Transport for NSW

Productivity Packaging

Feedback summary report

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Introduction

Transport for NSW (Transport) is committed to working with industry to explore new procurement models to deliver great projects for the people of NSW. Our constant ongoing dialogue with our industry partners and suppliers allows us to adapt and apply best practice models and learnings from across NSW and other jurisdictions.

In September 2022 we released a discussion paper called Productivity Packagingthat outlined two proposed procurement models that sought to unlock greater capacity at a time of peak demand.

The two models were:

- Three-phase procurement
- Portfolio procurement

This report provides a summary of the industry feedback we received. We have kept feedback anonymous, aggregated insights where appropriate and have included our responses and any actions we will take.

Cover image of the Productivity Packaging Discussion Paper, September 2022

The two proposed models

The two proposed models were designed to support the delivery of our future pipeline of work by providing an alternative approach that not only complements existing procurement and delivery models but also responds to changing market conditions.

Three-phase procurement

A model intended to streamline the design and procurement process and develop projects to a more advanced stage within a collaborative environment.

Under this model a single designer would be sourced by Transport to assist developing a design. Two construction tenderers would be engaged through a Registration of Interest (ROI) process to work individually with Transport and the designer in a collaborative environment. This model would allow pricing and contract award based on a more developed design and with a better understanding of project risks.

Portfolio procurement

A model that would establish a series of contractor shortlists through a single ROI process. These shortlists would be used for the procurement of a portfolio of projects, creating greater flexibility to package works across Transport's portfolio. Projects could be added to the portfolio as they are funded for construction.

The two models were proposed to apply to Tier 2 to Tier 4 road projects within our portfolio. It was and is not proposed Tier 1 road projects, rail projects or other complex projects be procured via this model at this stage.

Objectives

The intent of the Productivity Packaging discussion is to:

- Ensure competition in the procurement of industry partners
- Support a sustainable contractor market, including a broad participation of industry partners
- Support the industry to understand and mitigate risks
- Facilitate innovation in project design and delivery
- Unlock a more efficient procurement pathway in a constrained market
- Deliver greater cost savings and improved cost certainty

Our engagement approach

Phase one: identifying key issues

We commenced our engagement in September 2022 with the release of the *Productivity Packaging* discussion paper. The paper outlined some high-level principles on the two proposed procurement models and invited industry to respond.

Industry could access the paper via a data room on our Industry Portal and respond to our proposed thinking via a series of questions and provide alternative ideas.

Phase two: industry workshops

To better understand key issues and nuances across the industry we held 16 one-on-one workshops with a diverse range of representatives from designers, contractors and industry bodies.

Phase three: developing the path forward

This report provides a summary of the key findings from the industry engagement. The conversation will continue throughout 2023.

Summary of the key findings

We received written feedback from **22 organisations**

held workshops with **16 organisations.**

Overall, industry welcomed the opportunity to be part of the discussion about alternative procurement models.

Based on feedback received, we will:

- further develop the three-phase procurement model and explore opportunities to trial this approach on upcoming projects.
- not pursue the portfolio procurement model at this time following mixed industry feedback and due to the diverse nature of the current project pipeline

While there is no single solution to the various challenges in the market, we are continuing to explore delivery models that add capacity in the market while maintaining our focus on value for money and supporting healthy competition between a capable field of industry partners.

We anticipate the three-phase procurement model will be one potential means of procuring Tier 2 to Tier 4 road projects within our portfolio. Its suitability for a particular project will be assessed as the project is developed, which may also include market engagement. Existing procurement and delivery models will continue to play a role in the delivery of our project pipeline.

Feedback and action summary

The following table outlines key areas of feedback and the next steps we will take.

Three-phase procurement

Principle	Industry feedback	We will
Overall view on three-phase principles	Industry supported the key principles underpinning three-phase procurement: earlier involvement of contractors allowing tender pricing to be based on a more advanced design, tested contractor methodology and better mutual understanding of risks.	• continue to explore and develop the three-phase procurement model. • ensure the model is flexible, allowing it to be scaled up or down to suit specific projects.
Single designer, contracted by Transport	Industry had mixed views that were intertwined with other elements such as the designer's terms of contract. Some parties expressed a preference to select their own partner for Design and Construct (D&C) tenders. This is based on a combination of existing relationships, knowing how other parties work and commercial terms. In the context of the overall model, some parties relaxed their preferences to select their own partner. Design firms and contractors were generally supportive of the proposal (see below on novation and innovation). Some contractors expressed a desire to have a say in the selection of the single designer but recognised this may be challenging.	• continue to develop the model for a single designer to encourage and drive innovation. • explore team selection, payment methods and incentives, and deliverables (e.g. design options, concessions, etc). • develop alternatives to the single designer model for instances where more than one designer is appropriate.
Novation of designer from Transport to successful contract at award (for D&C / Incentivised Target Costs (ITC) contracts)	Industry generally considered novation a risk if done without knowledge of the counterparty or commercial terms. Industry was generally comfortable with the arrangement, provided they have upfront visibility of the commercial terms between contractor and designer. Most designers indicated they had or would work with most contractors, and vice versa.	• develop key commercial terms for the contract between the successful contractor and the designer and seek industry's feedback on these terms.

