3.1 Consultation with PPP practitioners

KPMG held discussions with 35 existing and potential PPP participants in the Australian infrastructure market (referred to in this Review as Participants). The parties consulted covered a broad range of disciplines including practitioners from the following segments of the market:

- specialist PPP arrangers and long term investors
- construction companies
- facilities maintenance providers
- investment bank equity providers and debt arrangers
- superannuation funds
- debt providers
- advisors
- Government project team members.

To stimulate discussion and to facilitate the receipt of feedback, KPMG issued a discussion paper to market participants in advance of face-to-face meetings. The paper summarised some of the key issues cited by current or prospective market participants and/or those issues arising from observations in respect of both barriers to competition and the efficiency of Australian PPP procurement processes. A copy of this discussion paper is included in the Appendix.

To facilitate a free discussion of issues, the face-to-face meetings did not follow a fixed agenda. Participants were free to raise the issues of specific concern to them, which meant that they did not all address all the questions within the discussion paper. This approach had the benefit of obtaining detailed comments on issues that Participants believe are important, but it did mean that a formal statistical analysis of the results of the consultation process is not possible. In addition, Participants made comments and provided information on the basis that they were not attributable.

3.2 Review of international jurisdictions

KPMG also undertook a high-level desktop review of countries involved in PPP procurement, with the aim of identifying the most mature and active countries that might provide a guide to possible improvements to current Australian PPP procurement practices. KPMG analysed further practices in these countries – the UK, Canada, Spain, Portugal, Ireland and France - by undertaking a desktop review and by KPMG's professionals in those countries completing a questionnaire.

3.3 Infrastructure Australia Workshops

Following the completion of the industry consultation and international review, we conducted two workshops with Infrastructure Australia and representatives of several Australian Governments (henceforth referred to as the 'Working Group').

The Working Group discussed the key issues and proposed strategies raised by our Review in detail and we have taken into account the comments received in this report.

4 Barriers to Competition

Competitive PPP procurement processes are necessary to ensure best value for money delivery of public infrastructure. Factors that impact the level of competition within the PPP market can affect existing Australian PPP players as well as deter potential new domestic participants and experienced international participants from participating in the Australian market.

This section of the report summarises the key factors that PPP market Participants consider to be barriers to competition within the Australian PPP market. It also discusses the treatment of comparable issues in other key international jurisdictions participating in PPP procurement processes.

4.1 Feedback received from discussions with PPP practitioners

The following discussion provides a high-level summary of the responses provided by Participants in relation to the questions included within the discussion paper[5] distributed prior to consultations.

Do you consider there are currently substantive barriers to entry within the Australian PPP market and, if so, what are they, and which element of the market do you consider most affected?

Most Participants (both private and public sector) feel that there is good competition within the Australian PPP market. Projects generally deliver strong financial value for money and Government project teams see strong competition between short-listed bidders. Frequently, more parties submit Expressions of Interest (EOIs) for projects than the number on the Government's proposed short-list. However, factors that impact the level of competition within the PPP market can affect existing Australian PPP players, as well as deter potential new domestic participants and experienced international participants from the Australian market.

The two most common issues identified as barriers to entry were:

- the largely unknown pipeline of projects, and their sporadic nature (almost all Participants mentioned this issue)
- the establishment costs of developing a team with the core competencies and specialist knowledge required to participate competitively in PPP projects (around a half).

Participants generally also considered the magnitude of bid costs and general complexity of bidding processes in the Australian PPP marketplace as a key deterrent for new entrants when compared with other international jurisdictions. Further, several international Participants consider that there is a preference by Governments for demonstrated local experience both at the State and national level, though Governments refute that there is any such preference and, indeed, encourage competition from international firms.

5 See Appendix.

The sectors that Participants considered most impacted by barriers to entry include:

- the construction industry, in particular large-scale international contractors looking to take a sponsorship role and smaller sized, appropriately skilled national construction contractors without large balance sheets (mentioned by potential new entrants as well as by sponsors trying to bring in contractors new to PPPs)
- the superannuation industry (a majority)
- facilities management contractors (several)
- financial advisors (international and some domestic participants).

What do you consider are the key barriers to competition amongst existing PPP market participants?

Participants raised a range of issues, with the most common being:

- the certainty of procurement processes, in terms of meeting procurement milestones (most)
- the degree of commitment to the project within each of the various Australian jurisdictions (most).

A majority of Participants indicated that, due to the lack of a national pipeline and co-ordination of project release, where resource constraints exist, bidders will select projects in which to participate based on an initial assessment both of assumed chances of success and of best return on investment.

Although Participants often used a competitor assessment for each particular project to determine their chances of success, other major factors determining their decision to bid for a project are:

- the level of confidence in the efficiency of the procurement process of the Government concerned (and the associated level of bid costs)
- the degree of certainty that the Government concerned will go through with the procurement of the project.

Participants indicated significant historic variations across jurisdictions.

Participants raised a number of additional issues including:

- *National pipeline* – the most important factor from the perspective of all Participants is the total number of projects brought to market (if there are more projects, prospective bidders are able to take a more favourable view of initial set up costs, their ability to absorb or recover bid costs, and their ability to manage and plan resources). Participants also view the co-ordination of projects coming to market as important, but it is only a major issue where there are a limited number of projects and the pipeline is sporadic in nature (as is currently the case). This situation has resulted in Participants being unwilling to increase their teams to meet the demand requirements due to the risk of being unable to continue to carry such costs without a probable and transparent pipeline. There also is a heightened risk of some project sponsors withdrawing from this role.

- *Current financial markets* – due to the current restrictions on the availability of finance, including the current lack of activity within the capital markets (although there is some emergence in other countries) in the aftermath of the Global Financial Crisis, international debt financiers are requiring the presence of one of the domestic ‘Big 4’ within a consortium in order to obtain credit committee approval. As a result, there has been reduced competition from both:

  - the ability of Sponsors to lock up two or more of the domestic ‘Big 4’ on an exclusive basis, resulting in a strategic bidding position that reduces the practical bidding field to no more than two players

  - in many instances, the domestic banks demonstrating a preference to work in pairs and accordingly, within the current market, being able to create a secondary shortlist (even though Government has short listed three) based on criteria that may not coincide with those of the Government.

  Some Participants also felt that Governments have sought as much comfort on funding as possible, by not short-listing consortia without a “traditional” investment bank financial advisor arguably capable of providing or underwriting debt and equity.

- *Bid Costs* – a majority of existing market participants have indicated that the level of bid costs remain a barrier to competition, particularly where there is a concern as to the level of commitment to proceed with the project as a PPP and the certainty of the procurement process (in terms of meeting procurement timelines). However, several active players in the PPP market indicated that bid costs are not a major factor inhibiting participation in the bidding process, provided there are both an appropriate pipeline of future projects and an efficient procurement process. This reduced concern is due to their factoring bid costs into future successful bids as a multiple of actual costs incurred for each particular project such that, when they are successful, they can recoup past bid costs.

What is the source of the barriers, e.g. Government policy, accepted practice, industry structure, etc.?

In relation to barriers to competition (both potential new entrants and competition amongst existing players) the key reasons cited as preventing competitive outcomes consisted of:

- *Perceived lack of commitment to the PPP procurement model in some jurisdictions* – with regard to bringing potential projects to market, as well as projects where there has been a previous commitment to a PPP delivery model. Participants indicated that:

  - Governments do not procure as PPPs some projects that might be best suited to, or appropriate for, PPP procurement, possibly due to bureaucratic prejudices or public misconceptions regarding private delivery of public infrastructure. As a result, existing and potential market participants are less able to undertake a reliable assessment of the likely future pipeline of PPP projects.

  - Governments’ commitment to projects announced and/or processes that have already commenced sometimes is lacking.

- *Inefficient decision making processes* – protracted timeframes and excessive stop/start periods for Participants bidding on projects, resulting in inefficient allocation of resources and constraints on teams' capacity to bid for multiple projects, act to reduce market capacity and competition.

- *Perceived dominance of Australia's construction industry* – international Participants have indicated that they believe that the major Australian construction contractors have a dominant position in the Australian market that impacts on their ability to compete effectively.

What do you consider to be potential solutions to the abovementioned issues? Where you suggest potential solutions, please indicate which of these options are likely to be the most effective.

Industry Participants suggested a range of solutions in relation to the above issues, which included:

- *greater leadership from within Governments* in respect of projects that are appropriate for PPP procurement (including the development of communications strategies to address public perception issues and controversy surrounding the PPP procurement model), resulting in greater clarity and certainty of a project pipeline

- *recruitment, development and retention of highly skilled and experienced Government teams*, in particular the project director but also key team members managing the various disciplines required to undertake PPP procurement processes successfully

- *appropriate governance structures* to ensure timely and effective decision-making processes, in particular the project director and project team being appropriately empowered to make decisions, with streamlined approvals processes in instances where whole of Government decisions are required.

We note that each jurisdiction through COAG has committed to the National PPP Policy and Guidelines, which include criteria for determining whether a project should be a PPP.

To the extent that your organisation is active in international jurisdictions that have implemented initiatives that act to reduce barriers to competition, please comment on the relevance and likely success of such initiatives within the Australian context.

Most Participants with international experience quoted Canada as an exemplar jurisdiction in relation to encouraging maximum competition from the perspective of both new entrants and existing competitors. Participants recognise Canada as a country with a solid pipeline of deals, particularly in the healthcare, justice and roads sectors.

Like Australia, Canada has an international reputation for its efficient procurement process and its track record of getting transactions through the procurement process to financial close (with few projects experiencing delays in reaching financial close). Canada has been able to reduce the time from release of EOI to financial close over the last three years (from an average of about 18 months to 16 months)[6].

6 KPMG has based this conclusion on an analysis it performed on a random sample of 15 projects from the Infrastructure Journal database.

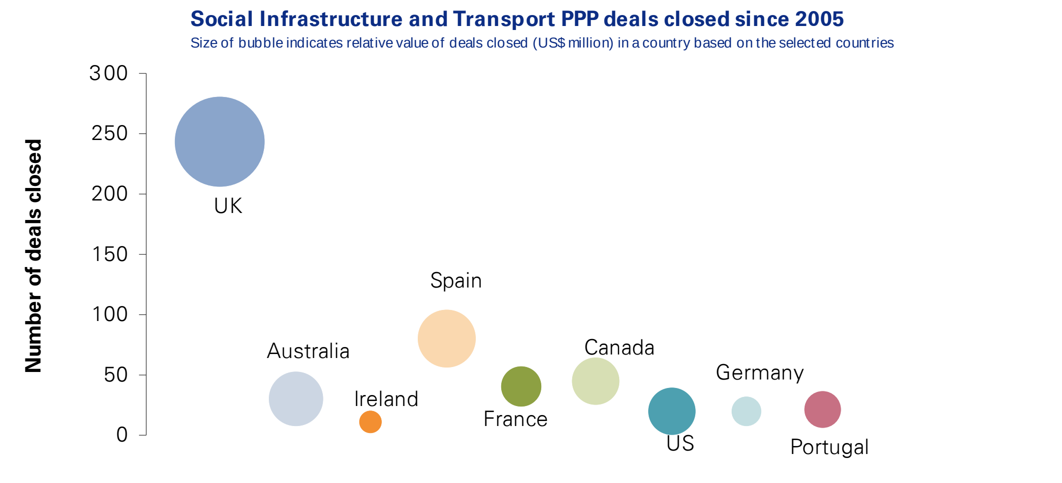
4.2 Findings from review of key international jurisdictions

The following section provides a high-level summary of approaches adopted by key international jurisdictions to address some of the main issues raised by the Australian market participants in respect of barriers to competition.

Largely unknown pipeline of projects that is sporadic in nature

Based on literature reviewed, most international jurisdictions consider the establishment of sufficient deal flow as crucial to encouraging new firms to enter markets. Jurisdictions such as the UK, Spain and Canada are releasing multiple projects to the market annually (as depicted in the graphs below[7]).

Australia has closed fewer PPP deals since 2005 (in terms of number of transactions), compared with the UK, Spain, Canada and France, although the total value of deals closed is comparable to that of Spain and Canada; with the average deal size in Australia being significantly higher than other countries (for example, the average capital value of PPP deals closed since 2005 in Australia is about 3.5 times that of the UK and 2 times that of Canada).



Source: Infrastructure Journal (October 2009) and KPMG analysis of data

Even after adjusting for Australia's smaller population, its pipeline falls well behind those of the UK and Canada.

According to Chan *et al* (2009)[8], in Australia, PPPs are increasing and now constitute around 5% of investment in public infrastructure; more in NSW and Victoria (where the proportion has been around 10%). Canada delivers 10% to 20% of public sector capital investment using PPPs[9] and the UK delivers about 15% similarly[10].

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7 Source: Infrastructure Journal (October 2009) and KPMG analysis of data
Included desalination transactions
Excluded all refinancing, disposal, privatisation, bridge loans, corporate loan, acquisition, credit facility, housing, student accommodation, aircraft, airport, ports and terminal, and car park transactions
8 Chan, C., Forwood, D., Roper, H., and Sayer, C. (2009). *Public Infrastructure Financing: An International Perspective.* Productivity Commission Staff Working Paper, Australian Government Productivity Commission.
9 Source: The head of Partnerships British Columbia noted that he "couldn't imagine more than 10 or 20 percent of all the capital projects that the Government does being done in a P3 way." Province of British Columbia Executive Council, Transcript

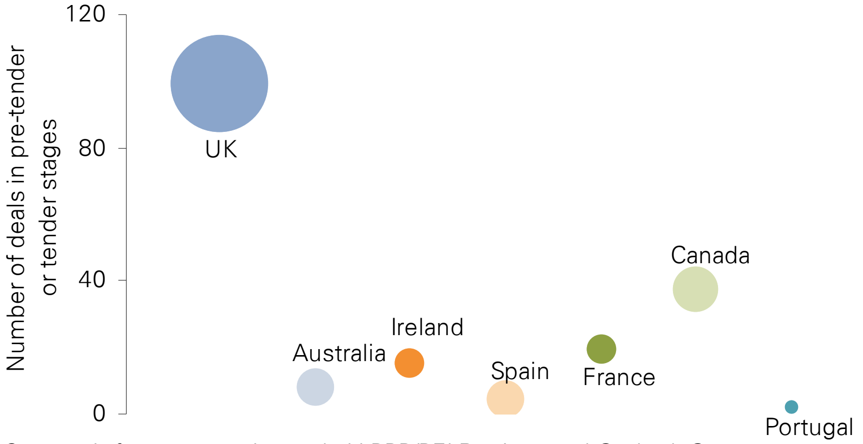
A key success factor for the UK has been strong political will and general public acceptance of the PPP model (though opponents to it remain). The UK government has made a policy decision to use the PPP model for new investment where PPP has proven and continues to prove to be value for money (such as schools, hospitals, prisons, etc.),[11] though it is not clear this policy will survive the election in May 2010. The UK also is not constrained in practice by the need for full budget funding of a project's capital costs before approval for it to proceed.

The UK Treasury has recently formed Infrastructure UK from its own PPP Policy unit, the Treasury Infrastructure Finance Unit and Partnerships UK to coordinate the country's overall approach to infrastructure development.

