



Australian Government

Department of Infrastructure and Regional Development

National Public Private Partnership Guidelines

Volume 6: Jurisdictional Requirements



December 2014



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Components of the Guidelines

National PPP Policy Framework

National PPP Guidelines Overview

National PPP Detailed Guidance Material

Volume 1: Procurement Options Analysis

Volume 2: Practitioners' Guide

Volume 3: Commercial Principles for Social Infrastructure

Volume 4: Public Sector Comparator Guidance

Volume 5: Discount Rate Methodology Guidance

Volume 6: Jurisdictional Requirements

Volume 7: Commercial Principles for Economic Infrastructure

Roadmap for applying the Commercial Principles

Document Updates

This Policy will be updated from time to time to reflect evolving best practices and lessons learned.

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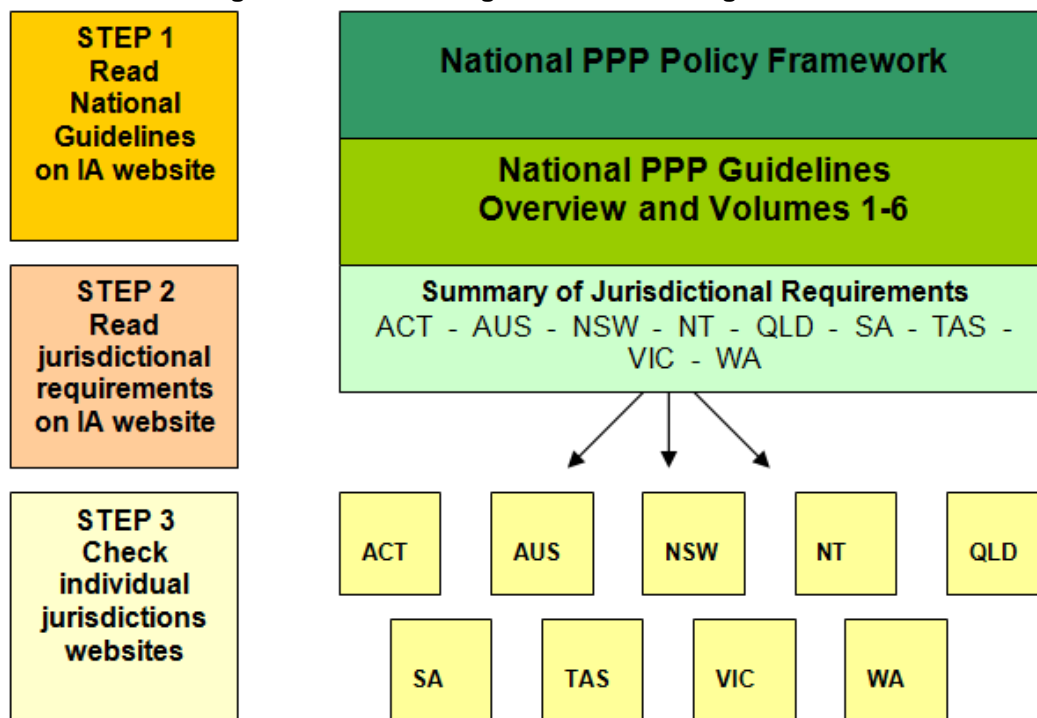
Introduction

The National PPP Policy and Guidelines have been prepared and endorsed by Infrastructure Australia and the State, Territory and Commonwealth Governments as an agreed framework for the delivery of PPP projects. The guidelines provide a framework that enables both the public and private sectors to work together to improve public service delivery through private sector provision of infrastructure and related non-core services.

The guidelines set a framework for the procurement of PPPs on a national basis, and apply across state, territory, and Commonwealth arrangements.

These guidelines represent a high level of uniformity across jurisdictions. However, specific requirements of individual jurisdictions, where different or in addition to the guidelines, are detailed in this document. These jurisdictional requirements will need to be read in conjunction with the national guidelines in order to understand how specific jurisdictional practices differ from the national PPP policy and guidelines.

Figure One: Accessing the national PPP guidelines



With the assistance of Infrastructure Australia, COAG will monitor, review and from time to time refine the national PPP policy and guidance material. Individual jurisdictions will be responsible for updating their respective sections of this document to ensure its currency.

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National PPP Guidelines

Australian Government Requirements

December 2014

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		
2	December 2014	All	Archiving of FMG 17

1. Introduction

The Council of Australian Governments (COAG) endorsed the national Public Private Partnerships (PPP) policy framework and guidelines on 29 November 2008. The policy and guidelines apply to all Australian, State and Territory government agencies and are available at www.infrastructureaustralia.gov.au.

This document provides advice to Australian Government agencies on:

- applying the national PPP policy and guidelines; and
- Australian Government requirements for PPP project development and delivery.

2. Coverage of the national PPP policy and guidelines

Infrastructure Australia (IA) is responsible for the policy and guidelines. With the assistance of IA, COAG will monitor, review and from time to time refine the policy and guidelines. COAG is responsible for approving substantive changes to the policy and guidelines.

At the Australian Government level, the policy and guidelines apply to all agencies subject to the Public Governance, Performance and Accountability Act 2014 (PGPA Act) unless a specific government decision advises otherwise. For example, agency chief executives may put in place measures which allow exemption from the policy and guidelines for projects which involve national security issues. Any exemption must be adequately documented for future audit scrutiny.

The national policy and guidelines update and replace the majority of Australian Government PPP policy and guidance material.

The replaced financial management guidance (FMG) publications are:

- *Policy Principles for the use of Public Private Partnerships (No. 21)*;
- *Introductory Guide to the Public Private Partnerships (No. 16)*;
- *Public Private Partnerships: Risk Management (No. 18)*; and
- *Public Private Partnerships: Contract Management (No. 19)*
- *Public Private Partnerships: Business Case Development (No. 17)*

3. Scope of services

The Australian Government agency undertaking a PPP project is responsible for delivery of the core services of the project on behalf of the Commonwealth of Australia. The determination of core and non-core services will occur on a case-by-case basis at the early planning stages of each project.

4. PPP as a procurement option

A PPP is required to be evaluated as a potential procurement method for all infrastructure or asset projects with a capital investment over \$50 million.

Projects below the \$50 million threshold may also be suitable for PPP delivery if they exhibit sufficient value for money drivers. The same process may be used to consider a PPP as a procurement option for these projects.

A procurement options analysis should be completed in accordance with the *National PPP Guidelines: Procurement Options Analysis* available at www.infrastructureaustralia.gov.au.

5. PPP project governance

Each PPP project will be overseen by, and be the responsibility of the relevant portfolio minister of the Australian Government agency undertaking the project. The agency undertaking the project is also responsible for the management and implementation of the project.

The Department of Finance and Deregulation (Finance) is the relevant PPP authority as defined in the national guidelines. Finance has whole-of-government responsibility for:

- advising government on the use of PPP arrangements and the value for money of particular proposals; and
- assisting and advising agencies with the preparation and development of PPP proposals as part of the budget process.

PPP projects will be subject to the Gateway review process, a project assurance methodology involving short, intensive reviews at critical points in the project's lifecycle, by a team of reviewers independent of the project. Gateway applies to all major projects undertaken by FMA Act agencies, including via PPPs. Further information is available at www.finance.gov.au/gateway.

The Auditor-General will have full and complete access as required to information on any Australian Government PPP project.

6. Public interest consideration

For Australian Government PPP projects, an agency's duty of care to the public and the impact of on the public must be considered, especially on those stakeholders identified as being directly affected by the project.

7. Publication requirements

Australian Government agencies must publish all open approaches to the market, including an expression of interest, on AusTender in accordance with the requirements of the Commonwealth Procurement Rules. AusTender is the electronic system for notification and publication of business opportunities with Australian Government agencies and is accessible at www.tenders.gov.au.

8. Tender release requirements

The request for proposal (RFP) should include a draft contract in accordance with the Commonwealth Procurement Rules. The issue of a draft contract with the RFP ensures all parties are aware of, and have sufficient opportunity, to consider the specific contractual terms that government is seeking.

9. Tender requirements

Information on tender requirements is contained in the Commonwealth Procurement Rules.

As part of the RFP response, bidders should be requested to provide a compliance schedule which identifies all instances of departure from the draft contract, including providing the rationale and cost for each departure. Bidders should also be asked to submit a fully marked up contract and schedules outlining any instances of departure.

As part of the RFP response, bidders should be asked for evidence of committed finance at bid submission, unless specific project circumstances deem otherwise.

10. Reimbursement of bid costs

In normal circumstances, the Australian Government would not contemplate payment of any part of the bid costs incurred by unsuccessful bidders.

11. Disclosure policy and requirements

All Australian Government PPP projects will be subject to the disclosure requirements of the Commonwealth Procurement Rules.

Further information

For more information visit www.finance.gov.au/procurement/index.html

National PPP Guidelines

New South Wales Requirements

August 2012

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		
2	August 2012	All sections	Updated Guidelines

1. Executive Summary

The procurement of infrastructure and associated services through Public Private Partnerships (PPP) (PPPs are also known as Privately Financed Projects in NSW) by any NSW Government agency, including State Owned Corporations (SOCs), need to comply with:

- the National Public Private Partnerships Policy and Guidelines (the National Guidelines); and
- NSW specific requirements in the NSW Public Private Partnerships Guidelines (the NSW Guidelines).

The NSW Guidelines supersede the NSW 2006 Working with Government Guidelines for Privately Financed Projects. PPP projects contracted through unsolicited proposals with a private sector proponent need to also comply with the Guide for Submission and Assessment of Unsolicited Proposals.

The NSW Guidelines provide a transparent mechanism to competitively pursue innovative solutions to deliver improved services and better value for money. This is primarily achieved through optimal risk transfer, management synergies, encouraging innovation, efficient asset utilisation and integrated whole-of-life asset management. The achievement of “off balance sheet” transactions is not the motivation for the Government to deliver PPPs.

All NSW Government agencies, other than State Owned Corporations (SOC), are also subject to the NSW Government Procurement Policy and its associated guidelines. SOCs are subject to the Commercial Policy Framework. Local government councils are required to comply with separate guidelines as per Part Six of Chapter 12 of the Local Government Act 1993.

PPPs have the following principal features:

- creating public infrastructure assets through private sector financing and ownership control;
- a contribution by Government through land, capital works, risk sharing, revenue diversion or other supporting mechanisms ; and
- engaging the private sector for a specified period for the delivery of related services.

Any “related services” contracted to the private sector should be determined on a project by project basis at the early planning stage of each infrastructure project. Government retains the overall responsibility to meet its service delivery objectives and goals, regardless of any PPP entered.

The NSW Guidelines are based on the following principles:

- ensure PPPs are procured in a professional and transparent manner, minimising tender costs and providing fair opportunity to all prospective private sector participants;
- ensure stability of PPP delivery structures, with sustainable debt financing and robust commercial and financial structures;
- the Government will not guarantee private sector borrowings;
- encourage innovation in the provision of infrastructure and service delivery; and
- ensure the timely disclosure of information on contracts and tenders.

In NSW, for any public infrastructure project with a total estimated capital value exceeding \$100 million, PPP must be assessed as a potential procurement method having regard to value for money drivers.

2. Using the NSW Guidelines

The NSW Guidelines are designed to provide Government agencies, the private sector, advisors and other stakeholders a streamlined guide on the NSW specific requirements for PPP procurement and aim to complement the National Guidelines.

As the NSW Guidelines apply to a wide range of projects, and in the spirit of efficient procurement (including keeping transaction costs as low as possible), there may be cases where it is appropriate to depart from the processes set out in the NSW Guidelines. In such cases, the procuring agency should seek prior approval from NSW Treasury. Depending on the circumstances, approval from the Treasurer or Cabinet may be necessary.

Any reference to “NSW Treasury” within the NSW Guidelines or to the “relevant PPP authority” in the National Guidelines refers to the Infrastructure Financing Unit within NSW Treasury, unless otherwise specified.

NSW Treasury will periodically review the NSW Guidelines and update them as required. Any substantial revisions of the NSW Guidelines will be published following Cabinet approval.

2.1. Roles of Agencies in PPP Procurement

Generally, the procuring agency has overall responsibility for delivering a PPP and for ensuring the project will meet its service requirements. Agencies that are not accredited (by Department of Finance and Services) under the NSW Government Procurement Guidelines for either the planning or delivery phase may be required to engage external support, depending on the risk profile of the project.

Where more than one agency is involved in a project’s service delivery outcomes, the Director General of NSW Department of Premier and Cabinet will appoint an agency to lead the project and convene a project’s steering committee. The other agencies will be represented as members on that committee.

In certain circumstances, the Premier may authorise Infrastructure NSW under Part 5 of the *Infrastructure NSW Act 2011* to “step in” to deliver major projects. Such instances include where there is no clear majority stakeholder for a project or the particular agency lacks the required skills or capacity.

The Infrastructure Financing Unit of NSW Treasury is responsible for ensuring that agencies adhere to the processes set out in the NSW Guidelines and the National Guidelines, and is the first point of contact in NSW for PPPs. Treasury assists agencies with commercial/financing advice on PPPs through the preparation of required documents, the Public Sector Comparator (PSC) and participating in the tender and negotiation process. An experienced member of the Infrastructure Financing Unit will also be a member of the steering committee for each project. The level of assistance provided by Treasury will vary according to the procuring agency’s level of relevant experience.

The Auditor General is responsible for certifying the accuracy of the Contract Summary prepared by the procuring agency. The procuring agency may consult the Auditor General early in the process on the likely contract structure and the proposed accounting treatment for the PPP.

Other agencies, like the Major Projects Coordination Unit of the Department of Premier and Cabinet may also be involved in a PPP. This will be determined on a case by case basis.

3. Approval Processes

3.1. Overview

Government approval will be required at various project milestones throughout the PPP procurement process. The Government approval process and required documentation is illustrated in Figure 3.1 and Table 3.2.

Further information on the documentation requirements at each decision point is provided in section 4 of the NSW Guidelines, and in the more detailed National Guidelines.

The Cabinet approval process for funding public infrastructure projects and for PPP delivery of that public infrastructure and related services is detailed in section 3.2. Generally, a Cabinet sub-committee with specific mandates (as outlined in sections 3.2 and 3.3) provide approval at the various milestones. However, Cabinet has discretion over whether a full Cabinet approval is required for a particularly significant PPP transaction milestone(s).

Separate Cabinet steps can be combined in some cases, such as when an agency has already advanced project planning and documentation (perhaps because the project is similar to an existing PPP). It may also occur when the funding decision and the procurement decisions are linked (such as for road PPPs funded by user charges).

