Interactive Tendering Guidelines

November 2019

NSW
GOVERNMENT

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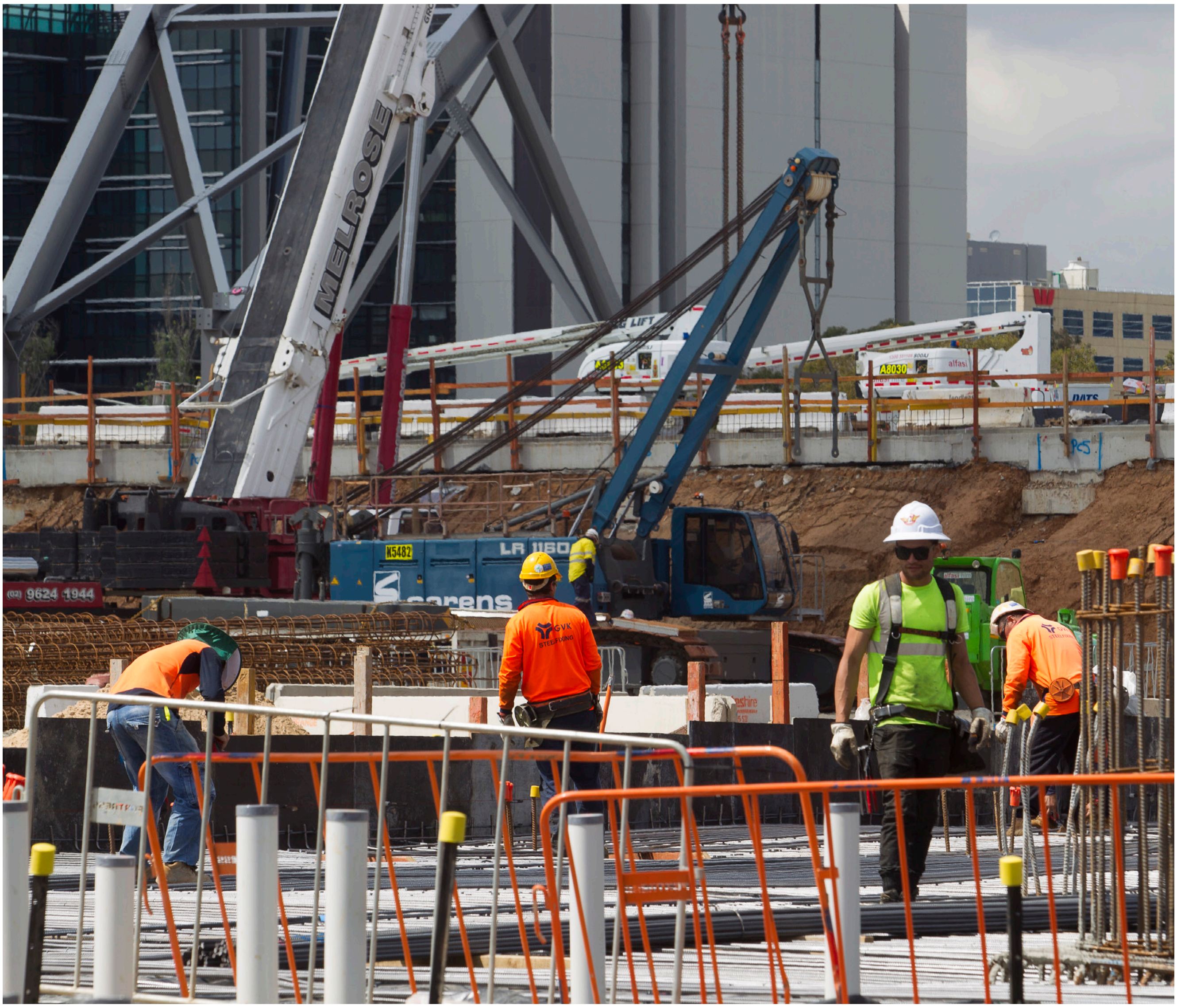
Background

These Interactive Tendering Guidelines ("Guidelines"), prepared for the Construction Leadership Group ("CLG") have been developed in support of the *NSW Government Action Plan – A ten point commitment to the construction sector*, to inform government and industry of best practice interactive tendering to achieve more efficient procurement processes that drive quality, innovation and value for projects.

