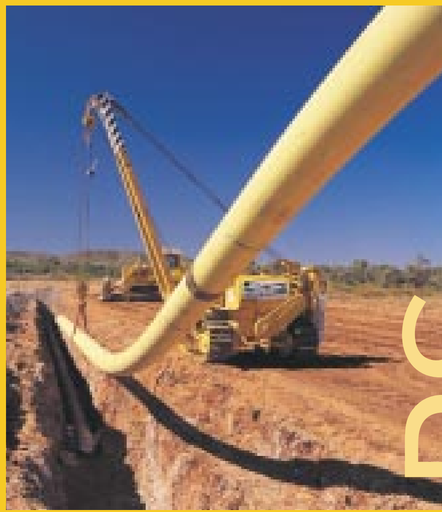
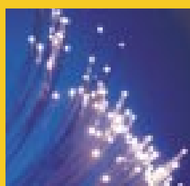
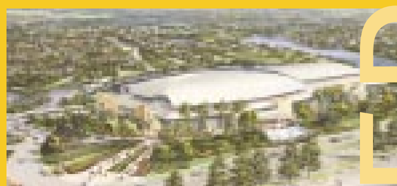
PUBLIC PRIVATE PARTNERSHIPS

GUIDANCE MATERIAL






VALUE FOR MONEY FRAMEWORK



Queensland Government
State Development

ACKNOWLEDGEMENTS

This Guidance Material draws substantially on the Partnerships Victoria Guidance Material. The Queensland Government thanks the Victorian Government for their permission to reproduce extracts from the material and acknowledges the work of the Victorian Department of Treasury and Finance and their team of consultants. Copyright in the reproduced material belongs to the State of Victoria.

The Guidance Material was drafted by a Working Group drawn from the Infrastructure Partnerships Taskforce in the Department of State Development, the Strategic Asset Management Branch of Queensland Treasury and a representative of the Queensland Treasury Corporation.

Each member of that Working Group devoted considerable time and effort into preparing what we hope you will find to be a high quality product of enduring value. The Working Group members were:

State Development: Shaun Drabsch, Richard Seton, Greg Fahey, Gerard Nelson, Tim Crane, Donna Tobe, John Hall and Leo Rowan

Treasury: Ian Munro, Tracey Gibson, Mary-Anne Curtis, Lyn la Rosa and Di Fahey

QTC: David Lynch

A wide range of people from within Government, the union movement and the infrastructure sector also participated in informal consultation on this material. While many of their suggestions were adopted, the final content of the Guidance Material remains solely the responsibility of the Department of State Development and Treasury, and should not be taken as a representation of the views or approaches of those individuals.

We particularly wish to thank the Infrastructure Association of Queensland, the Property Council of Australia and the Institution of Engineers for their advice and input throughout the drafting process including the organisation of two workshops.

AUGUST 2002

FOREWORD

Queensland's Smart State agenda is a comprehensive strategy to achieve community and economic growth by doing things smarter.

To meet the infrastructure needs of a rapidly growing State, the smart approach is to explore every reasonable opportunity to provide quality facilities that allow the delivery of effective services throughout their economic life.

Increasingly, Public Private Partnerships are emerging as an infrastructure delivery option that can offer best value for money, by introducing incentives to innovate in design, construction, operation and in managing the risks of these substantial investments.

This Guidance Material lays out a Value for Money Framework for analysing the full range of options for delivering necessary infrastructure facilities. By adopting this Framework, Government agencies can ensure that the whole of life costs and risks of delivering infrastructure are analysed, and that the opportunity for private innovation is properly explored.

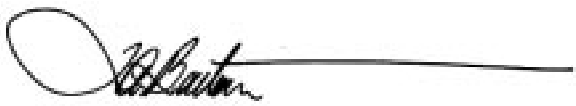
The Guidance Material builds on the release of the Queensland Government's PPP Policy in September 2001, and a draft was released for public consultation in May 2002. The infrastructure sector, the union movement and other interested stakeholders have provided valuable feedback as the Material has been developed.

The Department of State Development's Infrastructure Partnerships TaskForce (IPT) and Queensland Treasury have jointly developed this material, in close consultation with other Queensland Government departments. They have been assisted greatly by the pathbreaking work undertaken by Partnerships Victoria, and I thank Treasurer John Brumby for his generosity in providing access to the copyright of their material.

The PPP Guidance Material has been developed in line with the policies now existing, or being developed, in other States in support of a national commitment to the rigorous assessment of the potential for private sector involvement in the delivery of major infrastructure Projects.

A wide range of projects are currently being analysed for value for money delivery, possibly as a PPP. The Government is committed to exploring PPPs as a delivery option for major infrastructure projects.

I encourage all infrastructure practitioners, public or private, to apply the principles laid out in the PPP Guidance Material, and explore how to maximise value for money so that Queensland can have the infrastructure it needs, when it needs it.



Tom Barton MP
Minister for State Development

AUGUST 2002







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I. INTRODUCTION

Queensland's *Public Private Partnership Policy - achieving value for money in public infrastructure and service delivery* was launched in September 2001. This Policy is a key strategic initiative that supports the Queensland Government's central economic objective of achieving high and sustainable levels of economic growth and employment by providing efficient and effective services and infrastructure.

The aim of this Value for Money Framework is to support the objectives of Queensland's Public Private Partnership (PPP) Policy. These objectives are;

- to deliver improved services and value for money through appropriate risk sharing between Public and Private Sector parties:
- encouraging Private Sector innovation;
- optimising asset utilisation; and
- ensuring integrated whole of life management of public infrastructure.

A key characteristic of the policy initiative is its flexibility, which ensures its ability to respond to the changing needs of our communities in an evolving social and economic environment.

This document provides the analytical framework for implementing Queensland's PPP Policy. It outlines processes to promote the creation of successful partnerships to develop infrastructure and related non-core service delivery projects. Through a transparent Framework, built on the principles of probity and accountability, the Government will:

- exercise consistency in the rigour of its evaluation of candidate projects;
- ensure the provision of clear information regarding the Government's objectives and desired outcomes in order to facilitate efficient, informed and competitive bidding;
- ensure that bidding processes are not unnecessarily protracted; and
- provide firm commitment to the delivery of projects prior to the Private Sector undertaking project due diligence and developing Binding Bids.

This Framework is consistent with the objectives of the State Purchasing Policy. These objectives propose to:

- advance Government priorities;
- achieve value for money; and
- ensure probity and accountability for outcomes.

This Value for Money Framework is part of the suite of Guidance Material developed to assist in the implementation of Queensland's PPP Policy. Other elements of the Guidance Material include the Overview, and a range of Supporting Documents which provide further detail including

- Risk Management;
- Project Resourcing;
- Probity and Process Governance;
- PPP Business Case Development; and
- Contract Development and Management.

This Guidance Material may be supplemented over time by the release of further Supporting Documents.

I.1 WHAT IS MEANT BY PPP?

Broadly defined, a Public Private Partnership (PPP) is a risk-sharing relationship between the Public and Private Sectors to deliver timely public infrastructure and related non-core services. The specific nature of each partnership will be defined through a contractual agreement covering the delivery of infrastructure facilities over a period of time.

The scope of the PPP Policy encapsulates the delivery of "hard" and "soft" infrastructure facilities, including the services required to operate and maintain those facilities. The Policy does not apply to the provision of "core" public services that involve direct delivery of community services to the public or the exercise of statutory power.

PPPs encompass a broad spectrum of Project Delivery Options. This Policy applies to projects involving: Design, Build and Operate (DBO); Design, Build, Finance and Operate (DBFO); and equity sharing arrangements. Queensland's PPP Policy also encompasses the numerous variations on these concepts, including Build, Own, Operate (BOO) and Build, Own Operate, Transfer (BOOT) structures. Many of the project structures within this spectrum are not new to Queensland. This Value for Money Framework builds upon an established project history to present a process for engaging the Private Sector in infrastructure delivery. The application of this process will be consistent across Government.

I.2 WHAT DOES THIS FRAMEWORK PROVIDE?

This Framework provides the basis for the implementation of Queensland's PPP Policy. It provides a comprehensive set of procedures by which to evaluate a range of Project Delivery Options available to satisfy a specific Infrastructure need. The Framework allows Government to identify the most appropriate option.

The Framework applies to projects undertaken in Queensland. It is broadly consistent with approaches in other jurisdictions, particularly in relation to risk allocation, contractual issues and the construction of the Public Sector Comparator (PSC) model.

The Framework focuses on the consistent application of whole of life, risk adjusted costing, by a comparison of delivery alternatives with current standard Government procurement practices. Its major objective is to select from the full range of Project Delivery Options the option that provides the best value for money outcome for Government and the community.

The Framework and the Supporting Documents, while comprehensive, are not intended to provide an exhaustive description of all issues and eventualities that may arise, or all specific tasks involved in undertaking a particular PPP project. The Framework does however provide a comprehensive description of the major stages in the procurement process and procedures for the resolution of issues that may arise.

1.3 GUIDING PRINCIPLES

The guiding principles underlying this policy framework include,

- clarity and certainty of process to provide the Private Sector with the confidence to invest in the development of high quality, cost-effective and efficient project solutions.
- value for money focus, to ensure the objectives of the Government are delivered by the mechanism that best represents value for money.
- competitive process to drive value for money and innovation.
- consistency with Government policies, objectives and planning principles, and with PPP policies being developed in other jurisdictions.
- analytical rigour that focuses on objective, whole of life, risk adjusted costing as part of a thorough investigation of available Delivery Options.
- effective Risk Allocation to ensure risk is allocated to the party best able to manage it.
- protection of genuine Intellectual Property to encourage development of innovative solutions.
- transparency and accountability through clear definition of the process and of the respective roles and responsibilities of the Government and Private Sector parties.
- clear definition and understanding of project outputs through constructive information exchange with potential Proponents. This will be undertaken through a structured process to ensure all Proponents are treated in a fair and equitable manner.

1.4 WHO SHOULD USE THIS FRAMEWORK?

This Framework should be used by Agencies for the procurement of Infrastructure. It is also intended to provide information to potential Proponents, advisors and other interested parties.

As a general rule, the Framework is not mandatory for Local Authorities, Government Owned Corporations (GOC) or Category 1 Water Authorities. However, adoption of the procurement principles contained within the Framework may be beneficial for such organisations.

Where a GOC or Category 1 Water Authority seeks Community Service Obligation (CSO) funding (in whatever form) from the Government to support the procurement of new Infrastructure, and the project value exceeds the threshold (refer 1.5) then the Organisation must comply with the Value for Money Framework. The portfolio Minister may write to the Cabinet Budget Review Committee (CBRC) seeking to exempt from the Framework a project which lies above the threshold, or include a project that lies below the threshold, having first consulted with the Minister for State Development and the Treasurer.

1.5 APPLICATION OF THE FRAMEWORK

The Framework should be applied when the expected capital value will exceed $30M or the Net Present Value (NPV) of the strategic priority will exceed $50M. The portfolio Minister may write to CBRC seeking to exempt from the Framework a project which lies above the threshold, or include a project that lies below the threshold, having first consulted with the Minister for State Development and the Treasurer.

When applying this Framework, agencies should be mindful of, and comply with Government policies and guidelines, in particular:

- State Purchasing Policy[1];
- Local Industry Policy[2];
- Art Built-in Policy[3];
- "10% Training Policy" for Queensland Government Building and Construction Contracts[4];
- Capital Works Management Framework[5];
- Employment Security Policy[6].

1 http://www.qgm.qld.gov.au/policy2000/index.htm
2 http://www.sd.qld.gov.au/dsdweb/docs-bin/publications/lip_01_2002.pdf
3 http://www.arts.qld.gov.au/publicartagency/
4 http://www.training.qld.gov.au/buildconst/policydoc.pdf
5 http://www.build.qld.gov.au/amps/qmps03.htm
6 http://www.opsme.qld.gov.au/directives/security.htm

Agencies should also ensure that 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 existing and future relevant legislation including,:

- Freedom of Information Act 1992[7];
- Public Sector Ethics Act 1994[8];
- Financial Administration and Audit Act 1977[9].

I.6 AGENCY ROLES

I.6.1 ROLE OF AGENCIES

Portfolio Agencies have primary responsibility and accountability for the delivery of PPP projects within their portfolio. The responsible agency should establish a Steering Committee to oversee the development and implementation of the project and a Government Project Team responsible for day-to-day project management. The Steering Committee and Government Project Team should include representatives from the Infrastructure Partnerships Taskforce (IPT) and Treasury.

Subsequently, the responsible agency will be required to establish a Contract Management Team, which will manage the Project Agreements over the whole of the service delivery life.

I.6.2 ROLE OF THE INFRASTRUCTURE PARTNERSHIPS TASKFORCE (IPT)

The IPT (within the Department of State Development) is the central coordinating body for the ongoing development of the PPP Policy and Guidance Material and its application to projects within other agencies.

I.6.3 ROLE OF TREASURY

Treasury will assist IPT in the ongoing development of the Policy Framework. In its capacity as financial/commercial adviser to Government, Treasury will work with the responsible agency and the IPT on projects being progressed under the Value for Money Framework.

I.7 VALUE FOR MONEY FRAMEWORK

Consideration of projects within the Framework involves progression through six stages (Figure 1). These stages are presented in further detail in the following chapters.