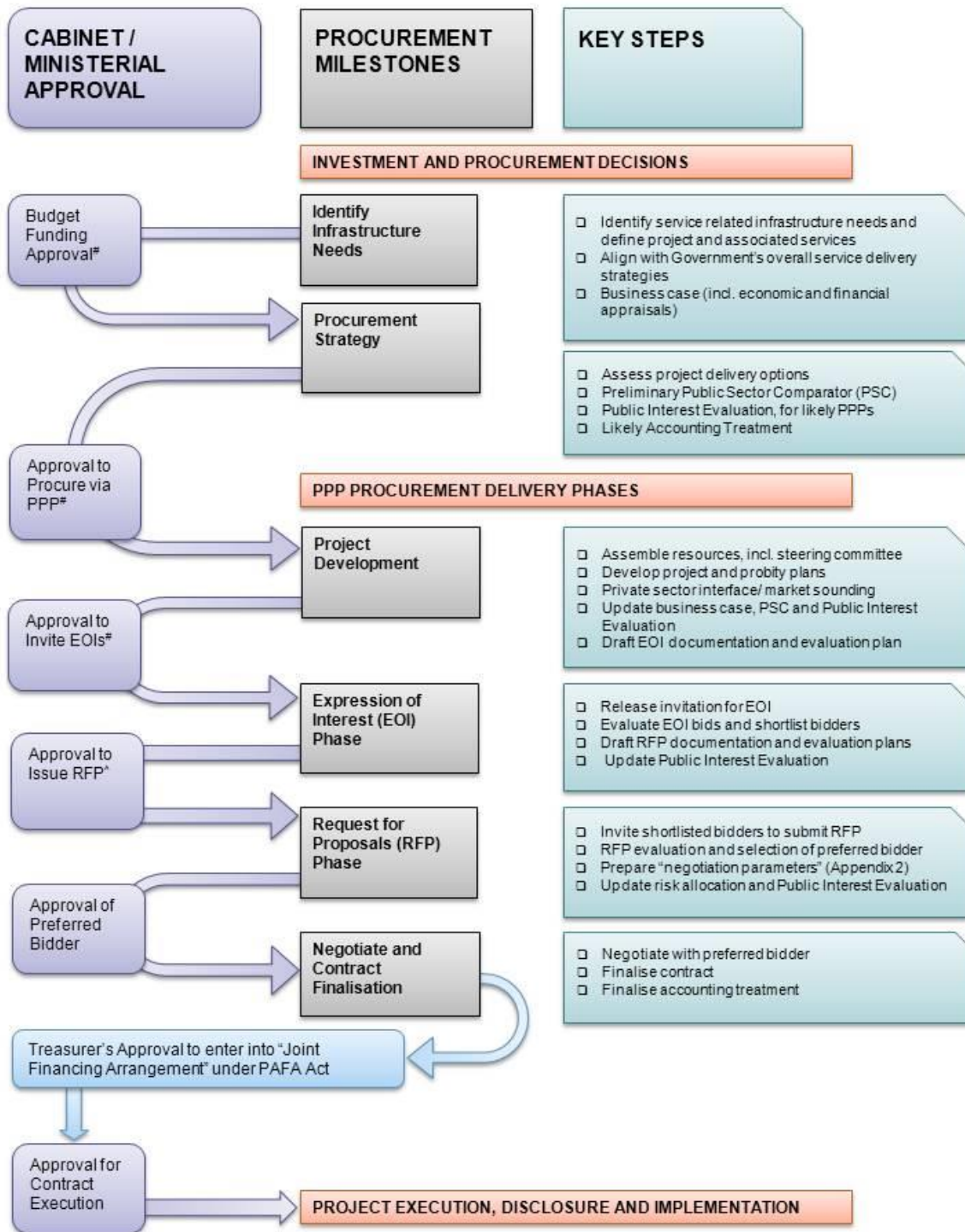
With respect to PPPs procured by SOCs or other public trading enterprises with a Board of Directors, approval by the Board is required prior to requesting Cabinet approval at each phase outlined in Figure 3.1 and Table 3.2.

In NSW, PPPs also require statutory approvals under the *Public Authorities (Financial Arrangements) Act 1987* (PAFA Act) and, if applicable, the *State Owned Corporations Act 1989* (SOC Act), as detailed in section 3.4 and 3.5.

Environmental and planning approvals (see section 3.7) will be required throughout the procurement process. Gateway reviews should also be conducted at various checkpoints¹.

¹ The Gateway review process is outlined in <http://www.nswprocurement.com.au/Government-Procurement-Frameworks/Gateway-Review.aspx> and Treasury Circular 10/13 *Gateway Review System*.

Figure 3.1 Phases of Government Approval



[#] Approvals of some phases may be combined. Further Cabinet approvals may be required for any changes in key assumptions, proposed contractual terms and conditions and/or significant revisions of the Public Interest Evaluation. For further details, see section 3.3.

[^] Approval for this phase is only required for very large projects, where there are a large number of bidders, divergent proposals to consider and/or where non-standard key commercial terms need to be endorsed. See NSW Treasury for further guidance.

3.2. Investment and Procurement Cabinet Approvals

Prior to procuring a PPP project, it must undergo the standard Government infrastructure procurement approval processes, including:

- the investment decision - approval and budget funding to invest in a specific public infrastructure project; and
- the procurement decision - approval of the best value for money procurement method.

Cabinet Approval for the Investment Decision

The procuring agency must identify public infrastructure needs to achieve its service delivery objectives. The public infrastructure project should then be developed (based on a business case²) in line with the Total Asset Management (TAM) Framework³, prior to obtaining Cabinet approval.

The **Cabinet Infrastructure Committee (CIC)** considers infrastructure investment proposals based on agencies' detailed business cases for major projects (those beyond a \$100 million and those elected as significant by the Premier). The CIC takes into account the priority of other projects and consistency with the State Infrastructure Strategy and Infrastructure Plans.

Capital and recurrent funding for the project needs to be approved by the **Expenditure Review Committee (ERC) of Cabinet**, prior to an agency approaching the market. ERC's funding approval decision takes into account the CICs decisions on the relative need for the project.

Cabinet Approval for the Procurement Decision

The procurement strategy considers the various project delivery methods to assess which option provides Government with the best value for money. The decision to procure a project as a PPP is made by ERC, based on the project's procurement strategy report, business case, Public Interest Evaluation and any CIC recommendations (if applicable).

Where a PPP procurement strategy is elected, the private sector would be the employer of the staff within the PPP, unless otherwise approved by Cabinet.

3.3. Cabinet Approvals during PPP Procurement

Once funding and PPP procurement has been approved by Cabinet, further ERC approvals will be required at certain stages of the tender process as summarised in Figure 3.1 and Table 3.2⁴. In particular, at each milestone, ERC will consider any material changes in the risk allocation and if PPP procurement remains in the public interest and is likely to provide value for money.

In addition, an agency will be required to seek ERC approval:

- if at any time, the business case conclusion changes significantly, or there are material changes:
 - in forecast construction, operating or maintenance costs (particularly due to changes in project scope), and
 - in revenues or proposed or maximum user charges;
- if significant additional funding is required from Government or from internally generated funds of the procuring agency, including funding for PPP procurement processes;
- if there is significant change in likely development approval conditions;

² Business cases must be prepared in accordance with Treasury Policy and Guidelines Paper TPP08-5 *Guidelines for Capital Business Cases*.

³ More details on the Government's *Total Asset Management Policy and Guidelines* are available at Treasury's Website: www.treasury.nsw.gov.au. Whilst SOCs are not bound by TAM policy, their assets strategies should as far as practicable be consistent with the principles of TAM.

⁴ For PPPs costing \$5m or less in total, Cabinet have delegated approval authority to the Treasurer [Treasury Circular 98/5]. All other projects still require Cabinet approval.

- prior to any upfront payment being requested from the private sector; and
- if there is a material change in debt and/or equity financial markets that affects the viability and/or cost of the project.

A further Cabinet approval will be required prior to signing a contract if any of the negotiation terms previously approved by Cabinet cannot be met.

Other Cabinet Approvals: After Contract Signing

Renegotiation of any significant areas of a PPP contract after it has been approved and signed by Government **will require the agency to obtain Cabinet approval prior to commencing negotiations.**

In the case where the agency wishes to renegotiate or amend any element of a previously signed PPP, the agency is required to consult with NSW Treasury prior to commencing negotiations. Treasury will determine whether it would be appropriate to seek the approval of the Treasurer or Cabinet.

TABLE 3.2 PPP Procurement & Execution Phases (post Cabinet approval of project funding)

Phases	Actions
1. PPP Project Planning and Definition	<p>Once Cabinet has approved project funding and PPP procurement, the procuring agency should:</p> <ul style="list-style-type: none"> • update the business case, including economic and financial appraisals; • determine project scope and management plan, including: <ul style="list-style-type: none"> - related services to be privately provided, - risk allocation matrix, - timetable for procurement showing key milestones, and - probity plan; • update the Public Interest Evaluation (section 4.1.1); • develop a preliminary PSC (section 4.1.4); • develop a preliminary Fiscal Impact Analysis (See Annexures); • prepare an estimate of contingent liabilities upon the Consolidated Fund; • prepare a preliminary accounting treatment and taxation opinion; • conduct a preliminary environmental and development planning assessment and consultation (section 3.7) • establish a complete project team and Project Steering Committee (section 4.1.2); • perform market soundings, in consultation with NSW Treasury (if appropriate); and • prepare EOI documentation.
<p>ERC approval: Required to proceed with release of EOI tender documentation.</p> <p><i>ERC submissions must disclose any known probity, policy or other issues likely to impact on the tendering or evaluation processes.</i></p>	
2. Expression of Interest	<p>An Evaluation Panel, coordinated by the project manager and overseen by the Project Steering Committee, will evaluate the EOIs. Shortlisted bidders (normally about three bidders) would be invited to submit detailed proposals.</p> <p>After EOI Evaluation, the following should also be completed:</p> <ul style="list-style-type: none"> • RFP documentation and evaluation plan; • contracts to issue with the RFP; and • Updated: <ul style="list-style-type: none"> - Public Interest Evaluation, - risk allocation matrix, - probity plan (if required), and - the PSC based on RFP documentation. <p>The Auditor-General should be advised of the form of the contractual arrangement to be included in the RFP and the likely accounting treatment for the transaction.</p>
<p>ERC approval: Agencies should consult NSW Treasury to determine if ERC approval is required.</p>	
3. Request for Detailed Proposals	<p>The procuring agency may proceed to issue the RFP to shortlisted bidders after gaining any required ERC approvals.</p> <p>The Evaluation Panel will assess submissions by shortlisted bidders and recommend a preferred bidder. If no satisfactory bid is received, the process may be terminated, or if the Steering Committee believe a value for money solution can be obtained, a Best and Final Offer (BAFO) process or pre-selection (structured) negotiations may be conducted to select a preferred bidder.</p> <p>Prior to obtaining Cabinet approval for entering into negotiations or pre-selection negotiations with a preferred bidder(s), the following need to be completed:</p>

Phases	Actions
	<ul style="list-style-type: none"> • 'negotiation parameters' (See Annexures); • updated: <ul style="list-style-type: none"> - Public Interest Evaluation, - business case (including economic and financial appraisals), - risk allocation matrix and management plan, - Fiscal Impact Analysis (See Annexures), - probity plan (as required), and - accounting treatment and taxation opinion.
<p>ERC approval: required before entering into contract negotiations or pre-selection negotiations based on prescribed 'negotiation parameters' with preferred bidder(s).</p>	
<p>4. Negotiations and Contract Finalisation</p>	<p>Negotiations with the preferred bidder will be based on updated documents listed in Phase 3 (above).</p> <p>Any updated statement of accounting treatment must be submitted to NSW Treasury after negotiations have been finalised. Before the contract is executed, the agency should obtain a NSW Treasury agreed determination on the accounting treatment and should advise the Auditor General of the proposed accounting treatment.</p> <p>The terms of contract, and accounting treatment and taxation opinion should be finalised prior to seeking final Cabinet approval to sign the contract.</p> <p><i>Selection of preferred bidder – not to be made public until after Cabinet approval.</i></p> <p>Stated Owned Corporations: may need to obtain the written approval of shareholding Ministers under section 20X of the SOC Act (section 3.5)</p>
<p>ERC approval: required prior to the Portfolio Minister (or delegate) signing any contract, if significant variations arise in negotiations.</p>	
<p>Treasurer's approval: under the PAFA Act for agencies to enter into a joint financing arrangement. This will be a condition precedent for any PPP contract to become effective.</p>	
<p>Project Execution, Disclosure and Implementation</p>	
<p>5. Project Execution, Disclosure & Implementation</p>	<p>After contract signing, management of the project will normally be transferred to an implementation team and ultimately to ongoing agency service delivery arrangements to manage the execution and implementation of the contract.</p> <p>This may be overseen by the Project Steering Committee and/or Infrastructure NSW (where a project implementation plan exists⁵).</p>

⁵ As part of INSW's function under Part 4, Div 4 of the *Infrastructure NSW Act 2011*

3.4. Statutory Approvals under PAFA Act

Approval to enter into Joint Financing Arrangements

Under section 5A of the PAFA Act, all PPPs fall under the definition of a joint financing arrangement. The Treasurer's approval is required under section 20 of the PAFA Act for the procuring agency to enter into a joint financing arrangement, on the recommendation of the responsible Minister. Treasury should be consulted on the appropriate form of words of the Minister's letter.

The procuring agency will need to provide the Treasurer (and Treasury) with a copy of the final contract deed and the supporting documents, including the updated 'negotiation parameters' (See Annexures), prior to the Treasurer granting approval to enter into the joint financing arrangement.

Any amendments to previously signed PPP contracts may also require the Treasurer's approval under the PAFA Act.

Approval for Government Guarantees under section 22AA or 22B of PAFA Act

It is not always necessary for performance guarantees to be granted in relation to PPP contracts. NSW Treasury should be consulted regarding the appropriateness of providing guarantees in relation to the performance of an agency's obligations under the contract, under either section 22AA or 22B of the PAFA Act. Where a guarantee is appropriate, a section 22AA guarantee is the preferred mechanism to ensure transaction costs for all parties are minimised.

3.5. Statutory Approvals under SOC Act

SOCs may need to obtain the written approval of the Shareholding Ministers under section 20X of the SOC Act. This section of the SOC Act deals with the acquisition and disposal of fixed assets and investments. The NSW approvals should occur prior to obtaining Cabinet and PAFA Act approvals to sign the contract. SOC's should confirm with NSW Treasury to determine whether this approval is required for their particular PPP.

3.6. Unsolicited Proposals and Direct Negotiations

Unsolicited proposals for PPPs are proposals initiated by a private sector proponent and can provide a source of innovative ideas about how to improve the delivery of Government services. Unsolicited proposals and direct negotiations for PPPs must comply with the principles in the NSW Guidelines as well as the *Guide for Submission and Assessment of Unsolicited Proposals*⁶.

The Director General of Department of Premier and Cabinet is the first point of contact for unsolicited proposals.

3.7. Environmental & Planning Approvals

Environmental and development approval requirements are separate from financial and budgetary approval requirements outlined in sections 3.1 to 3.6. Risks associated with gaining development approvals should be appropriately considered at the outset and updated as required.

Under the *Environmental Planning & Assessment Act 1979* (EP&A Act), the Minister for Planning and Infrastructure provides consent for all State Significant Developments or Infrastructure under Parts 4 and 5.1, respectively.

Generally, PPPs are either State Significant Developments or Infrastructure based on project scope and capital investment value.

⁶ Available at <http://www.nsw.gov.au/unsolicitedproposals>

In all cases, an appropriate level of environmental assessment and community consultation must be undertaken as part of the assessment process. Final environmental and planning approval will not occur until full details of the project to be actually delivered are known.

In general, the trade-off for a higher degree of planning approval certainty is a lower level of private sector innovation. The planning approval process adopted will depend on the level of private sector innovation required. Cabinet should be informed of the planning process that will be followed prior to the procuring agency calling for EOI.

Likely development approval conditions and their associated costs need to be updated at the various project approval phases. These costs may impact on business case conclusions, triggering the need to seek ERC approval for any material adverse impacts to the project (see section 3.3). The sharing of risks and costs relating to the attainment of approval and compliance with any conditions must also be detailed in the project contract.