Canada also (generally) has a politically supportive environment ,with the federal government requiring the PPP model to be being considered as an option for large infrastructure projects receiving federal funding. The Province of British Columbia (BC) also requires consideration of the PPP model for all provincially-funded capital projects with a value in excess of C$20 million, and that procuring agencies justify any use of alternative procurement methods.[12]

Social Infrastructure PPP deals in the pipeline

Size of bubble indicates relative value of deals (US$ million) in a country based on the selected countries



Source: Infrastructure Journal - IJ PPP/PFI Review and Outlook Q4 2009 and KPMG analysis of data

According to a recent Infrastructure Journal report[13], Canada has 43 PPP projects in the pipeline (at pre-tender and in tender stages) compared to Australia with 9 projects (3 in each of Victoria and Queensland; 2 in SA; 1 in the Federal Government). The total capital value of the deals in the pipeline in Australia is comparable to Canada, Spain and France, current projects in Australia's pipeline being relatively large in size.

Some key strategies implemented by other international jurisdictions to increase the volume of transactions include:

10 Source: IFSL Research, PFI in the UK: Progress and Performance, p. 1. The 15 per cent figure refers to PFI deals.
11 Source: A report by HM Treasury – PFI: meeting the investment challenge (July 2003)
12 Source:: The Impact of the Global Credit Retraction and the Canadian PPP Market, deliberations by the industry members of the Canadian Council for Public-Private Partnerships, published Spring/Summer 2009
13 Source: IJ PPP/PFI Review & Outlook Q4 2009 – A detailed report on PPPs in Europe, the Malay Peninsula, Australasia and Canada.

- putting in place a strong pipeline of smaller PPP projects under 'framework' type agreements that streamline processes and reduce bid costs in sectors with a high number of PPP projects

- maintaining a database about planned construction projects across the public sector to (for example the database of the Office of Government Commerce (OGC) in the UK) to:

  - provide the market with information on when it expects projects to proceed to tendering

  - monitor whether projected demand from the public sector is likely to exceed market capacity

- making key public announcements in respect of large scale infrastructure plans (such as Canada's seven-year "Building Canada" infrastructure initiative and the five-year infrastructure plan (announced in 2005) – "ReNew Ontario" – under which more than C$30 billion will be invested, with 31 projects undertaken as PPP projects, of which 27 is in the healthcare sector)

- committing to the PPP model to attract and maintain the interest of PPP market participants

- using the PPP model as an alternative approach to funding infrastructure within a fiscally constrained environment (i.e. as a driver to defer expenditure). For example, in most of the international jurisdictions reviewed, the decision about how to fund a project is not separate from the decision of how to deliver it (which is different from Australia). These jurisdictions usually measure affordability by their ability to pay the service payment obligations[14].

As noted elsewhere in this report, these strategies largely are not appropriate for Australia.

General complexity of bidding processes in the Australian PPP marketplace as a key deterrent for new entrants when compared with other international jurisdictions

As noted in Section 2.2 of this report, the primary considerations driving PPP procurement in Australia have been the ability to achieve:

- value for money

- significant design innovation

- appropriate risk transfer

- superior whole of life outcomes.

14 European Union countries need to comply with European Union (EU) convergence criteria, which places limits on public debt and budget deficits (EUROSTAT, the EU's statistical agency, generally counts payments of PPP service charges as operating payments, rather than capitalising them and counting them as part of countries' debts)

These considerations contrast with those of many other international jurisdictions, where a key driver for the use of PPP procurement models is the provision of an alternative funding source when public infrastructure capital is scarce.

Market participants generally view the Spanish and Portuguese models as having simple and short processes, but with some negative implications.

- In its early PPP projects (mainly roads), Portugal evaluated bids and awarded contracts based on effectiveness (price) rather than economic efficiency (value for money). This approach resulted in (fairly) short procurement timeframes and low bid costs but left Government with a possible significant fiscal impact in the long term, as there is widespread agreement that the Government significantly underestimated the risk borne by the public sector, at least in some projects.

- The Spanish approach involves significant project development ahead of the approach to the market and, in essence, requires the private sector to provide a price for the Government's detailed requirements, with limited room for innovation. The advantages of this approach are that the process is quick and that bid costs at risk are low (for the private sector). However, a disadvantage is the risk of problems with the Government's design, leading to an increase in the capital costs of the project and a consequent "rebalancing" to restore the project company's equity IRR.

Such shorter and simpler procurement processes are not desirable in Australia if they are at the expense of the overall value for money and innovation of the projects and if the Governments retain significant project risk.

The current restrictions on the availability of finance

Many countries have established separate funds to finance PPPs or concession-based infrastructure projects and/or changed their procurement practices in order to assist them to reach financial close despite the impact of the global financial crisis, to reduce or remove bidders' need to demonstrate full financial backing for their proposals. For example:

- the UK recently established a new Treasury Infrastructure Finance Unit (TIFU) as a temporary solution to lend to PPP projects that cannot raise sufficient debt finance, which it has now merged into Infrastructure UK. TIFU provided debt finance for the first time in April 2009 for the Greater Manchester Waste PPP project (with a project value of US$1.09 billion). Market participants have noted that this is a fairly complex process involving substantial government resources. Treasury lending will mostly be on commercial terms, with the ability to provide up to 100% of senior debt, but Treasury's expectation is that lending will be less than 50%. However, future use of Government lending looks less likely in the near term, as the current pipeline contains few large projects that might stretch the capacity of the financial markets

- Canada launched a new P3 Canada Fund (Can$1.25 billion) in September 2009 to invest in PPPs using a range of financing arrangements. The fund has a limited authority with some projects, such as schools and hospitals, falling outside its mandate

- the Spanish ministry of infrastructure initiated special financial guarantees for PPP projects (mainly for a high speed train project) for an estimated amount of €15 billion

- in France, savings funds managed by the Caisse des Dépôts et Consignations can provide loans, up to a limit of €8 billion, to finance PPP or concession-based infrastructure projects. It may grant these loans either directly to project companies or to local authorities making investment subsidies. The French government will also, as part of its stimulus package, provide up to €10 billion in partial guarantees for PPP projects (for no more than 80% of total funding requirement).

Some international jurisdictions have also made changes to their PPP regulatory framework, including:

- the UK issuing guidance on Preferred Bidder Debt Funding Competitions

- France reducing its requirement for 100% private sector financing to at least 50% for some projects. It has also removed temporarily the requirement for bidders to submit firm financial commitment with the final bid (RFP), and it now only requires finalisation within a certain period from selection of preferred bidder, with certain conditions.

The Canadian Council for PPPs identified a number of procurement process and funding mechanism enhancements in its recent report "The impact of Global Credit Retraction and the Canadian PPP market"[15]. The key recommendations from this report are:

- maintaining a national pipeline of projects in Canada, ideally organised such that the timing of projects better meets the supply of resources required to complete them. This measure should stimulate more competition and potentially a better price

- continuing to use a two-staged evaluation procurement process (i.e. technical evaluation followed by financial evaluation) to shorten the irrevocability period of financial submissions

- emphasising a stable project scope and disciplined adherence to procurement timetable

- providing a commitment to an outside date for financial close, which would allow parties to rely on timelines specified and plan accordingly. Remedies should be provided to all parties if there is a breach of timelines

- increasing due diligence on private sector sponsors to ensure that the closed deal is representative of the competitive process

- increasing the level of bid cost contributions where Government requires sponsors to incur additional costs and / or assume more risks associated with bidding committed financing

- developing a fair and objective manner to evaluate requested committed financing submissions and scoring these submissions appropriately within the evaluation process

- establishing clear and consistent definitions of refinancing risk and clearly setting out the amount of refinancing risks to be transferred to sponsors

- considering Government financial support options, including co-lending of senior debt, which needs to be passive and subordinate to private lenders' debt and not be as large as

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to impact risk transfer and equity returns. Similarly, governments should also consider grants and project insurance (but not be perceived as a lender of last resort or 'subsidiser')

- within the value for money analysis, refreshing input costs regularly during one or more stages in the procurement process to ensure affordability targets move in line with the market. Governments also should make the public sector comparator (PSC) available to bidders in a more transparent way to promote a clear understanding of how they derive the PSC while balancing detailed disclosure with more competitive bidding

- in order to maintain the attractiveness of the Canadian PPP market, government should not be tempted to participate as equity investor, should not reduce the number of bidders short-listed, and should not introduce funding competitions after the selection of the preferred bidder while continuing to require committed financing at the RFP stage.

Many of these recommendations are specific to the impact of the Global Financial Crisis and the funding of PPP projects (which could also apply to Australia but are outside the scope of this Review). However, some aim at strengthening Canadian PPP procurement processes generally and potentially could also apply to Australia, particularly around more rigorous adherence to timetables and processes. We have discussed these improvements elsewhere in this Review.

4.3 Key Factors impacting Barriers to Competition

In summary, the most important issues identified as barriers to competition were the:

- largely unknown pipeline of projects that is uncoordinated and sporadic in nature

- high establishment costs of developing a team with the core competencies and specialist knowledge required to participate competitively in PPP projects.

Should Governments be able to address sufficiently the Australian PPP pipeline issue, many other issues regularly cited as key barriers to competition (such as complexity of process, magnitude of bid costs, lack of co-ordination and sporadic nature of projects brought to market, etc) would have significantly less of an impact. By addressing the PPP pipeline issue, Governments would give the PPP market sufficient information and certainty to assess the opportunity and respond efficiently by either entering the market or growing existing teams to meet national capacity requirements, as well as the ability to recoup bid costs on future successful transactions.

Participants also raised a range of other issues, with the most common being the:

- the magnitude of bid costs and their uncertainty, resulting from protracted and uncertain procurement process timeframes

- a perceived lack of commitment to PPPs consistently across all Australian jurisdictions

- for international Participants, the general complexity of bidding processes in the Australian PPP marketplace when compared with those of other international jurisdictions

- the current restrictions on the availability of finance, including the current lack of activity within capital markets, due to the aftermath of the Global Financial Crisis.

5 Procurement Inefficiencies (High Bid Costs)

The efficiency of the procurement process can significantly impact the level of transaction costs to Government and of bid costs incurred by market participants. Excessive and unnecessary bid costs impact the value for money achieved by Governments, with the market loading these costs into the pricing of future successful tenders and/or the level of return required within a project.

This section of the report summarises the key factors that PPP market Participants consider currently impact the overall efficiency of PPP procurement processes, many of which vary across the different jurisdictions and projects. It also looks to approaches adopted in other international jurisdictions participating in PPP procurement processes.

5.1 Feedback received from discussions with PPP practitioners

The following issues focus on those impacting bid costs incurred by the market from release of EOI to announcement of preferred bidder. Bidders generally do not consider costs incurred post-appointment of preferred bidder to be at risk (assuming successful negotiation and resolution of outstanding issues as well as Governments' commitment to the project). However, inefficiency in the procurement process post-appointment of preferred bidder still negatively impacts value for money outcomes, as these costs are included within the overall tender price and continue to add to Government's internal transaction costs.

What do you consider are the key contributing factors to inefficiencies within the Australian PPP procurement process?

As noted above, most Participants view Australian PPP procurement processes as being generally efficient, but not consistently so. The key factors raised by all Participants in relation to the efficiency of the Australian PPP procurement processes are:

- the skill and expertise of the Government team managing the procurement process
- the Government's level of commitment to the project and procurement model.

Participants have a perception of significant variations in these factors between the various jurisdictions and projects within a jurisdiction.

The degree of commitment to the PPP procurement process and expertise of Government project teams directly impacts decision-making efficiency and the overall timeframes taken to complete procurement processes.

Specific issues that Participants raised in relation to inefficiencies in the procurement process that can occur included:

- excessive information and documentation requests (almost all Participants mentioned this issue)
- inconsistency in tender documentation (a majority)
- inefficient decision making processes and delayed communication of decisions to market (a majority)

- inefficient resourcing associated with the stop/start nature of the Australian PPP market, due to a number of factors including a lack of pipeline, delayed communication of decisions and protracted procurement processes (a majority).

These factors are far from universal, but have applied for some projects.

Do you have suggested improvements as to the structure of the typical Australian PPP procurement process, including potential precedent processes employed in international jurisdictions?

Although almost all Participants are typically happy with the standard EOI and RFP structure that is used in Australian PPP procurement processes, all indicated a preference to move quickly to a preferred bidder and not to have further bid stages.

Several Participants suggested modifying the RFP approach to include the staged submission of information to Government, as used in some international jurisdictions such as Canada, to facilitate more efficient evaluation processes. Such processes typically require the early submission of technical information, with the commencement of evaluation of commercial solutions and proposed project financing prior to the receipt of final pricing. However, others suggested that this modification would not increase efficiency, due to bidders often altering their technical solution significantly following pricing and presentation of the solution to sponsor committees, particularly in projects containing high levels of design innovation. Consequently, such a modification is not appropriate in Australia.

Further to the above, given current global capital constraints for PPP projects, several Participants suggested the short-term introduction of debt competitions, following the selection of a preferred bidder.

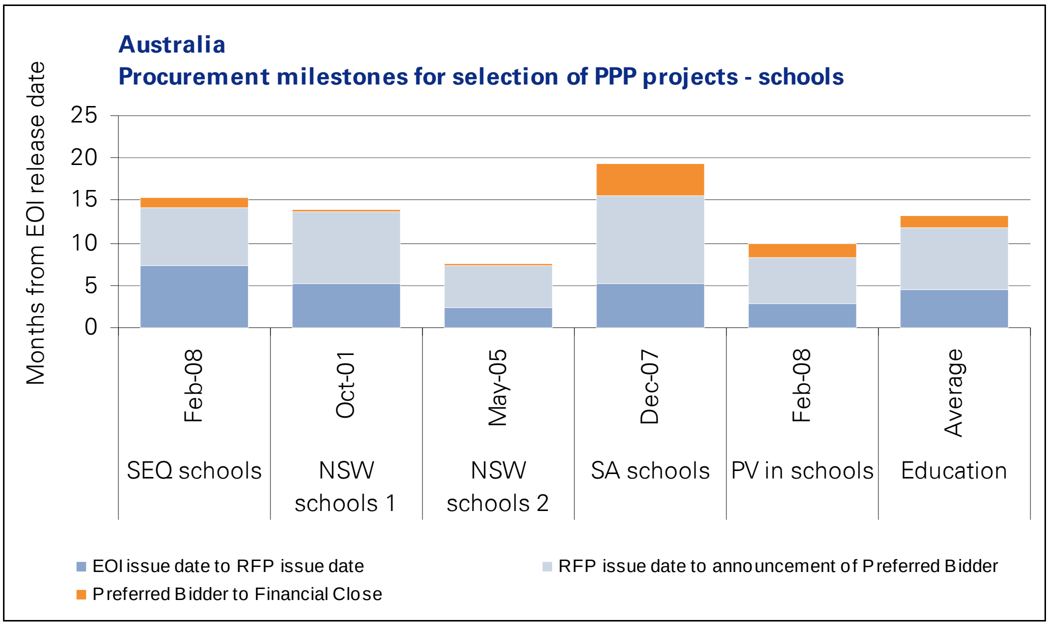
Please provide your views on the overall timeframes typically associated with the procurement process from release of EOI documentation to the achievement of contractual and financial close. Where you have suggested alternative processes in the question above, please comment on suggested timeframes to best facilitate value for money outcomes.

Almost all Participants indicated that the typical timeframes associated with receipt of EOI and RFP responses are appropriate, being in the order of 4 to 6 weeks and 14 to 26 weeks (depending on the complexity of the project), respectively. However, all indicated that the time taken to make decisions and convey this information to the market is often excessive, resulting in significant inefficiency and higher bid costs. Examples provided included the time taken to:

- confirm whether a PPP delivery model will be used
- announce the shortlist for the RFP process. Consortia often incur significant costs prior to short-listing in preparation for the RFP phase of the project, as they often commence work, set up bid offices, etc., given:
  - recent Government practise to announce the shortlist and release the RFP within a short period
  - increased competitive pressures
- undertake evaluation and communicate the approach to completing procurement.

