Transport
for NSW

Productivity Packaging

Discussion paper

September 2022

NSW GOVERNMENT

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Acknowledgement of Country

Transport pays respect to Elders past and present and recognises and celebrates the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

Introduction

Transport for NSW is committed to working with industry to explore new delivery models to help us deliver great projects for the people of NSW.

Our approach, guided by the NSW Government's *10 Point Commitment to the Construction Sector*, is to support healthy ongoing competition between a capable field of partners. To achieve this, we place great value on engaging with industry early to understand the capacity and capability of the market.

Early market engagement is the cornerstone of our approach to procurement across our portfolio. Our constant dialogue with our industry partners and suppliers allows us to adapt and apply best practice models and learnings gained from across NSW and other jurisdictions.

Capacity challenges and opportunities to innovate

With the current volume of work underway in NSW and Australia, we are in a period of historically high demand for the construction industry. In 2021, Infrastructure Australia estimated known investment would peak at $52 billion in 2023 and remain historically high for some time.

COVID-19, major natural disasters and broader world events have also placed additional strain on global supply chains and the supply of high-skilled labour to the Australian infrastructure market. These factors, beyond the control of government, will continue to influence the performance of the industry in NSW.

Furthermore, we expect to see increasing competition for market capacity with the energy sector as investment in renewable energy infrastructure significantly increases.

As a result of these combined pressures, Transport for NSW is 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.

Productivity Packaging

Overview

This paper has been developed to start a conversation with our industry partners around a variation to our typical procurement pathway that is under active consideration. Like all our procurement models, we have a commitment to engage with industry to understand how we can continue to evolve the way we work to apply learnings and best practice.

The pathway we are exploring, called Productivity Packaging, has been developed following engagement with industry and market analysis and aims to unlock greater capacity at a time of peak demand. This paper provides an overview of the proposed model with an objective to seek direct feedback from industry to refine our thinking.

This paper will outline two concepts being explored as part of the model, which may be combined. However, for the purpose of discussion with industry we have separated them. These concepts are:

- Three-phase procurement
- Portfolio procurement

It is envisaged that Productivity Packaging would potentially apply to Tier 2 to Tier 4 road projects within our portfolio. It is not proposed Tier 1 road projects, rail projects or other complex projects be procured via this model at this stage.

Objectives

The key objectives of the Productivity Packaging model are:

- Ensuring competition in the procurement of industry partners
- Supporting a sustainable contractor market, including a broad participation of industry partners
- Supporting the industry to understand and mitigate risks
- Facilitating innovation in project design and delivery
- Unlocking a more efficient procurement pathway in a constrained market
- Delivering greater cost savings and improved cost certainty.

Benefits

The proposed Productivity Packaging model seeks to deliver benefits to constructors, designers, and Transport for NSW in the following ways:

Constructors – This model recognises the need to provide a more efficient approach to tenders to manage resources in high demand through reduced procurement costs and tender periods. Through earlier engagement with constructors, Productivity Packaging will also better accommodate innovation and provide a better understanding of risk profiles to inform pricing and help address the ability of constructors to obtain appropriate project insurances.

Designers – Productivity Packaging responds to the significant constraint on design expertise in the Australian market and the need to use existing resources with greater efficiency. This model also helps to ameliorate the challenges the sector is facing to obtain sufficient Professional Indemnity insurance.

Transport for NSW – This model recognises that the Client faces the same constraint pressures as our industry partners and seeks to deliver better outcomes with a more efficient use of resources. Furthermore, it is believed that Productivity Packaging, if applied well could result in better price certainty and value while supporting a more collaborative and sustainable contractor and design market.

Three phase procurement

The proposed three-phase procurement model involves a Registration of Interest (ROI)phase, a design phase, and a pricing phase, leading to contract award.

The proposed model seeks to streamline the design and procurement process with a single designer and two construction tenderers engaged for each project or package within a collaborative working environment.

Under this model Transport for NSW would develop a concept design to inform the procurement process with the selected designer. Following this process, an ROI would be undertaken from the nominated project shortlist leading to the selection of two tenderers.

ROI Phase

A typical ROI process is undertaken, resulting in two tenderers being invited to participate in the project tender process.