4. Project Phases – NSW Requirements

Volume 2 of the National Guidelines details the required documentation and procedures at each project phase. However, there are also NSW specific requirements where the National Guidelines provide flexibility or where NSW requirements vary from or are in addition to the National Guidelines.

4.1. Project Development Phase

4.1.1. Public Interest Evaluation

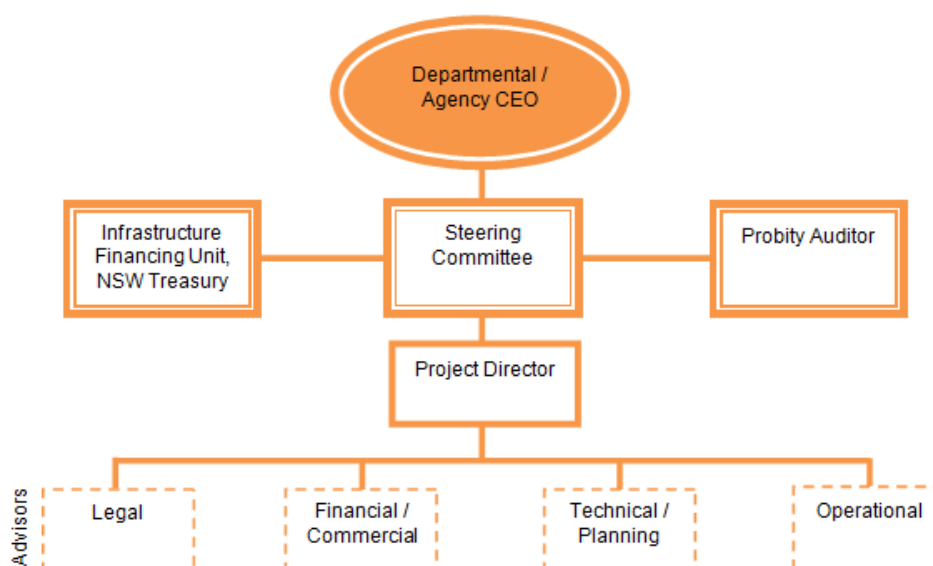
All NSW infrastructure projects where PPP procurement is a possible option need to undergo a Public Interest Evaluation (See Annexures) to ensure that the PPP is in the public interest. This must be submitted to and considered by Cabinet prior to proceeding to the market and updated throughout the procurement process, as detailed in Table 3.2. Cabinet may require updates to be submitted at other points during the tender process.

4.1.2. Project Management Structure

Consistent with the National Guidelines all PPP projects should be managed by a project director, Project Steering Committee and dedicated project team. The project team members should include financial, technical, operational and legal skills to reflect the breadth of skills brought to the project by a private sector consortium and should have clear lines of accountability and quality of resources applied to the project team. Figure 4.1 outlines a typical project management structure.

In NSW, the composition of the Steering Committee will include the procuring agency, an experienced officer from NSW Treasury and any representatives from other agencies or independent advisers as jointly approved by Treasury and the procuring agency or by Cabinet.

Figure 4.1



4.1.3. Probity Requirements

The NSW Government is committed to efficiency, fairness, impartiality and integrity in all its dealings. Probity is an important issue for Government as custodian of the community's assets. Probity management is an integral part of the procurement process as PPP transactions can involve lengthy and complex tender process.

As part of ensuring public and bidder confidence in the process, all PPPs in NSW must have:

- a **comprehensive probity plan** – a probity plan that helps foster a probity culture and clearly defines the proper process
- an **appointed probity auditor** – providing an independent assessment and/or ongoing advice throughout the tender process.

All PPPs must also comply with NSW Government's Code of Practice for Procurement⁷. The Code establishes ethical principles and standards of behaviour for all parties involved and will apply to all procurement actions from calling for EOIs through to project completion.

To ensure that the participation of related companies in a tender does not impact on the probity, competitiveness or cost of a project, the companies may be required to sign a probity process deed.

The NSW Government has established independent review mechanisms for complaints about tendering with Government agencies to maximise community and business confidence in the NSW Government's tendering practices. The Independent Commission Against Corruption may examine complaints about potentially corrupt conduct in the procurement process.

4.1.4. Preliminary Public Sector Comparator

PSCs are the main quantitative benchmark for testing value for money of PPP bids received during the procurement process. The preliminary PSC is developed before issuing an EOI, to quantify the contract value of the PPP project. The PSC will be refined as details of the project scope are defined and should be fully updated before accepting responses from RFP submissions. The development of the PSC is detailed in section 4.3.3 of the NSW Guidelines and Volume 4 of the National Guidelines.

4.1.5. Budget, Accounting Treatment and Taxation matters

Accounting

Agencies must prepare a statement of accounting treatment to assess the balance sheet, income statement and cash flow impacts of a PPP project. This statement should also include the estimated full contingent exposure to Government, including:

- the termination liability, in the case of private party default or voluntary termination; and
- the sum of any individual actual or contingent liabilities under specific clauses of the project delivery contract, combined with the probability of each outcome.

⁷ Further details are provided in <http://www.treasury.nsw.gov.au/procurement/procure-intro.htm>.

Agencies should refer to the relevant accounting standards and Treasury's Accounting Policy for Privately Financed Projects⁸. Where reliance is placed on professional accounting opinions, copies of these should be attached to the statement.

The Budget and Financial Management Directorate of NSW Treasury is responsible for accounting policy guidelines. Agencies should consult with Treasury to agree on the most appropriate accounting treatment for each individual PPP transaction.

Taxation

PPPs are taxed at the national, state and local government levels. However, Commonwealth taxation legislation, particularly Income Tax legislation, is generally the most significant cost to the private parties involved in or considering infrastructure projects under PPP arrangements.

Depending on the degree to which Government (a tax-exempt entity) is deemed to have assumed commercial risk and control, Commonwealth taxation legislation may adversely affect PPPs. Tax risk is the responsibility of the private party, and NSW Government will not assume or underwrite risk associated with the denial of tax deductions, or of any other aspect of tax law.

For those tax risks that can threaten the viability of a project, NSW Government agencies may require the private party to obtain a binding ruling from the ATO as a condition precedent to the contract becoming effective.

4.2. Expression of Interest Phase

Consistent with the National Guidelines, the EOI phase is the first step of the formal bidding process. The purpose of the EOI phase is to allow government to shortlist the number of private parties that are required to submit detailed proposals and ensure that the transaction costs to all bidders are minimised. Consistent with Table 3.2, NSW specific documentation is required to be updated and the Auditor General should be advised of the expected contractual arrangement and accounting treatment for the PPP project, prior to commencing the RFP tender phase.

4.3. Request for Proposals Phase

The RFP phase involves the call for detailed proposals from shortlisted bidders and the evaluation of submissions to select a preferred bidder. The process set out in Volume 3 and 7 of the National Guidelines should be followed for commercial principles underpinning the draft contract. Where the National Guidelines provide flexibility, or where departures are warranted, such variations of the commercial principles need to be approved by NSW Treasury.

4.3.1. Submission Requirements

Generally, the RFP documentation will identify the parameters and requirements of the RFP submission to which the private sector must conform to be deemed a complying proposal. Requirements may be mandatory (i.e. no variations will be allowed) or may allow departures to be considered and will still result in the bid being considered as a complying proposal.

The treatment of non-complying proposals will be assessed on a case-by-case basis by the project's Evaluation Panel, consistent with the RFP requirements.

4.3.2. Interactive Tender Process

An interactive tender process generally involves the procuring agency holding a series of individual workshops with shortlisted bidders, usually during the RFP 'bid' phase, and in accordance with the probity framework.

⁸ See Treasury Policy and Guidelines Paper TPP06-8 *Accounting Policy – Accounting for Privately Financed Projects*

This process provides shortlisted bidders with an opportunity to discuss the development of their concepts and designs and to seek clarification and feedback in the context of the Government's output requirements, before lodgement of bids.

The interactive tender process should also include a planning workshop with each short-listed bidder and the Department of Planning and Infrastructure, so that bidders have opportunity to discuss the development approval process and any conditions that have been or are likely to be set.

The objective is to improve the quality of bid submissions, minimise overall transaction costs and ultimately deliver better outcomes for the public, through clear communication of the Government's requirements. The RFP should specify the procedures, timetable and protocols for the interactive tender process.

4.3.3. Fully Scoped Public Sector Comparator and Evaluating PPP Bids

A PSC is an estimate of the net present value (NPV) of a project's whole of life costs and revenues using the most efficient and likely form of Government delivery. The PSC must be fully updated prior to the Government receiving detailed proposals from the shortlisted bidders. It is the main quantitative tool in determining whether a PPP Bid is value for money. However, the PSC is a dynamic tool. It may need to be updated for comparison with final bids, subject to certain constraints⁹.

The construction of a PSC requires a high level of technical expertise in project costing, financing and risk analysis. NSW Treasury is responsible for advising on the development of PSCs and will assist agencies with advice on technical issues, including the discount rate (also see Volumes 4 and 5 of the National Guidelines) to be used in comparing PPP Bids to the PSC.

Where an agency wishes to deviate from the methodology in the National Guidelines and determine a specific discount rate based on current market data, NSW Treasury must approve the discount rates used.

The PSC is a quantitative benchmark with inherent limitations as forecasts span the life of the proposed contract period. Estimating the impact of risks on costs and revenue is complex and often subjective. To maintain its usefulness as a tool, the PSC will be:

- accompanied by qualitative considerations in determining the potential value for money of a private finance arrangement;
- subject to sensitivity testing and scenario analysis; and
- sufficiently flexible to allow new information to be incorporated as it comes to light.

The PSC should be developed on a basis that is consistent with the nature of the proposed project. The calculation of the PSC varies for economic and social infrastructure projects, with key differences outlined below.

Government also recognises that individual projects may have characteristics of both economic and social infrastructure projects. Such projects will need to be considered on a project specific basis with reference to Volumes 3 and 7 of the National Guidelines.

PSCs for Social Infrastructure

PSCs for social infrastructure are calculated as the estimated NPV of a project's cash flows based on traditional infrastructure procurement and whole-of-life operational and maintenance costs. This is because revenue derived from social infrastructure is primarily (if not completely) sourced from Government, through availability based payment mechanisms. The PSC for social infrastructure projects are cost-driven, and Government generally retains most, if not all, of the demand risk.

⁹ See NSW Treasury for guidance on when it is appropriate to update PSC after the receipt of RFP submissions.

The cash flows for social infrastructure in the PSC will include three core components:

- the base costs of delivering the services specified in the project brief based on traditional delivery through a general government agency;
- a competitive neutrality adjustment (if applicable), covering any expenditure-based State and Local Government taxes, fees and charges that the agency is not required to make by virtue of its Government-owned status; and
- an estimate of the expected cost of risks that could potentially crystallise over the life of the project. The PSC should be able to distinguish between the expected cost of risks that would be retained by the Government and those that would be transferred to the private sector.

The National Guidelines outline the detailed methodology to determine the discount rates for the PSC and to evaluate PPP Bids for social infrastructure PPPs.

PSCs for Economic Infrastructure

In developing a PSC for economic infrastructure projects, it is assumed that the most efficient government delivery method is using a special purpose vehicle, operating under the SOC Act and in accordance with NSW Government's Commercial Policy Framework¹⁰. This approach reflects the importance of revenue and the allocation of demand risk between the public and private parties in determining the financial outcomes of the project.

PSCs for economic infrastructure projects will incorporate the following principles:

- competitive neutrality with the private sector through the payment of State and Commonwealth tax equivalents and other regulatory costs equivalent to those that would be faced by the private sector;
- a commercial capital structure, i.e. a level of debt and equity that optimises the value of the project while maintaining an investment-grade credit rating for the project's debt. Prudential constraints will be applied to the project's financial structure, including minimum debt service cover ratios and reserves for debt service;
- Government guarantee fee, reflecting the margin between the project's credit rating and the credit rating of the NSW Government a commercial level of return on the Government's equity investment in the project, reflecting the project and financial risks borne by equity throughout the project's life.

Disclosure of PSC

The NSW Government will consider providing a summary of a PSC in tender documents where it will assist the private sector's bid preparation process and result in higher quality and better value bids to the Government. The results of the PSC will be made publicly available in the contract summary.

4.3.4. Reimbursement of Bid Costs

While processes outlined in the NSW Guidelines endeavour to minimise the bid costs for the private sector, Government will not normally reimburse bidding costs.

In certain circumstances, consideration may be given to the full or partial reimbursement of bidders' reasonable bidding costs. Any reimbursement will be based on the quality and quantity of information supplied by the proponent(s). Where reimbursement is paid, the agency will retain the proprietary rights to the bidding material. Any reimbursement will be at the sole discretion of the NSW Government with Cabinet approval, based on recommendations by NSW Treasury.

¹⁰ This framework seeks to replicate within Government businesses appropriate disciplines and incentives that lead private sector businesses towards efficient commercial practices. The framework includes financial performance monitoring, financial distributions, capital structure, guarantee fees, social programs and assessment of projects of State significance. Relevant policy documents are available from NSW Treasury at <http://www.treasury.nsw.gov.au>

4.4. Negotiation and Contract Finalisation

4.4.1. Negotiation Parameters

Before seeking Cabinet approval to begin contract negotiations with one or more proponent, the agency together with NSW Treasury, must develop the 'negotiation parameters' schedule (See Annexures). Any departures from the Commercial Principles underpinning the RFP documentation should be explained.

This will inform Cabinet of the type of commercial deal the agency wants to pursue with the private sector. The terms and conditions submitted to Cabinet must outline the scope of the project and areas for final negotiations, as well as any conditions that must be satisfied for the Government to support the project.

4.5. Post Contract Execution

4.5.1. Contract Management

After contract execution, management of the project will normally be transferred to an implementation team and ultimately to ongoing agency service delivery arrangements. For risk to be managed effectively after the contract becomes effective the foundations for contract management must be incorporated into the RFP and the draft contract provided to bidders, then maintained through further development and finalisation of the contract. In addition, the steering committee may need to increase its involvement in the last 2-3 years prior to contract expiry to oversee the handover of assets (if any) and transition procedures.

For many projects, it may be useful for the procurement steering committee to oversee the implementation of the project during the initial delivery phase (i.e. during construction and at least the first two years of operations). In NSW, Cabinet may also require regular progress reports for major projects so that it can monitor implementation. This will be determined on a case-by-case basis.

All PPP projects should compile a contract management plan and contract administration manual to assist the agency in managing the PPP contract during the life of the project, including end of contract procedures and asset handovers. Also see Appendix H, Volume 2 of the National Guidelines. These documents will need to be signed off by the CEO (or equivalent) of the procuring agency.

4.5.2. Refinancing of Debt

As per the National Guidelines, all re-financings other than those contemplated at financial close will require consent by Cabinet. In NSW the Treasurer (under the PAFA Act) is also required to provide consent for any re-financings not included in the base case financial model.

Where there are no contractual provisions otherwise, any re-financing gains are to be shared between government and the private party on a 50:50 basis provided the projected equity return at the time of the re-financing (taking into account any refinancing) is above that reflected in the original base case financial model.

In NSW, any proposed re-financing should not result in a debt balance, at any time between the date of the refinancing and the end of the concession, greater than the projected debt balances in the original base case financial model. The transaction costs related to future debt refinancing should be appropriately allocated in the original base case financial model.