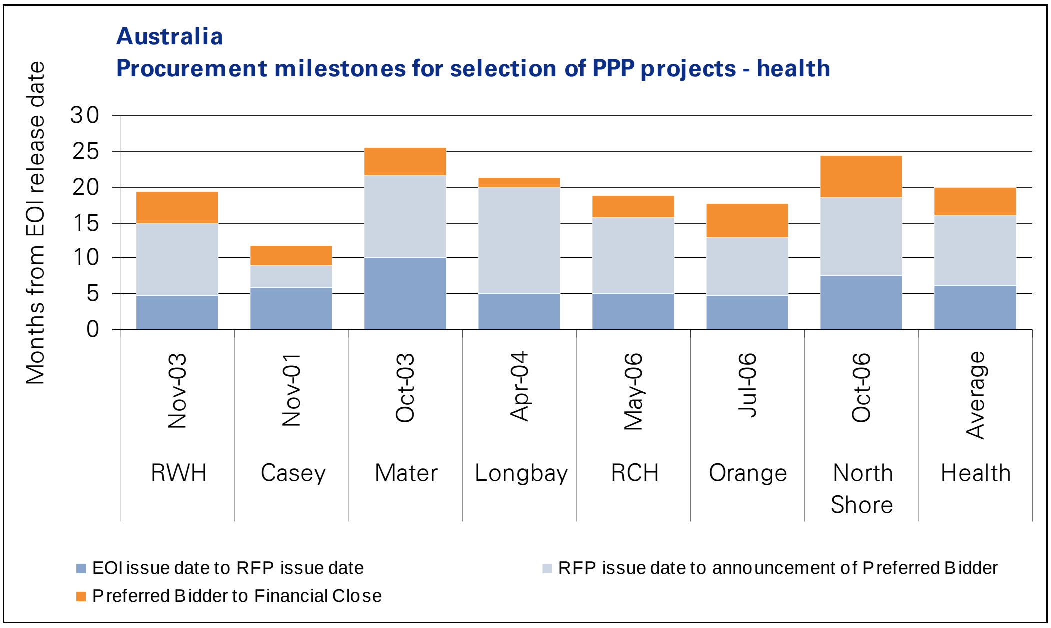
In respect of the above issues, almost all Participants indicated a significant variation from best practices between different jurisdictions and projects.

The graph below depicts the procurement timelines for PPP projects closed in Australia, though differences in scope make comparisons between projects in the charts below difficult.



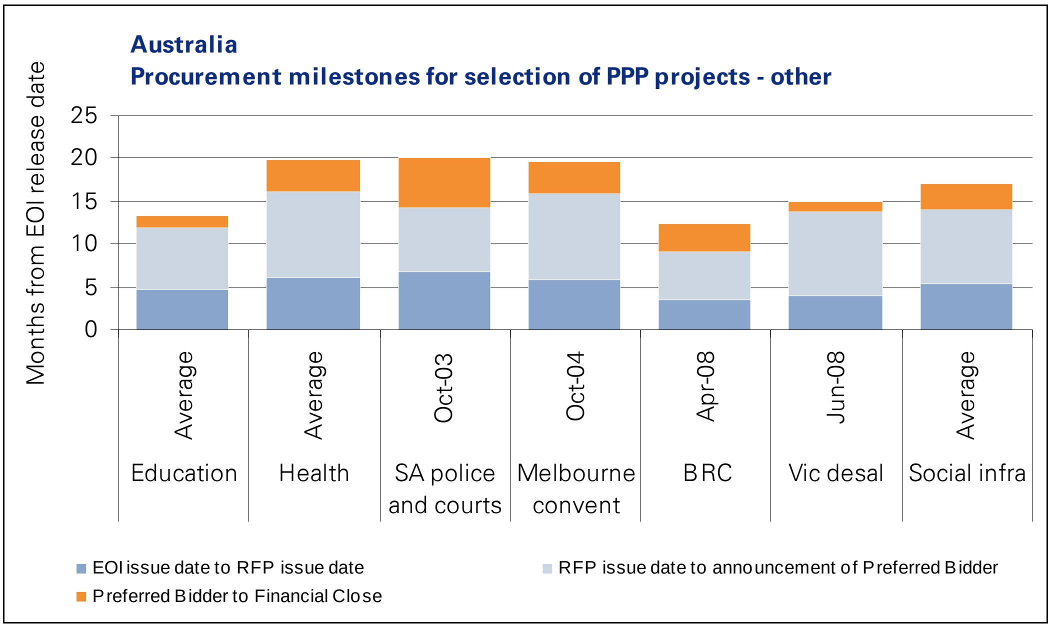
Source: KPMG research
NB The procurement of the SA Schools project was prolonged by an extension of the RFP close date requested by a bidder and by the impact of the Global Financial Crisis.

School PPP projects in Australia have an average procurement period of about 14 months, with some variations between projects (for example, NSW procured its 2nd schools more quickly).



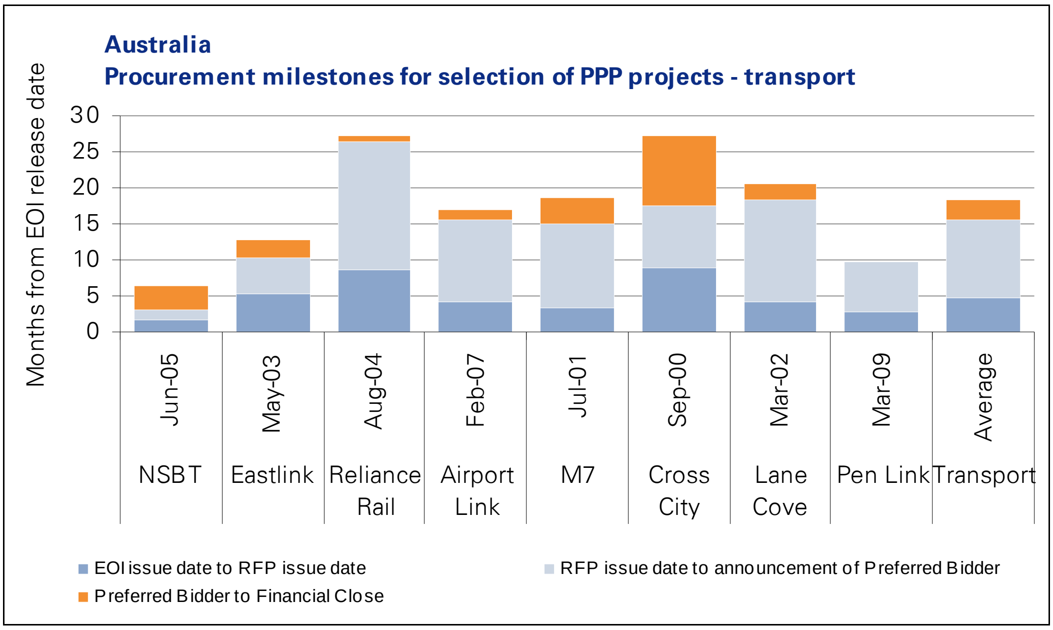
Source: KPMG research

Health PPP projects in Australia have a procurement period of about 19 months on average.



Source: KPMG research

The average procurement timeline for social infrastructure projects in Australia is about 14-19 months, with school projects at the lower end and health projects at the higher end.



Source: KPMG research
NB Cross City Tunnel financial close was delayed due to the need for a new Environmental Impact Statement resulting from the winning bidder's innovative design

The average procurement timeline for transport infrastructure projects in Australia is 18 months, but with considerable variation about this average.

Are there any significant costs associated with typical EOI processes and, if so, do you have suggestions for potential process improvements?

Almost all Participants indicated that there are not significant direct costs associated with typical EOI processes. However, they suggested that Governments could make improvements in respect of information required, including generic requests for financial statements and information double-up within the various response sections. There was some concern from several Participants at the growing length (and consequent cost) of EOI submissions (noting that the private sector has driven this through competitive tension rather than Government requiring it).

Several Participants mentioned possible confusion as to the purpose of the EOI process and questioned whether Governments should use it as more of a pre-qualification process rather than to encourage bidders to commence early works in advance of receipt of the RFP documentation, noting that, as mentioned above, the pressure for early work comes from the private sector seeking a competitive advantage.

A key issue also raised by several Participants in respect of the EOI process was the general lack of useful feedback received during debrief sessions, whether they were successful or unsuccessful. Feedback often is vague and bland, providing little guide to how Participants might improve future EOI submissions. Unsuccessful parties often want a detailed comparison between their submissions and those of successful parties, with which there are legitimate probity concerns. However, some concrete comparison with the overall standard of successful submissions should be possible.

Please provide details of the order of magnitude of bid costs, post-EOI, for a typical PPP project, including how this might vary for small medium and large-scale projects.

The magnitude of private sector bid costs does vary by project. The table below indicates the level of external bid costs invested by the private sector in bidding for PPP projects in Australia. We have derived these data from information provided by Participants.

Estimated total private sector bid costs (internal and external)	Capital value	Indicative winning bidder's bid costs (up to financial close)		Indicative losing bidders' bid costs (up to preferred bidder)	
	A$m	A$m	% of value	A$m	% of value
Social infrastructure		On average		On average	
$250m project[1]	$250	$2.5-5.0	1.00-2.00%	$2.0-3.0	0.80-1.20%
$1bn project[1]	$1,000	$7.0-9.0	0.70-0.90%	$5.0-6.0	0.50-0.60%
Economic infrastructure					
Desalination plant (Vic)[2]	$3,500			$30.0	0.86%
EastLink (Vic)[3]	$2,950	$20.0	0.68%		
North South Bypass Tunnel (Qld)[3]	$2,128	$27.0	1.27%		
Airport link (Qld)[4]	$3,000	$40.0	1.33%		

Source:
1. Source: Analysis of information obtained by KPMG as part of the consultation process
2. Source: Market comment
3. Source: Presentation by Wal King from Leighton Holdings Limited at the 2009 CEDA conference
4. Source: Presentation by Peter Hicks from Leighton Holdings Limited – Overseeing Queensland's largest PPP project (27 February 2007)

There appear to be significant differences between individual Proponents' bid costs, which may be due to differing approaches, with some Proponents sub-contracting more work on bids than others, and some managing external advisors more efficiently.

For Australian economic infrastructure projects, the quantum of bid costs is significantly higher than that for social infrastructure projects (partly because of the larger project sizes: bid costs as a percentage of capital value can be lower).

From the above, it is evident that the quantum of bid costs increase as the capital value of the project increases, but not proportionately. Nonetheless, in absolute terms, bidding for PPP projects is expensive: typically $2.5 million "at risk" for projects with a capital value of $250 - 300 million, rising to $5 - 6 million for a $1 billion hospital and $30 million or more for a large $2 billion+ economic infrastructure project.

At financial close, approximately 30% of the winning bidders bid costs relate to internal costs (including salary costs, corporate overheads, etc.) and about 70% to external costs. The internal costs percentage is slightly higher, at about 40%, for the period to preferred bidder. For social infrastructure, the wining bidder incurs approximately 55% of bid costs in the period to preferred bidder (see graph below).

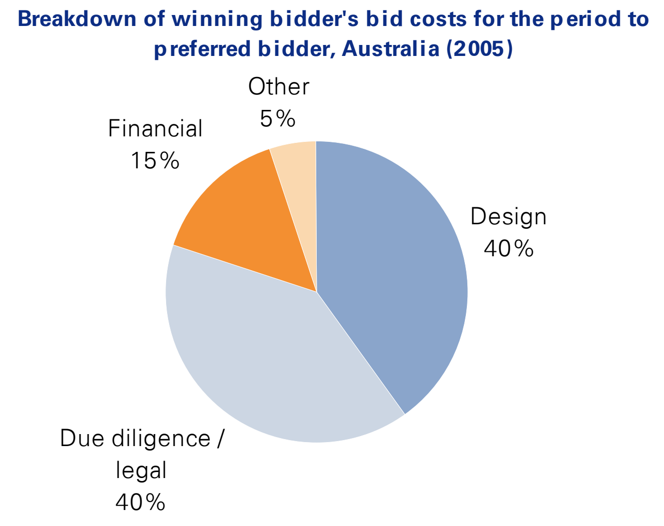
A large part of the difference between the winning and losing bidders costs are success-based fees. Several Participants mentioned high success fees in finance-led bids as a factor driving aggressive bids, particularly for toll road projects.

Source: KPMG research and data obtained during market consultation process

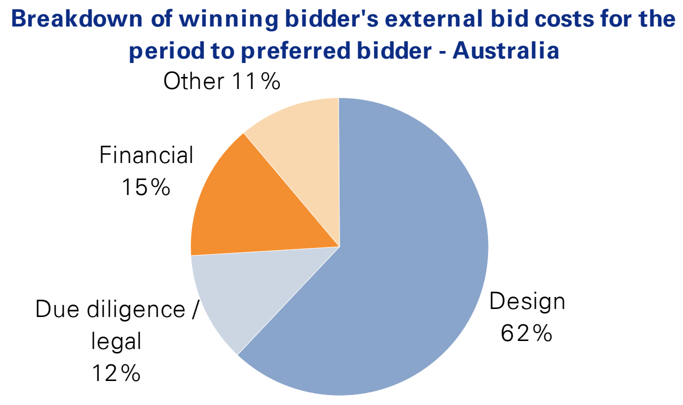
KPMG found EOI submission costs to be insignificant.

Where possible please provide details as to the breakdown of typical bid costs, in particular in relation to design (including relevant components), legal, financial arranging (where appropriate), tax structuring, submission costs and any other key components.

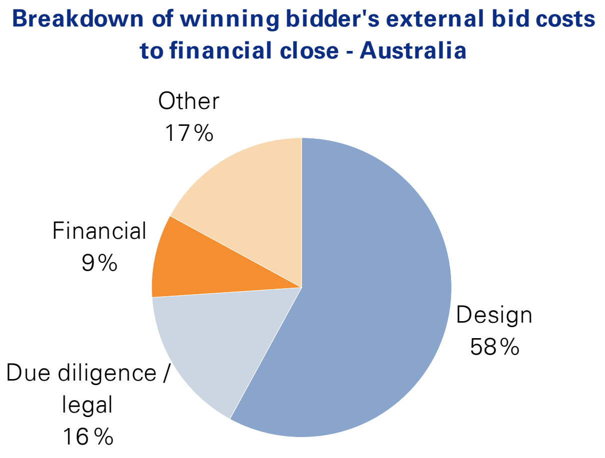
The breakdown of bid costs has changed substantially over time. A (2005) Deloitte report prepared for *Partnerships Victoria* estimated that, on average, the total bid costs for a project was $5 million (noting that costs varied across projects), with about **70% relating to the period from EOI to announcement of preferred bidder** (the EOI submission costs were insignificant), as shown below.



The above graph shows that, in 2005, the design and legal / due diligence components were key drivers of bidding costs (about 40% each). Since then, there has been a marked change in the profile of bid costs. The graphs below show the cost profile of a typical social infrastructure project.



Source: KPMG research



Source: KPMG research

In 2009, design alone is the dominant cost driver (ranging between 50% and 65%, depending on the project). The reduction in legal costs since 2005 may be due to an increase in experience over time as well as the positive impact of published standardised commercial provisions.

