

NATIONAL OFFICE

Level 6, 50 Clarence Street
Sydney NSW 2000
GPO Box 56
Sydney NSW 2001

T. 02 8252 6700
E. info@consultaaustralia.com.au
W. www.consultaaustralia.com.au
ABN. 25 064 052 615



Driving business success for consulting firms in the built and natural environment

11 November 2020

Jason Loos

Deputy Secretary, Commercial
Department of Treasury and Finance
Victorian Government

Corey Hannett

Director-General
Major Transport Infrastructure Authority
Victorian Government

By email to: candice.tan@mtia.vic.gov.au

Dear Jason and Corey,

Submission – review of procurement and delivery models for mega transport infrastructure projects

Thank you for letter on 21 October 2020 requesting submissions into a joint review between the Department of Treasury and Finance (DTF) and the Major Transport Infrastructure Authority (MTIA) on procurement and delivery models for transport infrastructure mega projects in Victoria. Consult Australia supports the review and welcomes the opportunity to comment.

As a reminder, Consult Australia is the industry association representing consulting businesses in design, advisory and engineering. Our industry comprises some 48,000 businesses across Australia, ranging from sole practitioners through to some of Australia's top 500 companies, providing solutions for individual consumers through to major companies in the private sector and across all tiers of government. Our industry is a job creator for the Australian economy, directly employing 240,000 people. The services we provide unlock many more jobs across the construction industry and the broader community.

We believe best practice procurement and delivery arrangements do not change based on project size, type or location. Instead, these best practices should follow the same processes and upfront project considerations which then determine the most appropriate procurement model to pursue, how works can be packaged, and how successful collaborative delivery arrangements can be established.

In a recent submission to Infrastructure Australia to support its 2021 infrastructure plan, we highlighted the benefits of taking a 'business-case like' approach to a project's procurement strategy. This means introducing greater accountability and transparency in the procurement model decision making process by using the business case gateway process, and by taking a collaborative integrated team approach to developing options and testing the market. Often a procurement model is used because it was used last time or because of a lack of subject matter expertise. We think the approach needs to be considered on a project by project basis and this decision needs to be documented and justified.

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Our submission also highlights the importance of ensuring whole-of-government procurement principles, rules and guidelines are fit for purpose. It is critical that these arrangements:

- are consistently applied by all agencies
- are flexible enough to be applicable in all circumstances
- include clear expected behaviours (rather than high-level principles that are difficult to implement on a project by project level)
- are supported by transparency to the public on reporting and complaint processes.

Centralised procurement arrangements are often drafted broadly which means many agencies create their own arrangements under a devolved model without any consistency across government. Very few jurisdictions hold these agencies to account against these central arrangements, and there are very few mechanisms for industry to raise concerns outside of the agency they are dealing with.

We support the industry-wide calls, including those that we have championed with the Australian Constructors Association, that broader changes are required to enable wholesale improvements as to how projects are delivered in Australia. We therefore support any reform to procurement and delivery models in Victoria that:

- encourage cultural changes needed to make the broader construction industry an attractive place to work
- increase the industry's capabilities through innovation, technology and other smarter practices, and industry's capacity through a strong talent pipeline
- ensure commercial frameworks are an enabler to collaboration and progress in the industry, rather than a handbrake.

We also believe our Model Client Policy is relevant when considering these wholesale improvements to procurement and delivery models in Victoria. This policy recognises that there is an inherent and substantial power imbalance that favours government clients when contracting with the private sector which has never been addressed. Yet, this same power dynamic is acknowledged and addressed when it comes to legal disputes between a government entity and the private sector – through a model litigant policy. We therefore encourage the Victorian Government to formally adopt this policy and focus on introducing model client behaviours across departments and agencies through education and practical application guides. This should also include the delivery of commercial capability training of government clients (down to project managers) to increase knowledge of commercial factors and techniques to move away from risk avoidance to a proper risk assessment and a well-reasoned allocation approach.

We note that the Australian construction industry is categorised by disputation and bad risk management. Too often risks are transferred along the supply chain, rather than being allocated to the party best placed to manage it. While this is partly an issue relating to how risk is considered, procurement models and delivery frameworks have a substantial impact on the risk environment for consultants and conditions facing these businesses. One example is the impact on professional indemnity (PI) insurance where we see a direct link between how projects are currently delivered in Australia and the hardening of the PI insurance market. AON's PI insurance update from Q3 2020 provide further insights on the current state of the market (available [here](#)), and we encourage this topic and its impacts along the supply chain to be considered as part of this review.

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Finally, of relevance also is some soon-to-be released work from Consult Australia on uplifting productivity through procurement reform. In this work we demonstrate how procurement reform is not an invention test but is just learning from past successful projects. We hope to share this with you in coming weeks.

For more detail on the above, please see:

- Our submission to Infrastructure Australia's 2021 infrastructure plan – available on our website [here](#)
- Our Government Briefing on PI Insurance (attached)
- Our Model Client Policy – available on our website [here](#).

Thank you again for the opportunity to contribute to this review. We would welcome the opportunity to discuss our feedback in a follow up meeting with the advisers of the review. To organise, please contact me at james@consultaaustralia.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "James Robertson", written over a light blue horizontal line.

James Robertson

Victoria Manager
Consult Australia