4.5.3. Change in Ownership/Control

Consistent with volumes 3 and 7 of the National Guidelines (and where there are no contractual provisions otherwise), the private party must obtain Government consent prior to either any change in control, change in the legal or beneficial ownership of the private party; or any member of the private party's group, or to any change in the private party's group structure relative to the situation as at contract signing. Prior Government consent is not required for transfers to related bodies corporate and of listed shares and interests.

Government will not unreasonably withhold consent to the change in ownership or control. The procuring agency should consult with NSW Treasury to determine if Cabinet or Treasurer approval is required.

5. Disclosure Requirements and Project Reviews

5.1. GIPA Act Requirements

All NSW PPPs are subject to Ministerial Memorandum No.2007-01 *Public Disclosure of Information Arising from NSW Government Tenders and Contracts* (M2007-01) and the *Government Information (Public Access) Act 2009* (GIPA Act), which set out specific disclosure requirements arising from NSW Government tenders and contracts.

The complete contract (less confidential information) and the information listed in schedules 1&2 of M2007-01 must be disclosed publicly within 60 days of contract execution¹¹. Any significant amendment(s) to the contract should also be disclosed within 60 days of the amendment(s) becoming effective.

5.2. Tender Release Requirements

All agencies, other than SOCs, are required to make Request for Tender documents publicly available and tenders must be able to be lodged through the NSW Government eTendering system¹². This system is managed by NSW Department of Finance and Services, through the Tenders NSW website (<http://tenders.nsw.gov.au>). It also provides a mechanism for the receipt of tenders in electronic form, closing tenders, receiving late tenders, opening the tenders, the removal of tenders, publishing a listing of tenderers, and publishing contract award information.

5.3. Contract Summaries for PPPs

In addition to the above public disclosure requirements, a contract summary should also be disclosed to NSW Parliament. The procuring agency must ensure that a contract summary is made available to the Auditor-General for audit within 45 days of the contract becoming effective (that is, within 45 days after all conditions precedents to the contract have been satisfied).

Within 90 days of receipt by the Auditor-General, the audited contract summary must be tabled in Parliament by the responsible Minister. In the case where Parliament is not sitting, the Clerk of the Legislative Assembly should receive the contract summary within 90 days of it being received by the Auditor-General with a view to it being tabled the first day that Parliament is next sitting.

¹¹ For further details see Division 5 Part 3 of the GIPA Act, which outlines specific disclosure requirements for PPPs, including a list of items that qualify as "Confidential Information."

¹² Refer to Premier's Memorandum 2006-11 *NSW Procurement Reforms*.

After the summary has been tabled, the agency must advertise the availability of the contract summary in the Public Notices. Contract Summaries will also be placed on the NSW Treasury Website.

Any amendment(s) to the contract that change information contained in the previously published contract summary will need to undergo the same public disclosure requirements of:

- an updated contract summary provided to the Auditor-General for audit within 45 days of the amendment(s) becoming effective;
- the updated audited contract summary will then need to be tabled in Parliament by the responsible Minister within 90 days of receipt by the Auditor-General; and then
- advertise the availability of the updated contract summary in the Public Notices.

The contract summary will have two distinct parts:

- Background to the Project, including a summary of the rationale for the project, its value and the parties involved; and
- Elements of the Contract, which summaries the key commercial features of the project.

Background to the Project

- History of the project and its characteristics including a statement as to the nature of the relationship(s) between the Government and other parties created by the contract(s). (For example, “The NSW Government is seeking to; Party A can provide....; Party B wishes to finance... Party C is prepared to underwrite...);
- Fully identify the private party and its sponsors, including details of cross ownership of relevant companies;
- A list of the contract(s) with a statement of the nature and purpose of the contract(s), including a general description of the parties’ obligations (description of project to be completed or goods/services to be provided or property to be transferred);
- A general statement as to the nature of any material that has been excluded on the basis that it is subject to obligations of confidentiality or is ‘commercial in confidence’¹³;
- The results of cost-benefit analyses;
- The results of the PSC compared with the successful private sector proposal;
- The significant evaluation criteria and the weightings used in tender assessment, including that of the PSC;
- The risk sharing in the construction and operational phases of the project, quantified in net present value terms (where possible) and specifying the major assumptions involved;
- Activities of the State and the contractor during the construction period; who is responsible for environmental, heritage, site risks, etc; staging and payment arrangements; site access, responsibility for completion and commissioning, etc.;
- A statement of the actual liabilities of the Crown; a statement of any indemnities and/or guarantees given by the Crown; and
- A summary of the Public Interest Evaluation.

¹³ See the Ministerial Memorandum 2007-01 and Part 3 of the GIPA Act for the list of items that qualify as ‘Confidential Information’.

Elements of the contract

- The commencement date of the contract; the term of the contract including the ability to extend the term and at whose option. This information would include details of future transfers of assets of significant value to Government at no or minimal cost, and details of the right to receive the asset as well as when this might occur;
- Description of change control provisions (i.e. what happens if ownership of a party changes);
- Service delivery (including maintenance) and quality requirements in terms suited to the non-technical reader. Performance measurement may be linked to an agreed set of standards or key performance indicators, which will generally relate to the quality, amount and frequency of service provision;
- What and when assets are to be transferred by the public sector to the contractor;
- Operation and/or maintenance provisions in the contract expressed in non-technical terms;
- The price to be paid by the public, and the basis for future changes in this price. This should include a statement setting out the basis on which price is computed or projected;
- Provisions for renegotiation;
- Significant guarantees or undertakings between the parties. This would include loans entered into or agreed to be entered into;
- A statement that the Auditor-General's ability to carry out the audit function under the *Public Finance and Audit Act 1983* has not been diminished by the contract(s) by, for example, removing or limiting access to records, information, etc. that should otherwise be available;
- A description of the events of default;
- A description of termination rights (including for convenience, for default and any other grounds of termination);
- A statement as to contractual remedies available to the Government in respect of breach or losses otherwise caused by the other party or parties, and remedies against the Government in any circumstances;
- A description of exit/disengagement arrangements, including the basis for calculating the cost of disengagement;
- A description of the situations in which the Government may exercise its contractual right to step-in (i.e. assume all or some of the service delivery obligations of the private party for a period of time);
- A description of any pre-determined dispute resolution process;
- A description as to how insurance proceeds are to be used in the event they are called upon (e.g. reinstatement of the asset, payment to the financiers); and
- Any other key elements of the contractual arrangements if they have not been covered above.

5.4. Post Implementation Reviews

A Post-Implementation Review (PIR) should be undertaken jointly by the procuring agency and NSW Treasury for all PPPs. PIR is a comprehensive feedback mechanism designed to assess project outcomes, collecting and utilising knowledge learned throughout a project to optimise the delivery and outputs of future projects.

The PIR of the project development, procurement process, initial contract execution and implementation should generally be initiated twelve months after operations have commenced, although it may be undertaken earlier. The PIR should specifically review:

- project formulation, objectives and appropriateness of project scope;
- design performance, including effectiveness of risk exposure/risk sharing;
- approval process;
- project delivery, including delivery time and budget performance;
- project operations, including service delivery and financing;
- project management/procedures;
- functional competence of infrastructure, including networking and interfacing;
- industry, community and environmental management, including industrial relations;
- any non-competitive tender process through unsolicited proposal or direct negotiation (if applicable) (see section 3.6).

Any deviations from the NSW Guidelines should clearly be identified and justified in the PIR.

Service delivery performance and contractual compliance will also be reviewed regularly throughout the life of the contract by the responsible agency and, at least initially, by the Steering Committee.

List of annexures

Annexures available at www.nsw.gov.au/ppp:

- 1 Public Interest Evaluation (Appendix 1 *NSW PPP Guidelines*)
- 2 Fiscal Impact Analysis (Appendix 2 *NSW PPP Guidelines*)
- 3 Negotiation Parameters (Appendix 3 *NSW PPP Guidelines*)

Further information

For more information, visit www.nsw.gov.au/ppp

National PPP Guidelines

Partnerships Victoria Requirements

May 2013 (Version 3)



Version control

Version Control	Last Updated	Updated sections	Rationale
1	February 2009		
2	January 2010	Section 12 and Annexure 6 Annexure 3	<i>Public Sector Comparator (PSC) Requirements.</i> The new requirement is for Procuring Agencies to conduct an internal quality assurance review PSC workshop. The workshop objective is to reduce the risk of error or inaccuracy by cross-checking the PSC outputs against the inputs and assumptions, prior to release of the Request for Proposal. A change made to the Notes related to Discount Rate Inputs.
3	May 2013	Material revisions throughout the document	Updates made to reflect reforms to the PPP model introduced following industry and practitioner consultation

1. Introduction

Public Private Partnerships (PPPs) play an important role in infrastructure delivery. The PPP model promotes government objectives including maximising the efficiency, social and economic returns from government expenditure, promoting growth and sustainability in Victoria, and ensuring value for money over the longer term.

The environment that PPPs operate in continues to change. The Victorian Government has responded by reforming the PPP model in Victoria in consultation with our key industry stakeholders. The areas of reform are:

- committing upfront to the PPP model with no automatic reversion to traditional delivery;
- using the public sector comparator (PSC) as a benchmark to test value for money but also using a scope ladder for specific projects;
- using modified financing structures which deliver value for money in project specific circumstances;
- expanding the PPP model to include more services, including services previously publicly delivered;
- developing a streamlined model for smaller scale projects; and
- continuing to identify tender process efficiencies to reduce bid costs.

PPP projects are procured under the *Partnerships Victoria (PV)* Framework that requires compliance with both:

- the National PPP Policy and PPP Guidelines; and
- the Victorian specific requirements outlined in this Partnerships Victoria Requirements document and annexures.

The National PPP Policy and Guidelines apply to all Victorian PPP projects released to the market from January 2009. Where the National Guidelines allow flexibility, the Victorian specific requirements in this document and related information apply (see in particular the information on commercial principles published on the *Partnerships Victoria* website).

Under the national guidelines, there is a policy requirement to consider PPP delivery as one of the procurement options when planning for any capital expenditure over \$50 million.

The *Partnerships Victoria* Framework complements the investment lifecycle and High Value High Risk (HVHR) guidelines (lifecycle guidelines) and other asset management initiatives that apply in Victoria. These whole-of-government policies continue to apply to Victorian PPP projects.

These *Partnerships Victoria* Requirements include a range of contract management guides and practice notes that are important for effectively managing long-term contracts.

Figure 1 depicts the overarching policy framework applicable for all Victorian PPP projects.

Figure 1 Relevant Guidance for Victorian PPP Infrastructure Projects

2. Coverage of the Policy and Guidelines

The policy applies to public infrastructure projects when the estimated value of payments to be made by the Government (and/or by consumers of a service) will exceed \$50 million for the assets underpinning the services to be delivered.

Assets below this threshold could use a streamlined PPP approach if they have suitable value for money drivers.

The National PPP Policy and Guidelines and *Partnerships Victoria Requirements* apply to all PPP projects entered into by Victorian budget sector agencies.

Application of the policy to the provision of infrastructure by a Government Business Enterprise (GBE) shall be determined on a project-by-project basis, following consideration by the

Portfolio Minister of the business plan of the GBE. One variant process is set out in the Annexure 7A Non-Metropolitan Urban Water Authority Approval Process.

The Treasurer remains responsible for developing and overseeing the *Partnerships Victoria Framework*. The Treasurer is responsible for Victorian contributions to the National PPP Policy and Guidelines.

With the assistance of Infrastructure Australia, the Council of Australian Governments (COAG) will monitor, review and

from time to time refine the National PPP Policy and Guidance material. COAG is responsible for approving substantive changes to the National Policy and Guidelines. Individual jurisdictions are responsible for maintaining and updating their specific jurisdictional requirements.

3. Scope of services

The national policy applies to the provision of public infrastructure and any related services which involve private investment or financing. In Victoria the term infrastructure can extend beyond physical assets to encompass major information technology procurements. The policy does not apply to the general procurement of services by the Government where public infrastructure is not being provided.

The Victorian Government is committed to delivering services efficiently and in new and innovative ways that prioritise the community's needs. Part of this is examining whether and which (if any) internal services can be more efficiently provided by the private sector or made more contestable.

The extent of services included for delivery in a PPP project should be considered on a case by case basis at the early planning stages of the business case. The scope of services will include consideration of publicly delivered services (previously considered core) and a greater package of ancillary services where appropriate to be delivered by the private sector.

In considering the scope of services to be included in a PPP Government will assess any public interest impacts together with the potential improvement in value for money and broader service outcomes.

4. PPP as a Procurement Option

All public infrastructure projects with a Total Estimated Investment (TEI) in capital goods over \$50 million, are required to evaluate a PPP as a potential procurement method with regard to the value for money drivers, when conducting a procurement options analysis and seeking government approval for a project. The capital threshold may be triggered by bundling projects together.

There is opportunity to use the key commercial principles and performance incentives in the PPP model while tailoring the procurement process for smaller scale projects. Procuring Agencies should consider projects of a smaller scale for PPP delivery where they exhibit sufficient value for money drivers. The Department of Treasury and Finance (DTF) is currently identifying pilot projects and developing commercial principles to support smaller scale procurement using a streamlined PPP model. Procuring Agencies should consult with DTF where a potential smaller scale PPP project is identified.

The procurement options analysis is to be done in accordance with the *National PPP Guidelines Procurement Options Analysis*, and Victorian guidelines such as the *Investment Lifecycle and High Value High Risk Prove and Procure Guidelines*.

5. PPP Project Governance

Each PPP project in Victoria will have Ministerial oversight of project delivery and implementation. A designated Portfolio Minister will have responsibility for delivering the PPP project and/or ongoing ownership of the project with responsibility for management and implementation once the procurement process is complete.

Procuring Agencies are responsible and accountable for delivering the PPP project and securing the desired outputs and outcomes. Procuring Agencies must secure the required Government approvals, establish a procurement team and governance framework, manage key stakeholders and deliver the project consistent with broader Government policies and objectives. The Procurement Team is led by a Project Director who should be appropriately skilled and resourced.

DTF is the Relevant PPP Authority as defined in the National PPP Guidelines. DTF is not responsible for direct project delivery but has a broader quality assurance and advisory role. DTF has whole of government responsibility for:

- maintaining and ensuring Procuring Agencies consistently apply the Partnerships Victoria Framework;
- supporting and reviewing Partnerships Victoria projects, including providing advice to Government at key project approvals; and
- monitoring and independently advising the Treasurer and Cabinet on significant PPP issues.

Strong governance arrangements are integral to successful PPP project delivery. DTF must be appropriately consulted in development of governance arrangements and participate at all levels of the governance framework. At a minimum:

- High Value High Risk (HVHR) projects must report to Government through the Major Project Performance Report. DTF will actively monitor project risks through the HVHR Assurance Committee;
- senior representatives of DTF and the Department of Premier and Cabinet must be members of the PPP Project Steering Committee. DTF must also be represented at the project working group level;
- Procuring Agencies remain responsible for key project appointments. Procuring Agencies must consult with DTF on key appointments such as Project Directors, Commercial/ Transaction Managers and project advisers; and
- the Project Director must provide signoffs to DTF at key milestones and also obtain signoffs from key advisers at each stage of the procurement process to give greater confidence that key risks are understood and managed, and to give greater confidence about the reliability of the PSC and other project delivery outputs. DTF will provide advice to Procuring Agencies on the required form and content of these signoffs.

Consultation must occur with DTF to agree any variations to the standard commercial principles /risk allocation or precedent contractual documents during the tender process and once contracted, including any significant contract variations or modifications and any disputes.

Procuring Agencies must also specifically consult DTF in relation to budgeting, accounting and taxation matters on PPP projects.