Bidders often heavily discount the external bid costs to preferred bidder stage in anticipation of a success component (for example, legal fees to preferred bidder stage are largely success based).

Although design costs are still high for economic infrastructure projects, they are less dominant than for social infrastructure, partly due to more due diligence costs (such as traffic studies).

For the key components identified, please provide detail as to how the process may be improved and indicate where it could achieve savings, including the assumed savings impact.

Most Participants consider that much of the information Governments request as part of the initial bid response is unlikely to be necessary for evaluation purposes, and suspect that it has little influence on the selection of a preferred bidder.

A key component of bid costs is the design element and associated level of detailed technical information required, in particular the level of drawings requested. Participants indicated that the number of drawings typically requested as part of the bid submission is excessive and adds significant cost. Examples provided are the requests within the initial RFP submission for:

- detailed electrical layout drawings, including the location of power points and room data points
- details of signage, including fonts.

Participants indicated that contractors do not require these types of drawings to price the project (using room data sheets instead) and that these layouts require updating each time there is a change to the architectural drawings and functional layouts (which happens frequently).

Although other information (such as construction management plans or operational and maintenance manuals) may not significantly increase total bid costs, Participants indicated that it is time consuming to prepare, generic in nature and may not represent the eventual approach. As a result, Participants consider that they divert the construction and facilities management contractors' focus from development of the technical solution, whilst adding limited value to the development of the overall proposal.

A majority of Participants (excluding pure financiers and operators) indicated that they could make substantial savings in design costs by not having to provide information they regard as being unnecessary for bid evaluation. Participants with experience of the Canadian market cite reduced information requirements, including the level of design detail, as one main reason why bid costs in Canada generally are lower than those in Australia.

In addition, several Participants mentioned the need in some projects to undertake due diligence investigations (such as geotechnical surveys) individually, when all bidders require their results, thus unnecessarily multiplying up total bid costs. However, most project teams are aware of this issue and do procure investigations on behalf of all bidders commonly

Do you consider that the level of information typically requested at EOI is appropriate? If not, please provide detail as to potential improvements.

Although almost all Participants typically consider the level of information requested at EOI appropriate, they suggest that Governments could improve the process from the perspective of minimising multiple requests for similar information throughout the documentation as well as the development of a central repository for generic information, such as the financial statements of regular players within the PPP market.

Several Participants suggested that Governments could provide page limitation guidance for the EOI response, given a general view that the EOI responses are 'getting out of hand'. However, a similar number of Participants indicated that they had a clear preference not to have page limits. It is not clear that there would be any significant advantage gained from imposing page limits.

Which elements of RFP documentation do you consider unnecessary for the initial bid submission? For specific elements identified, please suggest an appropriate time for submission (if applicable) and how Governments can achieve certainty to the extent they have not received information as part of the bid process.

There were a number of areas of RFP bid documentation that Participants identified as contributing unnecessarily towards bid costs (as noted above). These areas included:

- design documentation requests, in particular the number of drawings requested as part of the initial bid submission including elements such as detailed mechanical and electrical drawings and structural drawings (a majority of Participants other than pure financiers and operators mentioned this area)

- communications and stakeholder management plans and related documentation (around half)

- generic project management documentation such as construction management plans, occupational health and safety plans, operational and maintenance manuals, etc. (a majority).

Governments would face relatively little risk by not requiring this information at the RFP stage, as discussed further in section 6.4.

Another area identified by several Participants is the requirement for full legal documentation (as opposed to term sheets) for downstream consortia arrangements (both construction and facilities management contracts) and for debt finance. Although the absence of full documentation could expose Governments to some risk of the winning Proponent not being able to deliver its Proposal without amendment, they could mitigate this risk by requiring strong letters of support from the parties concerned.

Please identify other potential improvements with regard to quality and content of RFP documentation and, in particular, the proposal requirements.

Several Participants indicated the degree of non-specific information requested by Governments as a key issue of concern, citing the tendency to add to information requests for each new project without critically assessing whether information requested on past projects remains appropriate in the current instance.

Do you consider that probity processes can be overly restrictive and prevent the achievement of best value for money outcomes for Government? If so, please suggest process improvements that could increase efficiency whilst maintaining integrity of process and continuing to protect public interest.

Australia is relatively unusual in having formal probity processes and separate probity auditors and advisors. Participants involved in bidding consortia typically indicated no visibility to probity processes except for the requirement to sign up to the Probity and Process Deed (PPD) and the attendance of probity auditors/advisors at workshops as part of the Interactive Tender Process.

Almost all Participants were very positive towards Interactive Tender Processes and increasing levels of interaction on recent projects, and would like to see further increases in interaction in the future. However, Participants feel that the effectiveness of interactions varied from project to project, often depending on the level of experience and capability of the project director and key project team members. In projects where project teams appeared to lack confidence, Participants felt that the Interactive Tender Process failed to result in effective interaction and good outcomes.

Most Participants suggested that the PPD requires re-alignment with the intended objectives of the document. Key concerns raised were the:

- level of indemnities required – it is very difficult to get new and existing players to sign up to them

- inflexibility in changing consortium members, which may result in reduced competition (although there may be genuine probity concerns about major changes)

- tendency to add to the document for each new project without critically assessing whether information requested on past projects remains appropriate in the current instance.

Participants bidding on projects commented on the rigidity of 'non-compliance' criteria included in some procurement documentation, which leave little room for innovation and restricts the ability of Government to consider proposals deemed to be 'non-complying'.

Participants who regularly consult for Government and have much greater visibility in regard to the full procurement process and the influence of probity within it generally had a much stronger view that, for some projects, probity practises have impacted competition negatively and have created process inefficiencies.

Australian probity requirements ensure that, within a relatively complex procurement process, Governments maintain transparency and fairness; and that one bidder does not gain an unfair competitive advantage through an act or omission of the Government. Although many project teams manage probity processes well, there are examples where an overly restrictive view of probity has led to significant inefficiencies.

Please provide details of any other key concerns or issues in relation to the efficiency of Australian PPP processes, including any recommended solutions.

Participants generally felt that debriefing sessions could be improved, as they consider them to be a key opportunity for bidders to learn how to improve their responses and hence their chance of winning future projects, thus leading to enhanced competition and improved outcomes for future projects. Currently, they consider the feedback provided as being too generic and high-level, giving unsuccessful bidders very little direction as to how they can improve their responses. Several Participants mentioned probity concerns as a reason for uninformative debriefing sessions, and felt that such concerns were excessive. Although unsuccessful bidders often want a detailed comparison between their bid and the winning bid, with which Governments have legitimate probity concerns, it is possible to provide reasonably detailed feedback on the evaluation of the bid and its areas of strength and weakness without breaching proper probity principles.

Interestingly, only a few Participants mentioned further standardisation of project contracts as a significant issue, most feeling that the current standard commercial principles and increasing use of documentation precedents are sufficient.

5.2 Findings from review of key international jurisdictions

The following section provides a high-level summary of approaches adopted by key international jurisdictions to address some of the key issues raised by the Australian market participants in respect of procurement inefficiencies.

Magnitude of external bid costs

There is a widespread perception that PPPs are associated with "high" bid costs in comparison with other forms of procurement, representing a hurdle for potential bidders to enter the bidding process, which, in turn may undermine competition. However, there is a lack of appropriate data to analyse the level of bid costs incurred by the public and private sectors, the drivers for bid costs and the make-up of bid costs in PPP projects. There is limited publicly available information, it mostly being confidential and with limited identification and allocation of in-house costs – both for the public and private sectors.

A study by the Major Contractors Group in 2005 found that, in the UK:[16]

- the *winning bidders'* bid costs (as a percentage of capital value) are about 5% - 6% of an average project value of US$150 million

- from a sector perspective, the *winning bidder's* bid costs are about 4% of the project's capital value (US$20.5m) for a hospital project, where project values tend to be large; 6% (US$4.3m) for a school project; and 3% for a road project, also where project sizes tend to be large.

- each *failed bidder* spends about 2.5 - 3% (50% that of the winning bidder) on external bid costs.

The more recent introduction in the EU of the Competitive Dialogue procurement process has increased the time and cost to bid, as it requires the finalisation of bids (albeit without committed funding) before selection of a preferred bidder, with no subsequent negotiation.[17]

In Canada[18], the "at risk" external costs of bidding are about 0.35 – 1.0%.

As many PPP players are competing in projects worldwide, Canadian governments view their policies of providing an honorarium (partial cost reimbursement) to bidders as potentially a deciding factor in whether a company bids on a Canadian PPP project at all.

The table below provides **a comparison** of bid costs between the UK, Canada and Australia.

Private sectors bid costs (as a % of capital value)	**UK**	**Canada**	**Australia**
Average project value	**US$150m**	**C$350m**	**A$250m**
Winning bidder	5-6%	0.5-1.5%	1-2%
Each failed bidder	2-3%	0.35-1.0%	0.8-1.2%
Source: KPMG research			

Bid costs spent by failed bidders, as a percentage of total capital value, appear to be lower than those in the UK (assuming that they spend 50% - 70% on the first full submission), but higher than those in Canada. A like-for-like comparison between countries is difficult, due to limited information, substantial variability in bid costs as a proportion of capital costs, and partly because Australia generally undertakes larger projects than do the UK and Canada. However, comparing projects with broadly similar sizes, Australian bid costs are perhaps 25 – 45% higher than those in Canada.

The main sources of the lower bid costs in Canada than in Australia cited by Participants are:

- less of a focus on design, particularly architectural design

- less information and less design development required within bids

16 Source: A study by the European Investment Bank (EIB) in 2005 analysing the key determinants of bid costs and a survey carried out by the UK Major Contractors Group (MCG) in 2005
17 Source: KPMG research
18 Source: KPMG research and quote from Jim King, SVP Finance, EllisDon Construction in "The Debate over PPP Honoraria", Daily Commercial News online, 27 November, 2006

- greater standardisation of contracts, with contracts being rolled forward to subsequent projects without substantive amendment
- less focus on third party income or development gains
- less use of further bid stages.

Although noting these factors, Australian Governments value their emphasis in PPP projects on design (including operational efficiency) and potential third party income as key sources of wider value for money, so some of these strategies are not appropriate for Australia.

In comparison, a 2008 EIB report[19] indicated that the PPP bid costs for the winning bidder in European Countries using the Competitive Dialogue procurement process is c. 2.54% of the capital value of a project (though they based this analysis on a project with a significantly lower capital value of €200 million).

Many international jurisdictions have a form of bid cost reimbursement. Examples include.

- Canada, where there is a growing trend in some Provinces to pay an honorarium to losing bidders, as noted above, demonstrating commitment on the part of the procuring authority, and as an acknowledgement of the substantial costs associated in bidding, particularly in the design and legal components of bids. These honoraria typically are a third to a half of losing bidders' total external bid costs, and so are significant
- Portugal, which has also adopted a practice of paying a "fee" to unsuccessful bidders in order to maintain and attract investment in an emerging market. The Government has reimbursed bid costs on its High-Speed Line project to increase competition and to attract players that were unfamiliar with this type of project in the Portuguese market
- France, where the Government often reimburses a portion of bid costs to unsuccessful bidders, depending on the extent to which they participate in the competitive dialogue procedure and the detail of their offer. The level of reimbursement can reach 40% of design cost for the initial bid phase and 70% for the final phase.

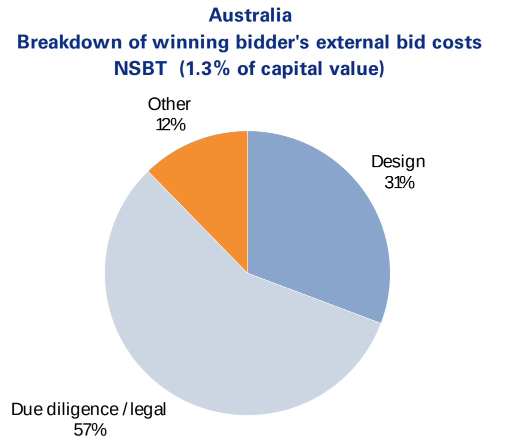
The UK Department of Health is considering using exemplar designs on major PPP health schemes, in preference to paying the losing bidder's costs.

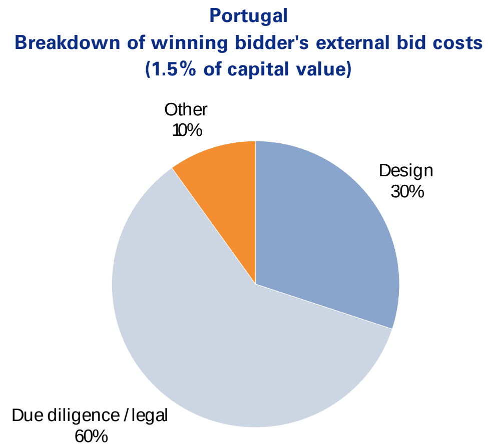
Breakdown of bid costs

There is a similarity between design related costs, for social infrastructure projects, in Australia (c. 55%), the UK (about 65%) and Canada (about 50%) with about 50% to 70% of design related costs spent before announcement of a preferred bidder. Therefore, any strategies adopted that might reduce bidders' design costs should have a significant impact on the level of bidders' costs 'at risk'.

For road projects, there appears to be a similarity between Australia and Portugal in terms of the level of costs incurred and the breakdown, as depicted in the graphs below.