While the Guidelines have been prepared with a focus on construction or infrastructure projects, interactives can also be a valuable tool for other types of procurement. The principles and approach described here are also applicable to non-construction procurements.

In the development of the Guidelines, NSW Treasury conducted interviews with government and industry representatives and published draft Guidelines for public consultation in June 2019. The key findings and messages from the interviews and public consultation form the basis of these Guidelines.



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Introduction

2.1 What are interactives?

Through any procurement process for a project or services, a Project Team is working to drive the best value outcome for the State. This can only be done if Proponents are able to deliver what the State is seeking to buy.

Interactives are typically part of a comprehensive interactive tendering process which can also include site inspections and the ability to ask questions of the Project Team and receive answers via an online platform. The objective of a comprehensive interactive tendering process is to provide Proponents with access to State information and feedback as part of a procurement.

Specifically, interactives provide a forum for direct, face-to-face interaction between the Project Team and Proponents, typically during the Request for Proposals ("RFP") phase. Interactives can also occur at other times, for example, during the Expression of Interest phase to test ideas and help inform the RFP phase. Therefore, in the context of these Guidelines, a Proponent can be a respondent to any procurement process.

Interactives give Proponents an opportunity to individually discuss the development of their concepts and seek clarification and feedback in the context of the State's requirements, before lodging a proposal.

KEY FEATURES

- Direct interaction between each Proponent and the Project Team during procurement.
- Opportunity for the Project Team to explain complex issues and clarify the intention of the project documents.
- Forum for Proponents to test the acceptability (or otherwise) of proposed operational, technical, commercial and financial solutions.
- Opportunity for each Proponent to leverage the Project Team's knowledge, expertise and input to enhance and improve its own processes, plans and, ultimately, its proposal to ensure it aligns with the State's objectives.

OBJECTIVES

- Improve private sector proposals, which should ultimately deliver better value outcomes for the State.
- Minimise the risk of Proponents misunderstanding the State's requirements.
- Promote collaborative exchange of information to ensure Proponents are able to deliver their best proposals.

2.2 Key principles

The following key principles should guide the Project Team's overall approach to structuring and managing interactives.

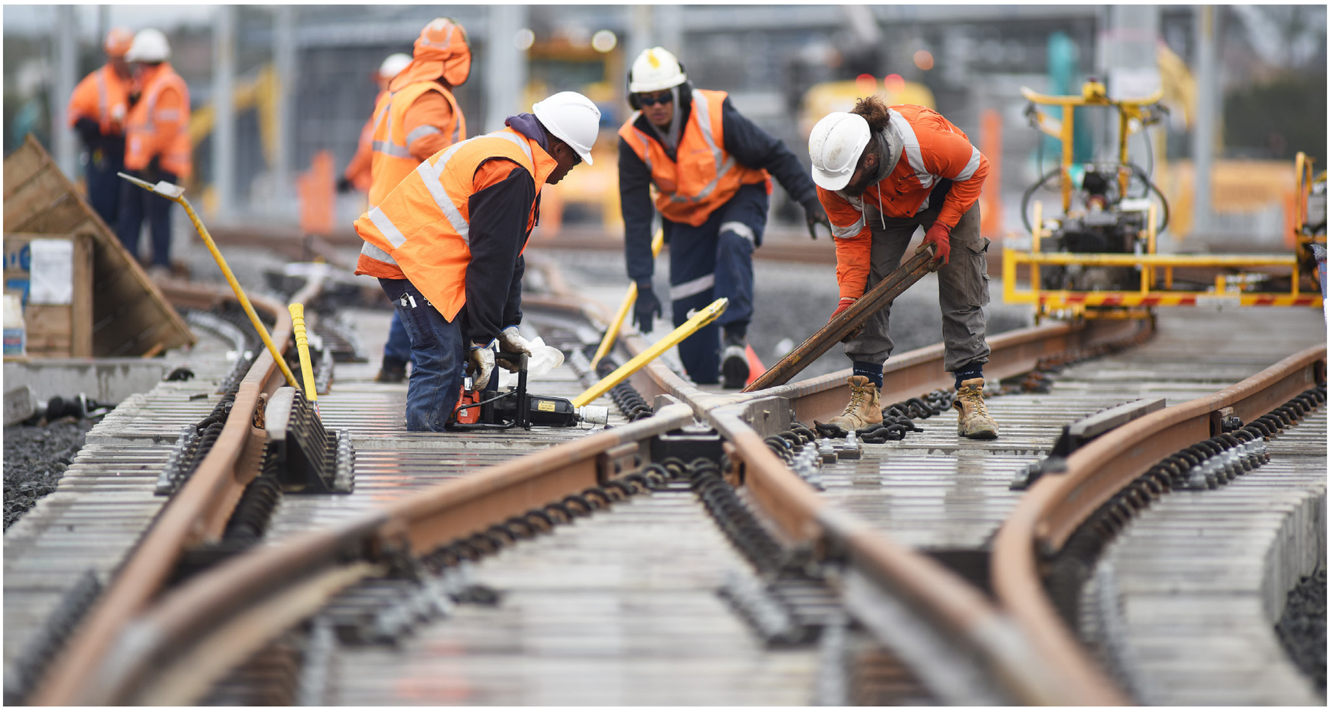
1. **Interactives are not negotiations and should focus on achieving the objectives of the interactives.**

