Public Private Partnership

Comhpháirtíocht Phoiblí Phríomháideach

Interim Guidelines for the Provision of Infrastructure and Capital Investments through Public Private Partnerships:

Procedures for the Assessment, Approval, Audit and Procurement of Projects

Table of Contents

Introduction

1.1 Background and Other Relevant Guidelines

These Interim Guidelines are based on the existing "Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector" (hereafter referred to as the Guidelines for Capital Appraisal) which apply to all capital expenditure proposals including Public Private Partnerships (PPP). These guidelines should be read in conjunction with other guidelines on project delivery published by Department of Finance including the Framework for PPPs[1], the Procurement Green Book, the working rules for Cost Benefit Analysis, the State Authorities (Public Private Partnership Arrangements) Act 2002 and the National Development Finance Agency Act 2002.

1.2 Scope

The Guidelines for Capital Appraisal set out the major stages which must be undertaken for the appraisal and procurement of **all** public infrastructure projects. However, the complex nature of PPP procurement requires a number of additional subordinate steps within the existing stages. For each of these steps more detailed policy guidelines will be issued by the Central Public Private Partnership Unit of the Department of Finance (Central PPP Unit).

The pilot PPP programme provided a base in which the PPP approach was tested. Lessons have been learned from these initial pilot projects and more recent projects have benefited from these lessons. These Guidelines build on that learning for the benefit of future projects. The development of generic guidance is an iterative process and as further experience is gained in developing PPPs in different sectors further updating of existing guidance may be necessary.

The PPP Procurement Process

2.1 The Parties to the Process (Stakeholders)

Most projects involve the coming together and interaction of a number of interests and parties, and the Sponsoring Agency should consult with all of these stakeholders at appropriate points throughout the procurement process. Public Private Partnerships in particular may involve a very wide range of interests. These interests, and the relative novelty of the concept, make the actual procurement

[1] The Framework for PPPs was agreed by all the social partners and published by the Department of Finance in November 2001. This framework must be adhered to in all PPP projects.

process and the various stages involved more difficult to manage than conventionally procured projects.

This guideline note identifies from the outset the key public sector “stakeholders” in the PPP procurement process and their roles and responsibilities. For ease of reference and consistency, the titles and roles accorded to the parties, as far as practicable, are those used in the Guidelines for Capital Appraisal.

2.2 Some PPPs are stand-alone in that they relate to one particular project – for example the bundle of five post-primary schools. Other PPPs may be part of a Government approved programme of works – for example the Roads Programme being implemented by the National Roads Authority (NRA). There may also be exceptional projects from time to time, such as the Dublin Metro. While the parts played and the responsibilities borne by the various bodies involved in the PPP procurement process will vary depending on the nature of the project, the procedures to be followed and the overall responsibilities to be taken on, are regarded as similar for the purposes of these guidelines.

2.3 The main participants for the procurement of PPP projects are the Sponsoring Agency, Sanctioning Authority, Accountable Officer, Process Auditor, the National Development Finance Agency, Project Board, Steering Committee, the Central PPP Unit, the Interdepartmental Group and the Informal Advisory Group. Their roles and descriptions are:

- the ***Sponsoring Agency*** has overall responsibility for the planning and management of the project(s). It may be a Government Department, local authority, health board or other State body or agency. The Sponsoring Agency is responsible for all aspects of the appraisal and assessment of the project and for following national and EU procurement procedures;

- the ***Sanctioning Authority*** is the person or body with authority to sanction expenditure. It is responsible for determining and allocating the resources for specific projects. The level at which sanction is required usually depends on the scale of the proposal, the complexity of the issues, whether or not policy changes are involved and whether there are delegated sanctions in place. In some cases Government approval is required. In others, approval may be required from the Department of Finance, a line Department, a local or regional authority or its management, or the Board of a State Agency. Where an individual project is not covered by a delegated sanction, the Department of Finance Vote section, or in some cases the Government, is the Sanctioning Authority;

- the ***Accountable Officer*** is the person within a line Department or Office to whom sanctioning authority is delegated. This is usually the Secretary General of a Department or the Chief Executive Officer of a State Body;