The early stages of the process (Stages 1 - 3) focus on the development of the project concept that best meets specified service outputs. The objective of Stages 1 - 3 is to provide high quality information to Government decision-makers to assist them in making informed decisions with respect to the project's priority and affordability, and, if it is determined that the project is to proceed, the form it should take to deliver best value for money.

The later stages (Stages 4-6) outline the processes to be followed in progressing the projects that have been identified as suitable for development as PPPs.

7 http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/F/FreedomInfoA92_008_020705.pdf
8 http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PublicSecEthA94_03C.pdf
9 http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/F/FinAdminAudA77_06D.pdf

ELEMENTS OF THE VALUE FOR MONEY FRAMEWORK

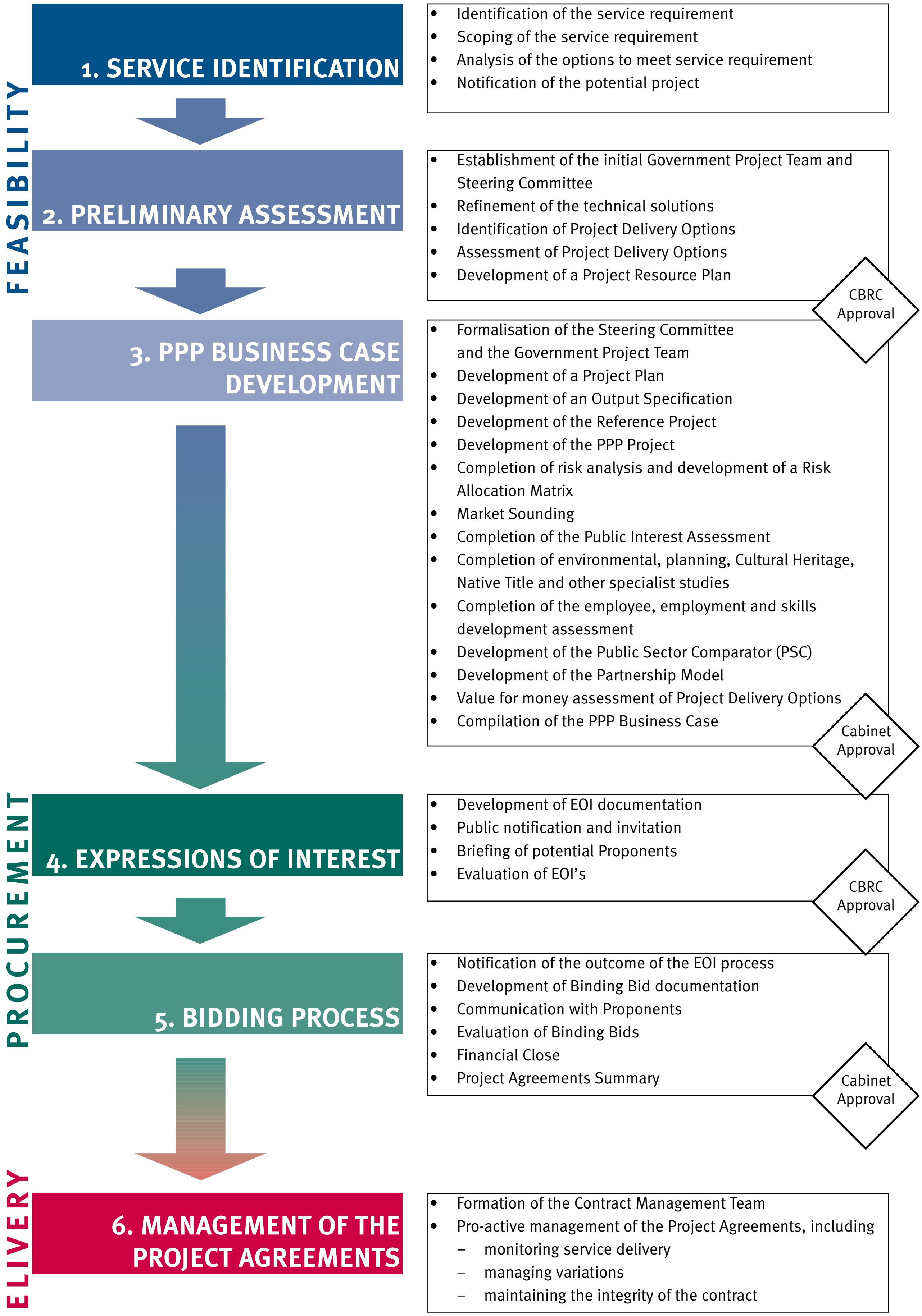


Figure 1 - Elements of the Value for Money Framework

1. STAGE ONE - SERVICE IDENTIFICATION

1.1 PURPOSE

The purpose of the Service Identification Stage (Stage One) is to:

- identify and broadly scope a potential Infrastructure project to satisfy an Agency priority service requirement; and
- determine whether the potential project meets the criteria to be progressed as a potential PPP.

1.2 PROCESS

The key elements of Stage One, illustrated in Figure 2 and described in further detail below, are:

- Identification of the service requirement;
- Scoping of the service requirement;
- Analysis of options to meet the service requirement; and
- Notification of the potential project.

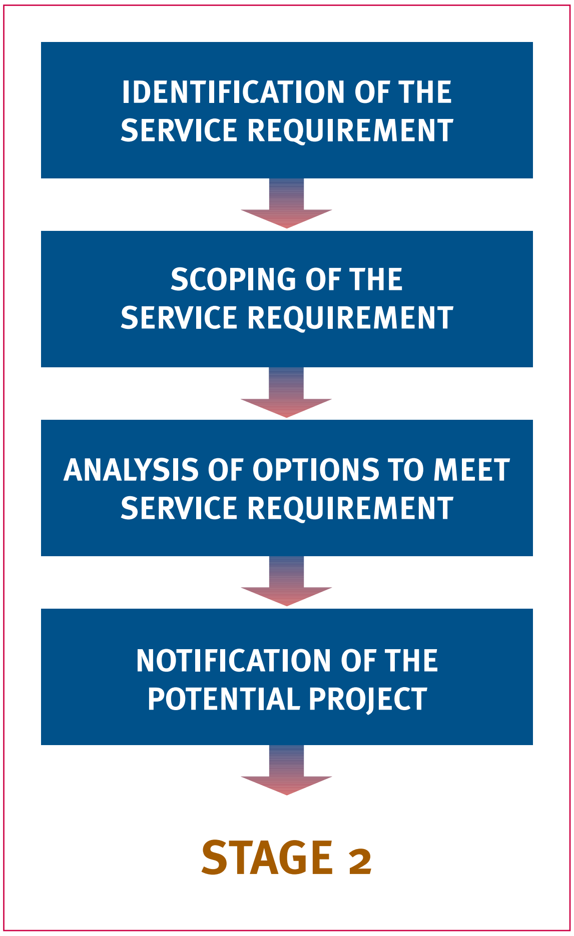


Figure 2 - Key elements of Stage One

1.2.1 IDENTIFICATION OF THE SERVICE REQUIREMENT

Infrastructure procurement commences with the identification of a service requirement. The Government has well-established, regional-based strategic planning and service review processes for Agencies, including such instruments as the State Infrastructure Plan, individual Agency strategic plans and associated Capital Investment Strategic Plans (CISPs).

Government articulates its key priorities in terms of outcomes that meet specific community needs. Under the Government's Managing for Outcomes Framework, Agencies identify the outputs (services) they believe will best achieve the required outcomes. For example, a required outcome of Government is to improve the wellbeing of Indigenous citizens. An output to meet this required outcome would be the provision of health infrastructure and ancillary services by Queensland Health.

If an Agency receives an unsolicited proposal from a Private Party addressing a service requirement that has been identified by that party, the proposal will be assessed for priority against the relevant Agency's strategic plan and the State Infrastructure Plan. If the proposal is considered by the Agency to be a priority, it will be progressed either,

- within this Framework in the same manner as Agency-generated outputs; or
- pursuant to an Exclusive Mandate (for further detail on Exclusive Mandates refer to Appendix 1).

Any unsolicited proposal seeking to place risk, cost or payment obligation upon the Government must, if pursued, be subjected to a competitive bidding process to ensure that it represents a value for money outcome for Government.

In progressing unsolicited proposals, the Government would take all reasonable steps to protect the genuine Intellectual Property of the Private Sector. However, it is the responsibility of any proponent who considers their proposal, concept or design to include intellectual and commercial Property to demonstrate to the satisfaction of the Government that it is likely to possess commercial value and utility in the marketplace. Specifically, the Government would not reveal a proponent's intellectual property when subjecting the project to a competitive bidding process. This could be achieved by developing an Output Specification that excludes any reference that may infringe Intellectual Property rights.

1.2.2 SCOPING OF THE SERVICE REQUIREMENT

At this early stage, it is only necessary to scope the service requirements in broad terms so as to establish the nature of possible solutions for the identified service requirement. A determination can then be made as to whether the solution should be progressed as a potential project under the Value for Money Framework.

A detailed Output Specification will be developed in Stage Three - PPP Business Case Development.

1.2.3 ANALYSIS OF OPTIONS TO MEET THE SERVICE REQUIREMENT

Once an Agency has identified and broadly scoped the service requirements, the available options should be broadly evaluated. Agencies should consider innovative options when formulating Technical Solutions to address service requirements. At this stage, all realistic options should be evaluated. These options include,

- Existing asset options: Consider whether existing Government or Private Sector infrastructure may be used. Recycling infrastructure may involve upgrading, refurbishment or reconfiguration of assets and co-location/shared facilities.

For example, population growth may result in an existing modular sewage treatment plant being near capacity. Rather than expanding the plant by constructing an additional module, it may be more cost-effective to divert supplies to existing underutilised plants..

- New asset-based options: Consider whether new infrastructure is required.

For example, an analysis of the changing demographics of a region indicates that the current number of hospital beds will not meet anticipated demand in two years. If a cost/benefit analysis of all options demonstrates that a new hospital is the lowest cost solution to meeting demand in the medium term, then construction of the new hospital is justified.

- Non-asset options: Consider whether service requirements can be met through demand management practices or the implementation of changes to existing service delivery models.

For example, an increase in demand may indicate that the expansion of an existing water treatment plant is necessary. However, the introduction of various demand management practices, such as price increases and rationing supplies, could delay or eliminate the need for new infrastructure.

Technical Solutions should, where appropriate, take into account the disposal of existing assets. When a number of location and site alternatives are available, it will be necessary to include these in the analysis.

Where an Agency decides to proceed with an asset-based option, it will include this requirement in its CISP. Note that Agency CISPs are prepared on the basis of existing Agency forward estimates and there may be instances where an Agency has identified an asset option that is unfunded.

1.2.4 NOTIFICATION OF THE POTENTIAL PROJECT

Where an asset-based solution (including major refurbishment) has been identified and included in the Agency's CISP, and the expected capital value will exceed $30M or the Net Present Value (NPV) of the strategic priority will exceed $50M to the Government, the Agency should notify the IPT of the potential project.

The IPT and Treasury will assist the Agency:

- to review the potential project in terms of its applicability to the Government's PPP Policy; and
- to determine whether it is appropriate to proceed to the Preliminary Assessment Stage of the Value for Money Framework.

The portfolio Minister may write to CBRC seeking to exempt from the Framework a project which lies above the threshold, or include a project that lies below the threshold, having first consulted with the Minister for State Development and the Treasurer.

1.3 OUTPUTS

The outputs from Stage One will include:

- a description of the service requirement;
- a broad description of the potential solutions;
- inclusion of an asset-based option in the Agency's CISP; and
- notification to the IPT.

2. STAGE TWO - PRELIMINARY ASSESSMENT

2.1 PURPOSE

The purpose of the Preliminary Assessment Stage (Stage Two) is to provide CBRC with information regarding the service requirement and potential solutions. This information should be sufficient to enable decision-making regarding,

- the priority of the potential project for Government;
- the likely affordability of the potential project; and
- given the above and the characteristics of the potential project, whether it is appropriate that the potential project be progressed to the PPP Business Case Development Stage.

2.2 PROCESS

The level of detail required for the Stage Two analysis is only that needed to enable CBRC to make an initial determination on the priority and affordability of the potential project and its suitability for further investigation under this Framework. As such, it is not expected that there will be significant costs or resource requirements for Agencies at this stage of the process.

The key elements of Stage Two, are illustrated in Figure 3 and described in further detail below:

- establishment of the initial Government Project Team and Steering Committee
- refinement of Technical Solutions;
- identification of Project Delivery Options;
- assessment of Project Delivery Options;
- development of a Project Resource Plan; and
- consideration by CBRC.

As a general rule, a project should not be referred to publicly as a potential PPP project until CBRC have confirmed it to be a priority.