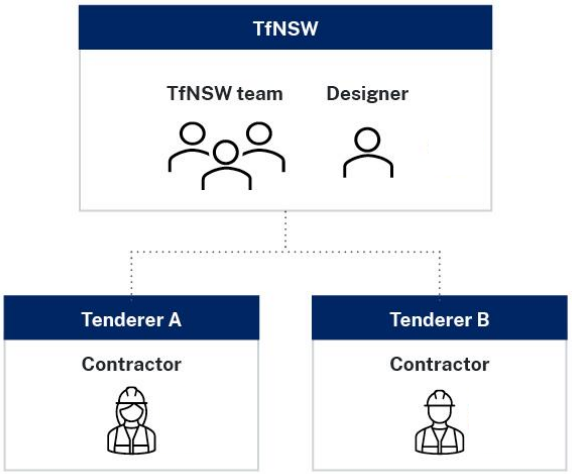
Design Phase

During the design phase, Transport for NSW would collaborate with each tenderer to develop the design – notionally to 80% detailed design but this could be adjusted to a level suitable for the pricing phase – including technical specifications and any concessions.

Developing the design in this manner will provide both Transport for NSW and the contractors with more certainty around the design and an improved understanding of the project risks ahead of the pricing phase.

A robust probity process, including Transport for NSW's advisors, will be established to ensure individual tenderer's intellectual property or innovation enhancements are protected.

At the completion of the design phase, Transport for NSW would obtain a base design and if applicable, a number of confidential options put forward by each tenderer.



There would be a preference against having two totally different designs at this stage although it is accepted that constructability may vary.

If staged appropriately, the design(s) developed with contractor input can be used to inform the environmental assessment and property footprints for the project.

Further, in the design phase, the contractor will also develop its non-price returnables, including project management plans and detailed construction program.

This approach would provide the opportunity to drive a more collaborative culture between contractors, designers and the client and would require engagement with the delivery teams.

Pricing Phase

The primary objective of the pricing phase is to allow the two contractors to prepare and tender their contract price for the project.

In parallel, Transport for NSW will undertake its evaluation of the non-price returnables submitted at the end of the design phase to reduce the time taken to enter contract.

Contract form

It is important to note that the proposed three-phase procurement model is a procurement pathway rather than a form of contract. Transport for NSW is proposing to continue to leverage existing contract forms, with appropriate project specific risks sharing mechanisms to procure projects within the model.

The opportunities and benefits of the model are potentially different for different types of contract.

Design and Construct family of contracts

For a Design and Construct form of contract (including variants such as Design and Construct, Collaborative D&C, Detailed D&C, and Incentivised Target Cost), the proposed process would involve Transport for NSW developing a concept design to inform the procurement process.

Two tenderers would be invited from the appropriate shortlist to participate in the project.

The design would be further developed through the design phase with contractor input, including development of design options. For the purposes of completing environmental assessment and property acquisition, the design footprint will need to be locked at an appropriate time.

The process is envisaged to accommodate design and constructability innovation, improve the understanding of project risks and risk allocation, ahead of the pricing phase.

At contract award, the designer used in the ricing phase would become the designer within the D&C contract to complete the detailed design, with design continuing from a notional 80% detailed design rather than from a concept design stage under a traditional Design and Construct approach.

Construct Only

For a Construct Only contract, the proposed process would involve Transport for NSW developing a concept design to inform the procurement process.

The potential benefit of contractor input will be somewhat dependent on the nature of the project. Some projects will benefit from more contractor input than others, depending on project scale, constructability, and complexity. That is, the level of contractor input can be adjusted, to optimise the project outcomes.

The design phase should still yield a detailed design, potentially with options, based on contractor input. The contractor involvement should also improve an understanding of project risks, although this will generally not impact the pricing phase for the contractor, due to the typical risk allocation of a Construct Only.

Similar to Design and Construct contracts, the design footprint will be locked at a point in time to inform environmental assessment and property acquisition - again, this will be project specific.