19 Source: Transaction Costs in PPP Transport Infrastructure Projects: Comparing Procurement Procedures EIB University Research Sponsorship Programme. Authors: Antonio Sánchez Soliño Associate Professor. Universidad Politécnica de Madrid Pilar Gago de Santos Researcher. Universidad Politécnica de Madrid (dated November 19, 2008)





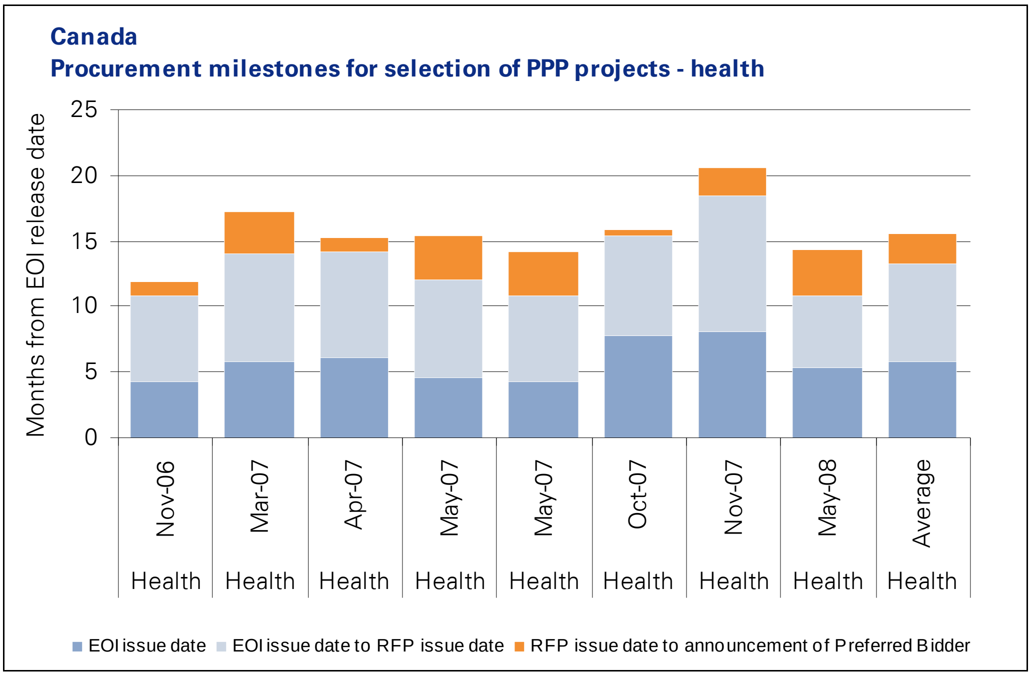
Source: Presentation by Peter Hicks from Leighton Holdings Limited – Overseeing Queensland's largest PPP project (27 February 2007)	_Source: KPMG research_

Protracted and uncertain procurement process (specifically in respect of procurement milestones)

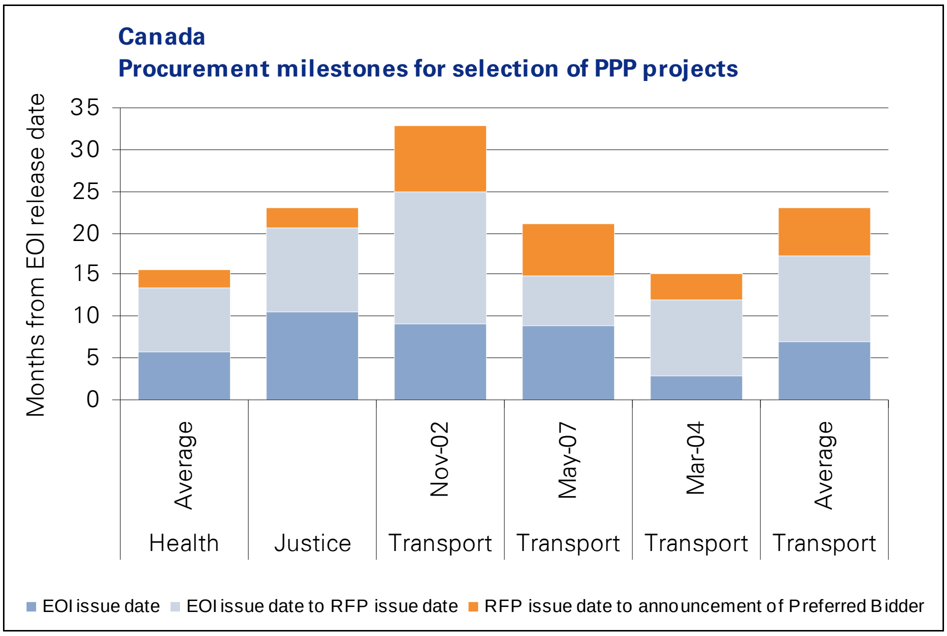
Canada (using in essence the same procurement process as Australia) has been able to reduce the time from release of EOI to financial close over the last three years (from an average of about 18 months to about 16 months). Canadian market participants consider the interactive tender process as instrumental in enabling Canada to emerge as a leader in PPP, with projects regularly closing with little to no scope creep post-selection and with little use of additional bid stages. Canada has offered the bidding community clarity on timeline, and recent projects have reached financial close an average of four months or less from RFP submission.

The graph below depicts the procurement timelines for PPP projects closed in Canada (based on a random sample of projects[20]).

20 Source: KPMG research, based on a random sample of projects from the Infrastructure Journal database



Source: KPMG research, based on a random sample of projects from the Infrastructure Journal database



Source: KPMG research, based on a random sample of projects from the Infrastructure Journal database

The above graphs show that Canada has been able to close its latest health PPP projects on average within 16 months, without significant variations, but with a significant longer period used for transport projects.

Australia's recent average social infrastructure PPP procurement times (of 14 to 19 months) are significantly shorter than those in the UK, where procurement timeframes averages between 18 and 60 months[21]; and are comparable to Canada (with both these countries using effectively the same procurement processes as Australia).

Our review of international jurisdictions suggests that several strategies are important to achieve tighter timeframes, reducing the need for more than one priced bid stage while maintaining good value for money:

- obtaining commitment to the project from all key stakeholders at an early stage
- developing better output specifications, including greater dialogue with potential bidders about the design of assets, before approaching the market
- having detailed guidance on the Interactive Tender Process and regularly disseminating lessons learnt and "good practices", enabling a structured process of learning and sharing
- ensuring that probity processes, while appropriately conducted, allow the effective working of the interactive tender process
- identifying lessons from recently closed PPP projects of relevance to subsequent projects, revising sector-specific guidance and standard specifications where new issues recur
- considering how to facilitate the retention of existing skills in complex procurement across the public sector, promoting an attractive career path backed by a structured training and development programme
- undertaking good forward planning in the procurement phase, including early risk assessment, thorough due diligence, and robust output specifications
- only using a further bid stage where absolutely necessary because of changed market conditions or where no bidder has made an acceptable proposal.

Some Australian Governments already undertake these actions to a greater or lesser extent, but there are variations between jurisdictions and projects.

PPP procurement processes are shorter (and less complex) in Spain (5 - 8 months) and Portugal (about 12 months) than in Australia, but are not directly comparable, as their Governments' aims for PPPs differ from those in Australia. Shorter procurement timeframes are not desirable in Australia if they are at the expense of the overall value for money and innovation achieved by projects.

21 Tendering periods in the UK average about 34 months (25 months average for PPP schools, 38 months for PPP hospitals and 47 months for other PPP projects). Source: Report by the National Audit Office – Improving the PPP tendering process (8 March 2007)

Inefficient decision making processes

The UK considers procurement and commercial skills essential ingredients, as they lead to positive partnership relationships with providers. A recent report[22] by the NAO found that the key barriers to developing commercial skills in the UK's public sector are:

- pressure to reduce public spending and the frequency with which commercial staff move, both impacting on the commercial experience of project teams
- the Government not using its scarce commercial skills and experience to best effect.

Key approaches adopted to address the gaps in commercial skills in the UK include:

- recruitment of commercial directors
- establishment of commercial units
- introduction of skills initiatives (including skills assessment; a graduate training programme; and commercial skills frameworks).

It has also produced a skills strategy *Building the procurement profession in government* that departmental permanent secretaries have largely endorsed.

Other approaches adopted to address gaps in commercial skills in the UK include:

- the standardisation of contract terms and procedures, which has reduced the level of input required from commercial experts
- centralised commercial support from Partnerships UK (now Infrastructure UK) or local authority adviser Local Partnerships (formerly 4ps) to advise on critical commercial decisions
- focusing on the career development of commercial staff by ensuring a logical progression from project to project and through mentoring, which can help staff gain valuable experience and achieve promotion to senior positions.

The requirement for highly experienced and capable personnel is even more critical for Australian projects, given their typically non-standard nature.

5.3 Key factors impacting the efficiency of the PPP procurement process

In summary, the key factors identified by Participants that can impact the efficiency of the PPP procurement process were:

- a largely unknown pipeline of projects that is sporadic in nature, meaning that bidders have difficulty in maintaining an efficient level of resources

22 Source: A 2009 report by the NAO "Commercial skills for complex government projects"

- skill and expertise of the Government team managing the procurement process
- Governments' commitment to the project, PPP model and the procurement process (specifically in terms uncertain timeframes).

Although bid costs would become significantly less of an issue (as bidders will be able to recoup bidding costs from future projects) following resolution of an appropriate Australian PPP pipeline, inefficient processes continue to impact the value for money outcomes achieved by Governments.

Participants also raised a range of other issues, with the most common being the:

- excessive information and documentation requirements
- inconsistency in tender documentation
- inefficient decision making processes and delayed communication of decisions
- inefficient resourcing associated with the stop/start nature of the Australian PPP market, due to a number of factors including a lack of pipeline, delayed communication of decisions and protracted procurement processes.

In 2008, the UK's NAO undertook a survey to obtain evidence on the performance of PPP construction projects, particularly focussing on whether they deliver to the expected time, price and quality[23]. The survey identified experienced project teams, clear expectations and constant dialogue as best practice, and provides support for the issues noted above.

23 Source: A report by the National Audit Office (UK) - The performance of PFIPPP construction (dated October 2009)

6 Key factors identified and potential implementation strategies

This section identifies those key issues that KPMG has identified as important to reducing barriers to competition and increasing efficiency in the procurement of PPPs. The following discussion draws together key themes raised during market consultations and lessons learnt from leading international jurisdictions, as well as potential strategies to address the key issues identified.

Australian Governments already undertake some of these actions to a greater or lesser extent, but with variations between Governments and between individual projects within jurisdictions.

6.1 Lack of PPP pipeline

Key issues identified

Compared with some international jurisdictions, the number of PPP projects undertaken in any year and the announced pipeline of future PPP projects in Australia is limited. As noted in Section 4.2 above, Australia has closed fewer PPP projects since 2005, and has a smaller announced pipeline of PPP projects, than the UK, Spain, Canada and France. However, the average value of Australian PPP projects is substantially higher than that of both the UK and Canada, two comparable jurisdictions.

The transparency of the pipeline has improved for infrastructure generally with the creation of Infrastructure Australia and its publication in May 2009 of the *National Infrastructure Priorities*. However, this document contains little information about which projects might become PPPs, and focuses only on those projects that are important nationally. The States procure most PPP projects, and they have additional, largely local priorities not addressed by Infrastructure Australia.

The recent update to the Infrastructure Australia website means that there is now a reliable, nationally co-ordinated central repository of information detailing projects completed to date and the status of projects currently in the market, collated from the Federal Government, States and Territories. However, information provided by the various jurisdictions on the future pipeline is very limited. Even within individual jurisdictions, it is not easy to obtain information about future potential PPP projects, particularly in respect of the federal Government.

As noted in Section 2.2 above, Australian jurisdictions typically only commit to an infrastructure project following the allocation of its full capital cost within the relevant Government budgetary cycle. Hence, the pipeline of projects generally depends on:

- the need for the project to support Government's ongoing service obligations
- budgetary considerations such as fiscal strategy, and capital borrowing requirements and constraints.

Governments generally only decide on the procurement method once they commit to a project, and normally then move fairly rapidly to procurement. Understandably, Governments generally are reluctant to announce potential projects in any detail in advance of a budget commitment, limiting the size of the announced pipeline.

Once Governments commit to a project, the National PPP Guidelines (published in December 2008) contain detailed guidance on procurement options analysis that specifies objective criteria for selection of the most appropriate procurement model for a project. However, the weightings of these criteria and the scoring against these criteria are subjective. Most Participants felt that jurisdictions and individual project teams within jurisdictions do not apply these Guidelines consistently (and also did not apply their predecessors in individual jurisdictions consistently). Participants felt that, for many agencies, PPP projects bring a perceived loss of control and require unfamiliar skills, for example in developing output specifications, which may be why some agencies have been slow to adopt PPPs.

The lack of a clear pipeline compromises the visibility and knowledge of the Australian PPP market, resulting in:

- a reduced ability to assess whether entry into the market is likely to provide an appropriate return on the considerable initial investment required to establish a team with the requisite skills and experience

- resource capacity constraints amongst existing players, due to an unwillingness to expand teams with specialist skills and knowledge where there is little confidence of appropriate future opportunities to amortise such costs

- bid costs becoming a greater deterrent to participation in projects, due to a reduced ability to take a view on the commitment of “at risk” capital and the opportunity to “win some, lose some”

- a heightened risk of Participants disbanding their specialist teams.

There also is some lack of national co-ordination and orderly release of projects to market, with the timing of projects depending on individual agencies’ priorities. One recent example was the proposed bid response dates for the SA schools and Victorian Biosciences projects being on the same day, although these dates changed subsequently. Where PPP projects brought to the market are sporadic in nature, there are greater challenges for the market in its ability respond to projects and to adjust to address capacity constraints.

If Governments do not address the above concerns, the Australian PPP market place may be subject to fewer Participants and general market capacity constraints, leading to reduced competition and possibly worse value for money.

Strategies adopted by international jurisdictions

By comparison, other international jurisdictions such as the UK and Canada are releasing more projects to the market annually than is Australia, even after adjusting for their larger populations. Some key strategies implemented by these jurisdictions include:

- committing to the PPP procurement model as the default for major projects that meet certain minimum general criteria indicating that this model is likely to result in the best value for money, unless there are specific factors favouring another procurement method
- putting in place a strong pipeline of smaller PPP projects under 'framework' type agreements that streamline processes and reduce bid costs in sectors with a high number of PPP projects
- maintaining a database about planned construction projects across the public sector (such as the database maintained by the to Office of Government Commerce (OGC) in the UK)
- making key public announcements in respect of large scale infrastructure plans (such as Canada's seven-year "Building Canada" infrastructure initiative)
- clear criteria, applied consistently, for determining whether projects become PPPs.

Potential strategies for the Australian PPP market

An obvious response to this issue is the development of, and public commitment to, a coordinated forward pipeline of PPP projects (preferably containing a significantly greater number of projects) well in advance of the release of projects to market, thus enabling the development of a more efficient and competitive PPP market in Australia. However, such a commitment is difficult to achieve, given:

- the overall pipeline of infrastructure projects depending on Governments' budget capacity and the need for and priority of projects within overall Government spending
- the Australian federal political system
- each jurisdiction's own political considerations and need to progress with its own projects
- that it could conflict with the Budget funding arrangements of each jurisdiction.

In contrast to some other countries, Australia does not use the PPP model as an alternative approach to funding infrastructure within a fiscally constrained environment (i.e. as a driver to defer capital expenditure and to spread it over a long period). These countries usually measure affordability by their ability to pay the service payment obligations.

By comparison, Australian Governments typically only commence procurement of projects as PPPs following the allocation of capital within the relevant budgetary cycle, and only commit to them when they know their value for money compared to the estimated cost of the most likely alternative procurement method (the Public Sector Comparator). Accordingly, the number of projects that Governments can bring to market is significantly constrained when compared with some other international governments that effectively debt-fund PPP projects.

It is proper for Governments to determine the pipeline of infrastructure projects by their overall budget capacity and the priority of such projects in relation to other Government spending.

However, within this overall pipeline (which is outside the scope of this Review), there is potential to increase the use of PPPs where this procurement model is most appropriate.

The Working Group has indicated that a key challenge within Governments is to obtain buy-in and commitment to the PPP model from client agencies. Many other leading international jurisdictions (including the UK and Canada) have made policy decisions to use the PPP model for new investment in sectors where PPP has proven and continues to prove to be value for money, or based on capital value thresholds, unless proven otherwise. In Australia, the commitment to PPPs is weaker, with Governments looking at each project individually.

An early announcement of potential future PPP projects could be beneficial. It would indicate to the market the projects that are under investigation for their PPP potential with their subsequent business cases and procurement analyses demonstrating the procurement methods that would deliver the best value for money. However, the annual budget cycle means that early announcement of projects before any funding for them is in place will be politically difficult and subject to subsequent amendment should circumstances change. In addition, the subsequent reversal of an announcement that a project will be a PPP could lead to lack of confidence in the market. Nonetheless, we recommend:

A. as early as possible announcement of potential future PPP projects.

Initiatives that would improve both the Australian PPP pipeline and knowledge of PPP opportunities include:

B. **more consistent and rigorous application of the National PPP Guidelines on the criteria for determining whether PPP procurement is appropriate for a project**, maintaining the commitment that projects meeting these criteria will proceed as PPPs unless specific circumstances exist that make PPP procurement inappropriate

C. continued commitment and leadership from politicians and senior bureaucrats within the Commonwealth and each of the various jurisdictions in support of the use of PPPs in appropriate circumstances

D. where possible, continued focus on improving national co-ordination of the release of projects to the market, by greater liaison between jurisdictions, acknowledging the difficulties in achieving this.