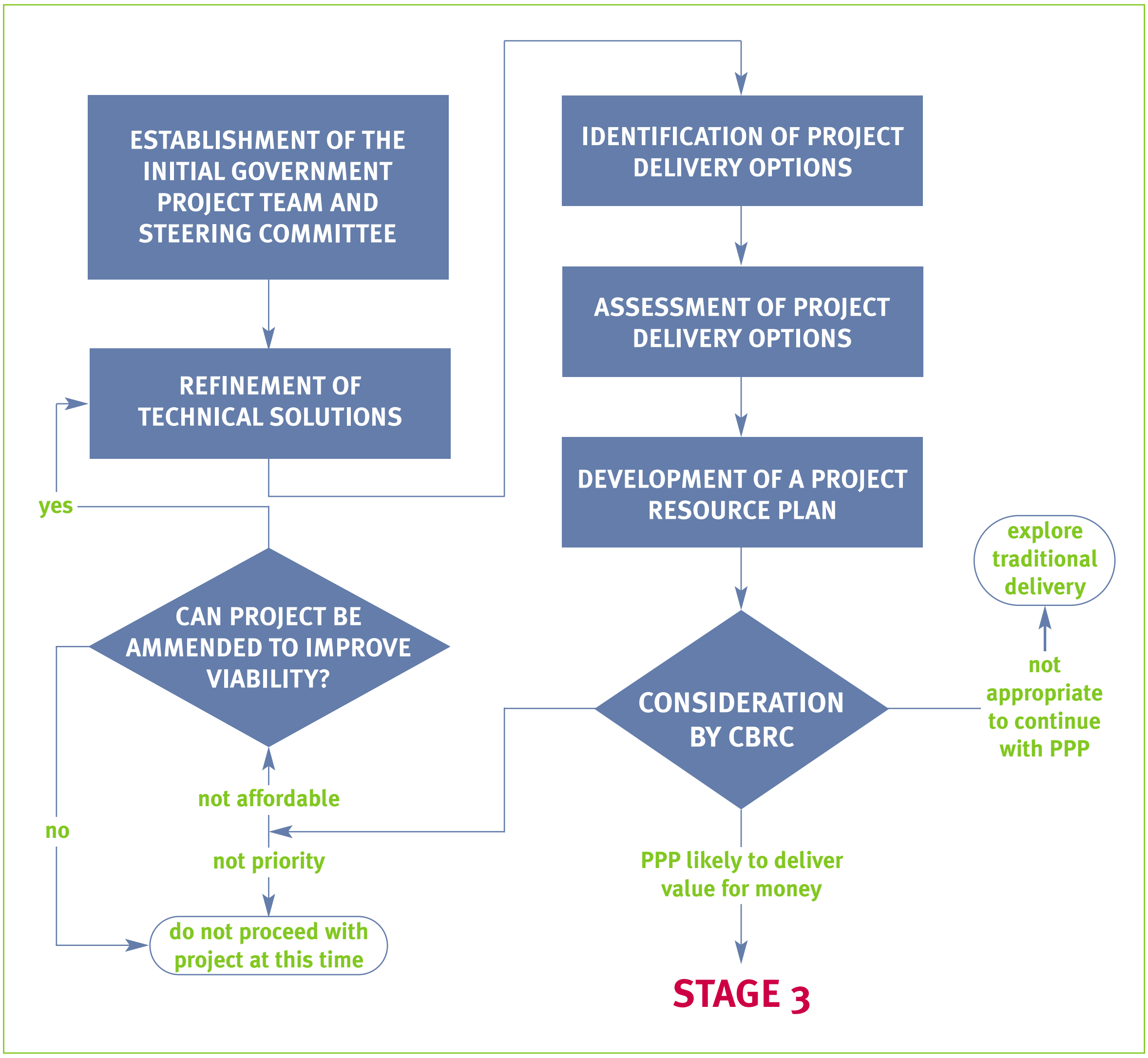


Figure 3 - Key elements of Stage Two

2.2.1 ESTABLISHMENT OF THE INITIAL GOVERNMENT PROJECT TEAM AND STEERING COMMITTEE

Successful implementation of the Value for Money Framework requires a high degree of project specific skills. These range across technical, legal, commercial and financial disciplines. The initial Government Project Team should be established during the Preliminary Assessment stage and then formalised in the PPP Business Case Development Stage (Section 3.2.1).

The initial Steering Committee should also be established at this point, with a view to its formalisation in the PPP Business Case Development Stage (Section 3.2.1). The Steering Committee will oversee the development of the project and should include representatives from the relevant Agency (ideally the Director General), the IPT and Treasury.

2.2.2 REFINEMENT OF TECHNICAL SOLUTIONS

This step further develops the project solutions identified in Stage One by identifying a range of Technical Solutions to the service requirement. Technical Solutions would address issues such as the range of asset alternatives and engineering possibilities. A shortlist of viable Technical Solutions should be developed.

2.2.3 IDENTIFICATION OF PROJECT DELIVERY OPTIONS

Each of the identified Technical Solutions may be delivered through a number of alternative Delivery Methods. The Delivery Methods reflect various development, operating, financing and ownership arrangements and represent varying degrees of risk sharing and partnership between the Public and Private Sectors. A range of possible Delivery Methods should be identified for each Technical Solution and a list of the potentially viable Project Delivery Options developed.

2.2.4 ASSESSMENT OF PROJECT DELIVERY OPTIONS

The list of potentially viable Project Delivery Options developed in Section 2.2.3 should be assessed to determine whether there is potential for a PPP arrangement to deliver value for money.

In their assessment, Agencies should consider key value for money drivers, including,

- allocation of risk to the Private Sector where it is best able to manage that risk;
- output based specification which avoids unnecessary prescription of delivery mechanisms;
- Private Sector innovation;
- long-term nature of contracts;
- performance measurement and incentives;
- increased competition;
- Private Sector management skills;
- improved asset utilisation;
- alignment of the interests of Public and Private Sectors; and
- transparency of processes.

This assessment may result in modifications to, or abandonment of, some or all of the Project Delivery Options. The assessment will involve the following,

<u>Derivation of initial cost estimates</u>

Whole of life costs need to be considered and, accordingly, estimates of the following should be made:

- initial capital expenditure requirements;
- life cycle maintenance and refurbishment costs; and
- life cycle costs of operation.

<u>Preliminary identification and notional allocation of risks</u>

For each Project Delivery Option, all potential material risks should be identified, and some initial consideration given to identification of the parties likely to be best able to manage those risks. Where opportunities for risk transfer are limited, the potential to deliver value for money through a PPP alternative is reduced.

Guidance on the identification, assessment and allocation of risk is provided in the Risk Management Supporting Document.

<u>Economic and financial analyses</u>

The purpose of the economic analysis is to assess which Project Delivery Option will create the largest net economic benefit to the State. This assessment involves the measurement of the costs and benefits of a Project Delivery Option to the State economy as a whole and comparison of the net economic benefit of each Project Delivery Option.

A financial analysis is used to determine the commercial viability (profitability) of a Project Delivery Option. In particular, the financial analysis will indicate, inter alia, the level of cost recovery, the ability to repay borrowings and the ability to make a return on the investment.

The financial and economic analyses undertaken during this Preliminary Assessment Stage will be further developed in the PPP Business Case Development Stage (Section 3).

Agencies should refer to the Queensland Treasury Project Evaluation Guidelines (March 1997)[10] and the Draft Queensland Treasury Business Case Guidelines for guidance on economic and financial analyses. Queensland Treasury can provide technical assistance to Agencies in undertaking economic and financial analyses.

10 http://www.treasury.qld.gov.au/pdfdocs/PROJGUID.PDF

Identification of environmental, planning, Cultural Heritage and Native Title issues

While it is not practical to resolve environmental, planning, Cultural Heritage and Native Title matters at this stage, any material issues that are likely to arise should be identified. This will ensure,

- there are no insurmountable issues that would render any of the Project Delivery Options unworkable;
- appropriate modifications can be made to the Project Delivery Options to accommodate specific issues.

Early identification of significant issues will assist with project planning and resourcing during the PPP Business Case Development Stage.

Identification of employee, employment and skills development issues

At the Preliminary Assessment Stage it is important to commence the identification of any likely significant industrial relations, employee relations, employment and skills development issues that may require attention during consideration of the Project Delivery Options, (eg. employment security, preservation of employment conditions and entitlements).

Identification of these issues should involve consultation with the appropriate stakeholder to ensure effective change management mechanisms can be developed and implemented during the project development. This consultation may include meetings with individual employees, focus groups and delegated representatives.

The Agency should identify and evaluate,

- the consistency of the proposed Project Delivery Options with the relevant Government policy pertaining to Employment Security and Contracting Out of Government services;
- any possible structural effects to the Agency emanating from a transfer of employees under the potential Project Delivery Options.
- the direct impact on employment;
- substitution/displacement effects;
- regional and social impacts;
- training issues.

Preliminary public interest assessment

For each Project Delivery Option, the matters to be considered during the preliminary public interest assessment include,

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

Assessment of potential Private Sector interest in the potential project

The assessment of Private Sector interest in the potential project will be based on existing expertise and knowledge of the market, supplemented where necessary with market sounding. This market sounding should further explore the potential range of solutions to a service requirement, and determine the market appetite for involvement in the potential project.

In undertaking a process of market sounding, Agencies should ensure they adequately focus their enquiries to avoid burdening Private Sector parties. Various industry associations may provide a useful reference point for coordinating Private Sector input. Market sounding should be conducted without prejudice, given the early stage of the Government's investigation, and all parties should be conscious of probity issues throughout the process.

2.2.5 DEVELOPMENT OF A PROJECT RESOURCE PLAN

In preparation for Stage Three, Agencies should develop a Project Resource Plan containing:

- an estimate of the resources required to deliver the project through to Financial Close (including internal staff and external advisers);
- a funding proposal for the conduct of the project development (i.e., from existing internal resources, specific budget supplementation or a combination of both);
- an indicative project timetable for each of the key stages in the process which will allow effective integration of the project's consideration into the budget cycle.

The Project Resource Plan is submitted for the information of CBRC.

2.2.6 CONSIDERATION BY CBRC

At the end of the Preliminary Assessment Stage, a joint Agency/DSD/Treasury submission will be presented to CBRC. This submission seeks:

- initial determination of priority and affordability of the potential project;
- approval to proceed to the PPP Business Case Development Stage (Stage Three);
- allocation of appropriate resources to undertake Stage Three.

The submission should summarise the characteristics of the project, the risks at play, any industrial relations considerations and report on the outcomes of the economic, policy and financial assessments undertaken. CBRC's decision should provide the Agency with a clear mandate to progress to Stage 3.

Experience in other jurisdictions suggests that the cost to Government of the PPP Business Case Development Stage can be significant. It is therefore important that only potential projects viewed as a priority should be progressed to Stage Three.

If the initial analysis of Project Delivery Options indicates that a PPP arrangement is not likely to offer better value for money for Government, existing infrastructure analysis processes would then apply (in place of the full PPP Business Case approach). It is important that the rigour applied to the analysis of a traditional delivery option should not be less than that applied when exploring a PPP Delivery Option. In practice, Traditional Delivery analysis should require an investigation of risk management and whole of life modelling that would mirror the construction of a Public Sector Comparator model.

CBRC's decision at this point does not constitute funding approval for project delivery. Such approval will be made on completion of the PPP Business Case Development Stage and, consistent with Government budget policy, will be made as part of the normal budget process.

Where the proposed timing for completion of the PPP Business Case does not coincide with the normal budget process, CBRC may, at its discretion, base its funding decision on a partly developed PPP Business Case, provided that it is sufficiently robust. The funding of the proposed project should be reconfirmed following completion of the PPP Business Case.

2.3 OUTPUTS

The following key outputs from the Preliminary Assessment Stage will form the basis for the preparation of the detailed PPP Business Case:

- establishment of the initial Government Project Team and Steering Committee;
- a clearly defined and measurable service need;
- a list of potentially viable Technical Solutions which meet the identified service need;
- a list of potentially viable Project Delivery Options;
- initial estimates of whole of life costs;
- preliminary identification and notional allocation of risks;
- economic analysis of Project Delivery Options;
- financial analysis of Project Delivery Options;
- identification of environmental, planning, Cultural Heritage and Native Title issues;
- identification of employee, employment and skills development issues;
- preliminary public interest assessment;
- assessment of likely Private Sector interest in the potential project;
- a Project Resource Plan; and
- a CBRC submission and decision.

3. STAGE THREE - PPP BUSINESS CASE DEVELOPMENT

3.1 PURPOSE

The purpose of the PPP Business Case Development Stage (Stage Three) is to:

- identify the Project Delivery Option most likely to provide the best value for money outcome; and
- provide information regarding the available Project Delivery Options, sufficient to enable Cabinet to:
  - determine the preferred Project Delivery Option; and
  - make commitments regarding funding of the potential project.

3.2 PROCESS

Stage Three builds on the project feasibility analysis undertaken in Stage Two, by developing a comprehensive PPP Business Case analysing each of the Project Delivery Options. Additional information is available in the PPP Business Case Development Supporting Document.

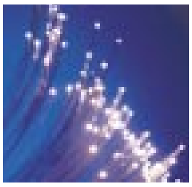
The extent to which each of the elements in this process need to be undertaken will depend on the specific Project Delivery Options being considered. It is inherent that where the Project Delivery Options involve private financing, the analysis will be more complex. However, where privately financed Project Delivery Options are not under consideration, a rigorous analysis should still be undertaken. In such instances, guidance should be sought from the IPT as to the specific procedural requirements.

The headings used in this section are for reference purposes only and, in practice, the activities described should be developed iteratively. Integration of technical and financial analyses is vital because the preferred Project Delivery Option must be both technically sound and bankable, and therefore able to satisfy the requirements of debt and equity providers.