- ***Process Auditor*** - A requirement of these Guidelines is that the Accountable Officer must appoint a person as Process Auditor who is independent of the reporting arrangements of the Project Board and who is answerable only to him/her. This requirement applies for all projects where the capital cost exceeds €20 million. For projects below this threshold the Accountable Officer may choose to appoint a Process Officer if s/he thinks it prudent to do so. Where the initial cost estimate for a project is lower than €20 million and a Process Auditor has not been appointed, one must be appointed immediately if it should become likely that the capital cost will exceed €20 million. Upon such appointment, the Process Auditor must be provided with a copy of all documentation referred to below, plus any other documentation which s/he may reasonably consider necessary to carry out his/her functions.

  The Process Auditor should be a person (internal or external) of suitable experience and standing who will work closely with the Sponsoring Agency / Project Board.

  The sole function of the Process Auditor is to certify, at each step, that the procurement process complies with all relevant EU, Department of Finance regulatory and administrative procedures and sector specific guidance as well as procedures stated by the Project Board.

  The Process Auditor will support the role of the Sponsoring Agency / Project Board by monitoring and assessing, all project related documentation created, issued and/or circulated under their auspice, for consistency and on a statutory basis andand to ensure that the process is compliant. The Process Auditor will assess and feedback his/her concerns to the Sponsoring Agency / Project Board before the documentation is circulated to a wider audience. All certificates of compliance should be made available to the Sanctioning Authority on request;

- ***National Development Finance Agency (NDFA)* -** A new Agency, the National Development Finance Agency was established on a statutory basis[2] on 1st January 2003. State Authorities must now seek the advice of the Agency on the best financing approach for projects. The Agency will assist the State Authority**:**
    - ❖ in evaluating financial risks and costs of infrastructure projects and facilitating them in availing of the best financing package for each project;
    - ❖ assessing optimal financing as between a private/PPP financing package, Exchequer or NDFA funding for infrastructure projects;
    - ❖ raising finance for projects (including certain PPPs), where this would be more cost-effective than private funding and, in respect of conventionally procured capital projects, where there are clear benefits offsetting any increased cost of Agency funding over Exchequer funding; and
    - ❖ creating special purpose companies that can raise project finance with guarantees, securitise revenues from projects with user-charging and receive land or other property assigned or transferred from State authorities for use in financing infrastructure projects.

State Authorities cannot appoint project specific financial, risk and/or insurance advisors. NDFA is the financial advisor to State Authorities and its advice must be sought in the following circumstances:

- o for major projects and grouped projects having a capital cost in excess of €20 million; and,
- o for projects with a capital value lower than €20 million where State Authorities require financial, risk and/or insurance advice.

In the delivery of their role NDFA must be informed of and entitled to representation at all finance, risk and/or insurance related project meetings and be supplied copies of all relevant documentation. All project related decisions

[2]National Development Finance Agency Act, 2002. Number 29 of 2002

will remain the responsibility of the Sponsoring Agency and Sanctioning Authority;

- ***A Project Board*** will be established by the Sponsoring Agency to manage the procurement of the project. This board will consist of members of the Sponsoring Agency, the National Development Finance Agency, as outlined above, and may also include representation from the Sanctioning Authority and the Department of Finance where required. The Process Auditor while not a member of the Board will attend all meetings as an observer and receive copies of all documentation circulated to the board members for his/her observations before issue/publication;

- a ***Steering Group*** will usually be required in the case of large-scale or complex projects, particularly where a number of bodies are interested in or involved with the project. The Steering Group will have responsibility for overseeing the implementation of the project. It should be chaired by a representative of the Sanctioning Authority and include representation from the Sponsoring Agency and/or the Department of Finance;

- the remit of the ***Central PPP Unit*** in the Department of Finance is to lead, drive and co-ordinate the implementation of the PPP process within and across Departments and Agencies. The primary role of the Central PPP Unit is the development of generic guidelines for the procurement of PPP projects, which in some cases requires the participation of experts from the Central PPP Unit on Steering groups / Project Boards in a variety of sectors and on projects of differing capital costs. The Central PPP Unit may also require access to project related documentation;

- the ***Interdepartmental Group*** will identify projects in the procurement process where lessons have been learned that can be passed on to the various interests, including Sponsoring Agencies and Sanctioning Authorities. These lessons will also feed into the policy-making process;

- the ***Informal Advisory Group*** is chaired by the Head of the Central PPP Unit in the Department of Finance with membership from IBEC, ICTU, the CIF[3] and relevant State Authorities. This forum facilitates discussion on PPP related issues and feeds into the development of PPPs in Ireland.