Principle	Industry feedback	We will
Opportunity and ability to innovate	Industry agreed that the three-phase model provided an opportunity to innovate, for example: constructability input, concessions and client requirements. Success of innovation will rely on the client team providing timely responses to options. Innovation would only be forthcoming if intellectual property was protected –requiring a combination of probity and appropriate setup of the design teams. By implication, there would likely be differences between the tenderers' designs at the end of Phase 2. Recognising innovation comes from a combination of designer, contractor and client, the model would accommodate innovation if the design team were appropriately set up, incentivised and managed as a key contributor to this process. Designers indicated they would consider different contract structures and payment models to incentivise innovation.	• develop a framework to encourage and incentivise innovation.
Two construction contractors through tender	Industry was supportive of this proposal, with some participants indicating tenders with three bidders was unattractive in the current market. It was suggested to consider only using one tenderer.	• continue to develop a three-phase model based on two tenderers.

Principle	Industry feedback	We will
Level of effort / costs	Industry was generally supportive of the level of effort that would be involved in a three-phase tender process. Some contractors noted the opportunity cost of resources being tied up for a long Phase 2 and commented this phase needs to be an appropriate period and run to a fixed end-date. Several contractors raised the need for reasonable tender costs to be covered, with some noting internal costs are not insignificant even though Transport would incur the cost for the designer. The market acknowledged two tenderers provided participants with much greater opportunity.	• develop tender programs that are appropriate in length and intensity for the particular project. Allowing enough time in phase two for design development, including constructability, innovation and concessions. • develop an approach to tender costs for the three-phase model.
Applicability to different contract types: D&C/ ITC, construct only and alliance	Industry was generally supportive of the model being used to procure D&C/ITC contracts. There was a suggestion that an early contractor involvement (ECI) approach could achieve similar results. Feedback supported using the model to procure construct only contracts where constructability input may improve the design. There is a need for the client to assess where the value of collaboration could exceed the cost to participate. Some parties suggested the model was well-suited to procuring an alliance.	• continue to develop a model that can be adapted for various contract types.

Portfolio procurement

Principle	Industry feedback	We will
The use of shortlists and merits of model	Industry was generally supportive of this model where there is a strong committed pipeline of delivery projects, and preferably when projects share skills required, location, technical challenges, etc. Where this does not exist, industry was less supportive. Contractors were less supportive of this model than designers.	• not pursue the portfolio procurement model due to the diversity of our project portfolio and variability with respect to committed delivery funding. • explore opportunities where we can better use the proximity of large and small projects to focus resources in an area and drive better value for smaller projects • continue to consider opportunities to improve the efficiency of procurement processes. For example, utilising a '3-2-1' model or similar program approaches if considered appropriate.
Ability to select projects to tender work on	Designers generally supported a shortlist arrangement for designers or contractors. Contractors had mixed views. Several contractors expressed a concern that this would undermine value for money by not allowing them to tender for projects aligned to their strengths, capabilities and resource capacity. It would also remove the ability to joint venture (JV), since these are typically formed for a specific project. A set order may potentially remove healthy competition within the shortlists.	• continue to explore procurement and delivery models that add capacity in the market while maintaining our focus on value for money and supporting healthy competition between a capable field of industry partners.

Shortlist structure – tiering, size, joint ventures	Industry feedback was mixed. The concept of tiering was discussed and several options were put forward. A sizable portion of the market is interested in projects up to $50m. There would need to be consideration of more tiers for projects up to $500m to encourage a range of contractors. There was some concern that tiering would preclude businesses from growing. There was some concern that JVs would be precluded and this could limit the ability of smaller contractors to 'partner up' on larger projects. Contractors noted tiering may make sense if the portfolio is expected to have a mix of project sizes. However, if projects are all mid-size rather than large, then larger contractors would tender for these mid-size projects. This has been experienced in other jurisdictions. Some organisations tender for a range of projects by size and complexity to develop their team leadership capability.	*No action required*
Shortlist structure – operating rules	Designers supported the idea provided there were multiple opportunities to participate in tendering on a broad range of projects. Some contractors felt a rule of going to the back of the queue after one tender was not appropriate. There was concern it may result in the same two contractors always competing, and limit the ability to leverage lessons from previous unsuccessful tenders.	*No action required*

Thank you

Transport is committed to continuous improvement and making it easier for industry to work with us to deliver our project pipeline. We would like to thank you, our industry partners, for taking time to provide feedback on the discussion paper.

For more information and to join the conversation around project procurement, please visit the Transport Infrastructure Industry Portal.

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