The key elements of Stage Three, illustrated in Figure 4 are described in further detail below:

- formalisation of the Steering Committee and the Government Project Team;
- development of a Project Plan;
- development of an Output Specification;
- development of the Reference Project;
- development of the PPP Project;
- completion of risk analysis and development of a Risk Allocation Matrix;
- market sounding;
- completion of the public interest assessment;
- completion of environmental, planning, Cultural Heritage, Native Title and other specialist studies;
- completion of the employee, employment and skills development assessment;
- development of the Public Sector Comparator;
- development of the Partnership Model;
- value for money assessment of Project Delivery Options;
- compilation of the PPP Business Case; and
- consideration by Cabinet.

The PPP Business Case is developed around the Public Sector Comparator and Partnership Model. These models require development of the Output Specification and the Risk Allocation Matrix and a detailed understanding of economic and financial issues, public interest issues, policy implications, Native Title, Cultural Heritage and environmental impact.



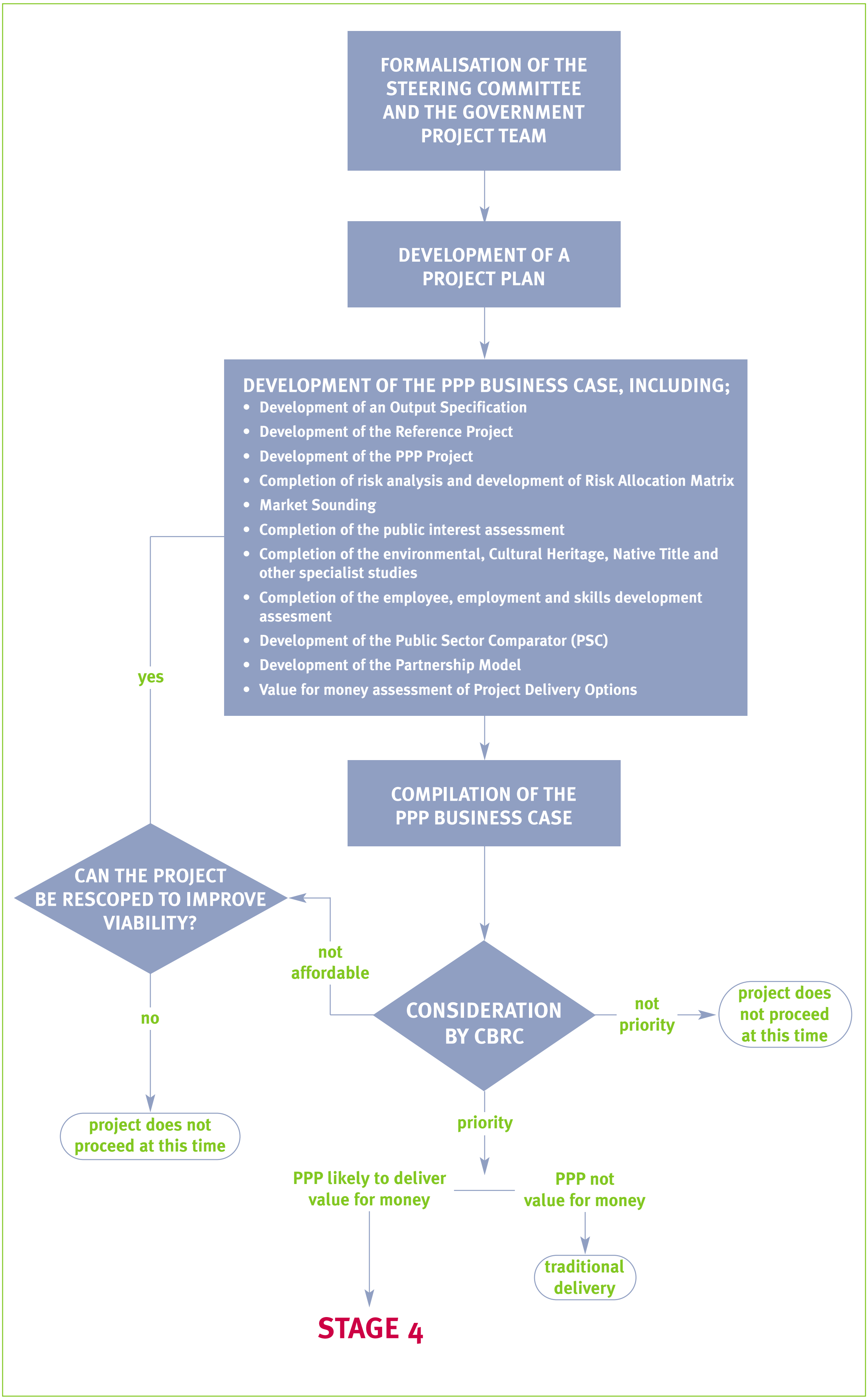


Figure 4 - Key elements of Stage Three

3.2.1 FORMALISATION OF THE STEERING COMMITTEE AND THE GOVERNMENT PROJECT TEAM

Successful implementation of the Value for Money Framework requires a dedicated Government Project Team with an appropriate mix of skills and experience from key technical, legal, commercial and financial disciplines.

Figure 5 outlines a typical project management structure. The Government Project Team would be resourced from the Agency, IPT, Treasury and external advisers. While some resources will have been devoted to the Preliminary Assessment Stage, the full Government Project Team should not need to be established until the PPP Business Case Development stage.

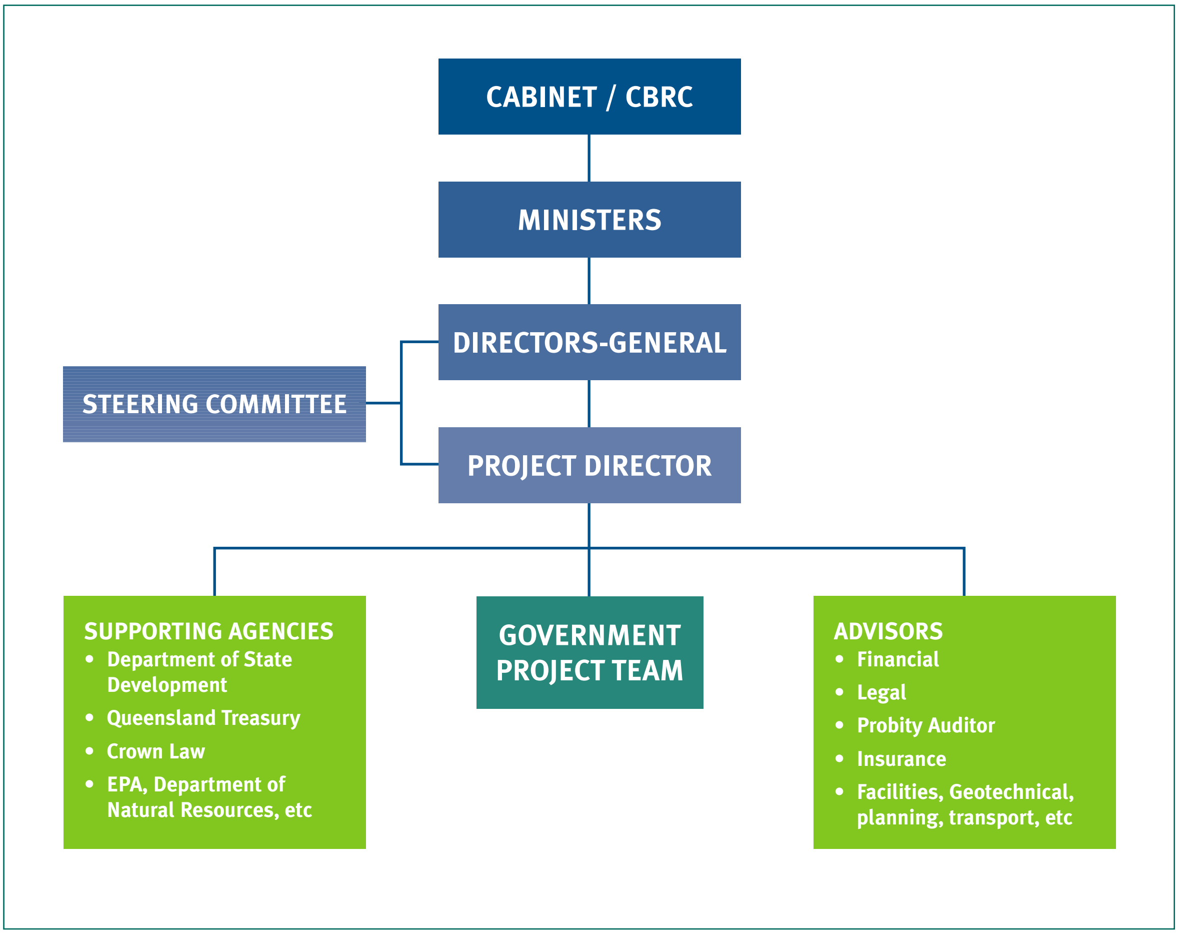


Figure 5 - Typical project management structure

** - the IPT and Treasury representatives on the Steering Committee will report through their respective Directors General to the relevant Ministers.*

A Steering Committee will oversee the development of the project and deal with key commercial and policy issues, including the content of key documentation, evaluation of competitive bids, recommendation of shortlists and of the preferred Bidder. The Steering Committee will approve submissions to Ministers on key policy and commercial matters. The Steering Committee will include representation from the relevant Agency (ideally the Director General), IPT and Treasury, together with the Project Director.

A Project Director should be appointed by the Agency with overall responsibility for delivery of the project. The Project Director has responsibility for management of the Government Project Team, including external advisers.

Agencies should expect to engage specialist external advisers in the areas of legal, financial, planning, technical, industrial relations and communications as required. The specific skill sets and experience required will vary between projects. The process of selecting and appointing external advisers should commence as soon as practicable (that is, as soon as the Project Director is appointed). Even if a particular adviser is not required until a later stage, it may be appropriate to appoint them early to ensure that the most suitable advisers are available.

Key personnel should be identified for the task of managing the Project Agreements and incorporated into the Government Project Team. This will ensure that contract management issues are properly explored during the PPP Business Case Development Stage, and that there is a continuity of knowledge throughout the life of the project.

The Project Resourcing Supporting Document contains a more detailed discussion of the establishment of a project management structure.

3.2.2 DEVELOPMENT OF A PROJECT PLAN

One of the key initial tasks for the Government Project Team is to develop a detailed Project Plan and timetable. This plan needs to take account of all steps in the process, including consultation, market sounding and Government approval.

The Project Plan should comprise, amongst other things:

- a clear definition of the respective roles and responsibilities of key Government stakeholders including Cabinet, CBRC, Ministers, Agency Chief Executives, the Steering Committee, the Government Project Team and its advisers;
- a project Probity Plan;
- a communications protocol; and
- a timetable documenting key steps in the project, (such as a Gantt Chart).

3.2.3 DEVELOPMENT OF AN OUTPUT SPECIFICATION

One of the key differences between traditional Infrastructure procurement practices and the Value for Money Framework is the use of an identifiable and measurable Output Specification. The Output Specification details the service requirements of Government and seeks to improve the procurement and management of public infrastructure by focussing on the relevance, effectiveness and efficiency of a service provided, rather than its means of delivery.

Output specifications should describe the level and quality of the service sought by the procuring Agency. Evaluation of competing Project Delivery Options involves a like-for-like comparison of those options against the specified service requirements. It follows that specifications should be sufficiently loose as to permit the emergence of competing Project Delivery Options, but also sufficiently detailed as to ensure that all such alternatives deliver a common minimum standard of service.

The procuring Agency should be indifferent (subject to public interest considerations) as to how a particular service requirement is met, provided that the required service standard is achieved in a timely and cost-effective manner (having regard to risks being assumed). This focus on output rather than input provides the greatest scope for Private Sector innovation in delivery of the service.

The Output Specification should include unambiguous, measurable performance requirements and should clearly identify the relative importance of each.

Public expectation of improvements in levels of service over time requires careful consideration when developing the Output Specification. Agencies should avoid linking service standards in Project Agreements to the Agency's existing standards of service, unless such standards are expected to continue to satisfy public expectations over the life of the partnership.

In practice, developing the Output Specification is a particularly challenging task that requires a significant change in approach from traditional procurement practices. It is likely that, in developing Output Specifications, the Government Project Team may require assistance from external advisers.

Output Specifications will differ between Agencies and between projects within an Agency. As such, inclusions for the Output Specification may include, but are not limited to the following:

- site location;
- extent and quality of service required;
- latest date for commencement of service;
- project life (not to be confused with asset life);
- transitional arrangements (usually only applicable for brownfield sites);

- State, Federal and Local Government policy positions;
- agreed positions in relation to local communities, suppliers, employment, and other third parties;
- performance measurement and reporting requirements;
- variation mechanisms;
- condition of project Infrastructure at end of project life; and
- upgrade or expansion requirements during the project.

Poorly developed and articulated Output Specifications may result in sub-optimal procurement outcomes.

3.2.4 DEVELOPMENT OF THE REFERENCE PROJECT

The Reference Project identifies the most cost-effective Delivery Method that would have been traditionally employed to satisfy all elements of a particular Output Specification. In the event that the service requirement is not one that has been previously delivered by Government, the Reference Project should instead identify the most efficient, publicly-financed Delivery Method available to meet the Output Specification.

The Reference Project is the benchmark against which the PPP Project option will be measured. As such, it is vital that all elements of the Output Specification are included to ensure appropriate like-with-like comparison. In other words, the Reference Project effectively represents a conforming bid from Government. The Reference Project is also the method by which the project would be delivered if the PPP Project option proves to be unacceptable.