PPP projects will be subject to gateway reviews (except for Gate 4) in accordance with the Gateway Review Process www.gatewayreview.dtf.vic.gov.au/.

Procuring Agencies should also consider further assistance available from:

- the Victorian Government Architect in relation to design matters in the project development phase and ongoing tender phase of PPP projects. Further information is available at The Office of the Victorian Government Architect <http://www.ovga.vic.gov.au/>; and
- the Victorian Construction Code Compliance Unit in accordance with the *Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry*. Further information is available at www.dtf.vic.gov.au/viccode.

The Auditor-General will have full and complete access as required to information on any Victorian PPP project.

6. Approval Process

Underlying *Partnerships Victoria* is a commitment to thorough project preparation and an efficient Cabinet approval process. In accordance with the National PPP Guidelines and these *Partnerships Victoria* Requirements, the key approval steps for budget sector agencies include:

Stage	Approval Required
Review of project proposal	DTF HVHR Review of initial investment logic and Project Development (including Preliminary Business Case), including Gate 1 Strategic Assessment. DTF HVHR Review of full Business Case (including scope of services), Procurement Options Analysis, preliminary PSC and Public Interest Test, including Gate 2 Business Case. DTF must agree the budget impacts of the project in accordance with the budget process requirements.
Government approval of project and procurement method	Government to approve: <ol style="list-style-type: none"> a) the investment decision (budget funding) based on a Business Case (including the Public Interest Test); and b) the procurement model based on the Procurement Options Analysis and Strategy.
Government approval of Expression of Interest (EOI)	Government to approve release of Expression of Interest document. Following release of EOI and evaluation of responses, Government may approve or endorse the short-list of bidders.
Government approval of PSC and Scope Ladder	Government to approve the Public Sector Comparator at the same time as RFP approval. This approval step is also to approve the scope ladder and level of PSC disclosure to bidders.
Government approval of Request for Proposal (RFP)	Government to approve release of Request for Proposal to short-listed bidders, including any modified financing structure and variations to standard tender process (to improve efficiency or address project specific issues). The relevant Gateway Review conducted prior to seeking approval is Gate 3: Readiness for Market.
Government Approval of Preferred Bidder	Following evaluation of responses, Government may approve or endorse the appointment of a Preferred Bidder, or alternative strategy to reach Preferred Bidder.
Government approval of contract execution	Following negotiations, Government or the Portfolio Minister in consultation with the Treasurer to approve contract execution. Portfolio Minister to report back to Government to note the financial close outcome or seek approval if any funding implications arise from financial close process.
Ministerial approval of project summary and contract publication	The Portfolio Minister in consultation with the Treasurer to approve the release of the Project Summary and contractual documents within three months of financial close.
Ministerial approval of Contract Management Plan	The Portfolio Minister in consultation with the Treasurer to approve the Contract Management Plan within three months of financial close.
Commissioning	The Agency to consult DTF on final form of Contract Administration Manual and project governance for the operating phase of the project. Gateway Review: Gate 5 Readiness for Service to be conducted.
Government approval of material variations during operations	There is an ongoing requirement for material contract variations to be considered and approved by Government. Agencies to consult and agree with DTF on all significant PPP related contractual matters.
Operations	Gateway Review: Gate 6 Benefits Evaluation should be conducted. The Procuring Agency should discuss the timing of these reviews with DTF.

Additional Government approvals are also required in certain situations, such as where there is:

- a material change to the project including an amendment to the key project objectives, scope of services, or where there is significant change to the conclusions, or major assumptions of the business case (including the economic and financial appraisals);
- a material change in the projects risk profile since last government approval stage (e.g. due to change in market appetite, feedback or responses, or changes in law or policy) which requires Government consideration;
- an amendment to the approved funding is required; and
- a significant issue relating to the public interest.

Unless otherwise declared to suit the requirements of a particular project, this accountability structure and approval process will be applied consistently for PPP projects. Exceptions to this may be considered for GBE's, for example the *Partnerships Victoria* Non-Metropolitan Urban Water Authority Approval Process which is a streamlined process for smaller capital value projects.

Budgeting for PPPs

PPP project budgets are developed consistent with all other procurement methods for consideration as part of the initial investment decision and business case process (refer Prove Lifecycle guideline).

If approved as PPP delivery, the budgeting for PPPs will differ from other procurement approaches. Procuring Agencies should consult DTF when developing business cases that propose PPP procurement.

Once a project is approved as PPP delivery, the Government will reflect in the Budget the expected PPP capital cash flows for that project as an estimated finance lease liability, and any capital contribution expected to be made by the State consistent with project approval. This differs from the previous practice of budgeting Total Estimated Investment (TEI) as an assumed traditional build in the Forward Estimates up to contract award. The budgeting for other costs such as the asset maintenance, lifecycle and operational costs is to remain consistent with current practice.

7. The use of the Public Sector Comparator and scope ladder

The Public Sector Comparator (PSC) remains an important tool to ensure that Government is an informed buyer and has the knowledge to drive competitive outcomes during the tender process. It is used in a number of ways to drive outcomes in PPP projects, including:

- a preliminary PSC used to better understand the potential for value when seeking Government approval for using a PPP as the preferred procurement method at the business case stage; and
- a full risk adjusted PSC used as a cost benchmark for bidders to beat during the procurement process. There is no longer an assumption that should the PSC cost expectations not be met through a competitive process that the Government will use the PSC as the basis to a revert to traditional design and construct delivery.

The Procuring Agency is required to develop a PSC that must be approved by Government prior to the release of the Request for Proposal document. Any subsequent material changes must also be approved.

Disclosure

The Government will determine the level of disclosure of the PSC and the scope ladder for each project based on project specific circumstances. Current practice of disclosing the raw PSC will continue with consideration given to complex projects that could benefit from disclosing the full PSC as an affordability benchmark and scope ladder to short listed bidders.

Scope ladder

A new requirement is for the Procuring Agency to develop a scope ladder for approval alongside the PSC. The level of development of the scope ladder will be informed by the type of PPP project. In a typical PPP project, a scope ladder would not be disclosed to bidders and only be used to inform negotiations if bids were above the PSC. Whereas for projects that have a complex output specification or where government is seeking to maximise scope, a clearly defined scope ladder would be disclosed to shortlisted bidders alongside the Risk Adjusted PSC as an affordability benchmark in the tender documents.

The purpose of the scope ladder is to identify any scope items bidders can either remove or add should bids be over or under the PSC. Developing the scope ladder concurrently with the PSC and RFP documents means that priorities will be clearly communicated to bidders and Project Directors will have a pre- agreed mandate to negotiate with bidders in order to present scope options to government for decision. Any scope ladder will need clear definition as it is not the intention for the scope ladder to be used to request multiple options from bidders as part of the tender process.

Any scope changes or cost movement against the PSC should be justified based on a full value for money analysis.

Quality Assurance

The accuracy and robustness of the PSC must be assessed prior to Government approval of the RFP. This will include:

- a quality assurance (QA) review workshop conducted and documented by Procuring Agencies. The objective is to improve the quality of the PSC and reduce risk of error and inaccuracies. It should ensure that outputs are an appropriate reflection of the inputs and assumptions. For guidance on the implementation of this review requirement please refer to www.partnerships.vic.gov.au.
- a separate DTF managed HVHR review of the PSC by an independent external adviser to ensure that the estimate is robust.

Roles in the development of the PSC and scope ladder Agency

Primary responsibility for the construction and use of the PSC and scope ladder rests with the Procuring Agency, in particular the development of the output specification and Reference Project for the PSC.

The construction of a PSC requires a high level of specialist skills that will generally require the engagement of external expert advisers. The PSC construction process should be methodical and rational through the proper and systematic recording of cost and risk material throughout the stages of PSC development. Specifically, the Procuring Agency should maintain adequate documented evidence to support all costings and calculations for the PSC approved by government.

Department of Treasury and Finance

DTF may be involved in assisting with developing the preliminary PSC. DTF will review the preliminary PSC as part of the business case.

DTF will review the final PSC and scope ladder when government approval is sought prior to the release of the RFP to bidders. As part of this review, DTF will manage the separate independent HVHR review of the PSC.

DTF is developing guidance to assist Procuring Agencies with aspects of undertaking value for money assessments. This guidance will include detail on the importance of qualitative criteria and assessment.

8. Discount rate methodology

Procuring Agencies are to consult DTF on the appropriate Discount Rate for use in assessing RFP responses. Discounted cashflow analysis is required to compare differing PSC and bid cashflows on a consistent basis. The National PPP Guidelines provide a methodology for determining the discount rates to be used in making this comparison and determining whether PPP delivery offers value for money (refer *Volume 5: Discount Rate Methodology*).

The discount rate methodology under the National Guidelines is **not** appropriate for use in making the investment decision, that is, it is not appropriate for deciding at business case stage whether the investment has merit and should proceed.

The national guidance focuses upon the development of the discount rate for social infrastructure projects, i.e. projects with net cash outflows for government. Different considerations will apply to economic infrastructure projects.

The appropriate national guideline is *Volume 5: Discount Rate Methodology Guidance*. The guideline includes a range of asset beta factors as one of the key inputs in determining the discount rate. Departments must consult DTF to determine the appropriate asset beta factor to be used based on project specific considerations.

Current discount rate inputs and further information on determining the general inflation rate for use in *Partnership Victoria* projects is available on www.partnerships.vic.gov.au.

9. Use of modified financing structures

Modified financing structures should be considered for specific projects where project outcomes can be improved.

Typically, unless there are financial market capacity constraints, construction of PPPs is fully privately financed and effectively repaid by Government over the concession life. An alternative to full private finance is part public finance either during construction or by substantial repayments at or soon after construction completion.

In consultation with DTF, Procuring Agencies should consider government capital contributions where there are liquidity constraints or where there are opportunities to reduce project costs by reducing the level of private capital at risk during the operations period. It is important to maintain sufficient private sector capital 'at risk' to absorb the remaining risks the private party is taking and to incentivise desired performance.

Assessment criteria will be used to determine if a modified finance structure could deliver value for a specific PPP project either for liquidity or broader value for money reasons. The criteria to assess modified structures against a standard PPP approach are:

- a. risk allocation;
- b. cost and complexity;
- c. preservation of the benefits of private finance;
- d. competitive tension;
- e. alignment of the tenor of finance with the project's risk profile; and
- f. potential for innovation.

A partial capital contribution can be made by Government in two ways:

- as milestone payments during construction (e.g. for mega projects where the full private capital to fully finance construction cannot be raised); and/or
- as a lump sum payment once construction is complete to achieve greater value.

Government approval is required for the use of modified financing structures as part of the RFP approval process on a project specific basis. In consultation with Procuring Agencies, DTF will evaluate modified finance options against the above criteria.

The Government will also consider other structures as appropriate on a specific project basis.

10. Tender process requirements

The Victorian Government is committed to reducing bid costs for all PPP projects. Procuring Agencies should continue process improvements, including minimising information requirements for bidders, short listing only two bidders where appropriate and minimising the use of best and final offers processes in PPP projects where possible.

Reimbursement of bid costs

Victoria will trial payment of partial bid costs for PPP projects. It will be used for projects where it will maximise competition by incentivising stronger market responses and attracting better quality bids. The amount of reimbursement will be determined on a project specific basis and will involve partial payment to losing bidders in return for intellectual property where appropriate. The approach for reimbursement will be communicated to bidders upfront at the time of the EOI release and will be funded as part of transaction costs in the business case.

Procuring Agencies should consult with DTF on the potential application of this trial for specific PPP projects.

EOI publication requirements

All Victorian Government tenders, including the Expressions of Interest for PPP projects, are to be advertised on the Victorian Government Tenders Website www.tenders.vic.gov.au in accordance with the requirements of the Victorian Government Purchasing Board www.vgpb.vic.gov.au.

RFP release requirements

The RFP document is to include comprehensive contractual documentation. The issue of the contract as part of, and concurrently with, the RFP, ensures that all shortlisted parties are aware of, and have enough opportunity, to consider the specific contractual terms that government is seeking. It also limits subsequent negotiations to clearly identified and fully drafted departures. The RFP normally includes a statement indicating that government may entertain variations from the contract in nominated areas.

PPP projects must also comply with requirements of the *Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry*.

RFP submission requirements

As part of the RFP response, bidders should be asked to submit a fully marked up contract and schedules. Term sheets are sufficient for some of the sub-contracts. While this does consume legal resources at the bidding stage, it leads to a more efficient negotiation stage.

As part of the RFP response, bidders should be asked for evidence of committed finance at bid submission, unless specific project circumstances deem otherwise. This usually takes the form of commitment letters from the providers of both debt and equity. For debt, this is likely to be a firm credit approval or term sheet signed by authorised officers, with clearly defined conditions which government can assess and evaluate. For equity, a demonstration of Board commitment and funding capacity would be required.

The specification of a Complying Proposal should be made and assessed in accordance with project evaluation requirements in the RFP and the project teams' evaluation plan. The evaluation plan will need to address how:

- to assess any mandatory requirements (i.e. lodgement time);
- to evaluate how well each bid meets the requirements of the RFP and contract (this involves the project team ranking criteria and outlining how to deal with legal and commercial evaluation and design and service criteria); and
- to evaluate any additional features or enhancements offered

The Victorian Government Industry Participation Policy (VIPPP) applies to all PPP projects. Bidders will be asked to respond on this matter in accordance with the policy requirements that are available at www.dbi.vic.gov.au. PPP projects must include tender submission requirements in accordance with the Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry. Further information, templates and draft contract clauses are available from the Victorian Construction Code Compliance Unit in DTF via www.dtf.vic.gov.au/viccode.

Taxation rulings are not typically required at the bid submission stage, however where concerns regarding tax exist, Procuring Agencies may consider a requirement for a tax ruling as a conditions precedent to financial close. The RFP should indicate the Government may require this. Procuring Agencies are to consult DTF on taxation issues.

Interactive tender process

Victorian PPP projects are to incorporate an interactive tender process into the procurement process. This is to be done in accordance with the *National PPP Guidelines Volume 2 Practitioner's Guide, Appendix E* and additional material available on the *Partnerships Victoria* website.

11. National Commercial Principles

The National Commercial Principles provide a consistent and efficient risk allocation framework, while recognising the need for flexibility for individual project needs. Additional materials on the Partnerships Victoria website outline the Victorian specific requirements that derive from the National Commercial Principles. This guidance will be updated from time to time to incorporate project lessons.

Any derogation from the National Commercial Principles and the Victorian Requirements for sector, or project-specific issues must be documented and agreed with DTF when:

- government approval is sought to issue the Request for Proposal (which contains the contract documentation) if the derogation is proposed by the Procuring Agency; or
- government approval is sought for the appointment of a preferred bidder or execution of contract, if the derogation is proposed by a bidder.

12. Public Interest Test

Victorian PPP projects must complete a Public Interest Test and submit it with documentation seeking project approval. Confirmation, or updates to the Public Interest Assessment are required at key stages throughout the project. The Public Interest Test covers consumer rights, transparency and other criteria designed to protect the interests of the community.

Public Interest Test elements, submission requirements and templates are outlined on the *Partnerships Victoria* website.

13. Probity requirements

All commercial transactions by the Victorian Government must be conducted in accordance with the *Victorian Government Purchasing Board Guidelines – Managing Probity (2013)* and *Guide to Managing a Probity Practitioner (2013)*. Refer to www.vgpb.vic.gov.au. These guidelines outline the key principles governing probity and the role of Probity Practitioners.