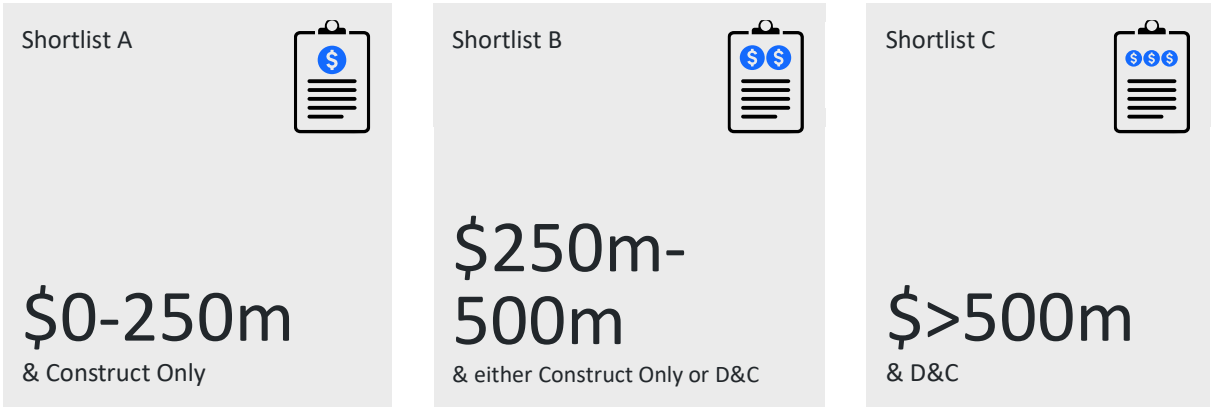
Notwithstanding the benefits in the design and pricing phases for Construct Only contracts are likely not as significant as for Design and Construct contracts, it is still proposed to utilise the shortlist process described above. This will provide industry with more visibility of projects, reduce the burden of ROIs (i.e. a single ROI for multiple projects), provide opportunities for innovation in design or staging, and provide better understanding of project risks in the design phase.

Portfolio procurement

The portfolio procurement approach proposes to establish a series of contractor shortlists through a single Registration of Interest (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 can be added to the portfolio as they are funded for construction.

Shortlists and thresholds

It is proposed that these shortlists are established based on project size and complexity.
The threshold for each shortlist could simply follow the Infrastructure NSW tiering system,
or be set based on contract value, for example:



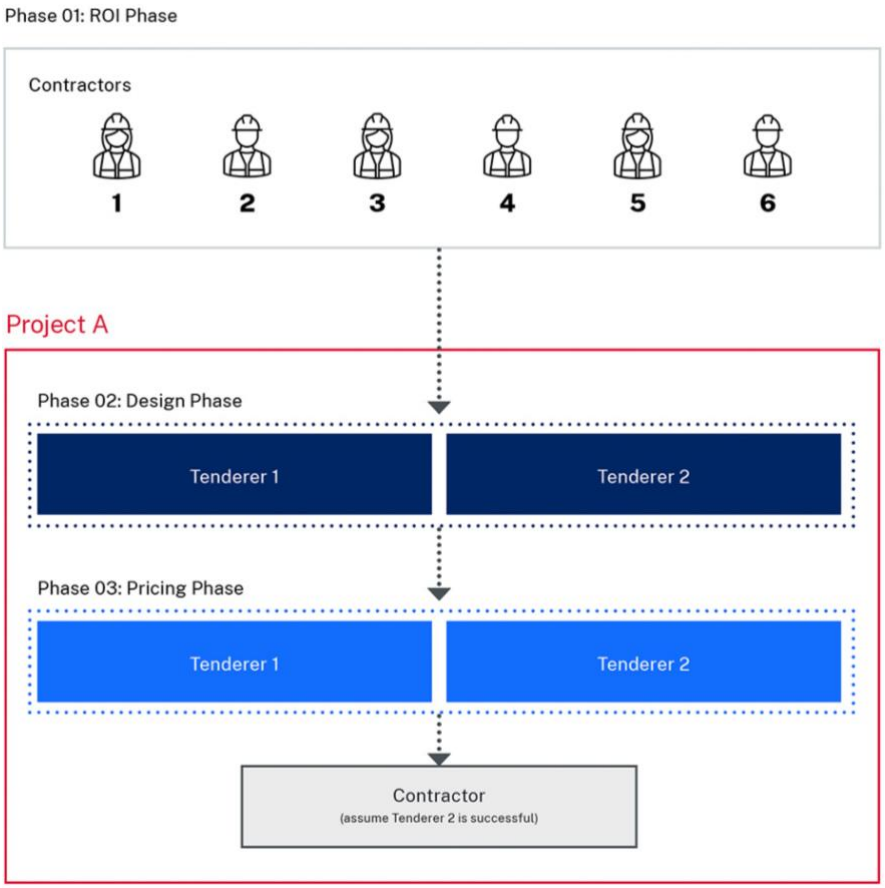
** Note: D&C refers to Design and Construct form of contract (including variants such as Design and Construct, Collaborative D&C, Detailed D&C, and Incentivised Target Cost). Dollar values are indicative only and provided for discussion.*

During the ROI process, contractors would be required to nominate their preferred shortlist(s), contract form and operational footprint. Contractors would be permitted to be on up to two shortlists at one time as a standalone entity or within a joint venture.