The consistent and rigorous application of the criteria within the National PPP Guidelines may see some projects currently procured using Project Alliances or Design and Build contracts instead procured as PPPs.

Infrastructure Australia or the Federal Government could play a role in national co-ordination where they consider projects to be of national significance.

Implementation of the above initiatives would enable market players to make an informed assessment of the potential opportunities within the Australian PPP market, in advance of formal approvals for undertaking projects. Quantifying the impact of these initiatives is difficult but, without them, there is a heightened risk of withdrawals.

Finally, Participants in our consultations have indicated that the tendency for PPPs to be politically contentious has led to unnecessary debates surrounding procurement decisions (even where the Government has determined that a PPP is the most appropriate model) that are highly influenced both by philosophical biases within client departments and by the potential for negative public perception of Governments from a political perspective.

Accordingly, in addition to strong leadership and commitment from politicians and senior bureaucrats, Governments (through the COAG infrastructure PPP sub-group) should consider:

E. developing a communications strategy that demonstrates the benefits achieved from PPP projects and addresses general misconceptions about the PPP model.

This strategy would help raise public knowledge of the PPP model. Individual project summaries, such as those published by NSW and Victoria, are helpful, but a regular (at least annual) review of developments in PPP projects at both State/Territory and national levels (preferably away from the budget cycle, to give it greater visibility) should enable stakeholders to see the benefits and applicability of PPPs more generally.

If Governments are able to address the Australian PPP pipeline issue, the issues relating to procurement efficiency that are described in this report would be less significant. The PPP market would have better information to assess opportunities and respond efficiently by either entering the market or growing existing teams to meet national capacity requirements, as well as better being able to recoup bid costs on future successful transactions.

6.2 Complexity of PPPs and the Australian context

Key issues identified

Australian PPP procurement processes are complex. Some of this complexity is necessary to deliver the outcomes that Governments desire from PPP projects. Some relates to the Australian federal political system and to the tax system that, although much improved in relation to PPP projects since 2007, remains complex. Consequently, PPP projects require significant upfront investment by new domestic entrants in recruiting staff with the requisite skills and knowledge. For experienced international participants, there are also significant set up costs associated with the development of an Australian capability. To date, both domestic and international potential participants in the Australian PPP market have cited the overall complexity of PPP procurement processes and the lack of understanding of PPPs within the context of the Australian market as key barriers to entry.

One issue also raised by several Participants was the frequent lack of useful feedback received during debrief sessions, whether they were successful or unsuccessful in their bids. Unsuccessful bidders sometimes seek a comparison of their bid with the winning bid, which Governments cannot provide within reasonable probity arrangements. However, the feedback they receive often is vague and bland, providing little guide to how they might improve future bids.

Strategies adopted by international jurisdictions

International Participants generally view the Spanish and Portuguese models as having simple and short processes, but with negative implications such as limited innovation and price creep after contract award that adversely affect value for money. Such a material change to a simpler, shorter approach is not appropriate for the Australian PPP market, because of its reduced ability to deliver the outcomes desired by Australian Governments.

Practices in other countries that generally emphasise the same outcomes as those desired in Australia (particularly Canada and the UK) are broadly similar to those in Australia, although there are some differences in emphasis and practice.

Potential strategies for the Australian PPP market

The wider benefits that Australian Governments seek from PPPs (other than just financial value for money) precludes them from following a simpler, shorter approach. Hence, inevitably, some international PPP firms will face a hurdle in participating in the Australian PPP market. To overcome this hurdle, Australian Governments may wish to consider:

F. appropriately educating new entrants in respect of PPP procurement processes and the "Australian context"

G. actively marketing the Australian PPP market and projects internationally where there might be a particular advantage in attracting international bidders

H. enhancing debriefing sessions so that bidders can obtain a better understanding of how they can improve their responses in future.

Such debriefing sessions could provide reasonably detailed feedback on the evaluation of the bid and its areas of strength and weakness without straying into a comparison with the winning bid, with which there are legitimate probity concerns.

6.3 Protracted and uncertain timeframes

Key issues identified

Due to the inherent complexity of PPPs, Participants and Governments have to commit significant time and resources during the procurement phase, involving large teams of highly skilled individuals spanning the range of disciplines (such as technical, legal and financial, etc.) required for each bidding party as well as Government. Accordingly, unanticipated extensions to procurement process timeframes are a key factor leading to:

- high bid costs for consortium sponsors and high transaction costs for Governments
- an inability of the PPP market to plan and manage resources effectively across projects from the perspective of both public and private sectors

- a delayed provision of essential services to the public as a result of the increased time taken to close transactions and deliver infrastructure.

One aspect of the procurement process that can significantly contribute to inefficiency and bid costs is the time taken to select a preferred bidder through protracted re-bid phases, which can occur as a result of:

- insufficiently developed project briefs,
- significant changes in scope,
- the submission of bids with material technical or commercial issues that require resolution, despite the Interactive Tender Process
- a desire to resolve outstanding issues while maintaining competitive tension[24].

Some Australian jurisdictions have required very long bid validity periods of up to 18 months, partly to cater for a further bid stage.

Although most Participants felt that probity processes have not been unduly restrictive, some Participants disagreed. Participants view Interactive Tender Processes very favourably and believe that interaction has increased in recent PPP projects. However, the effectiveness of interactions has varied from project to project, with some having received little or no feedback on their emerging proposals due to probity concerns. Some Participants feel that probity processes sometimes can be overly restrictive and prevent the best value for money outcomes for Government, particularly where the Government project team is relatively inexperienced and therefore more likely to follow an overly risk averse approach to probity rather than an approach that better balances probity risk with the aim of receiving bids that closely reflect the Government's desired outcomes.

Strategies adopted by international jurisdictions

Australia's average PPP procurement times are significantly shorter than those in the UK, (though slightly longer than those in Canada). PPP procurement processes in Spain and Portugal are shorter (and less complex) than those in Australia, but are not directly comparable, as their Governments' aims for PPPs differ from those in Australia. Shorter procurement timeframes are not desirable in Australia if they are at the expense of the overall value for money and innovation achieved by projects.

Canada (using in essence the same procurement process as Australia) has been able to reduce the time from release of a request for EOIs to financial close over the last three years (from an average of about 18 months to 16 months). Canadian market participants consider the Interactive Tender Process as instrumental in enabling Canada to emerge as a leader in PPP, with projects regularly closing with little to no scope creep after selection of a preferred bidder. Canada has offered the bidding community clarity on timeline, and recent projects have reached financial close an average of four months or less from bid submission. Canada also rarely uses further bid stages.

[24] There have also been examples of bidders themselves not taking full advantage of the Interactive Tender Process and delivering bids still with significant departures from the RFP requirements.

Potential strategies for the Australian PPP market

The key strategy to reduce both the bid period's overall length and its variability is:

I. **only using more than one bid stage where absolutely necessary, either because of changed market conditions or where no bidder has made an acceptable proposal.**

Such circumstances might include bidders making unreasonable material technical or commercial departures.

Factors arising from our international review that could help reduce the need for multiple bids and achieve tighter timeframes while maintaining good value for money are:

J. **obtaining commitment to the project from all key stakeholders at an early stage**

K. **developing better output specifications with less focus on design specifications (recognising that some areas, such as those involving safety, may require input specifications), including:**

   - **having detailed guidance on their development within the National PPP Guidelines**

   - **having a greater dialogue with potential bidders about the project functional brief before approaching the market**

L. **having a high degree of fruitful interaction during tender processes within appropriate but not excessive probity requirements**

M. **improved sharing of skills and knowledge between project delivery personnel and procurement project teams (i.e. not just respective PPP units), particularly in relation to lessons learnt and "good practices", adopting a framework to facilitate the transfer of experience from earlier to later deals.** This action would enable a more structured process of learning and sharing, recognising that the main impact comes from the quality and experience of the project team. Governments should consider an inter-jurisdictional forum of project directors, organised via the COAG infrastructure PPP sub-group or Infrastructure Australia

N. **revising sector-specific guidance and standard specifications where new issues recur**

O. **considering how to facilitate the effective retention and recycling of existing skills in complex procurement across the public sector, promoting an attractive career path in complex procurement backed by a structured training and development programme**

P. **undertaking good forward planning in the procurement phase, including early risk assessment, thorough due diligence, and robust output specifications.**

Some Australian Governments already undertake these actions to a greater or lesser extent, but there are variations between Governments.

To achieve an efficient process, **it is essential that Governments have strong project teams combined with efficient and decisive governance structures**. (The same also applies to the delivery and operational phases.) The quality of the whole project team is critical to the success of the project, not just the project director. The experience and capacity of project team members responsible for managing the various disciplines required for a PPP project is important. This is often a challenge faced by Governments within standard public service pay scales. Therefore, to the extent that they do not already have them, Governments should consider implementing frameworks to further the:

Q. recruitment, development and retention of high quality Government project team members, in particular the project director and key team members responsible for managing each of the various disciplines.

These frameworks may include paying salaries at commercial rates, either within the public service or, more likely, as consultants. However, pay is not the only issue: other important factors include an appropriate level of empowerment and a clear career path.

To ensure timely decision-making processes, it is important that Governments aim at:

R. ensuring governance structures empower the project team to deliver the project while enabling effective and efficient decision making so as to prevent unnecessarily protracted and uncertain timeframes.

In doing so, Government will need to ensure that project directors and their teams have an appropriate level of autonomy and authority to make day-to-day project decisions. Further, where issues require direction from outside the project team, direct access to and feedback from decision-making bodies or individuals is critical, with appropriately delegated powers for when those individuals normally required to provide approvals and directions are not available.

6.4 Excessive information requirements

Key issues identified

The RFP and any subsequent stage of PPP procurement processes require fully costed solutions supported by detailed information on design, construction, maintenance and financing. As a result, the level and/or amount of information required from bidders are significant and can easily become excessive if Governments request unnecessary information. Excessive information and documentation requests result in significant bid costs (particularly where specialist consultant input is required), as well as possibly and inadvertently resulting in compromised outcomes where focus is removed from more important elements of the bid.

Excessive information and documentation results from requests for:

- detail not required to determine a preferred bidder, particularly in relation to the level of detailed design drawings within the initial bid submission and the degree of downstream legal documentation (examples include detailed electrical layouts and details of signage)

- information regarding general processes that construction contractors and facilities maintenance contractors must have in place in order to maintain industry accredited certification (when Governments could, instead, rely on such accreditation)

- non-project specific and largely irrelevant information not required for evaluation of the current project (perhaps a legacy from previous projects used as precedents).

In addition, although most Participants are happy with the typical EOI process, several expressed concern about the growing length (and consequent cost) of EOI submissions, and the relative subjectivity of the EOI evaluation criteria. However, longer and more detailed EOI submissions generally have come from consortia seeking to improve their chances of selection for the short-list, rather than from any Government requirement.

Strategies adopted by international jurisdictions

Participants with experience of both Australian and Canadian projects cite differences in information requirements, particularly in relation to the level of design, as one of the main sources of the difference in bid costs between the two countries. Canada generally requires less information than Australia, relying more on the preferred bidder developing its proposal (both before and after contractual close) and on the protections within the project contract. However, a related feature of its approach is that there is less of an emphasis on architectural design and on design innovation than in Australia , which also may reduce its information requirements.

One example cited by a Participant is the perceived need in Australia (but not in Canada) to develop architectural models and video presentations of architectural design. However, we note that Governments typically do not formally require such models or presentations: bidders provide them because they feel they need to in order to enhance their competitive position.

Potential strategies for the Australian PPP market

Bidders at the RFP stage have to provide information for two key reasons:

- to enable Government to evaluate proposals to determine a preferred bidder

- to give Government certainty as to the quality and achievability of the product that it will receive.

Arguably, any additional information beyond that required for evaluation is excessive and contributes towards the unnecessary incurrence of bid costs. Government should have protection from an unacceptable product by:

- further development by the preferred bidder of its proposal in the period up to contractual close

- “fitness for purpose” tests

- the output specification for the project within the project contract and the associated Key Performance Indicator and abatement regimes.

Further, the receipt of unnecessary and excessive information (that evaluation teams frequently do not evaluate in detail) may result in unintended risk take back by Government, as the winning bidder could possibly claim that Government effectively accepted it by not objecting to it.

Accordingly, we recommend that, prior to the request of information from the market, in particular in relation to RFP documentation. project teams work on:

S. rationalising information requested that is neither required to evaluate bids nor required for certainty at contractual close, particularly that relating to some aspects of design and to general corporate processes

In undertaking this exercise, we suggest that Governments critically evaluate the information they consider requesting and categorise it into three segments:

- that required to select a preferred bidder
- that needed to ensure an appropriate degree of certainty as to the quality of the final outcome achieved that cannot be:
    - resolved in documentation and design development after appointment of the preferred bidder (or once in exclusive negotiations, if there is no such formal appointment)
    - satisfactorily tested by “fitness for purpose” tests after project award
    - achieved through reliance on the Project contract, including appropriate abatement and Key Performance Indicator (KPI) regimes
- that which they neither need to select a preferred bidder nor require to provide certainty, and that accordingly project teams should not request.

We also recommend that Governments consider:

T. using Gateway or other independent reviews at the key stages of documentation preparation and the procurement process to verify their appropriateness (ensuring that reviewers are familiar with PPP projects).

These reviews could assess EOI and RFP documents prior to their release, in order to identify any excessive information requirements (particularly relating to design and standard processes) and to improve the quality of the documents, as currently undertaken by some projects and jurisdictions.

We expect that the elimination of excessive information requests would result in a significant reduction in the total information requested from all bidding parties as part of an initial submission, with some reduction in the total information required from a preferred bidder. This reduction would reduce overall bid costs (and the public sector’s costs of evaluating proposals) as well as enable bidding parties to focus on more important aspects of the proposal.

As design typically accounts for over 50% of bids costs and as some Participants estimated that excessive design information requests could account for a significant proportion of design costs, there is the potential for Governments to reduce bid costs materially by implementing this strategy.

However, reducing the level of information required in RFP responses will create a degree of execution risk of:

- the winning bidder finding errors in its bid during the development process up to contractual and financial close
- the winning bidder failing to develop its proposal to provide the further information needed to enable the Government to sign the project contract
- the project not meeting the standard desired by Government, either at commissioning or subsequently during operations. Although the Government will have contractual protection against this risk, it will bear some political risk.

Hence, Governments should consider this risk as part of the rationalisation process. There will need to be an onus on the preferred bidder not to change its price or other material aspects of its proposal as a result of further development of its proposal in the period up to contractual close. (By doing so, it would run the risk of the Government reverting to another bidder.) Governments could explicitly take account any such change within a specific evaluation criterion for subsequent projects at both EOI and RFP stages (and clearly state in advance that they will do so).

Similarly, though less importantly, Project teams also should:

U. **review the EOI process to ensure clear communication of objectives to the market and a focus on the ultimate selection of a short-list of bidders that is most likely to deliver the best overall solution for the project. In particular, information requirements should match closely the evaluation criteria,** which should focus on proven ability to deliver the key aspects of the project, including value for money).

Governments could consider setting page limits for each section of EOI submissions, which could provide an indication of its relative importance. However, Governments would need to set such limits carefully to ensure they are adequate, and it is not clear whether there would be any benefit.