The Victorian Public Service Code of Conduct (available on www.ssa.vic.gov.au) applies to all Victorian Government employees involved in PPP projects.

The engagement of private sector advisers as part of the Procurement team will need to include confidentiality and conflict of interest requirements.

In accordance with the national guidelines, Project Directors are responsible for implementing Conflict of Interest (COI) guidelines and the principles based approach to the assessment of any COI event that arises. The Project Director may be supported by a senior responsible office in the Procuring Agency and a DTF project officer. All COI assessments in engaging private sector advisers are considered as part of the evaluation process and notifications made in accordance with that process. All COI assessments for private sector advisers outside the initial tender engagement process must be conducted in a timely manner and the adviser promptly notified of the outcome.

In relation to bidding companies, Related Party Probity principles are outlined in the *National PPP Guidelines: Volume 2 Practitioner's Guide*.

14. Accounting Treatment and Taxation matters

Accounting and taxation matters are a complex part of PPP transactions and require the advice of specialist advisers and liaison with DTF. The *National PPP Guidelines Volume 2: Practitioner's Guide* contains current advice on accounting and taxation matters that are also relevant in Victoria (refer Chapter 9, pg 40 and Appendices F & G).

DTF must be consulted on accounting issues and kept informed as to the likely balance sheet impact of PPP projects and the Budget implications of the accounting treatment.

Early consultation with the Auditor-General's Office on PPP accounting is also desirable to ensure that the correct accounting framework and any relevant accounting standards are appropriately considered and applied.

15. Disclosure policy and project summary requirements

All Victorian PPP projects will be subject to review and disclosure requirements.

In accordance with Victorian Government Purchasing Board Policy the executed PPP contract must be published on the Tenders website (www.tenders.vic.gov.au) within three months of financial close. Visit the Tenders website or www.partnerships.vic.gov.au to view the existing Victorian PPP contracts. The contract is to be published in full with limited exceptions from disclosure, guided by the criteria of the Victorian *Freedom of Information Act 1982*. Further information is available on the Victorian Government Purchasing Board website www.vgpb.vic.gov.au.

A project summary of each PPP project will be released within three months of the financial close of the project. The project summary will have two main sections:

- part one will summarise key project features. This is intended to provide a snapshot of the rationale for the project, its value and the parties involved; and
- part two will summarise the key commercial features of the project based on the contract.

The Treasurer and the Portfolio Minister with responsibility for the project must approve any project summary before it is released. The Portfolio Minister is also responsible for tabling the project summary in Parliament at the time of its release (or the nearest subsequent Parliamentary sitting day).

In determining the appropriate content of the project summaries, each *Partnerships Victoria* project has its own specific and unique circumstances to take into account. The content of the summaries will also evolve as new areas of public interest emerge. Agencies must update the project summaries if any significant changes are made to the nature of the project post-release.

A template to guide development of the project summary and existing project summaries are available on www.partnerships.vic.gov.au.

16. Unsolicited proposals

Unsolicited private sector infrastructure proposals will be considered under a separate policy framework. Unsolicited proposals directly related to PPP contracts must comply with this Requirements document as well as the unsolicited proposal framework.

17. Contract Management Framework

Contract management is a key activity for agencies involved in managing a *Partnerships Victoria* project after the contract is executed. Implementation of effective contract management practices will assist government to achieve the broader objectives of *Partnerships Victoria* and efficient delivery of services.

There is a range of contract management guidance materials available including the original *Partnerships Victoria* Contract Management Guide (2003) and other practice notes that have been developed in consultation with contract managers.

There is a requirement for a Contract Management Plan to be approved by the Portfolio Minister in consultation with the Treasurer within three months of financial close. Following this Plan, a more detailed Contract Administration Manual is required to be developed (or cross referenced with existing internal processes). The Contract Administration Manual (but not the Plan) will evolve over time as the project moves through different phases. Contract Management Plans and Contract Administration Manuals should cover both the design and construct and the operating phases of projects.

Contract management must form an integral part of the *Partnerships Victoria* project delivery process. Contract management issues should be considered early in the development of the project's contract documentation. Contract management personnel should be involved in the procurement phase where appropriate and there should be an effective transition/handover from Project Director to Contract Director. The initial Contract Director (who may have been the Project Director during the procurement process) should be identified and appointed prior to contract execution. The processes contained in the Contract Administration Manual must be implemented on a proactive basis while being capable of modification throughout the life of the project.

The Procuring Agency should establish and maintain appropriate governance structures and lines of communication between the public and private sector entities to facilitate a sustainable long-term partnership.

Agency Accountability. The Procuring Agency will be responsible for establishing a robust contract management framework, maintaining effective contract management practices throughout the contract term, and successfully delivering project objectives. This is to include:

- appropriate governance structures and effective communication and reporting lines;
- ensuring that all PPP project Contract Directors and relevant members of their teams undertake appropriate training within six months of their appointment, unless they have existing contract management experience or credentials;
- systems to ensure the continuity and retention of project knowledge over the life of the project;
- risk and dispute mitigation and their reporting; and
- regular ongoing review of its contract management practices to identify outstanding and emerging issues and take into account recent and anticipated future developments.

Due to the growing number of PPP projects in operations it is important to maintain a consistent approach to a number of contract management issues across different projects. Procuring Agencies must consult DTF on matters including:

- change in control;
- refinancing;
- material modifications to the contract; and
- any dispute resolution.

Treasury Accountability. DTF will have responsibility for:

- supporting and reviewing the contract management of Partnerships Victoria projects, including assisting in risk mitigation and dispute resolution;
- facilitating the sharing of contract management knowledge, including through conducting forums for contract managers to share lessons learned and network with their peers;
- establishing and implementing an appropriately credentialed and professional standard training program for public sector contract directors/managers; and
- monitoring and independently advising the Treasurer and Cabinet on significant contract management issues.

18. Additional guidance material

Guideline material providing further detail on Victorian specific requirements can be found at www.partnerships.vic.gov.au. These documents cover areas such as commercial principles and contract management and include some template requirements for the public interest test and project summary document.

Additional guidance supporting new reforms will be developed and made available online.

19. Useful links

Victorian Government

Partnerships Victoria

www.partnerships.vic.gov.au

High Value High Risk projects

<http://www.dtf.vic.gov.au/CA25713E0002EF43/pages/high-value-high-risk-and-investment-guidance-material>

Investment Lifecycle Guidelines

<http://www.lifecycleguidance.dtf.vic.gov.au/index.php>

Gateway Review

www.gatewayreview.dtf.vic.gov.au/

Construction Code Compliance Unit

www.dtf.vic.gov.au/viccode

Victorian Government Tenders Website

www.tenders.vic.gov.au

Victorian Government Purchasing Board website

www.vgpb.vic.gov.au

Office of the Victorian Government Architect

www.dpc.vic.gov.au

The National PPP Policy and Guidelines and other useful links and publications are available at Infrastructure Australia: http://www.infrastructureaustralia.gov.au/public_private/

Website: www.partnerships.vic.gov.au

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National PPP Guidelines

Queensland Requirements

April 2011

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		
2	April 2011	All	Minor changes to reflect updates to Qld legislation and changes in Government agency names.

1. Introduction

The national PPP policy and guidelines apply to all Queensland PPP projects that are released to the market from January 2009. Where the national PPP guidelines allow flexibility, the Queensland-specific requirements in this document and its annexures apply.

Existing Queensland whole-of-government policies such as the *Project Assurance Framework* and Gateway Reviews continue to apply to Queensland PPP projects.

The most significant Queensland departures are summarised in this document, with remaining detailed departures to be provided in annexures on the web-site, www.dip.qld.gov.au.

2. Objectives

The aim of the Queensland's PPP policy is to:

- to deliver improved services and value for money through appropriate risk sharing between public and private sector parties;
- encourage private sector innovation;
- optimise asset utilisation; and
- ensure integrated whole of life management of public infrastructure.

3. Coverage of the policy and guidelines

Under the national PPP policy guidelines, projects with a capital value of \$50 million will trigger consideration of PPP as a potential procurement option. As outlined in Section 4.3.2 of the national PPP policy, the consideration of the PPP option needs to have regard to the PPP value for money drivers, particularly sufficient scale and long term nature. As a result, PPP projects with a whole of life net present value greater than \$100 million attract most market interest.

The national and Queensland PPP policy and guidelines apply to all PPP projects undertaken by government departments in Queensland, unless a specific government decision advises that other provisions will apply. The following specific PPP exemptions continue to apply to Queensland:

- certain standard design and construction projects such as office buildings with long-term government tenants;
- information and communication technology projects;
- government owned corporations and Category One water authorities seeking community service obligation funding to procure new infrastructure; and
- general procurement of services by the Government where infrastructure is not being provided, for example through professional consulting services.

The Infrastructure Projects (IP) Division within the Department of Employment, Economic Development and Innovation (DEEDI) is responsible for developing and overseeing the Queensland PPP policy and supporting guidelines, and for Queensland's contribution to the national PPP policy and guidelines.

With the assistance of Infrastructure Australia, the Council of Australian Governments (COAG) will monitor, review and from time to time refine the national PPP policy and guidance material. COAG is responsible for approving substantive changes to the national policy and guidelines. Individual jurisdictions are responsible for maintaining and updating their specific jurisdictional requirements, therefore it is likely that this document will be amended from time to time.

4. Scope of services

The national PPP guidelines state the general principle that government will retain certain responsibility for delivering core services. In Queensland, government is responsible for the delivery of core services in a PPP project that involve direct delivery of community services to the public or the exercise of statutory power.

Unsolicited proposals and exclusive mandates

The national PPP overview document (Section 3.2) provides general guidance on unsolicited proposals and exclusive mandates. Queensland has more detailed guidance on policies and procedures when using exclusive mandates. This information can be found in Appendix One of the Queensland Government PPP *Guideline Value for Money Framework*.

5. PPP project governance

Each PPP project in Queensland will be overseen by—and be the responsibility of—the relevant portfolio minister. Procuring agencies are responsible for management and implementation of PPP projects and will be required to consult with DEEDI and Queensland Treasury.

Senior representatives of the procuring agency, DEEDI and Queensland Treasury are to be members of the PPP project steering committee and government project team. Procuring agencies are to specifically consult with Queensland Treasury in relation to budgeting, accounting and taxation matters on PPP projects.

6. Public interest assessment

Consistent with the national PPP guidelines, public interest matters will be considered in all investment evaluation decisions and any subsequent project procurement decision.

In Queensland, PPP projects must complete and submit a public interest test with documentation seeking project approval. Confirmation or updates to the public interest assessment are required at key stages throughout the project. The public interest test covers:

- the effectiveness in meeting the service requirement;
- the impact on stakeholders;
- accountability and transparency;
- public access and equity;
- consumer rights;
- security; and
- privacy.

The Queensland PPP guidelines (*Value for Money Framework*, Section 3.2.8) provides further detail on issues to be considered when completing a public interest assessment.

7. Probity requirements

All commercial and PPP transactions conducted by the Queensland Government must be in accordance with the Queensland *State Procurement Policy* and Queensland's *Probity and Process Governance* PPP supporting guideline.

All Queensland public servants, as a condition of employment, are under a general obligation of confidentiality to their employer. Accordingly, it is not necessary for members of the government project team who are public servants to execute a confidentiality undertaking in relation to a project. All government advisors, members of each bidding consortium and any other third party who are privy to commercially sensitive information must provide a formal undertaking to the Government that they will keep this information confidential. Clear security procedures should be implemented in line with Queensland PPP guidance material *Probity and Process Governance* supporting documentation.

8. Approvals process

The following table summarises the National PPP stages and approvals and the Queensland equivalent stages and approvals.

National PPP Stage and Approvals Required	Queensland Equivalent Stages and Approvals Required
Approval of project investment and procurement Obtain funding and project approval	Strategic assessment of service requirement
	Preliminary evaluation Initial determination of project priority and affordability
Project development phase	PPP business case Confirmation of project priority and affordability, and if PPP delivery seek approval to proceed to EOI stage and release the EOI
EOI phase Approval to release the EOI	EOI stage Approval of short-listed proponents and proceed to the binding bid/request for proposal stage
RFP phase Approval to issue the RFP to short-listed bidders Approval of preferred bidder	Binding bid or RFP stage Approval of preferred proponent (or preferred bidder) status Approval to finalise project agreements within agreed parameters and proceed to financial close Approval for the portfolio minister to execute the final project agreements in consultation with the Premier, Minister for Infrastructure and Planning, and the Treasurer
Negotiation and completion phase Approval to execute contract	
Contract management	Management of the project agreements

Queensland's PPP 'project' stages (i.e. post preliminary evaluation) align with the national PPP stages, except for the request for proposal (RFP) and 'negotiation and completion' phases. In Queensland, these latter two stages are compressed into a single 'binding bid' stage.

For the 'pre-PPP project' stage—namely strategic assessment and preliminary evaluation—these stages form part of the Queensland Government's *Project Assurance Framework*, which sets a minimum standard for investment decisions involving infrastructure projects.

Additional government approvals are also required in certain situations such as:

- where there is a material change to the project including an amendment to the key project objectives, scope of services or the conclusions or major assumptions of the business case (including the economic and financial appraisals);
- there is any significant material change in the risk allocation from that which was last approved by government;
- an amendment to the budget funding is required; and
- where significant issues relating to the public interest arise.

9. Discount rate methodology

The national PPP guidelines for using discount rates for social infrastructure projects aligns with Queensland's current policy of adopting the capital asset pricing model (CAPM) to derive discount rates that factor in systematic risk when discounting the public sector comparator (PSC) and bid cash flows for evaluation purposes.

10. Public sector comparator requirements

In Queensland, the PSC is initially developed in the preliminary evaluation stage and is refined further in the business case stage. The PSC is also updated prior to and during the RFP phase.

In Queensland, the raw (non risk adjusted) PSC will be released to short-listed bidders with the other bid documents unless there are exceptional circumstances where the release will materially compromise the State's negotiating position. (see the Queensland PPP guideline *Value for Money Framework*, Section 3.2.11).

Prior to the national PPP guidelines, Queensland required the detailed calculation of a Partnership Model to quantify the additional financing costs that must be offset by efficiency savings. In place of the detailed Partnership Model, Queensland will use an abridged version that—at a minimum—models the expected financial risks and benefits from a PPP solution. Supplementary guidance on the application of an Abridged Partnership Model is available on www.dip.qld.gov.au.

11. EOI publication requirements

Consistent with existing arrangements, under the National PPP Policy a notice should be published inviting interested parties to register their interest in participating in the expression of interest (EOI) process. The process will then take one of the following forms, where:

- all interested parties receive the EOI documentation; or
- interested parties are required to submit a précis of their experience and capabilities.

Suitable proponents will then receive the EOI documents. Selection of the appropriate EOI process will depend on expectations as to the level of private sector interest to be generated by the publication of the notice.

12. Request for proposal requirements

Consistent with existing arrangements, under the national PPP policy, the request for proposal (RFP) document will include comprehensive contractual documentation. Release of the contract as part of—and concurrently with—the RFP ensures that all parties are aware of—and have enough opportunity to consider—the specific contractual terms that government is seeking.

As part of the RFP response, bidders should be asked to provide a departures schedule which identifies all instances where they have departed from the draft contractual documents included as part of the RFP, including the rationale and cost for each departure. Bidders should also be asked to submit fully marked up contractual documents.