2. **Interactives provide Proponents with the opportunity to receive guidance from the Project Team and to test a Project Team's appetite for innovation or if a particular solution may be acceptable.**

3. **Interactives are intended to supplement the procurement process and should not be used as a replacement for clear project documents.**

4. **The Project Team must seek to promote open and collaborative dialogue with Proponents to maximise the benefits of interactives.**

5. **Interactives must be tailored to individual project requirements and should focus on what outcomes the State requires from the project.**



2.3 Why use interactives?

Although the procurement documents, for example an RFP, will contain detailed information regarding the State's requirements and expectations, it can be difficult in words alone to explain fully the commercial and functional requirements of a project. Proponents can also misinterpret the State's requirements. This can result in protracted negotiations with a preferred Proponent in circumstances where much of the competitive tension has been lost, or the need for a further procurement phase to address the shortcomings of a proposal. This is inconsistent with the objective of minimising the time and cost of procurement and may inhibit the preparation of best value for money proposals.

Through successful interactives, the Project Team can:

- Avoid unproductive or unnecessary work being carried out by Proponents.
- Encourage the preparation of proposals that meet or exceed the State's requirements.
- Efficiently transfer knowledge from the Project Team to Proponents.
- Minimise the number of clarifications and addenda, and eventual technical or commercial departures to RFP documents.
- Provide input to improve the quality of the Proponents' design options at an early stage.
- Receive feedback on the procurement process and the project from the private sector.
- Provide meaningful feedback to Proponents about the acceptability of alternative solutions that a Proponent is considering.
- Improve each side's understanding of the other side's perspective on issues.

Example: A transport project required an alignment shift during the procurement. As a result, Proponents became concerned that they would be required to assume risk on the condition of certain existing structures associated with the new alignment - a risk that was not contemplated in the original RFP. Through interactives, the Project Team was able to agree an appropriate testing regime that would provide Proponents with a comprehensive understanding of the structures. This resulted in the private sector being able to accept the condition risk associated with the structures without bidding any departures.

2.4 When to use interactives

There is no prescribed approach to interactives. While interactives are typically held during the procurement of large-scale construction projects and public private partnerships ("PPPs"), a range of government procurements can benefit from them, including non-construction procurements. Project Teams should consider how interactives can be structured for a particular procurement to maximise their benefits. For example, a few focused interactives may be better suited to a relatively simple lower-capital value project compared to a comprehensive schedule of interactives for a large, complex procurement. Conversely, where Proponents already have an in-depth knowledge of the project and its associated risks, comprehensive, intensive interactives may not be required.

Interactives are resource intensive, which can involve significant costs for the State and Proponents. The Project Team should ensure the expected level of effort and commitment from the State and Proponents is commensurate with the value and complexity of the project.

KEEP IN MIND
Interactives must be structured to allow all Proponents equitable access to information.
A more complex project generally necessitates more comprehensive interactives.
Flexibility should be built into the interactives to accommodate Proponents' feedback.
Project Team and Proponent resources need to be available to participate in interactives.
Interactives should be structured to reflect the unique requirements and circumstances of an individual project.
There is a need to balance the likely cost of interactives with potential benefits.