2.4 Examples of how the Sanctioning Authority, Sponsoring Agency, Steering Committee, etc., might be configured for different types of projects based in different State Authorities are set out in Table 1, below.

Table 1: Main Participants in the PPP Procurement Process

BODY	**PROJECT**		
	Schools	**Metro**	**Roads**
Sponsoring Agency	Department of Education and Science	Railway Procurement Agency	National Roads Authority
Sanctioning Authority	Department of Finance (Public Expenditure Division, Vote Section)	Department of Transport with the approval of Government	Board of the National Roads Authority
Accountable Officer [4]	Secretary-General, Dept of Education and Science	Chief Executive Officer of the Railway Procurement Agency	Chief Executive Officer of the National Roads Authority.
Process Auditor (PA)	The Secretary General appoints the PA. The PA reports directly to the Secretary General	The RPA CEO appoints the PA. The PA reports directly to the RPA CEO	The NRA CEO appoints the PA. The PA reports directly to the NRA CEO
Project Board	Officials of the Dept of E&S PPP Unit, Building Unit, Post-Primary Bch, D/F Central PPP Unit, NDFA [φ].	Railway Procurement Agency officials, NDFA[φ].	NRA representatives, NDFA[φ].
Steering Group	No group formed	Officials from the Department of Transport, Railway Procurement Agency, and D/Finance	NRA representatives, and officials from the Department of Transport and the D/F

EU Procurement

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[3] IBEC – Irish Business and Employers Confederation, ICTU – Irish Congress of Trade Unions, and CIF – Construction Industry Federation.
[4] Secretary General or equivalent in State Bodies
[φ] NDFA will be entitled to attend all project board meetings dealing with finance, risk or insurance matters.

3.1 Rules

The use of competitive tendering is a basic principle of all Government procurement procedures and should always be used unless there are acceptable and clearly justifiable circumstances. The full terms of the E.U. Directives will apply to the vast majority of PPP contracts. The public procurement procedure adopted must respect the general principles of the EU Treaties on which the public procurement Directives are based i.e. equality of opportunity, non-discrimination, transparency, mutual recognition, proportionality, right of establishment and freedom to provide a service. The restricted procedure as defined in the procurement Directives should be taken as the norm. In exceptional cases, the negotiated procedure may be considered. However, the Sponsoring Agencies / Project Boards should seek legal advice on any aspects of procurement where there is doubt, including the most appropriate procurement mechanism for each project. (The EU procurement procedures are currently under review and may have an impact on these interim guidelines).

3.2 Termination

On behalf on the Sanctioning Authority, the Project Board / Sponsoring Agency should retain the right to terminate the procurement process at any point prior to contract close while observing EU rules in relation to such action at all times. This position is consistent with traditional procurement. They must also retain the right to terminate the procurement process and commence a new procurement process using a non-PPP option if the submitted tenders fail to meet the Affordability Cap.

3.3 Communication

The Affordability Cap (see page 15 below) must be approved by the Sanctioning Authority before the Sponsoring Agency commences any project related communications with the private sector. Communication with the market to determine their interest in delivering that project may only occur in circumstances as outlined in the paragraph relating to optional market consultation on page 14. The Affordability Cap (page 15) and the Public Sector Benchmark (page 14), or any elements thereof, **must not be disclosed** to the tenderers. To do so could reasonably be expected to have serious adverse affect on the financial interests of the State. In general, for any project or similar procurement, the above information should not be released even after the completion of the procurement process. Where the use of a negotiated procedure[5] is permitted, the client should use the tender liaison meetings as a forum in which to discuss the tender's interpretation of the output specifications.