As part of the RFP response, bidders should be asked for evidence of committed finance and technical capabilities at bid submission, unless specific project circumstances deem otherwise. The specifications regarding what constitutes a conforming or non-conforming proposal must be set out in the documentation issued to proponents in the RFP documentation.

Bidders must also consider and comply with the following government policies and guidelines, in particular:

- *State Procurement Policy;*
- *Local Industry Policy;*
- *Arts + Place Policy;*
- *Building and Construction Contracts; Structured Training Policy (10 per cent Training Policy)*
- *Employment Security Policy.*

Agencies should also ensure the final project outcome is consistent with the *National Competition Policy*, the *Competition Principles Agreement* and Foreign Investment Review Board requirements.

PPP projects and the activities that occur during the process of establishing a PPP project must comply with all current and future relevant legislation including:

- *Right to Information Act 2009 (Qld);*
- *Information Privacy Act 2009 (QLD)*
- *Public Sector Ethics Act 1994 (Qld); and*
- *Financial Accountability Act 2009 (QLD)*

Taxation rulings are not typically required at the bid submission stage, however the State's standard policy is for a private binding tax ruling as a condition precedent to financial close. The RFP should indicate this requirement. Procuring agencies are to consult with Queensland Treasury on taxation issues.

13. Reimbursement of bid costs

Under normal circumstances, the Queensland Government would not contemplate the payment of any part of the bid costs incurred by unsuccessful bidders.

14. Disclosure policy and requirements

All Queensland PPP projects will continue to be subject to review and disclosure requirements.

In accordance with the Queensland *Probity and Process Governance* PPP supporting guideline and, as a minimum, a summary of the project agreements (excluding any genuine commercial-in-confidence material) is prepared by the portfolio minister and, if satisfactory, will be signed off by the Auditor-General as a fair reflection of the project agreements. This summary will then be tabled in Parliament following financial close, together with the probity auditor's final report.

In accordance with this document, regular updates will be given to government on the performance of PPP projects. In addition, procuring agencies will be required to detail PPP outputs in their annual reports. The Auditor-General is required to determine if matters contained in the annual reports concerning PPP projects are satisfactory, in addition to carrying out the duties contained in the *Financial Accountability Act 2009 (QLD)*

15. Contract management

The Queensland *Contract Development and Management* PPP supporting guideline provides high-level guidance related to contract development and the appropriate contractual mechanisms for undertaking a PPP project.

16. Accounting treatment

Accounting and taxation matters are a complex part of PPP transactions and require the advice of specialist advisers and liaison with Queensland Treasury. The national PPP guidelines *Volume Two: Practitioner's Guide* contains current advice on accounting and taxation matters that are also relevant in Queensland (refer Chapter Nine, page 40 and Appendices F and G).

Queensland Treasury must be consulted on accounting issues and kept informed as to the likely balance sheet status of PPP projects and the Budget implications of the accounting treatment.

Early consultation with the Auditor-General's Office on PPP accounting is also desirable to ensure that the correct accounting framework and any relevant accounting standards are appropriately considered and applied.

List of annexures

Annexures to be available at - www.dip.qld.gov.au

- National PPP Guidelines – Queensland Departures
- Abridged Partnership Model

Further information

For more information, visit www.dip.qld.gov.au/ or www.treasury.qld.gov.au/.

National PPP Guidelines

Western Australian Requirements

August 2010

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		
2	August 2010	All	The Western Australian Requirements have been updated to reflect the current policy and processes of the State Government

1. Introduction

The Council of Australian Governments (COAG) endorsed the (the National Guidelines) on 29 November 2008.

PPP projects in Western Australia are procured in accordance with the National Guidelines and the Western Australian specific requirements as outlined in this document.

2. Scope of Services

Services to be included in a PPP project will be determined on a project-by-project basis dependent on whether the inclusion of the services can deliver value-for-money and would be in the public interest.

3. PPP as a Procurement Option

Consistent with the National Guidelines, all general government infrastructure projects with a capital value of over \$50 million will be considered for delivery as a potential PPP.

PPPs are not a means of pursuing unfunded infrastructure projects. In this regard, social infrastructure PPPs can only be procured once an investment decision for the project has been made and funded in the context of the Government's overall budget priorities and financial targets.

PPP projects must comply with the DTF's *Strategic Asset Management Framework for Western Australian Public Sector Agencies*.

4. Governance Structure

The Treasurer is the Minister responsible for PPPs. In this role, the Treasurer is responsible for:

- overseeing the setting, implementation and application of Western Australian whole-of-government policy in relation to PPPs;
- endorsing, in consultation with the Portfolio Minister, adoption of the PPP approach for delivery of specific projects and key PPP milestones; and
- holding agencies accountable for performance against the key milestones.

The Minister responsible for the procuring agency (Portfolio Minister) is responsible for the outcomes of each PPP project in Western Australia.

The DTF is the Relevant PPP Authority as defined in the National Guidelines.

There is a specialist PPP function in Treasury, its responsibility includes:

- developing and maintaining whole-of-government PPP policy and guidelines;
- supporting and reviewing PPP projects at all stages from procurement options analysis to contract management; and
- advising the Treasurer on PPP policies, issues and projects, including the achievement of value-for-money.

In line with the State's Works Reform program, the DTF's Strategic Projects (SP) unit is responsible for project oversight of PPP projects during the contract development, tender and design-and-construct phases for non-residential building projects in the general government sector.

SP will work in close consultation with the procuring agency to fulfil this role. SP's involvement in other general government projects will be determined on a project-by-project basis.

Consistent with the National Guidelines, project delivery is undertaken by a project-specific steering committee set up for each project. Project steering committee membership will include senior members of the procuring agency, the DTF and the State Solicitor's Office. Where appropriate, other agencies such as the Department of the Premier and Cabinet, may also be represented on the project steering committee.

The procuring agency is responsible for management of the operational phase of PPP projects.

Procuring agencies should consult with the DTF and the State Solicitor's Office to determine the procurement powers to enter into a contract.

The Auditor-General will have full and complete access, as required, to information on any Western Australian PPP project.

5. Approval Process

Approval of the Portfolio Minister and endorsement of the Treasurer is required to proceed at each of the following stages, with the Treasurer having discretion to refer any such decision to the Economic and Expenditure Reform Committee or Cabinet where the Treasurer considers it appropriate to do so:

- recommendation to procure as a PPP;
- release of invitation for expressions of interest;
- short-listing of proponents;
- release of request for proposal;
- selection of preferred proponent; and
- execution of contract documents.

As per the National Guidelines, additional approvals are required in certain situations such as:

- where there are material changes to the project including amendments to the key project objectives, scope of services or the conclusions or major assumptions of the business case (including the economic and financial appraisals) change significantly;
- if there is any material change in the risk allocation from that which was last approved by Government;
- if an amendment to budget funding is required; and
- where significant issues relating to the public interest arise.

In these circumstances, the Treasurer will be seeking assurance that the relevant PPP project could still deliver value-for-money, retains its overarching objectives and would not compromise the public interest.

Procuring agencies must obtain approval from the DTF prior to entering into any negotiations to amend existing PPP contracts. Any material changes to PPP contracts will require approval by the Treasurer.

6. Protecting the Public Interest

The Government is committed to ensuring that the delivery of a project as a PPP is in the public interest. Public interest matters will be considered and addressed throughout the procurement phase of the project to ensure that the public interest is protected throughout the contract term. In support of this, a public interest assessment will generally be made prior to release of the invitation for expressions of interest and prior to contract award.

7. Accountability, Transparency and Probity

The State Government has a responsibility to the people of Western Australia to ensure that it is open and accountable in its dealings and that it promotes the State's best interests. A PPP project may therefore involve scrutiny by the Parliament, the Auditor General and the public through freedom of information processes.

There are also statutory requirements that Government must comply with in its dealings, such as the *State Supply Commission Act (Probity and Accountability and Open and Effective Competition)*, the *Financial Management Act (Section 81)* and the *Public Works Act*.

8. Reimbursement of Bid Costs

In normal circumstances, the Western Australian Government will not reimburse any part of the bid costs incurred by unsuccessful bidders.

9. EOI Publication

All State Government public tenders are released through Tenders WA (see www.tenders.wa.gov.au).

10. Contract Management

Effective contract management practices are important to Government achieving its broader PPP procurement objectives. The purpose of contract management is to maintain the integrity and intent of the contract over its lifetime to achieve project objectives, including the achievement of value-for-money for the State over the long term.

The procuring agency is responsible for establishing a robust contract management framework, maintaining effective contract management practices throughout the contract term and successfully delivering project objectives.

The DTF is responsible for supporting the contract management of projects, facilitating the sharing of contract management knowledge and advising the Treasurer on significant contract management issues.

An adequately resourced contract management team should be established by the agency well before the final contract is executed. The team should retain members from the procurement team to maintain a thorough understanding of project objectives.

Contract management issues and the development of a contract management plan should be considered early in the development of the project's contract documentation. Appropriate governance structures and lines of communication between the public and private sector entities are vital to facilitate a sustainable long-term partnership.

11. Coverage and Application of the National PPP Policy and Guidelines

The National Guidelines (including the Western Australian requirements) apply to all PPP projects entered into by Western Australian general government sector agencies. Application of the policy to the provision of infrastructure by Government Trading Enterprises will be determined by the Government on a project-by-project basis.

The Western Australian Government generally supports the objectives of the National Guidelines. However, the Government considers it to be essential that their application be assessed on a project-specific basis and that they are adapted to reflect the requirements and circumstances specific to Western Australia. Accordingly, the Government reserves the right to depart from the National Guidelines, including the commercial principles, as the Government may reasonably require. These circumstances may include:

- where the Government considers that it is reasonable or appropriate in the circumstances of each project;
- to ensure a competitive process and achievement of value-for-money;
- where the Government considers it to be in the public and State's interest to do so; or
- as may be necessary to meet the Government's policy and legislative requirements.

Further Information

For further information visit www.dtf.wa.gov.au.

National PPP Guidelines

South Australian Requirements

June 2009

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		

1. Introduction

The national PPP policy and guidelines replace the *Partnerships SA* policy, as articulated in *Private Sector Participation in the Provision of Public Services Guidelines for the Public Sector* issued by the Department of Treasury and Finance (DTF).

The national PPP policy and guidelines provide a mechanism for state and territory departures required to accommodate local law and policies in force from time to time. This document sets out the departures required by the South Australian Government to accommodate South Australian laws and policies.

2. Coverage of the policy and guidelines

The national PPP policy and guidelines—as amended by these South Australian jurisdictional departures—applies to all PPP projects entered into by South Australian agencies, unless a specific government decision advises that other provisions will apply.

3. PPP as a procurement option

The National PPP Guidelines provide that projects with a total capital value exceeding \$50 million should be considered for delivery as a PPP. South Australian agencies are also required to comply with Treasurer's Instruction 17 *Evaluation of and Approvals to proceed with Public Sector Initiatives* and the *Guidelines for the Evaluation of Public Sector Initiatives* which form part of that instruction.

The decision as to whether or not a project will be delivered as a PPP will be determined by Cabinet, on a project-by-project basis.

4. PPP project governance

In South Australia, the Treasurer is the minister responsible for PPP policies and guidelines.

5. SA Government approvals

Any activities undertaken in contemplation of a PPP must be done in accordance with Treasurers' Instruction 17: www.treasury.sa.gov.au/dtf/financial_management/financial_publications_and_downloads/treasurers_instructions.jsp?

Cabinet approval is required at various stages of a PPP project including:

- to issue EOI/RFP/BAFO;
- to short-list or select preferred or successful proponent/s;
- where there is a material change to the project including an amendment to the key project objectives, scope of services or the conclusions or major assumptions of the business case (including the economic and financial appraisals) significantly change;
- where there is any material change in the risk allocation from that which was last approved by government;
- where an amendment to the budget funding is required; and
- where significant issues relating to the public interest arise.

South Australian agencies are also required to comply with the policies and guidelines issued by the State Procurements Board www.spb.sa.gov.au/policiesandguides.asp.

6. Planning approval

In South Australia development of land for use in a PPP may be subject to local government planning and approval regulations or to the requirements of the *Development Act 1993* (SA). Section 46 of the Act provides mechanism for approval of developments or projects that are determined to be of major environmental, social or economic importance. Section 49 of the Act provides mechanism for approval of Crown developments and public infrastructure.

The private party will be responsible to obtain all necessary approvals, irrespective of which development approval process applies.

7. Core services

The national PPP guidelines provide that governments will generally retain responsibility for delivering core services (though this will be determined on jurisdictional basis). In South Australia this decision will be made on a project-by-project basis.

8. Public sector comparator

The public sector comparator (PSC) and the discount rate (and any subsequent material changes) are approved by DTF. The raw (non-risk adjusted) PSC figure (together with high level assumptions) may be disclosed in the request for proposal unless there are justifiable reasons for non-disclosure.

Timing in respect of the approval of the PSC and discount rate will be determined on a project-by-project basis. The disclosure of the total PSC value, e.g. the risk adjusted PSC (either in periodic cash flow or NPC form) may be disclosed following assessment on a project-by-project basis.

9. EOI publication requirements

All South Australian Government tenders, including the expressions of interest for PPP projects, are to be advertised on the South Australian Government tenders website www.tenders.sa.gov.au/tenders/index.doindex.do in accordance with the requirements of the State Procurement Board www.spb.sa.gov.au/policiesandguides.asp.

10. Commercial principles

The South Australian departures from the national commercial principles are set out in Table A below.

11. Reimbursement of bid costs

In normal circumstances, South Australia would not contemplate the payment of any part of the bid costs incurred by unsuccessful bidders.

12. Disclosure policy and requirements

All South Australian government contracts are required to be disclosed in accordance with the government's Contract Disclosure Policy http://www.premcab.sa.gov.au/pdf/circulars/pc027_disclosure_govt_contracts.pdf. The executed PPP contract will be published on the Contracts website <https://www.tenders.sa.gov.au/tenders/contract/list.do?action=contract-view> within three months of financial close.

The contract will be published in full with limited exceptions from disclosure approved in accordance with the *Freedom of Information Act 1991* (SA).

Further information

For more information visit www.treasury.sa.gov.au.