2.5 What is the Project Team's role in interactives?

The Project Team's role in interactives is to support Proponents in the preparation of their Proposals.

The Project Team should be approachable and collaborative. It should seek to foster an environment where Proponents feel open and secure to share their ideas – particularly around design and value-for-money opportunities.

The Project Team should be open to constructive feedback from Proponents in relation to procurement documents and the project's requirements. The Project Team should not adopt an adversarial approach in interactives when Proponents raise concerns. Similarly, the Project Team should not seek to defend the positions it has taken. A good interactive process will see the Project Team help the Proponent to understand why a particular position has been taken with reference to the project's requirements, or change a position that is not sustainable. This approach necessitates leadership from the Project Director.

Interactives typically do not form part of the evaluation process. However, in some cases a Proponent's conduct during interactives can be assessed, where working collaboratively and flexibly with the State, stakeholders and other contractors is particularly important to the success of the project. Where this occurs, the evaluation criteria must be clearly communicated to Proponents in the RFP documents.

Example: A social PPP included a prescriptive requirement concerning the construction of an asset. The Proponents tested with the Project Team what the State was seeking by including the requirement. Through the interactives, the State communicated it's concern with future-proofing the project for growth opportunities. With a better understanding of the State's concerns, Proponents were able to demonstrate that there were better value-for-money solutions than the prescriptive requirement set out in the RFP.

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Interactive sessions

3.1 Interactives structure

Interactives should be outcome focused rather than follow a step-by-step process.

The structure of interactives should be bespoke to the procurement and developed with the unique project issues and challenges in mind. Interactives typically cover the following topics:

- Design / technical.
- Legal framework and the State's proposed risk profile.
- Key commercial issues.
- Approach to operations and maintenance.

The Project Team should provide an indicative interactive program to Proponents as early as possible (including prior to RFP release where appropriate). There is no mandated frequency of interactives, however, there must be equal opportunity for the Project Team to meet with all Proponents. The frequency should take into consideration the time it takes to prepare for interactives and the need for Proponents to continue developing their proposal in parallel with the interactives, as well as the wellbeing of participants.

The indicative program can include guidance on the topics which Proponents may want to focus on in the interactives. However, the program should be flexible to allow Proponents to request alternative sessions to suit their bid preparation schedule. The program should also take into account major public holidays.

3.2 Interactives process briefing

The Project Team must be committed to the interactives and the key principles which drive the process. Each member of the Project Team (including Advisers) who participates in the interactives should be required to attend a briefing prior to commencement. This should cover:

- Implementation of the key principles set out in these Guidelines.
- Practical considerations of facilitating an interactive.
- The comprehensive interactive tendering process plan for the procurement.
- The role of probity.

3.3 State-led interactives

The Project Team is encouraged to conduct a State-led interactive at the commencement of the interactive process to provide Proponents with an overview of key aspects of the project and take Proponents through the procurement documents. This can also be an opportunity to align the Project Team's and Proponents' expectations for the interactives and cover the processes and probity framework that will govern them. The Project Team should actively consider and communicate to Proponents any topics that the Proponents may want to cover in future interactives.

Additional State-led interactives are important for complex issues and to reinforce a specific message to all Proponents. However, any additional State interactives may take away from the opportunity to hold additional Proponent-requested interactives in light of resource and time constraints.

3.4 Proponent-requested interactives

The majority of interactives should be led by Proponents to allow them to test their emerging solutions and discuss any material issue that may arise during the development of their proposal. This will allow Proponents to proactively structure topics and issues for discussion. Proponents should be required to provide detailed agendas in advance (ideally three days prior) of any Proponent-requested interactives to allow the Project Team to prepare. Agendas should be sufficiently detailed so the State knows not only the topic and issue, but also potential solutions. In return, the Project Team should meet to prepare ahead of the interactives, so that interactives can focus on feedback and exploring solutions.

HOW TO GIVE FEEDBACK

Give it in a timely manner

The Project Team should only defer providing feedback until after the interactive where there is a justifiable reason for doing so, for example if the issue needs to be discussed with other stakeholders. If this occurs, feedback should still be given in a timely manner to ensure the Proponent does not waste resources in the interim.

Express a collective, consistent view

The Project Team should express one collective view when responding to questions, and use break-out sessions if necessary to discuss any issues. The Project Team should provide consistent responses to all Proponents.