While the Output Specification is expressed in terms of desired services, the Reference Project should include designs and other such input details that are required to demonstrate how it would satisfy the Output Specification.

The Reference Project should be predicated on the Agency's existing rules, regulations, policies and procedures in relation to procurement.

The level of detail in the Reference Project should be commensurate with the project value. The Reference Project should detail all material whole of life costs and revenue items, including:

- external revenue sources;
- initial capital expenditure;
- ongoing maintenance;
- operating costs;
- upgrade and refit costs;
- any other contract payments (e.g. termination arrangements); and
- any Agency administrative costs.

These cost and revenue items will be quantified in the development of the PSC.

3.2.5 DEVELOPMENT OF THE PPP PROJECT

In addition to developing a Reference Project, the Agency should develop a PPP Project. The PPP Project is the Agency's best estimate of the most efficient Private Sector solution to satisfy the Output Specification. The development of the PPP Project is akin to the routine competitor analyses undertaken by Private Sector firms.

The PPP Project should be subject to all legislative and other lawful constraints that a Private Party would need to observe, but not to any other Agency-level policies or procedures. By removing Agency-level procurement constraints, it should be possible to identify some (but not all) areas of potential Private Sector innovation.

3.2.6 COMPLETION OF RISK ANALYSIS AND DEVELOPMENT OF A RISK ALLOCATION MATRIX

Identification and optimal allocation of risks to the party best able to manage them is integral to achieving value for money with PPPs. By their nature, the Public and Private Sectors have differing capacities to manage the various risks associated with an individual project. As such, an understanding of how each party can cost, manage or mitigate a project's risks is an important component in achieving optimal risk allocation.

In traditional procurement practices, Government generally takes responsibility for the majority of project risks (subject to contractual remedies for non-performance). Under a PPP arrangement, Government can allocate specific risks to the Private Sector that they can best manage and price most competitively. It is important that risks that cannot be effectively managed by the Private Sector are not allocated to them, as the Private Sector will require significant compensation for accepting unmitigated risk.

The expected cost of all material risks to be borne by Government should be incorporated into the PSC. Costs retained by Government under any PPP Project alternative should be included in the Partnership Model.

The Risk Allocation Matrix provides a summary of all risk assessments and material risks associated with the project, and identifies the Government's preferred (optimal) allocation of those risks. The Risk Allocation Matrix forms the basis of the proposed contractual relations that Government would present to the market in seeking Binding Bids.

For further detail on the identification and allocation of risks refer to the Risk Management Supporting Document.

3.2.7 MARKET SOUNDING

Market sounding refers to the practice of soliciting opinions from the Private Sector as to the potential viability and attractiveness of particular projects. Market sounding may need to cover issues such as risk allocation, management and mitigation, cost estimates, and project structure. As experience is developed within Agencies, the need for market sounding will diminish.

Selective market sounding may need to be undertaken to assist with the development of the PSC and Partnership Model. Market sounding should canvass a broad cross section of the market. Industry representative bodies may be useful vehicles through which market sounding may be undertaken.

In most instances, the Government Project Team's financial adviser would assist in the market sounding even in respect of non-financial matters, reflecting the fact that any Technical Solution must also be bankable.

Market sounding should occur on a without-prejudice basis, and commence only after consultation with the Legal Advisor. All parties should be cognisant of probity issues throughout this process.

3.2.8 COMPLETION OF THE PUBLIC INTEREST ASSESSMENT

During evaluation of Project Delivery Options it is important to consider their consistency with public interests. Matters to be considered in the assessment of public interest are outlined in Section 2.2.4. Public interest considerations may necessitate modifications to, or indeed abandonment of, some or all of the Project Delivery Options. These modifications may have cost and/or revenue implications that will need to be reflected as appropriate in the PSC and Partnership Model.

3.2.9 COMPLETION OF ENVIRONMENTAL, PLANNING, CULTURAL HERITAGE, NATIVE TITLE AND OTHER SPECIALIST STUDIES

The development of an individual project is likely to require a range of project specific undertakings that are not necessarily dependent on the Delivery Method selected. These may include environmental, planning, Cultural Heritage, Native Title and a range of project-specific specialist analyses. Examples of specialist analyses include geo-technical planning, land planning, and transport planning. Legislative and regulatory impacts across various levels of Government are likely.

Any issues that may arise should be considered in the context of likely Project Delivery Options. These issues may have cost and/or revenue implications that will need to be reflected as appropriate in the PSC and Partnership Model.

3.2.10 COMPLETION OF THE EMPLOYEE, EMPLOYMENT AND SKILLS DEVELOPMENT ASSESSMENT

The preliminary assessment of employee, employment and skills development issues that commenced in Stage 2 should be completed during this stage.

This assessment should include, amongst other things:

- further appropriate consultation with stakeholders, including discussions with employees, employee groups, unions and the Department of Industrial Relations;
- completion of an Employment and Skills Development Impact Statement (as per Department of Employment and Training (DET) Guidelines).

3.2.11 DEVELOPMENT OF THE PUBLIC SECTOR COMPARATOR (PSC)

The purpose of the PSC is to model the estimated risk-adjusted whole of life cost to Government of delivering the Reference Project.

The general position regarding release of the PSC is that release should occur except where Government considers that release may inhibit the competitive bidding process or compromise its negotiating position. Release will relate to the raw PSC only, and not to risk adjustments within the PSC.

The PSC comprises the following key components:

- the Raw PSC; and
- risk adjustments.

Raw PSC

The Raw PSC represents the base costing of the Reference Project. It does not include any allocation of value for risks and contingencies that may affect cash flows.

Cost categories are likely to be project specific, but as a guide, the Raw PSC should include:

- site acquisition;
- design, procurement and construction;
- routine maintenance;
- major maintenance (infrequent rehabilitation/ refurbishment);
- amounts paid to advisers and consultants;
- other transaction costs;
- revenues received by Government including those from end-users, third parties, Commonwealth subsidies, sale of surplus project-related land or assets, residual asset values at the end of the project life;
- administration and overheads including contract management, reporting, use of Agency premises and senior management time; and
- all other direct and indirect costs.

It is important that the Raw PSC fairly reflects the true base cost of satisfying the Output Specification. It is not the average cost of the Agency's existing portfolio of assets. In practice, PSC costs are likely to be required to be developed from first principles. Similarly, any revenues that would be collected by the Government under traditional procurement should be reflected in the PSC.

These would include user charges, Commonwealth subsidies, and proceeds of sale of assets at the end of the project.

Risk Adjustments

Within a PSC model, risk refers to financial uncertainty in cash flow forecasts. Risk exists in a project whether or not it is measured and as such, failure to measure and manage project-specific risk may result in poor cost estimates and sub-optimal service procurement.

The cost of risk is a function of the probability and consequence of occurrence of the risk event. Risks have both direct and indirect impacts, where for example, a construction cost overrun has a direct impact on the cost of a project. The same event may also have an indirect impact in terms of a higher borrowing requirement (to fund the cost overrun), leading to higher debt service costs over the life of the project. Here, the indirect impact may be more significant than the direct impact.

All material risks should be costed according to the expected costs (both direct and indirect) that would be incurred by Government were such a risk to occur. The expected cost is the mean of all the probability-weighted cost outcomes for the particular risk event.

The most useful tool for risk identification and quantification is the performance history of similar past and existing projects. Such data should be supported by additional risk analysis as required, including:

- a review of similar projects in other Australian jurisdictions;
- risk evaluation by specialist technical consultants;
- the use of quantitative techniques to estimate risk probabilities and consequences;
- the use of insurance premiums as an estimate of defined risks;
- the use of insurance actuaries to evaluate unusual risks (such as discriminatory change in law); and
- sensitivity analysis.

Risk valuation should reflect a commonsense approach, where it is important to measure only those risks that are material. It is of note that in some instances, a number of similar risks may be immaterial by themselves, but may become material when aggregated. The timing of a risk also affects its materiality. For example, an increase in costs in Year 25 of a project is less important on a discounted cash flow basis, than a similar increase in costs in Year 5.

The quantification of risks should take into consideration any risks transferred to the Private Sector under the Reference Project. That is, the PSC should not be inflated by the cost of risks not being borne by Government. For example, if the Reference Project assumed a fixed-price turnkey contract, the risk of construction cost overruns will be commensurately lower than it would have been on an Alliance contract where Government is exposed to a proportion of any cost increase (or decrease).

The expected cost of all risks not transferred to the Private Sector should be added to the costs in the PSC model. Similarly, the cost of shared risks should be prorated and added to the PSC model.

3.2.12 DEVELOPMENT OF THE PARTNERSHIP MODEL

The Partnership Model is a financial model of the PPP Project scoped by the Agency. As with the PSC, it measures the net cost to Government of satisfactorily procuring the Output Specification. Accordingly, the Partnership Model should span the full term of the partnership and include estimates of Private Sector debt and equity requirements. The model should assume that the Private Sector would accept the Government's preferred risk allocations.

Development of the Partnership Model helps the Government Project Team to better understand the Private Sector's key drivers, informing the development of documentation to be presented to the Private Sector in the competitive bidding process.

The construction of a Partnership Model will enable the Government to forecast, in advance of entering into, and subjecting Private Sector parties to a costly competitive tender process, whether:

- a Private Sector solution is likely to yield a value for money outcome for Government relative to Traditional Delivery; and
- if the PPP Project is likely to be bankable.

The Partnership Model will estimate:

- the price that the Private Sector party is expected to charge for provision of the service;
- any revenues accruing to Government; and
- the cost to Government of risks retained by Government.

Service Payments

When undertaking a PPP project, the Private Party is entitled to earn a fair commercial return, commensurate with the level of risk it bears on its investment. This return is comprised of:

- third party revenues (for example, user charges); and/or
- service payments from Government.

The Private Party return on investment can be estimated from rates of returns for similar activities observed in the capital markets. Service payments are structured so that they are conditional on the performance of the Output Specification, and any other contractual obligations.

Revenues to Government

Incremental revenues that would accrue to the

Government under a Private Sector solution (that is, in addition to any revenues of the same class that would accrue under Traditional Delivery) should be included as a benefit (negative cost) in the Partnership Model, to ensure a like-with-like comparison.

The cost of residual risks

Risks that are expected to remain with Government under the PPP Project must be identified and costed, and their specifications included in the Partnership Model. These risks should have been assessed in developing the PSC (where the majority of risks rest with Government).

Benefits of risk

Risks that may impact adversely or favourably on either or both parties will materialise over the course of the Project. By agreeing to share the cost of a materialised risk, Government should maintain an entitlement to the share in the benefit the risk may generate. In addition, the Government will maintain the right to share in any windfall gain or superprofits, including additional refinancing benefits.

These windfall gains will be determined based on the agreed level of return on investment. Rates of return above the agreed levels will result in a reasonable level of benefit sharing. Government recognises that it should share in these benefits - whether on a symmetrical or windfall basis - in a way that does not discourage innovation or performance.

3.2.13 VALUE FOR MONEY ASSESSMENT OF PROJECT DELIVERY OPTIONS

Some PPP Projects may generate sufficient third party revenues (for example, from user charges) to provide a fair return on investment for the Private Sector party. In the majority of cases, government will be required to directly pay for the cost (in full or in part) of the underlying Infrastructure through service payments. If so, the PPP Project can only represent better value for money if it satisfies the Output Specification at lower cost to Government than the cost of Traditional Delivery.

Value for money is a relative concept. In the context of PPP arrangements, it means, in its simplest terms, the lowest risk adjusted cost to Government of satisfying the specified Output Specification. However, non-quantitative factors may also require consideration within the context of the Output Specification and the specified evaluation criteria.

It is important that Government measures the true financial cost (net of any revenues) of delivery under both Traditional Delivery and the best PPP alternative. To this end, this Framework requires that adjustments are made to the Partnership Model to reflect the fact that certain costs faced by Private Sector parties are remitted to the Government as revenues (for example, stamp duties and land taxes) and therefore reduce the true cost to Government of the Private Sector alternatives.

Where Government Owned Corporations or other significant business activities is the delivery vehicle under the Reference Project, the principles of Competitive Neutrality apply, consistent with the National Competition Policy. Queensland has already met its obligations under the National Competition Policy, where all such entities comply with Competitive Neutrality principles. Comparable tax regimes are in place and they are fully subject to all regulations that apply to private businesses.

All things being equal, the option with the lowest net present cost should be preferred.

Agencies should not seek to proceed with a PPP solution unless the comparative analysis indicates that the PPP solution will represent better value for money than Traditional Delivery.

3.2.14 COMPILATION OF THE PPP BUSINESS CASE

All relevant information developed during Stage Three should be drawn together into a PPP Business Case, the purpose of which is to:

- define the service requirement through an Output Specification;
- specify the Reference Project and the PSC;
- specify the PPP Delivery Options and the Partnership Model;
- outline probable risk sharing arrangements with the various Project Delivery Options;
- provide information on the key issues considered and solutions proposed;
- analyse the various Project Delivery Options identified; and
- identify the preferred Project Delivery Option for meeting the service requirement.

The PPP Business Case, together with a summary document, will be submitted to Cabinet for its consideration. The PPP Business Case may not be fully finalised at the commencement of the Expressions of Interest (EOI) Stage. Consideration by Cabinet and commencement of the EOI stage may be undertaken while elements of the PPP Business Case are finalised.