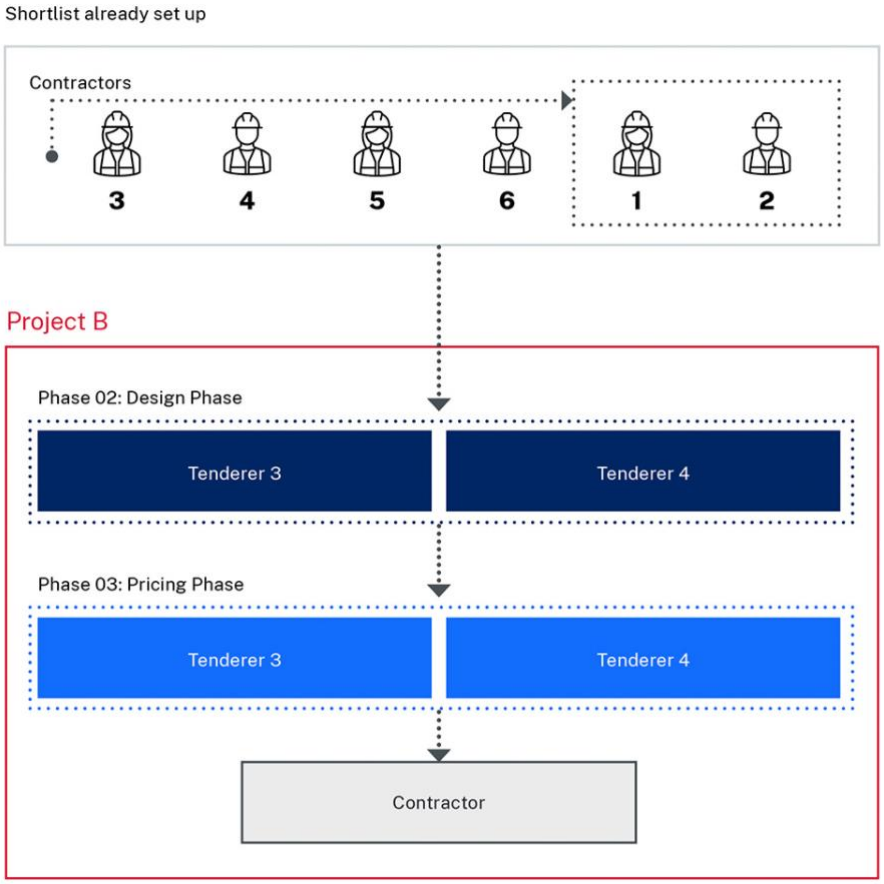
The shortlists would maintain a running order of contractors. Contractors would then be invited to tender for each project, consistent with their nominations, in the order they appear on the shortlist.

If a member of a shortlist wins a contract, they would move to the bottom of the list to free up capacity. Additionally, the unsuccessful tenderer would move to the second last position in the list.

Portfolio procurement approach with three-phases - Overview – Project A



Portfolio procurement approach with three-phases - Overview – Project B



Importantly, if a contractor is invited to tender and decides to opt out of the process once it has commenced, they would move to the bottom of the list. Transport for NSW would retain the discretion to not invite a contractor should there be concerns about that contractor's performance.

Shortlists are proposed to be refreshed every five years, providing an opportunity for contractors to move between them. To support competition in each shortlist, after the first twenty-four months and then every twelve months following, contractors who had not previously applied will be able to seek entry into up to two shortlists of their choosing.

As noted above, if combined with three-phase procurement, these shortlists could be used to procure and deliver a portfolio of projects.

Issues for discussion

Similar procurement pathways to the Productivity Packaging model have proven effective in other jurisdictions. If embraced by Transport for NSW and our industry partners, we believe it may improve the efficiency of the procurement process for projects within the portfolio.

However, Transport for NSW recognises there are some challenges with the proposed model that need some further consideration. This section of the paper outlines some of the initial issues that have been identified and how they could be mitigated.