Be frank and transparent

The Project Team should be frank and transparent, and provide positive and negative feedback to Proponents where possible, especially where a solution is unlikely to meet the project's objectives or outcomes. This will avoid unnecessary work by Proponents and save evaluation effort of the Project Team.

Don't lead the Proponent

The Project Team must not lead the Proponent in the development of its Proposal or provide solutions as to how best to address the RFP requirements. Where the Project Team is unsure whether a specific concept complies with the RFP, for example, due to the level of detail provided or the limited time available to review designs, the Project Team may direct the Proponent's attention to specific RFP requirements, for example, asking how a particular solution achieves a certain objective set out in the RFP.

3.5 State feedback

Fundamental to the success of interactives is the Project Team's direct and specific feedback on information shared by Proponents during interactives. It is not enough for the Project Team to just direct a Proponent to the particular project requirements.

The Project Team should decide in advance who will lead the interactives and respond to issues and questions raised. For example, in a recent transport procurement, the Project Team nominated a defined and accountable chair for each interactive. This person was responsible for responding to the Proponent's queries in the first instance and could then determine if it was more appropriate for another Project Team member to respond. This approach ensured that there was a clear, consistent response from the Project Team to all Proponents.

Example: In a social infrastructure procurement, the Project Team requested Proponents to include a scope-scale to represent how additional features of a proposed solution were priced. This allowed the Proponents to bid a base proposal and the Project Team to select additional scope items bid by the Proponents that would still be within the affordability range of the project.

3.6 Affordability discussions

The Project Team should encourage Proponents to discuss any affordability impacts associated with a proposed solution to:

» Ensure the Project Team is given an early indication as to whether affordability is a potential issue for the project.

» Identify differences in scope interpretation.

» Avoid 'surprises' when bids are ultimately submitted and evaluated.

The Project Team, in consultation with NSW Treasury, has discretion as to the level of affordability guidance provided to Proponents. Disclosure should only occur if it is likely to achieve a better outcome for the State.

3.7 Interactives attendance

The success of interactives depends on the level of preparation by attendees and their willingness and ability to be interactive. The Project Team must carefully consider which Project Team members should attend interactives, as having the right people attend can greatly enhance the success of the interactives. The Project Team must balance giving Proponents access to individuals who can provide feedback, with ensuring the number of attendees are appropriate and will not hinder a productive session. It is also important that the Core Team members have been genuinely empowered with decision-making authority to provide feedback to the Proponents in the interactives.

Core Team

The Project Team should ensure a Core Team, representing the State and each Proponent, participates in the interactives. The State's Core Team will generally comprise project team leaders and management responsible for driving the project. The State's Core Team should attend each interactive to ensure:

» Consistent messaging from the Project Team to all Proponents.

» A positive working relationship is established with the Proponents.

» Common matters raised by multiple Proponents are quickly identified and escalated for resolution.

» Attendees with the right level of knowledge and authority are in each interactive to make decisions and foster productive interactives.

Interactive sessions should not be siloed. Core Team members should attend a cross-section of interactives (i.e. technical, legal and commercial) no matter their own subject matter expertise, to ensure there is a comprehensive understanding of issues being raised and to ensure that there is a cohesive message being delivered to Proponents across the various interactives. For example, it is important to ensure that the legal/commercial interactives have an active and consistent technical participant to ensure discussions are supported by project specific examples.

Attendance at interactives should be a priority for all attendees and particularly the Core Team. Having consistent attendance at interactives means attendees will be familiar with issues and concerns so that time and effort is not wasted backtracking over previous discussions.

Where resource and time constraints limit attendance at all interactives, the Core Team must ensure knowledge and information is shared between team members to ensure consistency.

Specialists

Specialists are generally domain experts, or specialists in certain fields where the Core Team members require detailed support and technical know-how of the project.

Specialists should be invited by Core Team members to attend the interactives on an 'as required' basis to assist in addressing and clarifying issues. Specialists should only contribute to the discussion as necessary, and Core Team members should continue to drive the responses provided to Proponents. This is to ensure that interactives remain focused on project requirements and do not become centralised on specialist detailed discussion (which is more appropriate for preferred-Proponent discussions).