3.2.15 CONSIDERATION BY CABINET

At the end of the PPP Business Case Development Stage, a joint Agency/DSD/Treasury submission will be presented to Cabinet, seeking:

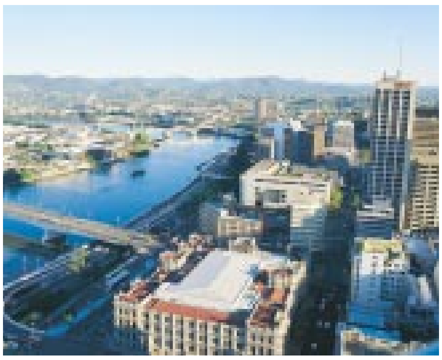
- confirmation of project priority and affordability;
- approval to proceed with the recommended Project Delivery Option; and
- in the context of the Government's normal budget process;
- funding approval for the recommended Project Delivery Option; and

- where a PPP Delivery Option is approved, approval to proceed to the Expressions of Interest Stage (Stage Four).

3.3 OUTPUTS

The key outputs from the PPP Business Case Development Stage will include:

- Project Plan;
- Output Specification;
- documented Reference Project;
- documented Project Delivery Options;
- summary risk assessment and Risk Allocation Matrix;
- the PSC;
- the Partnership Model;
- Public Interest Assessment;
- preliminary Environmental Impact Study;
- preliminary planning studies;
- preliminary Cultural Heritage Assessment;
- preliminary Native Title Assessment;
- preliminary employee, employment and skills development assessment;
- other specialist assessments as required;
- PPP Business Case; and
- a Cabinet Submission and decision.



4. STAGE FOUR - EXPRESSIONS OF INTEREST (EOI)

4.1 PURPOSE

The purpose of the Expressions of Interest (EOI) Stage (Stage Four) is to develop a shortlist of Proponents who demonstrate, in their Expression of Interest, the technical and financial capabilities to deliver the service requirement on a value for money basis.

4.2 PROCESS

The key elements of Stage Four, illustrated in Figure 6 and described in further detail below, are:

- development of EOI documentation;
- public notification and invitation;
- briefing of potential Proponents;
- evaluation of EOIs; and
- consideration by CBRC.

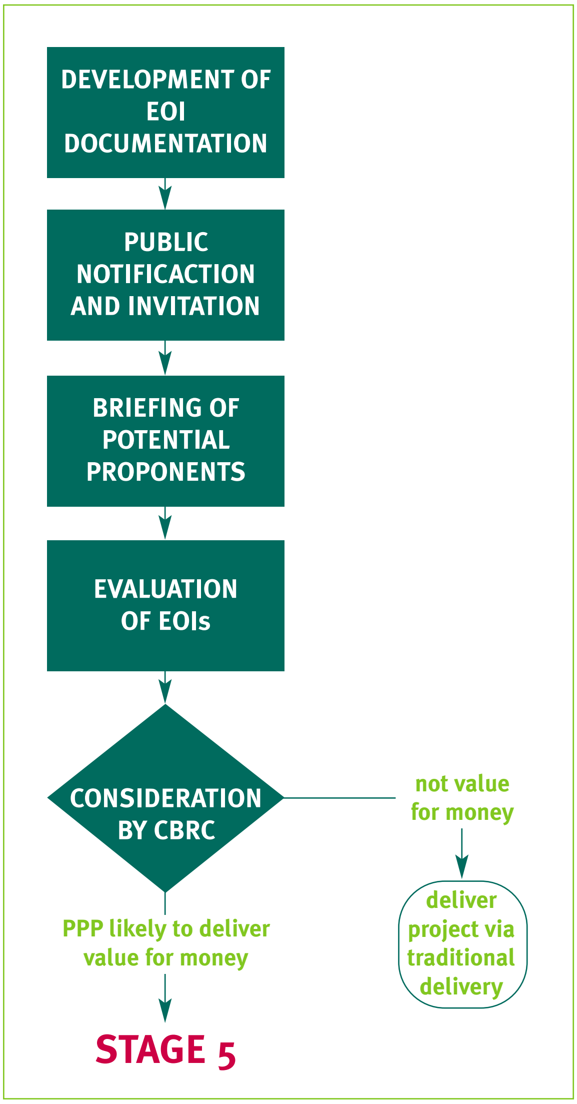


Figure 6 - Key elements of Stage Four

4.2.1 DEVELOPMENT OF EOI DOCUMENTATION

EOI documentation should provide Proponents with sufficient information to enable them to determine their interest in the potential project and to submit an appropriately informed EOI.

The level of detail in the information provided to Proponents should be tailored to reflect the nature of the responses required by Government at this stage. The provision in the EOI documentation of excessively detailed information and any lack of clarity in Government's objectives when conducting the EOI Stage could result in Proponents preparing unnecessarily detailed submissions and being subjected to unnecessary expense.

The purpose of the EOI documentation is to:

- broadly define the service requirements that Government seeks to have met;
- communicate to the market the proposed timeframes and the criteria on which EOI submissions will be evaluated; and
- solicit proposals from the market which enable Government to form a view on parties capability of meeting the service requirements.

EOI responses will serve to confirm the level of market interest in the potential project. The elements of the EOI documentation are outlined below.

<u>Request for EOI document</u>

The Request for EOI document provides clear guidance to Proponents as to the information required for submission and the basis on which the Government will evaluate this information. This document will incorporate, inter alia, information on the following matters:

- confirmation of the Government's commitment to the project;
- the service requirement to be met;
- the key project milestones and proposed timetable;
- the information required in the EOI responses, including any size and format requirements;
- the evaluation criteria for the EOI responses; and
- the rules governing the conduct of the EOI stage.

<u>Information Memorandum</u>

The Information Memorandum provides Proponents with factual information relevant to the service requirement, and will incorporate, inter alia, the following:

- an indication of the projects objectives, broadly outlining the service requirement and commercial principles to be applied;
- background factual data relevant to the service requirement;
- any known legal, policy and/or regulatory constraints;
- Government's proposed role in meeting the service requirement; and
- outcomes of progress regarding environmental, planning, Cultural Heritage, Native Title and other specialist technical assessments.

4.2.2 PUBLIC NOTIFICATION AND INVITATION

A notice should be published inviting interested parties to register their interest in participating in the 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 one EOI process will depend on expectations as to the level of Private Sector interest to be generated by the publication of the notice.

4.2.3 BRIEFING OF POTENTIAL PROPONENTS

It may be appropriate for the Government Project Team to provide a briefing to Proponents regarding the project.

In accordance with the Probity Plan, all communication with Proponents should be on a transparent basis, and all parties must be treated in a fair and equitable manner.

4.2.4 EVALUATION OF EOIs

Prior to the receipt of EOIs, the Government Project Team should prepare an internal document detailing procedures for the evaluation of EOIs. The Evaluation of EOIs document will include:

- roles and responsibilities of the relevant Government parties;
- guidelines for consistent application of the evaluation criteria, including the rating of specific responses provided by Proponents. The evaluation criteria documented in the Request for EOI document should not be amended. In the unlikely event that it is necessary to amend the evaluation criteria, the amended criteria should be communicated to all Proponents at the same time and sufficient time should be allowed to enable the Proponents to adequately address these amended criteria;
- the weightings (if any) assigned to the individual selection criteria;
- a schedule which links specific information requirements to individual selection criteria;
- the process for assigning ratings to responses to individual criteria;
- the process for determining the overall ratings for individual EOIs.

An Evaluation Committee should evaluate EOIs. The Evaluation Committee is likely to be drawn from the Government Project Team and should be endorsed by the Steering Committee. Specialist advisers will provide support to the Evaluation Committee as required. Subject to the Probity Plan, an independent Probity Auditor should oversee the evaluation process to ensure that it is conducted in a fair and equitable manner.

In evaluation of EOIs, the focus is on the Proponents' technical and financial capabilities to deliver the service requirement.

The Evaluation Committee should prepare an EOI Evaluation Report summarising the EOIs received, providing an assessment of each EOI against the evaluation criteria, and recommending the potential Proponents (if any) to be shortlisted for progress to the Binding Bid Stage.

When developing the shortlist, the Evaluation Committee should have regard for the following criteria:

- the Proponent's capability to construct, operate and finance the facility;
- the quality and innovation contained in the response to the Project's Objectives and service requirements;
- the need to maintain competitive tension in the bidding process; and
- the cost to Proponents in preparing Binding Bids.

The shortlist generally includes three to four Proponent parties in order to create adequate competition and cover the risk of a party withdrawing. A shortlist of three will be sufficient where there is adequate confidence in the capability and motivation of the Bidders. A shortlist of more than four is likely to lead to some shortlisted Bidders losing interest, where their chance of success - 20 per cent or less - may not warrant the significant investment of time and resources in preparing a bid.

The Steering Committee will report, through the respective Directors-General, to the Portfolio Minister, the Minister for State Development and the Treasurer following its consideration of the EOI Evaluation Report. The Ministers will present a joint submission to Cabinet through CBRC detailing their recommendations.

4.2.5 CONSIDERATION BY CBRC

At the end of the EOI Stage, a joint Agency/DSD/Treasury submission will be presented to CBRC, seeking:

- approval of the recommended shortlist of Proponents to proceed to the Binding Bid Stage (if the PPP alternative is expected to deliver the best value for money); or
- approval to proceed with development of the Reference Project (if the PPP alternative is not expected to deliver the best value for money outcome); and
- direction on any specific policy and/or commercial matters that may have arisen during the EOI Stage.

4.3 OUTPUTS

The outputs from the EOI Stage will include:

- Request for EOIs document;
- Information Memorandum;
- public notice;
- Evaluation of EOIs document;
- EOI Evaluation Report;
- CBRC Submission and decision; and
- an approved shortlist.

5. STAGE FIVE - BINDING BIDS

5.1 PURPOSE

The purpose of the Binding Bid Stage (Stage Five) is to enter into a binding legal agreement with the Preferred Proponent.

5.2 PROCESS

The invitation to submit a Binding Bid signals a commitment by Government to deliver the project by way of a PPP arrangement, subject to achievement of a best value for money outcome. Government should reserve the right to deliver the project by way of Traditional procurement practices should the PPP alternative not represent value for money.

The key elements of the Binding Bid Stage, illustrated in Figure 7 and described in further detail below, are:

- notification of the outcome of the EOI process;
- development of Binding Bid documentation;
- communication with Proponents;
- evaluation of Binding Bids;
- consideration by Cabinet;
- Financial Close; and
- preparation of Project Agreements Summary.

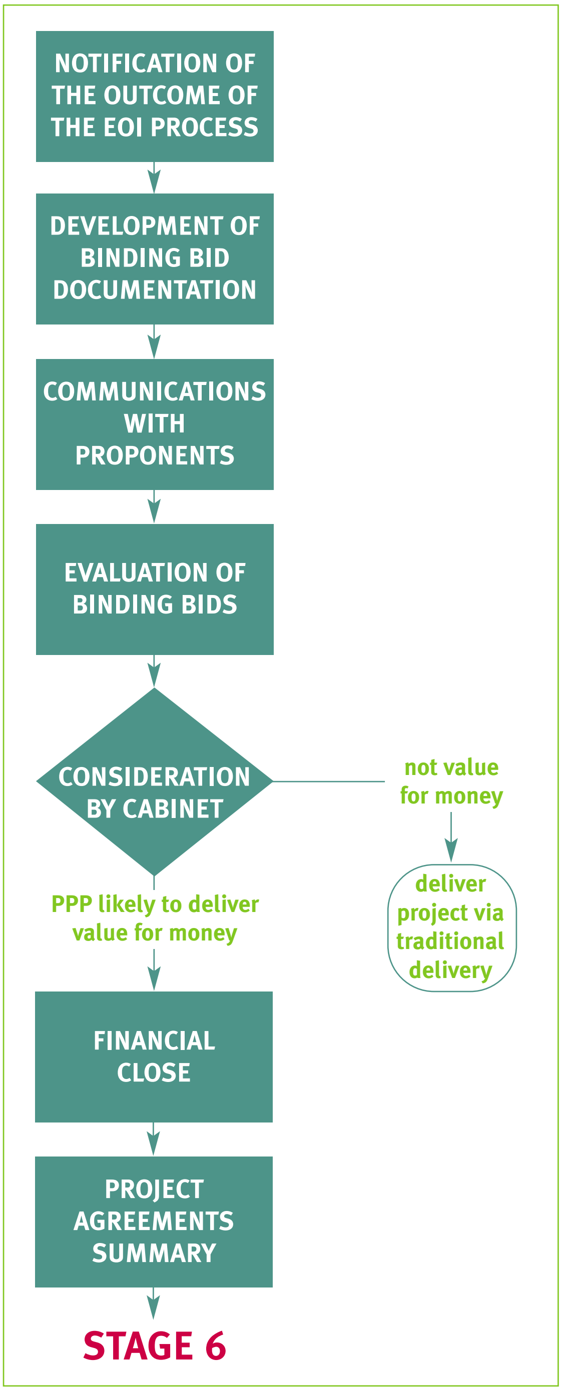


Figure 7 - Key elements of Stage Five

5.2.1 NOTIFICATION OF THE OUTCOME OF THE EOI PROCESS

All parties who lodged an EOI should be notified, at the same time, of the outcome in relation to their EOI. Advice to parties that have not been shortlisted should be accompanied by an offer to provide feedback on their EOI. Any feedback should be in relation to the evaluation of a Proponent's EOI against the evaluation criteria and should avoid reference to competitor EOIs.