Risk or issue	Mitigation
What happens when a contractor and designer are not able to collaborate?	Given the risks in design development, some contractors have preferred designers and approach to risk mitigation. This is partly attributable to the short tender timeframes and the pressure to develop a concept design in a constrained market. Three-phase procurement provides the designer with approximately six months to understand the concept design and develop it towards an 80% detailed design. The tenderers are also afforded the opportunity to observe both the designer's performance, understand a more developed design, helping to better understand and balance risk with their subcontractors. Finally, it is important to recognise that the Productivity Packaging model is only proposed to be used for Tier 2-4 projects that typically are less complex with a lower risk exposure.
What happens when you have two tenderers, and one withdraws?	Tenderer financial commitments will be relatively modest in the design phase, limiting the impost on contractors (since Transport for NSW will provide the designer). Furthermore, it is proposed that tenderer costs will only be paid to parties submitting a conforming tender providing a disincentive for a tenderer to withdraw from the process. In the unlikely event one of two tenderers withdraw, Transport for NSW will consider if it is feasible to directly procure the remaining tenderer, providing value for money can be demonstrated (noting 80% detailed design has been developed).

Risk or issue	Mitigation
	Finally, the three-phase procurement model has been developed to provide an opportunity to collaborate more closely with industry in an open and transparent manner. Poor performance, or a deliberate attempt to undermine this model could impact on future invitations.
How do you manage the reputational risk and cost exposure of commencing a project before final funding approval?	Three-phase procurement has been developed to strike the right balance between accelerating procurement while ensuring that resources are not used where they are not required. Therefore, Transport for NSW would propose only to commence projects on this pathway that have a high degree of certainty around funding. Furthermore, it is proposed that the substantive bid costs would be carried by Transport for NSW to ensure that tenderers are not exposed.
How will Transport for NSW manage having potentially two different designs?	Three-phase procurement provides all parties the opportunity to identify opportunities for innovation that would lead to design improvements and add value early. In doing so, this provides the contractor with clarity on where new ideas can be applied and where Transport for NSW is seeking alignment from both tenderers.

Feedback

As outlined above, the Productivity Packaging model is being considered as a variation to the procurement pathway for Transport for NSW projects. However, we want to know if industry supports the model and if there are opportunities to enhance it.

We will be seeing formal feedback on this paper through the survey function located within the Productivity Packaging Data Room.

General

1. Noting the stated aims of Transport for NSW outlined above, if this model was introduced would your organisation participate? If not, please expand on your concerns and your views on steps Transport for NSW could take to address those concerns.
2. What do you see are the benefits and challenges of the proposed Productivity Packaging model? Please separate into three-phase procurement and portfolio procurement.

Three-phase procurement

3. Do you consider three-phase procurement an appropriate model to meet the listed objectives and address some of the challenges being experienced in the market? What is your view on the applicability of the model to the proposed project and contract types?
4. Are there any challenges you can see with the model where under a D&C contract, the successful contractor would be required to enter into an agreement with the nominated designer?
5. If you are a contractor, what criteria or procurement methodology would you suggest Transport for NSW adopt to select a suitable designer?
6. If you are a designer, what criteria or procurement methodology would you suggest Transport for NSW adopt to select suitable contractors?

7. The model relies on a Transport for NSW team (including a single designer) working with two contractors. Noting that appropriate probity arrangements are used successfully already, do you envisage any issues that may limit innovation from the contractors?
8. If you are a designer, what form of contract for the design phase would drive your team to innovate?
9. What issues if any do you see regarding the management of design risk during phase two?

Portfolio procurement

10. Do you agree with the proposed shortlist category approach? If not, can you suggest another way of structuring these shortlists?
11. The proposed model creates a shortlist of contractors for a period of time for each shortlist. Do you agree with the approach to refreshing the shortlist outlined in the paper?
12. Considering the profile of projects within the program, do you have any comment or view as to how it should be delineated and/or projects included?
13. Do you anticipate any significant challenges that may impact your organisation's ability to respond to a single capability ROI to allow prequalification to the shortlist(s)?
14. What sort of lead time would your firm require to participate in the portfolio procurement process? Would this change if you were to participate via a joint venture?

Alternative models or ideas

15. Would you support the key elements of the model as proposed? In your experience what aspects of such a model would you recommend Transport for NSW specifically include to ensure the success of the approach? What changes would you suggest to the model?
16. Considering the objectives and market constraints, do you have other ideas on how Transport for NSW could modify or improve this procurement process?

How to provide feedback

You are able to provide your responses directly through the survey fields within the Transport Infrastructure Industry Portal here.

OR

You can provide feedback to this paper by completing a written response to the questions above and submitting them via email to the Industry Engagement and Development team.

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