Table A: National commercial principles for social infrastructure – SA Departures

Clause reference	Comments
3.1 Expiry Date	In SA the operating term starts on the Date <u>for</u> Commercial Acceptance rather than the Date <u>of</u> Commercial Acceptance.
4.2.2 (Site conditions - Exception)	SA includes an additional option whereby a provisional sum for this work is agreed on the basis that it will be the subject of competitive tender at a downstream level. This option may provide a better outcome where the government is unable to properly evaluate a schedule of rates proposed by bidders.
5.2.5(d) (Unidentified pre-existing contamination)	Same as clause 4.2.2 above.
9.3.1 (Nature of tenure)	SA will consider granting a lease for premises used for commercial activities (for example, a hospital café or news agency), where the grant of lease may be necessary and/or appropriate on a project-by-project basis.
9.3.4 (Government need for access)	The SA position is that where a lease of the core Facility is granted the government's rights under any sublease should be as broad as possible, so that government can deal with the Facility without the need to obtain consent from the private party (as head lessor). Limiting government's rights to access for the purpose of exercising its rights and performing its obligations under the Project Agreement may not be sufficient.
11.5.1 (Completion)	In SA pre-requisites for Completion (whether Commercial Acceptance or Technical completion) are generally limited to only those issues that are necessary for the operation of the Facility. Accordingly SA does not include all of the items set out in clause 11.5.1.
11.5.5 (Completion Certifier)	In SA an Event of Default occurs if an independent expert assesses that completion will not occur by the relevant Completion Date.
11.6.2 (Defects liability)	In SA there is an ongoing obligation to rectify defects throughout the Term instead of a finite defects liability period.
17 (Relief Events Principle)	SA distinguishes between Intervening Events (clause 17) and Relief for Construction Delays (clause 12), given that these two concepts have distinct and different regimes. Depending on value for money considerations and the nature of the project, the SA Government may extend the contract term for Relief Events that occur during the 'D&C Phase' where these also extend the Date for Completion.
17.1(Relief Events)	In SA the Sunset Date is extended for certain Relief Events that occur during the D&C Phase where the Date for Completion is also extended.
17.1(b) (Relief	SA does not adopt all of these Relief Events and may include other Relief

Clause reference	Comments
Events)	Events, on a project-by project basis.
17.2.2(b) (Claiming Relief) and 18.2 (Threshold for Compensation)	In SA extensions of time will be awarded for a Relief Event that impacts upon a critical activity on the critical path of the Project.
19.1(b) (Calculation of compensation)	In SA fixed overheads and profit margins for the private party and its main subcontractors are added to base costs which are determined on an open book basis.
20 (Modifications)	<p>SA includes the following minor works regime:</p> <ul style="list-style-type: none"> • The minor works regime will be utilised by the private party to complete works that fall under a specified per event monetary threshold and which are considered to be a routine element of administering the relevant social infrastructure. All thresholds for minor works will be determined on a project-by project basis. • The minor works regime only applies to the operational phase of the project. • Minor works are deemed to be part of the Services. • No additional margin or other cost will be payable to the private party for the minor works. • The private party must cost minor works on an open book basis. • Minor works will not impact on risk between the private party and government. It is envisaged that minor works will generally be agreed directly between the facility operator and the facilities management subcontractor. • Generally any overspend of the provisional sum allowed for minor works over the operating term will be recovered directly by the facilities management subcontractor from the facility operator on an annual basis. Any annual overspend will be rolled forward to the next year. Any accumulated underspend will be payable to the State.
20.1.1 (Modifications- Right to request)	SA does not treat acceleration as a modification, as each occurrence gives rise to different entitlements. SA does not pay margins for acceleration but does pay fixed margins for modifications.
21.1.1(c) (Change in Law Definition)	SA does not agree that a Change in Law should include a change in court decisions. These decisions change binding precedents but do not change law and should not be treated as if they do. Further, as judicial opinion is open to interpretation this inclusion may give rise to unnecessary and/or unproductive dispute. This issue is further complicated by the effect of decisions on appeal.
21.1.2 (Change in –Law Exclusions)	SA does not include the words “ <i>in substantially the same form as the change eventuating after the date of the project agreement</i> ”, which narrows the application of clause 21.1.2 (c).
21.2.1 (Compensation for Changes in Law)	SA does not limit compensation for general Change in Law to the Operating Phase. Accordingly, SAG agrees to pay compensation for Changes in Law during the ‘D&C Phase’.

Clause reference	Comments
21.2.2 (Capital expenditure and hard operating cost)	In SA payment for General Changes in Law is deferred to a specified review date.
21.3.1 (Project specific changes compensable)	SA may require the Project Company to take a nominal threshold amount of risk for Project specific Change in Law on a project-by project basis.
27.5 (Transfer of senior debt obligations)	SA does not agree to any fetter of the government's right to have the senior debt obligations transferred to it on termination.
31.1.8 (Refurbishment Bond)	SA does not generally require an end of term refurbishment bond (though it reserves the right to do so on a project-by-project basis.
33.1 (Government consent)	<p>In SA re-financing of a project that is not undertaken on a corporate finance basis does not include:</p> <ul style="list-style-type: none"> • Any re-financing specifically contemplated at financial close and reflected in the base case financial model; • Disposals of investments or commitments of debt or equity in an arms length transaction at market value; • The syndication or subscription of any debt under the current funding agreements contemplated at financial close; • Subject to the funding arrangements of a particular project, a change in control or sell down of any bonds in an arms length transaction at market value; • Waivers and consents and similar actions that relate to day to day administrative matters.
34.1.1 (Indemnity)	The SA Government policy on limitation of liability will apply for all SA PPPs http://www.treasury.sa.gov.au/df/financial_management/financial_publications_and_downloads/treasurers_instructions.jsp?

National PPP Guidelines

Tasmanian Requirements

June 2009

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		

1. Application of the Guidelines

In accordance with Section 4.3.1. of the national PPP guidelines policy framework, agencies will only consider a PPP as a procurement method where it can be clearly identified at the investment decision that there is market appetite for a PPP and that value for money drivers exist. Tasmania Government businesses are not required to apply the national PPP guidelines, but may use the guidelines on a case-by-case basis.

1. Scope of services

The Tasmanian Government retains responsibility for delivery of core services. The determination of core and non-core services will occur on a case-by-case basis at the early planning stages of each infrastructure project.

2. Compliance with procurement Treasurer's instructions

Tasmanian Government procurement is undertaken in accordance with the Treasurer's instructions established under the *Financial Management and Audit Act 1990*. Any proposed PPP process will be considered in the light of the Treasurer's instructions, and the relevant agency must apply for an exemption from the Treasurer's instructions should it identify any departure in its proposed process from the mandatory procurement requirements.

3. Confidentiality

The Tasmanian Government is committed to openness and transparency through its procurement processes. The Crown Contracts Confidentiality Policy provides that in any contract between the Crown and any other party, confidentiality requirements in relation to the provisions of the contract are not to be included unless it is in the public interest not to make the information publicly available. Exemptions from full disclosure, under public interest grounds, must be approved by the Crown Contracts Confidentiality Standing Committee. The restriction on confidentiality applies only to the contract itself, including annexures or schedules, but not to the services or products that flow from the performance of the contract.

Further information

For more information visit www.treasury.tas.gov.au.

National PPP Guidelines

Northern Territory Requirements

June 2009

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		

1. Introduction

The national PPP policy and guidelines replace *Territory Partnerships* which outlined the Northern Territory Government's position on PPPs.

2. Coverage of the policy and Guidelines

The national PPP policy and guidelines apply to all PPP projects entered into by Northern Territory budget sector agencies, unless a specific government decision advises that other policies and practices will apply.

Application of the policy to infrastructure delivery by a government owned corporation (GOC) will be determined on a project by project basis, based on the recommendations of the board of the GOC and consideration by the shareholding and the portfolio ministers.

As the minister responsible for PPP policy and practices in the Northern Territory, the Treasurer is responsible for developing and overseeing application of the national PPP policy and guidelines in the Northern Territory. The Treasurer is also responsible for Northern Territory contributions towards further development and enhancement of the national PPP policy and guidelines.

Infrastructure Australia (IA) is responsible for the national PPP policy and guidelines. With the assistance of IA, the Council of Australian Government (COAG) will monitor, review and from time to time refine the national PPP policy and guidance material. COAG is responsible for approving substantive changes to the national policy and guidelines.

3. Scope of services

The Northern Territory Government will be responsible for the delivery of core services in a PPP project. The determination of core and non-core services will occur on a case-by-case basis at the early planning stages of each infrastructure project.

4. PPP as a procurement option

All public infrastructure projects with a capital investment component of at minimum \$50 million are required to be evaluated for a PPP as a potential procurement approach. In undertaking this evaluation, consideration will be given to value for money drivers and market appetite and capacity. Projects with a capital value of less than \$50 million may be considered for PPP delivery if whole of life costs are expected to exceed \$50 million. The capital threshold may also be triggered by bundling projects together.

The procurement options analysis is to be undertaken in accordance with the *National PPP Guidelines Procurement Options Analysis* and other Northern Territory Government procurement policies applying from time to time.

A key factor affecting the Northern Territory in considering PPPs as a procurement approach is the Territory's small population base and geographic isolation. These factors potentially result in the requirement to consider a range of different PPP drivers and impacts in the Northern Territory context.

Economic infrastructure, for example, could be especially difficult to sustain for remote regions with large, highly dispersed Indigenous populations. On this basis, principles which would apply for social infrastructure may need to be applied to economic infrastructure depending on the allocation of demand and price risk.

5. PPP project governance

Each potential Northern Territory PPP project will be nominated and overseen by the relevant portfolio minister who will also be part of progressive Cabinet approval processes. Procuring agencies have primary responsibility for management and implementation of PPP projects.

The NT Treasury is the relevant PPP authority as defined in the national PPP guidelines. NT Treasury has responsibility for monitoring and independently advising the Treasurer and Cabinet on significant PPP issues.

Senior representatives of NT Treasury, the Department of Justice and—where appropriate—other agencies such as the Department of the Chief Minister, are to be members of the PPP project steering committee. NT Treasury is also to be represented at project working group level.

Procuring agencies are to specifically consult NT Treasury in relation to budgeting/accounting, commercial, risk management and taxation matters on PPP projects. Procuring Agencies are to specifically consult with the Department of Planning and Infrastructure in relation to initial project assessment and site identification and evaluation.

In relation to Indigenous land issues, the *Aboriginal Land Rights (NT) Act*, *Native Title Act* and *Northern Territory Sacred Sites Act* could apply. Depending on the nature of the particular PPP project, the ownership of the site and other factors, the procuring agency on behalf of the Northern Territory Government may take responsibility for all or part of initial consultations and negotiations on Indigenous land interest matters. It should be noted that over half of the Northern Territory has been claimed under the *Land Rights Act*, and that much of the rest has been claimed under the *Native Title Act*.

The Auditor-General will have full and complete access as required to information on any Northern Territory PPP project.

6. Public interest

The Northern Territory Government is committed to ensuring that each potential PPP project is assessed against the public interest. Public Interest assessments are undertaken early in the project development phase and in the subsequent preparation of business cases. Public interest issues are outlined project documentation.

The Northern Territory will ensure that the public interest is protected in infrastructure projects delivered through a PPP arrangement.

7. Approval process

In accordance with the national PPP guidelines, the key government approval steps include:

Stage	Approval Required
Government approval of project and procurement method	Government approves: <ul style="list-style-type: none"> c) the investment decision based on a business case; and d) the procurement model based on the procurement options analysis/strategy.
Government approval of EOI	Government approves release of EOI document.
Government approval of PSC	Government approves the public sector comparator (may be earlier than this point).
Government approval of short-listed bidders and request for proposal	Government approves release of list of short-listed bidders and the request for proposal to short-listed bidders. Procurement Review Board approval to the shortlist is required prior to consideration and approval by government generally (see Section Eight below).
Government approval of preferred bidder	Following evaluation of responses, government approves the preferred bidder. Procurement Review Board approval to the shortlist is required prior to general government consideration and approval (see Section Eight below).
Government approval of contract execution	Following negotiations, government or the portfolio minister in consultation with the Treasurer approves contract execution and financial close.
Government approval of material contract variations	Subject to existing delegated authority, there is an ongoing requirement for material contract variations to be considered and approved by ministers.

8. Links to Northern Territory procurement policy

The Department of Business and Employment has responsibility for administration of the Northern Territory Government's procurement policies. While the National PPP Policy and Guidelines are not encapsulated within Government's procurement policies, the principles which underpin Government's procurement framework apply. These principles are:

- value for money;
- open and effective competition;
- enhancing the capabilities of local business and industry;
- environmental protection; and
- ethical behaviour and fair dealing.

The Procurement Review Board (PRB) is a board established under the *Procurement Act* to review government procurement processes. Unless an exemption is obtained, PRB approval of short-listed tenderers and of the preferred tenderer is required prior to formal government consideration and decision.

9. Evaluation of tender responses

In the Northern Territory, evaluation of responses to EOI and requests for proposal will be undertaken by an evaluation team comprised of government representatives. Input from expert advisers will be sourced as necessary but expert advisers would not generally undertake the actual evaluation.

10. Public sector comparator requirements

The public sector comparator (PSC) is to be approved by government at project approval or, at the latest, prior to the release of the request for proposal document. Any subsequent material changes must also be approved.

Procuring agencies are to consult NT Treasury on the appropriate discount rate for use in developing and assessing project finance with NT Treasury also involved in the construction of the PSC and subsequent assessment of tender responses against the PSC.

11. National commercial principles

The national commercial principles provide a consistent and efficient risk allocation framework, while recognising the need for flexibility for individual project needs. While every endeavour will be made to maintain this consistency, each project has to be considered on its merits with an assessment made as to the suitability and impacts of the promulgated risk allocation framework.

Any proposed deviation from the national commercial principles for sector or project-specific issues will be documented and agreed with NT Treasury and the Treasurer when government approval is sought to issue the request for proposal.

12. Reimbursement of bid costs

In normal circumstances, the Northern Territory would not contemplate the payment of any part of the bid costs incurred by unsuccessful bidders. Exceptions may occur on a case-by-case basis.

Further Information

For more information visit <http://www.nt.gov.au/nt/index.shtml>.

National PPP Guidelines

Australian Capital Territory Requirements

June 2009

Version Control	Last Updated	Updated sections	Rationale
1	June 2009		

1. Introduction

The national PPP policy and guidelines is to be known as the Territory's PPP policy and guidelines unless otherwise stated in this jurisdictional requirements document. To date the Territory has not engaged PPPs as a procurement delivery method, and—until it does so—it is not in the position to test the policy and guidelines.

This jurisdictional requirements document will be reviewed and updated as and when the Territory considers infrastructure projects that meet the mandatory thresholds or where it considers a project to be of value for money in using PPP as a procurement delivery method.

2. Coverage of the policy and guidelines

The PPP policy and guidelines apply to all PPP projects entered into by the Territory's budget sector agencies, unless a specific government decision advises that other provisions will apply. Application of the national policy to territory owned corporations is excluded, unless otherwise determined by the Treasurer.

The Treasurer remains responsible for developing and overseeing the implementation of the national policy and guidelines in the Territory.

Infrastructure Australia (IA) is responsible for the national PPP policy and guidelines. With the assistance of IA, the Council of Australian Government (COAG) will monitor, review and from time to time refine the national PPP policy and guidance material. COAG is responsible for approving substantive changes to the national policy and guidelines.

3. Scope of services

The Territory is responsible for the delivery of core services in a PPP project. The determination of core and non-core services will occur on a case-by-case basis at the early planning stages of each infrastructure project.

4. PPP as a procurement option

All public infrastructure projects with a capital investment over \$50 million are required to include consideration of a PPP as a potential procurement method with regard to the value for money drivers, when conducting a procurement options analysis. Projects of less than \$50 million may also be suitable for PPP delivery if they exhibit sufficient value for money drivers. The capital threshold may also be triggered by bundling projects together at the Territory Government's discretion.

The procurement options analysis is to be done in accordance with the national PPP guidelines procurement options analysis, and with reference to other ACT budget processes and procurement related law, regulations, policies and guidelines—largely referenced on the Procurement Solutions, Treasury and Government Procurement Board's websites—but may also include internal working papers.

5. PPP project governance

Consistent with project management in the ACT, each PPP project will be overseen by, and be the responsibility of the relevant portfolio minister. Procuring agencies are responsible for management and implementation of PPP projects, unless otherwise agreed by the Territory Government.

The Department of Treasury is the relevant PPP authority as defined in the national PPP guidelines. Treasury has whole-of-government responsibility for:

- PPP policy and guidelines;
- supporting and reviewing projects; and
- monitoring and independently advising the Treasurer and government on significant PPP issues.

6. Approval process

Approval processes will be consistent with the Territory's budget process and procurement guidelines.

Further Information

For more information visit <http://www.treasury.act.gov.au/>.