Shortlisted Proponents should be invited to submit a Binding Bid in accordance with the Binding Bid documentation.

5.2.2 DEVELOPMENT OF BINDING BID DOCUMENTATION

Binding Bid documentation should provide Shortlisted Proponents with comprehensive project information to enable them to fully understand the service requirement, develop a robust, comprehensive project proposal and contractually commit to delivering the project.

The elements of the Binding Bid documentation, described in further detail below, include:

- the Project Brief;
- data room material; and
- Project Agreements.

<u>Project Brief</u>

The Project Brief is the document that guides Proponents in the preparation of Binding Bids. Read in conjunction with the data room material, the Project Brief provides Proponents with a comprehensive overview of the proposed project and the rules governing the Binding Bid process. Information should be made available to Shortlisted Proponents without prejudice. To this end, material provided should incorporate appropriate disclaimers.

The Project Brief is based on factual information obtained and developed during previous stages. Typical elements of the Project Brief include:

- comprehensive background information;
- the Output Specification;
- the Risk Allocation Matrix;
- any known legal, regulatory, or policy constraints or requirements (e.g. local industry policy requirements);
- key findings from material assessments such as environmental, planning, Cultural Heritage, Native Title and any other specialist technical studies;
- expectations regarding Government contributions to the Project;
- the rules under which the Binding Bid process will be conducted, including lodgement requirements, bid submission format, reservation of rights, communication protocol and treatment of non-conforming bids;
- the evaluation criteria;
- the key milestones of the Binding Bid Stage and associated timeframes; and
- specification of information required to be provided in the Binding Bids.

<u>Data Room material</u>

The data room material should comprise all relevant detailed supporting factual information that is made available to Shortlisted Proponents. The majority of this information will have been developed and collated during the PPP Business Case Development Stage.

The nature of the material that can be included in the data room is diverse and dependent on the specific project. Information that may be provided through the data room (either by way of electronic media or a physical location) includes:

- Environmental Impact Studies;
- matters relating to planning requirements;
- Cultural Heritage assessments;
- Native Title assessments;
- reports related to the service requirement;
- analysis of legislative and regulatory impacts;
- policy and public interest considerations;
- feasibility studies;
- land use considerations;
- geographical and demographical information;
- demand estimates;
- site investigations including geotechnical, survey, and land tenure;
- engineering reports; and
- other legal and/or commercial material.

Project Agreements

The Project Agreements comprise the legally binding contracts that underpin the project. The Government Project Team, with assistance from its legal advisers, should maintain prime responsibility for the drafting of the Project Agreements.

Shortlisted Proponents will be provided with a set of draft Project Agreements in the Binding Bid stage and may be given an opportunity to propose amendments to the draft Project Agreements. Any proposed amendments accepted by the Government (in its absolute discretion) will be incorporated into the draft Project Agreements and the resultant Benchmark Project Agreements distributed to all Shortlisted Proponents.

It is intended that the Benchmark Project Agreements will be broadly non-negotiable and that shortlisted Proponents will be required to submit a Binding Bid on this basis.

In considering requested changes, the Government will have regard to the fact that specific amendments may be necessary to accommodate a particular Proponent's bid structure. In such circumstances, Proponents will be required to submit, with their Binding Bid, a marked up set of Project Agreements together with a detailed explanation of the requested changes. Any specific amendments required to accommodate the bid structure would be finalised with the preferred Proponent.

Any additional changes requested by a Shortlisted Proponent will be taken into account during the evaluation of its Binding Bid.

Given the typically long-term nature of many PPP arrangements, it is possible that, over time, Government may need to redefine the service requirement to meet changing community needs. The Project Agreements need to be sufficiently flexible to accommodate such changes without unreasonable cost penalties on Government and whilst providing fair compensation to the Private Party.

5.2.3 COMMUNICATIONS WITH PROPONENTS

The Government Project Team should consider the various means available for the formal communication of information to the Shortlisted Proponents. While the major instruments for information flow between the parties will be the Project Brief, the data room, and the Binding Bids, other means of communication may be required. These include:

- detailed briefings to Proponents on specific aspects of the project;
- presentations by Proponents of their Binding Bids;
- written Question and Answer process in which all questions and answers, subject to commercial-in-confidence considerations, are communicated to all Proponents; and
- general correspondence.

Communications should provide for constructive interaction with Proponents to ensure they are appropriately informed and treated in a fair and equitable manner in accordance within the Probity Plan.

5.2.4 EVALUATION OF BINDING BIDS

Prior to receipt of Binding Bids, the Government Project Team should prepare an internal document detailing procedures for the evaluation of Binding Bids. The Evaluation of Binding Bids document will include:

- roles and responsibilities of the relevant Government parties;
- guidelines for consistent application of the evaluation criteria, including the rating of specific responses provided by potential Proponents;
- the weightings (if any) assigned to the individual selection criteria;
- a schedule which links specific information requirements to individual selection criteria;
- the process for assigning ratings to responses to individual criteria;
- the process for determining the overall ratings (which measure value for money) for individual Binding Bids.

The Evaluation Committee should evaluate the Binding Bids, supported by specialist advisers as required. The independent Probity Auditor should oversee the evaluation process to ensure that it is conducted in a fair and equitable manner.

The objective of evaluating Binding Bids is to determine which Project Delivery Option will deliver the best value for money in meeting the service requirement. While the specific evaluation criteria will vary between projects, key criteria are likely to include:

- a comparison of the whole of life cost with the PSC. In undertaking this comparison, it is important to take into account the fact that Proponents may propose project arrangements with very different State tax implications, for example, stamp duty. Accordingly, this Framework proposes that Bids should specify State taxation costs to allow these to be taken into account in assessing the true cost to Government;
- the approach to delivery of the Output Specification;
- the technical solution being proposed;
- the proposed commercial approach, including the risk allocation; and
- any departures from the Benchmark Project Agreements.

Government reserves the right to, at its absolute discretion, accept, evaluate and select non-conforming Bids, but shall not be obliged to do so. Non-conforming bids would need to be submitted with conforming bids.

The Evaluation Committee should prepare a Binding Bids Evaluation Report summarising the Binding Bids received, providing an assessment of each Binding Bid against the PSC and evaluation criteria, and providing a recommendation, either:

- to proceed with the preferred PPP proposal(s) on such terms as the Evaluation Committee considers commercially acceptable; or
- to proceed with traditional procurement, should the PPP proposals not provide value for money.

The selection of the Preferred Proponent should be completed as quickly as practicable to minimise bidding costs.

The evaluation process described above may need to be adjusted on a case-by-case basis to accommodate specific project circumstances. The specific evaluation process to be adopted would be detailed as appropriate at the commencement of the Binding Bid Stage in the Project Brief and in the Evaluation of Binding Bids document.

The Steering Committee will report to the Portfolio Minister, the Minister for State Development and the Treasurer following its consideration of the Binding Bids Evaluation Report. The Ministers will present a joint submission to Cabinet detailing their recommendations.

5.2.5 CONSIDERATION BY CABINET

At the end of the Binding Bid Stage, a joint Agency/DSD/Treasury submission will be presented to Cabinet through CBRC. Cabinet should be provided with a project summary based on the Preferred Proponent's Bid, including and an analysis of how value for money is expected to be achieved by entering into the partnership.

The Cabinet Submission should:

- if the PPP alternative is expected to deliver the best value for money outcome, seek approval:
- to award Preferred Proponent status;
- to finalise Project Agreements within agreed parameters and proceed to Financial Close;
- for the Portfolio Minister to execute the final Project Agreements in consultation with the Minister for State Development and the Treasurer.

Government may reserve the right to revert to another Proponent(s) if the Project Agreements cannot be finalised to the Government's satisfaction with the Preferred Proponent within a specified reasonable timeframe; or

- if the PPP alternative is not expected to deliver the best value for money outcome, seek approval to proceed with development of the Reference Project.

5.2.6 FINANCIAL CLOSE

Once the approval process is complete, the Project Agreements should be finalised and executed by the Preferred Proponent and the State.

The State should move to satisfy its conditions precedent as quickly as practicable.

No public announcement should be made as to the outcome of the process until Financial Close has occurred.

5.2.7 PROJECT AGREEMENTS SUMMARY

Following Financial Close, the Government Project Team must complete the Project Agreements Summary. The purpose of the Project Agreements Summary is to enhance the transparency and accountability of the procurement process.

Disclosure must take into account both the sensitivity of the details contained in individual contracts and the impact that disclosure will have on longer-term willingness of Private Sector businesses to deal with the Public Sector.

The Projects Agreements Summary will include key elements of contracts but will exclude commercial-in-confidence matters. The summary will be prepared by the agency, signed off by the Auditor-General as a fair reflection of Project Agreements and tabled in Parliament.

Additional information on disclosure, ongoing reporting and post-implementation audit is contained within the Supporting Document on Probity and Process Governance.

5.3 OUTPUTS

The outputs from the Binding Bid Stage are:

- notification of the outcome of the EOI process;
- Evaluation of Binding Bids document;
- the Project Brief;
- the data room;
- Questions and Answers;
- Binding Bids Evaluation Report;
- Cabinet Submission and decision;
- executed Project Agreements;
- Financial Close; and
- Project Agreements Summary.

6. STAGE SIX - MANAGEMENT OF THE PROJECT AGREEMENTS

6.1 PURPOSE

The purpose of the Management of the Project Agreements Stage (Stage Six) is to ensure that the Private Sector partner and the Government fulfil their respective obligations under the Project Agreements to deliver the service in accordance with the Output Specification.

6.2 PROCESS

Management of the Project Agreements is integral to the ongoing successful delivery of the service. The rights and obligations under the Project Agreements should be fully understood and undertaken so that value for money is obtained.

The key elements of Stage Six, illustrated in Figure 8 and described in further detail below, are:

- formation of the Contract Management Team; and
- pro-active management of the Project Agreements, including

  - monitoring service delivery;

  - managing variations; and

  - maintaining the integrity of the Project Agreements.

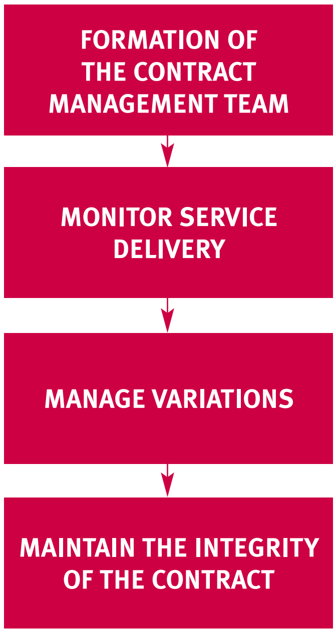


Figure 8 - Key elements of Stage Six

6.2.1 FORMATION OF THE CONTRACT MANAGEMENT TEAM

Establishment of the Contract Management Team should begin during earlier stages of analysis. In particular, key personnel should be delegated the task of managing the Project Agreements and incorporated into the Government Project Team. This will ensure that contract management issues are properly explored during the PPP Business Case Development Stage, and that there is a continuity of knowledge throughout the life of the project.

The Contract Management Team should have a good understanding of the rights and obligations of the respective parties pursuant to the Project Agreements.

The management structure that will administer the Project Agreements should be formally established before Project Agreements are executed. All Project Agreements should be readily accessible by the Contract Management Team.

The legal adviser should prepare a summary guide to the Project Agreements, focussing on the key obligations of each of the respective parties, key dates/milestones and the relationship between the Project Agreements.

6.2.2 PRO-ACTIVE MANAGEMENT OF THE PROJECT AGREEMENTS

The key tasks in the management of the Project Agreements are:

- monitoring service delivery;
- managing variations; and
- maintaining the integrity of the Project Agreements.

Monitoring service delivery

One of the key roles of the Contract Management Team is to monitor the level of fulfilment of the service against the Output Specification documented in the Project Agreements.

This may involve:

- monitoring the achievement of contracted milestones for development, site acquisition, construction and commissioning;
- monitoring the level of service delivery against the performance indicators documented in the Project Agreements;
- making payments to the Private Party if the service provision meets the performance indicators, or conversely, invoking penalties if the service provision does not meet the performance specifications;
- ensuring the Private Party fulfils all other requirements in the Project Agreements, e.g. obtaining and maintaining adequate insurances;
- ensuring that Government does not inadvertently assume risks allocated to the Private Party (for example, through approval of design changes);
- ensuring that no changes in practice or procedure occur which amount to de facto waivers or contract variations without prior consideration and approval;
- ensuring that any critical issues and claims by any parties are investigated and dealt with in a timely manner;
- setting up a reporting and monitoring system - this should be provided for in the Project Agreements;
- developing a communications plan for public relations and for communicating key changes to internal stakeholders; and
- further develop the contingency plan in case of service failure during the project implementation phase (if relevant) - this includes identifying any possible need to step in or take other action to ensure the project is delivered in accordance with terms and conditions of the Project Agreements.

In monitoring the service delivery, it is important that the Contract Management Team enforces the obligations and timeframes outlined in the Project Agreements. Failure to do so may erode the Government's rights under these Agreements, particularly in instances of default.

The Project Agreements must detail the level of reporting that is required.

The key principles for the Contract Management Team should be the careful monitoring of performance and quality, and maintaining the incentives and penalties specified in the Project Agreements.

Manage variations

Variations to the Project Agreements, such as adjustments in output requirements requiring changes in design fit-out quality, could lead to a price variation and may impact on the value for money that Government may gain from the Project Agreements.