If the Affordability Cap is exceeded, or would likely be exceeded at any point during the procurement process, the Sponsoring Agency must immediately communicate this to the Sanctioning Authority, who may terminate the procurement.

3.4 Statutory Approval

Many projects require statutory approvals. These are obtained at various stages in the procurement process. Undertaking statutory approval procedures must be preceded by the determination of the Affordability Cap by the Sanctioning Authority and receipt of their approval to proceed with the procurement of the project. Where the Government has already approved a programme of projects (such as the roads programme) the statutory approvals process required for that project may commence, before or, in parallel with its procurement.

Main Elements of the PPP Procurement Process

4.1 Streams of Responsibility

The PPP procurement process is comprised of separate but interrelated elements, ranging from the initial assessment of a proposal and consideration as to whether it is suitable for a Public Private Partnership to final approval of a contract at the end of the procurement process. These separate elements form three distinct strands, or "streams of responsibility", within the steps set out in the Guidelines for Capital Appraisal. These are called the project assessment stream, the approval stream and the audit stream. A nominated party is responsible for the delivery of each of these streams.

4.2 Responsible Parties

A diagrammatic representation of the three colour coded streams, displaying how they operate within the Guidelines for Capital Appraisal is shown at Appendix 1. The responsibility for the delivery of each of these streams is as follows:

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[5] This procedure allows meetings between the client and the tenderers after the issue of the tender invitation and before the submission of the tender. During these meetings the tenderers supply an outline of how they interpret the client requirements identified in the output specification.

A. Project Assessment Stream

This stream has a number of steps and represents the majority of the work required to procure the project. The Sponsoring Agency / Project Board is responsible for all the steps within this stream.

B. Approval Stream

This stream involves a number of strategic decision points in the procurement process. These points are essential to enable the Sanctioning Authority to decide whether a project should continue as originally planned as a PPP or be procured as a non-PPP. Two of these decision gateways are (i) the decision to proceed and appoint client advisors to assist the project Board in the drafting of a detailed Public Sector Benchmark and (ii) the subsequent decision to set an Affordability Cap on the value of the project on receipt and approval of the Public Sector Benchmark.

C. Audit Stream

This is additional to the current requirements as outlined in the Guidelines for Capital Appraisal. A Process Auditor should be appointed for all PPP projects. This should be done as soon as it is decided to proceed with a project on a PPP basis (i.e. at Decision Point B1 outlined below). The Process Auditor is appointed by and reports directly to the Accountable Officer to monitor and report on the process, to represent his/her concerns and to ensure and certify at each step that the procurement of the project complies with all relevant regulatory and administrative procedures. The Process Auditor is independent of the reporting arrangements of the Project Board and is answerable only to the Accountable Officer. All documentation created, issued and/or circulated under the auspice of the Project Board will be used by the Process Auditor in monitoring and assessing whether the process is compliant.

4.3 Steps within the Streams of the PPP Procurement Process

Each of the PPP streams contains specific steps which must be followed in the correct sequence, as outlined in the diagram in appendix 1, in order to ensure the development of a robust, value for money project and the smooth operation of the overall process. The reference given with each step indicates the party responsible for its delivery and its order in that stream. These steps are:

A1 Preliminary Appraisal

In preparing the appraisal, the Sponsoring Agency should refer to the Guidelines for the Appraisal of Capital Projects[6] which requires the following actions:

- establish the business need;
- appraise the options for the delivery of the asset or service; and
- compile an assessment of costs and benefits .

A2 National Development Finance Agency Assistance

State Authorities must seek the advice of the Agency on the best financing approach for projects. In practical terms, the NDFA is the financial advisor for the State Authority/Procuring Agency and their advice must be sought for major projects and grouped projects with a capital cost in excess of €20 million. The majority of PPP projects will fall within this criterion. The NDFA will support the State Authority in all relevant procurement transactions. In the delivery of their role they are entitled to be represented at all finance, risk or insurance related project meetings and to be supplied copies of all relevant documentation.