3.8 Confidentiality

Proponents are naturally very protective of their unique proprietary information as it is this material that gives Proponents their competitive advantage. Therefore strict confidentiality is critical to the success of interactives. The Project Team's ability to demonstrate robust confidentiality will promote greater trust from Proponents, in turn fostering an environment in which Proponents can be more forthcoming.

The Project Team must not, under any circumstances, discuss a Proponent's concepts or proposal with another Proponent, whether directly or inadvertently. This may result in significant adverse consequences for the procurement, for example, reputational damage for the Project Team, loss of competitive tension and/or a failed procurement.

The Project Team must treat any information provided, matter raised or question asked during an interactive, as commercial in confidence if:

» At that interactive and prior to providing the information, raising the matter or asking the question, the Proponent identifies the information, matter or question as containing proprietary information relevant to its Proposal.

» The Project Team agrees, in its absolute discretion, that the information, matter or question should be treated as containing proprietary information relevant to the Proponent's Proposal.

If the Project Team does not agree to treat the information, matter or question as containing proprietary information, the Project Team will, prior to responding, give the Proponent an opportunity to withdraw the information, matter or question.

3.9 Probity

Procurements are competitive processes and the inclusion of interactives involves a significant amount of interaction between the State and the Proponents. All interactives must be conducted having regard to probity to ensure the exchange and sharing of information occurs in a manner that maintains integrity and treats all Proponents fairly.

3.10 Probity Advisers

A probity adviser should attend all interactives. The role of the probity adviser is to:

» Be an independent observer of the procurement process.

» Provide guidance to the Project Team on how probity issues can be resolved.

» Monitor interactions that occur between Proponents and the Project Team to ensure that the interactives are fair and equitable to all Proponents.

The probity adviser should be recognised as someone who can assist with facilitating a robust process and support the objectives of interactives. Similarly, Proponents should feel that the probity adviser is there to assist in maintaining the same level of transparency and information with all Proponents.

For example, the probity adviser can assist with identifying whether the Project Team divulges any information to a singular Proponent which was not included in the RFP or whether it should be shared with the other Proponents to ensure fairness.

3.11 Check-ins

Check-ins involve regular conversations (ideally fact to face) between senior representatives from the Project Team and the Proponent that allow the representatives to openly discuss the status of the Proponent's proposal development and any issues and/or risks that the Project Team should be aware of. Check-ins are not an alternative to the interactives - they are to check on the process and not to engage *in* the process. Check-ins are a particularly useful forum for direct discussions with a select number of representatives, still within probity requirements and with the probity adviser present. Senior executives (above Project Director level) should be available to attend check-ins as necessary.

3.12 Interactive Tendering Process Plan

The Project Team will be required to prepare an Interactive Tendering Process Plan ("ITP Plan") as part of any interactive tendering process. The purpose of the ITP Plan is to set out the processes and procedures to be followed by the Project Team and the Proponent with respect to all interactive elements of the procurement (for example site inspections and the ability to ask questions of the Project Team and receive answers via an online platform).

The processes and procedures of the interactives are to be captured within the ITP Plan. NSW Treasury can assist Project Teams with the development of the interactives component of a Project's ITP Plan and the interactive tendering process more broadly.

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Practical Tips for structuring interactive sessions

First session: The timing of the first Proponent-led interactive should be scheduled to allow Proponents sufficient time to develop an understanding of the project requirements.

Preparation: The Project Team should prepare in advance to form a collective approach to the interactives.

Agenda-setting: Clear agendas should be used to ensure parties have sufficient time to prepare for the interactive and can secure the availability of appropriate attendees.

Project Team attendance: The Project Team should prioritise attendance. Attendance by the same people will ensure continuity and prevent wasting time and effort back-tracking over previous discussions.

Timing: Each Proponent should be allotted the same amount of time for interactives. However, it is at the Proponent's discretion whether they wish to use the full allocated time.

Project Team responses: The interactive program should be structured to allow the Project Team sufficient time to follow through on any actions arising from the interactives.

Break-out sessions: Break-out sessions should be used to allow the relevant parties to discuss issues. The Project Team should ensure the location of the interactives has space available to facilitate break-outs.