6.5 Poor quality documentation and processes

Key issues identified

Poor quality documentation and processes within PPP projects can significantly impact the efficiency of the procurement process, resulting in both increased transaction and bid costs, as well as compromised outcomes, including:

- a lack of clarity in respect of Governments’ requirements causing bidders to undertake unnecessary additional work and/or re-working potential solutions throughout the bid phase

- proposals received that are not capable of acceptance by Government, leading to further competitive processes or cancellation of projects.

In addition, some Participants mentioned the need in some projects to undertake due diligence investigations (such as geotechnical surveys) individually, when all bidders require their results, thus unnecessarily multiplying up total bid costs.

Strategies adopted by international jurisdictions

Australian documentation and processes compare well with those of other comparable countries such as the UK and Canada. The UK has benefited over several years from the standardisation of PPP project contracts and Canada, like Australia, has standard commercial principles and is benefiting from being able to draw on past contracts in developing contracts for new projects and achieving greater standardisation of drafting. Canada also benefits from Interactive Tender Processes similar to that in Australia, which Participants experienced in working there cite as being a key source of process efficiency.

Potential strategies for the Australian PPP market

Consistent with other key issues impacting the overall efficiency of typical PPP procurement processes, ensuring the availability of a project team that has the requisite level of expertise and capacity to undertake the project is essential to producing high quality project documentation and effective processes.

A properly run Interactive Tender Processes should lead to a greater understanding of each party's requirements and significant efficiency gains, minimising these problems. Furthermore, overly restrictive probity processes must not stifle appropriate interactions.

We recommend that Governments undertake a range of steps to improve the quality of documentation and processes (many of which some jurisdictions already undertake):

V. improved sharing of skills and knowledge between delivery personnel and procurement project teams (i.e. not just respective PPP units), particularly in relation to lessons learnt and "good practices", adopting a framework to facilitate the transfer of experience from earlier to later deals. This process should go further than just simply sharing documentation between jurisdictions. As part of this process, project teams should develop "lessons learnt" documents, articulating the key challenges faced by the project and areas for future improvement. As noted in recommendation M above, Governments should consider an inter-jurisdictional forum of project directors to aid in the sharing process

W. using strong precedent documentation as appropriate for generic aspects of projects (no need to try and recreate the wheel), noting that jurisdictions already use precedents for project contracts based on the National PPP Guidelines' standard commercial principles

X. consistently applying the National PPP Guidelines, particularly on conducting an Interactive Tender Process, across the country, recognising that what matters more is the quality of the project teams implementing the guidance

Y. using Gateway or other independent reviews at the key stages of documentation preparation and the procurement process to verify their appropriateness (ensuring that reviewers are familiar with PPP projects)

Z. having a high degree of fruitful interaction during tender processes within appropriate but not excessive probity requirements

AA. where not already done, undertaking due diligence investigations that all bidders require to minimise the unnecessary duplication of effort and costs, recognising that bidders may still require their own specific investigations.

In most instances, Governments do have a high level of interaction during procurement processes via the Interactive Tender Process, leading to a greater understanding of each party's perspective and to significant efficiency gains, with better value for money bids. However, as noted above, appropriate interaction continues to be stifled unnecessarily in some projects due to overly risk-averse probity processes. Such probity processes often occur in projects where those responsible for the process are less experienced and, as a result, are less prepared to lead a process within appropriate probity boundaries, as opposed to allowing probity to drive the process.

There is now enough experience within the Australian PPP market to minimise the risk of project teams not having, or having ready access to, experience in managing PPP procurement processes. Accordingly, we recommend that the procurement of an appropriately skilled team be a prerequisite to commencing the PPP procurement process.

6.6 Government contribution to bid costs

Key issues identified

Excessive and unnecessary bid costs impact the value for money achieved by Governments, with bidders loading these costs into either the pricing of future successful tenders and/or the level of return required within a project. They also act as a deterrent to new entrants, as well as reduce competition amongst existing players for particular projects. Bid costs relate directly to the efficiency of the procurement process, in particular:

- the overall time taken to complete the procurement process (protracted timeframes and extended competitive processes)
- the degree of information requested throughout the procurement process (excessive information requests)
- the quality of Government documentation and conduct of the procurement process (understanding Government's needs).

A small number of Participants expressed willingness to provide bid bonds as a *quid pro quo* for a significant Government contribution to their bid costs should they be unsuccessful. However, a similar number were strongly opposed to any significant Government contribution other than towards exceptional costs, as they see the ability to bear significant bid costs “at risk” as a competitive advantage.

Strategies adopted by international jurisdictions

Many international jurisdictions have some form of contributions towards bid costs, including Canada, France and Portugal. Canadian Governments view their policies of providing an honorarium (partial cost reimbursement of a predetermined amount) to bidders as potentially a deciding factor in whether companies bid on a Canadian PPP project at all, as many of them are international businesses operating in several different countries’ PPP markets.

Potential strategies for the Australian PPP market

As noted above, we recommend that Governments minimise the quantum of bid costs by implementing a range of strategies to reduce inefficiency, including:

- employing and retaining high quality people, in particular the project director and key team members responsible for managing each of the various disciplines
- having good governance structures that enable effective and efficient decision making
- rationalising the information requested from bidders.

However, even after successfully implementing appropriate strategies to minimise potential inefficiencies, bid costs incurred on major infrastructure projects delivered using the PPP procurement model will continue to be significant due to this model’s inherent level of complexity.

Arguably, Governments currently are paying for the bid costs of established participants through their including bid cost multiples within the projects that they successfully close and /or requiring high equity returns and profit margins on services provided. Given this situation, an obvious question is whether Governments should simply directly provide a significant contribution to bidders’ reasonable costs incurred as part of the bidding process, to maximise competition and hence to prevent bid costs from being a key barrier to competition within the Australian PPP market.

However, providing such substantial contributions routinely could have major consequences, such that Governments may not want this measure as a standard position. In particular, they may result in a change to the structure of the Australian PPP market. When compared with other international jurisdictions, financial institutions prepared to provide risk capital have typically dominated the Australian sponsor market (specialist PPP firms have generally originated from investment banking teams). Internationally, construction companies and operators more often lead bidding consortia, depending on the type of project and the level of diversification of construction companies into operations and maintenance. Consequently, routinely providing a significant contribution to bid costs could have extensive consequences on the make-up of consortia.

When considering any change to standard approaches in respect of bid cost contributions, Governments should also consider the potential for sponsors within the existing market to spend additional total monies on bidding, adding to the magnitude of total bid costs.

BB. Although we do not recommend that Governments make substantial contributions towards reasonable costs as a standard position, we recommended that, if they do not already do so, they do consider a substantial contribution in instances where:

- **they need to attract new entrants to the Australian market (i.e. specialist technology providers, specialist operators, etc.)**
- **they extend procurement processes beyond the norm in order to achieve maximum competition and best value for money outcomes**
- **projects are essentially 'one off' in nature or so large as to prevent bidders from being reasonably able to recoup those costs on future successful transactions**
- **they cancel the project for reasons other than bidders' failure to make acceptable proposals (when they should provide full reimbursement).**

Australian Governments follow these practices already, but not consistently.

Governments should state upfront the circumstances under which they will contribute towards bid costs and the basis for determining a "reasonable" level of contribution.

Finally, from the perspective of barriers to competition, the bid cost issue is much less significant where there is an appropriate pipeline. However, even where an appropriate pipeline exists, excessive bid costs still remain a key issue for Governments to address, due to their direct influence on the value for money achieved by Governments.

6.7 Debt market capacity (current issue)

Key issues identified

A very current issue for the Australian PPP market is the constrained competition amongst consortia due to current restrictions on the availability of finance, including the current lack of activity within the capital markets, due to the aftermath of the Global Financial Crisis. One resulting impact is the current importance of Australia's "Big 4" banks to providing financial certainty within RFP proposals, as international debt financiers generally have demonstrated an unwillingness to participate without them, requiring the presence of at least one of the domestic "Big 4" to obtain credit committee approval. There have been some instances of short-listed bidders withdrawing from RFP processes at least partly due to their inability to obtain "Big 4" support.

As a result, market participants have used the current anomaly strategically to reduce competition within the Australian PPP market. This reduced competition currently evidences itself in both:

- the ability of sponsors to lock up two or more of the domestic "Big 4" on an exclusive basis, sometimes resulting in a strategic bidding position that reduces the practical bidding field to no more than two Participants (even where the Government has short listed three)

- the domestic banks (having demonstrated a preference to work in pairs) effectively having the ability to create a secondary shortlist based on criteria that may not coincide with the Government's preferred selection approach, by selecting the consortia that they wish to support (in particular, where that support is based on corporate relationships).

Although this is a temporary issue that will begin to rectify itself following the return of capital markets and increased liquidity amongst international financiers, it is proving a key barrier to competition within the current Australian market place.

Strategies adopted by international jurisdictions

Other countries have:

- established separate funds to finance PPPs or concession-based infrastructure projects

- changed their procurement practices to reduce or remove bidders' need to demonstrate full financial backing for their proposals.

Potential strategies for the Australian PPP market

This is an important current issue that Governments should consider on a case-by-case basis, learning from experience. As such, it is outside the scope of this Review.

There are a number of initiatives that Governments could consider in respect of this issue, with the key objective being to prevent one or two consortia from strategically reducing competition. The key risk for Governments is that, where this reduced competition occurs, bidding parties that may provide a better holistic solution for Government may find themselves unable to offer certainty of finance. This feature is a particular problem for smaller projects, where there is capacity within the financial markets to support at least three fully funded bids, but where one or two bidders make exclusive arrangements with all of the "Big 4" banks. Other bidders may then be unwilling to put significant bid costs at risk, for fear that Governments will not select them either for the short-list or, ultimately, as preferred bidder because of their lack of financial support.

At the EOI stage, it may not be necessary for potential bidders to demonstrate current support from debt financiers if they have a clear track record of having been able to finance PPP projects (in the absence of a subsequent marked deterioration in their ability to do so).

For large-scale projects, the Victorian Government recently provided a good example of a solution for ensuring that bidders can bid them competitively and close them successfully while ensuring that Government retained the inherent benefits of the PPP model[25].

25 For its $3.5bn Desalination project, it provided a Syndication Guarantee, effectively underwriting a large part of the project senior debt. The project did not need to call on this guarantee, as the debt syndication was oversubscribed.

We recommend that strategies implemented in respect of this short-term market capacity issue should be temporary in nature and not give rise to longer-term structural changes. Hence, Governments should continually monitor any change from current practise, with a reversion to standard PPP practises following any normalisation of financial markets.

7 Recommendations

Strategies to reduce barriers to competition

Although process inefficiencies and bid costs are in themselves a barrier to competition, the key issue identified within the Australian PPP market is the sporadic nature of the project pipeline and the current inability of existing and potential new market participants to undertake an informed assessment of the likely opportunity in respect of PPP projects.

Accordingly, we recommend that the implementation of processes that act to improve both the visibility and certainty as to the Australian PPP pipeline, including:

a. as early as possible announcement of potential future PPP projects

b. more consistent and rigorous application of the National PPP Guidelines on the criteria for determining whether PPP procurement is appropriate for a project

c. continued commitment and leadership from politicians and senior bureaucrats within the Commonwealth and each of the various jurisdictions in support of the use of PPPs in appropriate circumstances

d. where possible, continued focus on improving national co-ordination of the release of projects to the market by greater liaison between jurisdictions, acknowledging the difficulties in achieving this.

Should the Australian PPP pipeline be greater, many other issues regularly cited as key barriers to competition (such as complexity of process, magnitude of bid costs, lack of co-ordination and sporadic nature of projects brought to market, etc) would have less of an impact. The PPP market would have more information to assess the market opportunity and respond efficiently by either entering the market or growing existing teams to meet national capacity requirements, as well as better being able to recoup bid costs on future successful transactions. However, Governments would still bear the costs of procedural inefficiencies through bid cost multiples in winning bids and in their own transaction costs

Strategies to improve the efficiency of the PPP process and reduce bid costs

Bid costs would become less of an issue with a stronger and more certain Australian PPP pipeline, but inefficient processes continue to impact the value for money outcomes achieved by Governments, irrespective of the pipeline. Accordingly, we recommend that initiatives to improve efficiency and reduce bid costs (as well as Government transaction costs) remain a key priority, including:

e. rationalising information requested that is neither required to evaluate bids nor required for certainty at contractual close, particularly that relating to some aspects of design and to general corporate processes

f. recruitment, development and retention of high quality Government project team members, in particular the project director and key team members responsible for managing each of the various disciplines

g. ensuring governance structures empower the project team to deliver the project while enabling effective and efficient decision making so as to prevent unnecessarily protracted and uncertain timeframes

h. only using more than one bid stage where absolutely necessary, either because of changed market conditions or where no bidder has made an acceptable proposal.

Other strategies recommended

In addition to the above, we recommend a range of other initiatives that should improve competition in the PPP market and lead to PPP procurement efficiencies, but that are unlikely to lead to significant enhancements. We have set out these initiatives below, noting that some Australian Governments already undertake the proposed actions to a greater or lesser extent, but with variations between Governments and projects.

- Strategies to address some of the complexity of PPPs and the Australian context

  i. appropriately educating new entrants in respect of PPP procurement processes and the "Australian context"

  ii. actively marketing the Australian PPP market and projects internationally where there might be a particular advantage in attracting international bidders

  iii. enhancing debriefing sessions so that bidders can obtain a better understanding of how they can improve their responses in future

  iv. developing a communications strategy that demonstrates the benefits achieved from PPP projects and addresses general misconceptions about the PPP model.

- Strategies to address poor quality documentation and processes

  v. improved sharing of skills and knowledge between project delivery personnel and procurement project teams (i.e. not just respective PPP units), particularly in relation to lessons learnt and "good practices", adopting a framework to facilitate the transfer of experience from earlier to later deals

  vi. using strong precedent documentation as appropriate for generic aspects of projects (no need to try and recreate the wheel), noting that jurisdictions already use precedents for project contracts based on the National PPP Guidelines' standard commercial principles

  vii. consistently applying the National PPP guidance, particularly on conducting an Interactive Tender Process

  viii. using Gateway or other independent reviews at the key stages of documentation preparation and the procurement process to verify their appropriateness (ensuring that reviewers are familiar with PPP projects)

ix. having a high degree of fruitful interaction during tender processes within appropriate but not excessive probity requirements

x. where not already done, undertaking due diligence investigations that all bidders require to minimise the unnecessary duplication of effort and costs, recognising that bidders may still require their own specific investigations.

- Strategies to address problems with the EOI process

xi. reviewing the EOI process to ensure clear communication of objectives to the market and a focus on the ultimate selection of a short-list of bidders that is most likely to deliver the best overall solution for the project. In particular, information requirements should match closely the evaluation criteria.

- Strategies to address protracted and uncertain timeframes

xii. obtaining commitment to the project from all key stakeholders at an early stage

xiii. developing better output specifications with less focus on design specifications (recognising that some areas such as safety will continue to need detailed input specifications), including:

- having detailed guidance on their development within the National PPP Guidelines

- having a greater dialogue with potential bidders about the project functional brief before approaching the market

xiv. revising sector-specific guidance and standard specifications where new issues recur

xv. considering how to facilitate the effective retention of existing skills in complex procurement across the public sector, promoting an attractive career path backed by a structured training and development programme

xvi. undertaking good forward planning in the procurement phase, including early risk assessment, thorough due diligence, and robust output specifications.