Any necessary variation in key performance standards or payment arrangements over time should be formalised in variations to the Project Agreements and not accommodated in informal or ad hoc arrangements.

Variations to the Project Agreements should not change the agreed risk allocation without appropriate price compensation.

Maintaining the integrity of the contract

The risk allocation approved by Government is reflected in the Project Agreements. It is critical to ensure that the contract is performed in accordance with its terms and that each party discharges its respective obligations. Failure to do so is contrary to the approval given by Government and has the potential to diminish the value of the project.

In addition, it is imperative to ensure that certain actions, or inaction, by the Contract Management Team does not result in Government implicitly taking back some of the risks allocated to the Private Sector party in the Project Agreements.

The remedies available to Government in the event of a project failing to deliver services in accordance with the performance specifications will be clearly defined in the Project Agreements. The Project Agreements should comprehensively take into account the implications of non-performance and thereby ensure there are no legal grounds for either party to seek alternative remedies. This should ensure that a value for money outcome is achievable for Government, even in circumstances where a project encounters performance difficulties.

The Government should consider the potential implications of issues such as performance default, operator insolvency, and project abandonment. Remedies available to Government may include payment of liquidated damages, surrender of facilities and step-in rights.

Government should desist from engaging with the Private Party other than as prescribed within Project Agreements. However, it is recognised that in exceptional circumstances variations to the Project Agreements or waivers of rights may be an appropriate response to ensure the Government's value for money outcome. Any such variations should be approved by relevant Ministers before any Variation Agreement is entered into with the Private Sector party.

APPENDIX 1 - EXCLUSIVE MANDATES

A1.1 WHAT IS AN EXCLUSIVE MANDATE?

An Exclusive Mandate is a right given to a Private Sector party to fully develop a proposal that it has brought to Government on an unsolicited basis. Key features of an Exclusive Mandate are that:

- it provides the Private Sector party the opportunity to fully develop its proposal for Government's consideration, in a non-competitive situation;
- it is granted at the Government's sole discretion;
- it is granted for a fixed duration specified by the Government, having regard to the particular circumstances of the proposal;
- unless withdrawn earlier by Government, the Exclusive Mandate remains in force until such time as the Government makes a determination in relation to implementation of the project;
- its operation is governed by a detailed set of terms and conditions specified up-front by the Government;
- while the Exclusive Mandate is in force, the Government would not:
    - consider any proposal submitted by any other person, where the objective of that proposal is to satisfy the same, or essentially the same, service requirement; or
    - deal with any such person in relation to such a proposal, except as required at law.
- the proposal developed under the Exclusive Mandate and submitted for Government's consideration would be legally binding on the Private Sector party; and
- it does not give the Private Sector party an automatic right to implement its proposal. The Government must be satisfied that the final proposal satisfies the evaluation criteria.

A1.2 WHEN MAY AN EXCLUSIVE MANDATE BE GRANTED?

Government is seeking value for money in the delivery of Infrastructure. To this end, Government will seek to maximise the use of competition as a means of driving operational and cost efficiencies, and innovation arising from Private Sector participation.

However, Government recognises that exceptional circumstances may arise where dealing with one Private Sector party in exclusivity is warranted. It is Government's express intention that the granting of Exclusive Mandates would be the exception and that, in most cases, proposals would be developed and considered pursuant to the processes outlined in the previous sections of this Framework.

The Government may, at its sole discretion, consider granting an Exclusive Mandate in those cases where each of the following criteria is met to the Government's satisfaction.

<u>Satisfaction of community need and Government priority</u>

The Private Sector party would be required to demonstrate that its proposal would satisfy a legitimate community need if implemented. Satisfaction of the community need must be a priority of Government for the proposal to receive further consideration.

<u>Service price</u>

The proposed pricing regime must:

- provide for a fair commercial return only on the Private Sector party's investment;
- be commercially sustainable in the long term; and
- be reasonably and appropriately priced relative to comparable domestic and international ventures.

<u>Intellectual Property</u>

The unsolicited proposal must involve genuine existing Intellectual Property rights, without which the proposal could not proceed to implementation.

The Private Sector party must be able to demonstrate to the satisfaction of the Government that it has a proposal, concept, technical solution or design that is genuine Intellectual Property. To this end, the Private Sector party must be able to demonstrate that it is likely to possess commercial value and utility in the market place.

<u>Preliminary investment</u>

The Private Sector party must have undertaken significant preliminary investment (relative to the value of the project) in developing the proposal or acquiring/developing Intellectual Property rights.

In particular, consideration will be given to whether the act of calling for Expressions of Interest to deliver the Infrastructure and service would significantly diminish the value to the Private Sector party of its preliminary investment.

<u>Responsibility for project costs and risks</u>

The Government has a responsibility to the community to seek to achieve best value from the expenditure of public funds in the delivery of public Infrastructure.

In circumstances, Government cannot deal exclusively with an unsolicited proposal under which Government is required to accept any project risks and/or costs or to make service and/or facility payments to the Private Sector party.

Where it is not feasible for the Private Sector party to bear a particular commercial risk, Government is to be fully indemnified by the Private Sector party (in a manner satisfactory to Government) against the financial consequences of that risk occurring.

Any unsolicited proposal seeking to place any non-indemnified risks, costs or payment obligations on Government must, if pursued, be subjected to a competitive bidding process to ensure that it represents a value for money outcome for Government.

Capacity of the Private Sector party

The Private Sector party must demonstrate that it has the financial and technical capacity to undertake the project to successful completion.

Feasibility of proposal

The Private Sector party would be required to demonstrate that its proposal is likely to be technically, commercially and practicably feasible.

Competing proposals

For an unsolicited proposal to be considered by the Government in exclusivity, the Government needs to be satisfied that:

- a proposal addressing the same or similar need is not already being considered by the Government; and
- there are no competing proposals addressing the same or similar need already under active and advanced consideration by any other Private Sector party (this will be deemed to have been satisfied if no further Private Sector proposals are submitted on an unsolicited basis, within a reasonable period (in the opinion of Government) following the receipt of the original unsolicited proposal); or
- if either of the above conditions are not satisfied, the Private Sector party satisfies Government that it enjoys such demonstrable commercial advantage over other Proponents that calling for Expressions of Interest could not be reasonably expected to generate a better value for money outcome.

Government reserves the right to subject an unsolicited proposal to the processes outlined in the previous sections of this Framework, or not proceed at all, should the proposal fail to meet the above criteria to Government's satisfaction.

A1.3 CONSIDERATION OF PROPOSALS UNDER AN EXCLUSIVE MANDATE

The procedure to be followed in progressing an unsolicited proposal through to the development of a detailed Binding Bid under an Exclusive Mandate would, to the extent practical, be consistent with the process outlined in Stage 5 of this Framework.

The process would apply appropriate rigour to ensure that:

- the project to be delivered is robust, efficient and effective in the delivery of services to the consumer; and
- costs and risks are not passed to Government under the project arrangements (unless Government is appropriately indemnified).

APPENDIX 2 - GLOSSARY OF TERMS

Agency: Government department, statutory authority or commercialised business unit.

Benchmark Project Agreements: The set of Project Agreements upon which Shortlisted Proponents must bid.

Binding Bids: A detailed proposal submitted by a Shortlisted Proponent in response to the invitation to submit a Binding Bid.

CISP: Capital Investment Strategic Plan.

CBRC: The Cabinet Budget Review Committee (CBRC) is a committee of Cabinet that consists of the Premier, the Treasurer and two other Ministers chosen by the Premier. CBRC makes decisions on expenditure and revenue measures and has the delegated authority of Cabinet to make decisions relating to the State's Budget.

Contract Management Team: A team established to manage the contract and ensure that the Private Sector partner and the Government fulfil their respective obligations under the Project Agreements.

Delivery Methods: Various development, operating, financing and ownership arrangements representing varying degrees of risk sharing and partnership arrangements.

DSD: Department of State Development.

Evaluation Committee: The committee responsible for evaluating the EOIs and Binding Bids and making recommendations as to the Shortlisted and Preferred Proponent(s). The Evaluation Committee is likely to be drawn from the Government Project Team and should be endorsed by the Steering Committee.

Exclusive Mandate: A commitment from the Government that it will not, for the period of the mandate:

- consider any proposal submitted by any other person, where the objective of that proposal is to satisfy the same need or substantially the same need; or
- deal with any such other person in relation to such a proposal, except as required at law.

Expression of Interest (EOI): A response to an invitation from the Government for Expressions of Interest from the Private Sector in a project. EOI responses will indicate to Government those parties capable of meeting the service requirements and confirm the level of market interest in the project.

Government Project Team: Team responsible for the day-to-day management and delivery of the project. The Government Project Team will be established by the Line Agency and will include representation from IPT and Treasury.

Information Memorandum: Document issued to potential Proponents that provides factual information relevant to the service requirement.

Infrastructure: Incorporates delivery of infrastructure assets and related non-core services.

Intellectual Property: Ideas, information, or material which has been produced as a result of intellectual effort and is protected by law; for example, confidential information, technical and professional publications, copyright, trademarks, patents, plant variety rights and designs.

IPT: Infrastructure Partnerships Taskforce in the Department of State Development.

Output Specification: The Output Specification sets out the service requirements of Government and the associated performance requirements.

Overview Document: Part of the suite of Guidance Material providing practical guidance on key technical issues which arise from the development and implementation of Public Private Partnerships in Queensland. This document provides an overview of the Guidance Material.

Portfolio Minister: Minister responsible for the Agency delivering the PPP project.

PPP Business Case: The PPP Business Case defines the service requirement, outlines the various Project Delivery Options and associated risk-sharing arrangements, analyses key issues, assesses the merit of the various Project Delivery Options and outlines the recommended approach to meeting the service requirement.

PPP Policy: Queensland's Public Private Partnership Policy - achieving value for money in public infrastructure and service delivery, which was endorsed in September 2001.

PPP Project: The Agency's best estimate of the most efficient Private Sector solution available to satisfy all elements the Output Specification.

Preferred Proponent: The Shortlisted Proponent who has demonstrated that its proposal will deliver the best value for money in meeting the service requirement.

Partnership Model: A financial model that estimates the risk adjusted whole of life net cost to Government of delivering the PPP Project.

Probity Auditor: An independent expert engaged to observe and review the process and establish whether the procedures have been administered fairly and impartially to all parties.

Probity Plan: The document that sets out the probity guidelines and procedures to be followed throughout the process.

Project Agreements: The contractual documents which define the specific relationships between various parties.

Project Brief: The document that guides Proponents in the preparation of Binding Bids.

Project Delivery Option: The range of possible Delivery Methods identified for each Technical Solution - also referred to as 'procurement option'.

Project Director: The person with overall responsibility for delivery of the project and management of the Government Project Team, including external advisers.

Project Plan: The internal document, prepared in the PPP Business Case Development Stage, which details the process and timetable for development of the Project through to Financial Close.

Project Resource Plan: The internal document that outlines an estimate of the physical and financial resources required to deliver the project through to Financial Close.

Proponent: A respondent to a request for Expressions of Interest or an invitation to submit a Binding Bid. Typically, a Proponent will be a consortium of parties, each responsible for a specific element, (for example, constructing the Infrastructure, supplying the equipment or finance, or operating the business).

Public Interest Assessment: An assessment of the impact of the project on the following elements of public interest: affected individuals and communities; public access; equity; consumer rights; security; privacy; accountability and transparency, and effectiveness.

Public Sector Comparator (PSC): A financial model that estimates the risk adjusted whole of life net cost to Government of delivering the Reference Project.

Raw PSC: The base costing of the Reference Project. It does not include any allocation of value for risks and contingencies that may affect cash flows.

Reference Project: The most likely and efficient form of Public Sector delivery that would be used to satisfy all elements of the Output Specification.

Risk Allocation Matrix: A summary of all material risks associated with the project and Government's preferred (optimal) allocation of those risks.

Shortlisted Proponents: Proponents that have demonstrated that they have the technical and financial capabilities to deliver the service requirement as outlined in the Output Specification and who have been invited to submit a Binding Bid.

Steering Committee: The Committee established by the Agency that oversees the development of the Project. The Steering Committee will include the Project Director and a representative from IPT and Treasury.

Supporting Documents: Part of the suite of Guidance Material providing practical guidance on key technical issues which arise from the development and implementation of Public Private Partnerships in Queensland.

The Supporting Documents provide further detail on specific aspects of the Value for Money Framework, in particular:

- Risk Management;
- Project Resourcing;
- Probity and Process Governance;
- Contract Development and Management; and
- Business Case Development.

Technical Solutions: Range of asset alternatives and engineering possibilities identified that could possibly meet the service requirement.

Traditional Delivery: Government's delivery of the Reference Project using current best standards and practices. That is, non-privately financed.

Value for Money: If the PPP Project satisfies the Output Specification at lower cost to Government than the cost of Traditional Delivery then the outcome represents value for money.

Value for Money Framework: Processes for the creation of successful partnerships to develop Infrastructure facilities and related service delivery projects.

Whole of life cost: The costs associated with design, construction, operation, maintenance and refurbishment of the Infrastructure over the term of the project.

PUBLIC PRIVATE PARTNERSHIPS

FOR FURTHER INFORMATION:

INFRASTRUCTURE PARTNERSHIPS TASKFORCE

Department of State Development
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