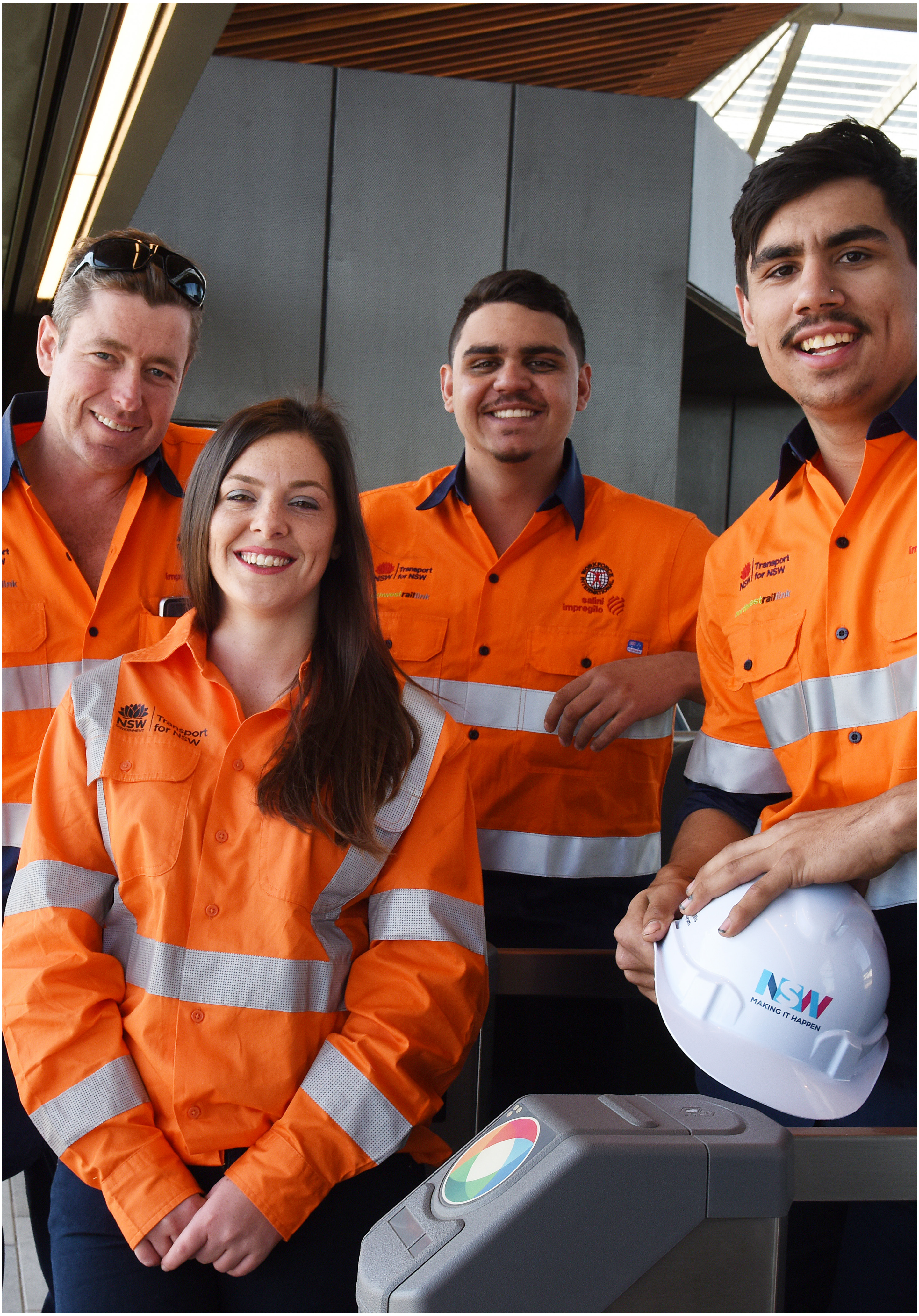
Interactive fatigue: Breaks should be used to keep attendees actively engaged for extended, continuous sessions on complex issues.

Cancelling sessions: Proponents should not be penalised for cancelling interactives if they consider meeting would not be useful (i.e. do not meet for the sake of meeting).

Focus groups: Where required, interactives can be held in smaller groups to facilitate better focused and targeted discussions.

Line in the sand: The interactive program should ensure interactives end in advance of the bid submission deadline. Proponents need to have sufficient time to incorporate in their proposal any feedback received as part of the interactives.

Debriefs: The Project Team should debrief immediately following each interactive to consider how best to address issues raised during the session.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