- Strategies to address bidders costs directly

xvii. although we do **not** recommend that Governments make substantial contributions towards reasonable costs as a standard position, we recommended that, if they do not already do so, they do consider a substantial contribution in instances where:

- they need to attract new entrants to the Australian market (i.e. specialist technology providers, specialist operators, etc.)

- they extend procurement processes beyond the norm in order to achieve maximum competition and best value for money outcomes

- projects are essentially 'one off' in nature or so large as to prevent bidders from being reasonably able to recoup those costs on future successful transactions
- they cancel the project for reasons other than bidders' failure to make acceptable proposals (when they should provide full reimbursement).

8 Next steps

The key next steps stemming from this report are:

- the consideration of this report by the jurisdictions
- consider further research on the quantum of the impact of our recommendations, particularly the rationalisation of information requested in the RFP stage
- the determination of the acceptability of the recommended strategies (both priority and other)
- the development of an implementation plan for the accepted strategies
- the implementation of the strategies by the jurisdictions.

Appendix:

Industry Consultation Paper

1 Discussion of Barriers to Competition and Inefficiencies in the Procurement of PPPs

1.1 Background to the issue

Public Private Partnerships (PPPs) are a key form of procurement for the delivery of major infrastructure projects throughout Australia. PPP procurement has been used to successfully deliver many large and complex projects. In line with the maturing of the Australian PPP market, Infrastructure Australia, in conjunction with the Australian, State and Territory Governments and the private sector, has recently developed the National Public Private Partnership Policy and Guidelines. This work should facilitate the harmonisation of PPP procurement processes nationally, encourage consistency and achieve efficiency for both Governments and market participants.

However, private sector participants continue to identify high bid costs, lengthy procurement processes and inconsistent and/or overly restrictive probity requirements as aspects of the process that are of continuing concern. Additionally, several organisations, including some with significant international PPP experience, have expressed concern about perceived barriers to their participation in Australian PPP projects.

Accordingly, a priority next step for Infrastructure Australia in its role of facilitating continuing improvement in infrastructure delivery is to identify and address inefficiencies in the procurement of PPPs relating to unnecessarily high bid costs and barriers to competition. It has appointed KPMG to undertake a formal “Review of Barriers to Competition and Efficiency in the Procurement of PPPs”.

1.2 The purpose of this paper

KPMG Corporate Finance (Aust) Pty Ltd (“KPMG”) has prepared this document at the request of Infrastructure Australia. Its use is limited to providing information about potential issues and strategies for reducing barriers to entry and increasing the efficiency of the PPP process. The information contained in this document is strictly confidential and must not be copied, reproduced or used, in whole or in part, for any purpose other than that for which it is intended. KPMG has prepared the information, statements and opinions contained in this document from a range of sources and do not necessarily represent the opinions of KPMG, Infrastructure Australia, State or Territory Governments.

Infrastructure Australia is keen to identify where current PPP procurement practices may not be consistent with best practice internationally and across Australian jurisdictions, and is seeking access to and cooperation from private sector parties to assist in identifying key barriers to entry within the Australian PPP market, in particular the major drivers of high bid costs.

KPMG has developed this paper to stimulate discussion and to facilitate the receipt of feedback from existing and potential PPP practitioners within the Australian infrastructure market. It summarises some of the key issues cited by current or prospective market participants and/or arising from observations in respect of both barriers to competition and the efficiency of Australian PPP procurement processes.

KPMG will collate feedback received during the industry consultation process, recommending suggested process reforms for implementation where it considers such changes are likely to improve competition and remove inefficiencies, whilst maintaining value for money and public interest outcomes for Government.

1.3 Issues and concerns raised by market participants

This paper categorises key issues and concerns raised by market participants as either:

- barriers to competition, or
- procurement inefficiencies typically resulting in unnecessarily high bid costs (which are in themselves a barrier to competition).

1.3.1 Barriers to Competition

Governments wish to ensure a competitive PPP procurement process, so as to encourage best value for money outcomes in the delivery of public infrastructure, by:

- maintaining competition amongst existing Australian PPP players, and
- encouraging potential new domestic participants and experienced international participants into the Australian market.

Factors affecting participation (and therefore the level of competition) of existing market players in PPP projects released to market include:

- challenges in their ability to manage and co-ordinate resourcing appropriately, due to **a lack of national co-ordination regarding the orderly release of PPP projects** to the market;
- concerns in relation to different jurisdictions' **commitments to the PPP procurement process** and/or eventual commitments to project delivery following commencement of the procurement process;
- **variances in the efficiency of different jurisdictions' procurement processes** and time taken to make a decision on a preferred bidder;
- **exclusivity arrangements,** particularly in regard to financiers and specialist advisors (to either Government or competing consortia); and
- an assessment of the chance of winning in respect of the **number of bidders short-listed** during tender prequalification processes.

PPP procurement processes are complex and require significant upfront investment by new domestic entrants in the skills and knowledge of the personnel involved. For experienced international participants, there are significant set up costs associated with the development of an Australian enterprise. Accordingly, factors affecting new PPP market entrants include:

- **lack of a clear and consistent pipeline** providing certainty that there is an ongoing opportunity to achieve a return on initial investment;

- a **perceived preference during pre-qualification processes** for both:
    - local experience, even where interstate or international organisations believe themselves to be appropriately paired with locally-experienced participants; and
    - top tier contracting parties (in particular, with regard to Building and Facilities Management organisations), in relation to balance sheet strength and concerns regarding bankability, irrespective of their relevance for small to medium PPP projects; and
- **prohibitive bid costs**, particularly given the above-mentioned issues.

1.3.2 Procurement Inefficiencies (High Bid Costs)

The efficiency of the procurement process can significantly impact the level of transaction costs to Government and bid costs incurred by market participants. Excessive and unnecessary bid costs impact the value for money achieved by Governments, with the market loading these costs into the pricing of future successful tenders and/or the level of return required within a project. Key issues raised as having a significant impact on bid costs include:

- **overall time taken from release of Expressions of Interest (EOI) to the appointment of preferred bidder**. This is considered the key factor impacting overall bid costs, in particular the time taken to:
    - announce short listed bidders and release RFP documentation (resourcing of staff, bid office costs, commencement of early work, etc.);
    - evaluate bids and complete Government decision-making and approvals processes, in particular in relation to overly restrictive and/or inconsistent probity processes;
    - protracted re-bid phases (where these occur as a result of an insufficiently developed project brief or significant changes in scope);
- **excessive information and documentation requests**, resulting in significant direct bid costs, particularly where specialist consultant input is required. Examples include:
    - design costs associated with a detailed level of design potentially not needed in order to determine a preferred bidder, particularly in relation to the level of drawings required as part of the bid submission;
    - non-project specific information requested (perhaps a legacy from previous projects used as precedents) but not required for evaluation of the current project; and
    - requests for information regarding general processes that contractors (both builders and facilities maintenance contractors) must have in place to maintain industry accredited certification;
- **inconsistency in tender documentation from project to project**, which significantly impacts the efficiency of the bidding process and the ability of bidders to realise efficiencies

in non-project specific elements of bidding. Although the market acknowledges the benefits associated with the improvements in standardisation of commercial principles nationally, a lack of consistency in detailed contractual drafting results in debate and reconsideration of positions amongst consortia members;

- **inefficient resourcing, due to the lack of a national co-ordinated pipeline**, resulting in peaks and troughs for specialist staffing requirements, impacting on bidders' ability to bid on multiple projects at the same time as having to select projects based on their perceived chances of winning;

- **lack of clarity in Governments' requirements** resulting in bidders undertaking unnecessary additional work and/or re-working potential solutions throughout the bid phase;

- **requirements for bid bonds and other forms of security** leading to additional costs unnecessarily incurred during the bid phase, due to the level of commitment already made to the process as a result of the existing resource commitment and sunk costs associated with submitting a bid; and

- **inefficient costs incurred by each bidding party individually undertaking due diligence** that could be undertaken by Government and provided to bidders (for example geological, contamination, environmental and condition assessment studies, particularly in respect of linear type infrastructure projects).

This paper focuses on the bid costs incurred by the market from release of EOI to announcement of preferred bidder. Costs incurred post-appointment of preferred bidder are generally not at risk (assuming successful negotiation and resolution of outstanding issues as well as Government's commitment to the project). However, inefficiency in the procurement process post-appointment of preferred bidder still negatively impacts value for money outcomes, as these costs are included within the overall tender price.

1.4 Possible Strategies to Reduce Barriers to Competition and Bid Costs

We have listed below strategies that could reduce barriers to competition and improve the efficiency of the procurement process (and hence reduce bid costs). We have noted for discussion potential changes with a view to facilitating market feedback. They do not necessarily represent KPMG's or Governments' views. Further, any suggested changes will require an assessment of the impact on overall value for money outcomes achieved by Governments, in particular in relation to certainty and the time taken to achieve operational commencement and quality of the infrastructure and associated services delivered to Government.

1.4.1 Barriers to Competition

There are a number of actions / potential changes that could address perceived or real barriers to competition within the Australian PPP market. These changes include:

- **a co-ordinated and well known national project pipeline**, including where possible repeat projects within particular sectors and a tiering of complexity and size to allow new entrants into the market;

- **development of appropriate evaluation criteria** to encourage participation by new players (particularly highly skilled/experienced international PPP participants) within consortia, as well as participation by players outside tier one entities for appropriately sized projects;

- **publication of evaluation criteria weightings** to enable potential consortia better to structure their bids;

- **provision of highly skilled Government practitioners** (particularly in respect of the project director and key project team members), with a clear governance structure that enables effective and timely decision-making;

- **consideration of a reduced number of short-listed bidders** invited to participate in the RFP process (i.e. not just the common position to shortlist 3 proponents);

- **reimbursement of bid costs** if considered appropriate (typically only considered in limited circumstances, for example, on large; complex; and/or specialised projects or where there are multiple bid phases and the assumed benefits from a long competitive process significantly outweigh the compensation to a bidder);

- **more fundamental changes to the procurement process,** such as mandated contracts, enabling a rapid move to commercial close; and

- **a reduction in the bid costs** typically incurred via the implementation of potential strategies that improve the efficiency of the PPP procurement process (including structural changes to typical processes, moving quickly to a preferred bidder, etc), as discussed below in section 1.1.1.

1.4.2 Procurement Inefficiencies (High Bid Costs)

Improvements that may address some of the current inefficiencies in the procurement process include:

- **consistency of general project documentation in relation to form and structure of both the EOI and RFP**, particularly in terms of information required to be submitted is of a general nature and not project specific;

- **further development of the standard commercial principles** to standardised contractual documentation for non-project specific issues and, potentially, sector specific contractual documentation (to facilitate reduced legal costs by enabling documents to be compared easily, and reduced negation time due to standard acceptable sector-specific contractual positions);

- **provision of highly skilled Government practitioners with a clear governance structure** that enables effective and timely decision-making, (to facilitate the prevention of unnecessary delays in the procurement processes);

- **implementation of an information rationalisation process** to ensure that information requested for each project is only that required to evaluate the current project (not simply a build up of requirements included in previous projects);

- **providing greater transparency of Government's requirements** in respect of the reference project and public sector comparator (PSC);

- **implementing a phased approach to the receipt of detailed technical information** (such as costly services layout drawings) during the course of the procurement process (thus requiring the right level of detailed design development for each phase of the bid process (i.e. information not required for the purposes of evaluation but required as a pre-condition to contractual close to ensure certainty of product delivered at commercial acceptance);

- **consideration of the staged receipt of information throughout the bid phase** allowing, for example, the commencement of technical evaluation prior to receipt of the final financing proposals;

- **undertaking due diligence and procuring condition assessment reports** particularly in relation to large linear type infrastructure projects, following receipt of bidders' input into the scope of investigation works to be undertaken;

- **limiting the information required for a rebid** to only the changed elements of the bid (as opposed to requesting a full resubmission of the bid) and ensuring the process is conducted within efficient timeframes); and

- **provision of clear guidelines in respect of discretionary elements of projects** (such as associated commercial development) within the project brief, indicating what will or won't be acceptable as well as ensuring ongoing feedback as to general acceptability throughout the bid process.

2 Consultation Questions/Issues for Discussion

2.1 Barriers to Competition

In relation to the level of competition within the Australian PPP market, please provide your views in respect of the items below.

1 Do you consider there are currently substantive barriers to entry within the Australian PPP market and, if so, what are they, and which element of the market do you consider most affected?

2 What do you consider are the key barriers to competition amongst existing PPP market participants?

3 What is the source of the barriers, e.g. government policy, accepted practice, industry structure, etc.?

4 What do you consider to be potential solutions to the abovementioned issues? Where you suggest potential solutions, please indicate which of these options are likely to be the most effective.

5 To the extent that your organisation is active in international jurisdictions that have implemented initiatives that act to reduce barriers to competition, please comment on the relevance and likely success of such initiatives within the Australian context.

Please provide details of any other key concerns or issues in relation to barriers to entry/competition within the Australian PPP market.

2.2 Efficiency of the PPP Procurement Processes

In relation to the efficiency of PPP procurement processes, please provide your views on the items below. Where possible, please provide examples to facilitate understanding of the views expressed.

Overview

1 What do you consider are the key contributing factors to inefficiencies within the Australian PPP procurement process?

Structure of PPP Procurement Processes

2 Do you have suggested improvements as to the structure of the typical Australian PPP procurement process, including potential precedent processes employed in international jurisdictions?

3 Please provide your views on the overall timeframes typically associated with the procurement process from release of EOI documentation to the achievement of contractual and financial close. Where you have suggested alternate processes in question 2 above, please comment on suggested timeframes to best facilitate value for money outcomes.

Bid Costs

4 Are there any significant costs associated with typical EOI processes and, if so, do you have suggestions for potential process improvements?

5 Please provide details of the order of magnitude of bid costs, post-EOI, for a typical PPP project, including how this might vary for small medium and large-scale projects.

6 Where possible please provide details as to the breakdown of typical bid costs, in particular in relation to design (including relevant components), legal, financial arranging (where appropriate), tax structuring, submission costs and any other key components.

7 For the key components identified, please provide detail as to how the process may be improved and indicate where it could achieve savings, including the assumed savings impact.

Information Requested

8 Do you consider that the level of information typically requested at EOI is appropriate? If not, please provide detail as to potential improvements.

9 Which elements of RFP documentation do you consider unnecessary for the initial bid submission? For specific elements identified, please suggest an appropriate time for submission (if applicable) and how Governments can achieve certainty to the extent they have not received information as part of the bid process.

10 To the extent not already addressed within Question 6 and 7above, please identify areas of project brief documentation that have a significant influence on bid costs and explain why.

11 Please identify other potential improvements with regard to quality and content of RFP documentation and, in particular, the proposal requirements.

Probity Requirements

12 Do you consider that probity processes can be overly restrictive and prevent the achievement of best value for money outcomes for Government? If so, please suggest process improvements that could increase efficiency whilst maintaining integrity of process and continuing to protect public interest.

In responding to the above, please also nominate projects in which you consider probity has been well managed and where it could be improved, and suggest why you think different approaches were used.

Other Considerations

Please provide details of any other key concerns or issues in relation to the efficiency of Australian PPP processes, including any recommended

Contact us

For additional information please contact

Graham Brooke
Partner
+61 2 9455 9091
gbrooke1@kpmg.com.au

David Asteraki
Director
+61 2 9295 3858
dasteraki@kpmg.com.au

kpmg.com.au

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