A3 PPP Assessment

If it is decided to proceed with the project on the basis of the Preliminary Appraisal the Sponsoring Agency/Project Board must then determine the most appropriate procurement mechanism (The procurement mechanism for some projects may be determined by Government). The PPP Assessment addresses a number of key issues in detail some of which are:

- Has the Sponsoring Agency the statutory power or *vires* to enter into a PPP arrangement – that it is listed in the Schedule to the State Authorities (Public Private Partnerships) Act, 2002 or that its governing legislation gives it the power to enter into PPP arrangements?
- Does the project have the potential to deliver value for money if procured as a PPP?
- Is there the potential for third party income which will significantly reduce the level of Exchequer funding required?
- Which form of Public Private Partnership provides the greatest potential in delivering value for money for the Exchequer?

The NDFA will provide financial, insurance and risk analysis advice to State Authorities in order to assist in determining the most appropriate procurement

[6] See the Department of Finance Website *http://www.irlgov.ie/finance/publications/otherpubs/capexguide.htm*

mechanism. Detailed factors to be taken into consideration will be issued in separate guidelines.

B1 Approval to Proceed and Appointment of Client Advisors *–Approval Point 1*

If the assessment indicates that the project is appropriate for PPP procurement, the Sponsoring Agency supplies the Preliminary Appraisal and the PPP assessment to the Sanctioning Authority for approval to proceed. In deciding whether to grant approval, the Sanctioning Authority must take account of the priority of the proposed project in the context of the Authority's overall programme of expenditure. If the Sanctioning Authority approves the project, agreement is simultaneously given to the appointment of client advisors who will assist the Sponsoring Agency to compile a detailed Public Sector Benchmark. The PSB is a detailed estimate of the cost which would be incurred if the project were to be procured in the traditional way and represents a real alternative procurement option. As set out in the NDFA Act, the NDFA will provide financial, risk and insurance advice to the Sponsoring Agencies/Project Boards. They are to be the only advisors to the State Authority in regard to these matters.

C1 Process Auditor

The Process Auditor is appointed by, and reports directly to, the Accountable Officer to monitor and report on the process, to represent his/her concerns and to ensure and certify at each step that the procurement of the project complies with all relevant regulatory and administrative procedures such as EU and National, financial and procurement procedures and guidelines, the Central PPP Policy Guidelines, sector specific guidelines, and any appropriate instructions issued during the procurement process by the Sponsoring Agency/Project Board. The Process Auditor is independent of the reporting arrangements of the Project Board and is answerable only to the Accountable Officer. These documents will be used by the Process Auditor in monitoring and assessing consistency and whether the process is compliant.

Optional Market Consultation

The EU Procurement Directives provide for an optional Market Consultation Procedure in order to establish whether the market has an interest in, and the capacity to deliver, the proposed PPP project. As outlined in 3.3 above market consultation must not commence until the Affordability Cap is approved by the

Sanctioning Authority. In exceptional circumstances the Sanctioning Authority may approve early consultation with the market for an initial pilot project. For example, this might apply to a project of a size and complexity of a metro which attracts a different market sector than currently operating in Ireland. Market consultation does not commit the State Authority to the procurement of the project. Market consultation may be needed to:

- identify or clarify suitable options or solutions;
- determine the bankability of, and the market interest in the proposed project;
- evaluate the risks that will be transferred; and
- assess the private sector's willingness to accept the required degree of risk transfer.

Market consultation must end when a call to competition is published after which time no market consultation may be undertaken. As noted earlier the project advisors will provide specific advice on this.

A4 Public Sector Benchmark

The next step in the process forms part of the Assessment Stream. A Public Sector Benchmark (PSB)[7] is required to allow the Sponsoring Agency to validate the continuation of the procurement process. The PSB should consist of a comprehensive, detailed risk adjusted costing of the project elements using conventional procurement over the whole life of the project. This is similar in many ways to the Detailed Appraisal in the Guidelines for Capital Appraisal. However, the PSB focuses on whole life costs over the contract period and provides a detailed cost valuation of all risks (transferred and retained) within the project.

The Sponsoring Agency / Project Board and its advisors compile the PSB, which is derived from detailed output specifications. If necessary, a shadow bid may be used to assist in the determination of project cost – this may arise if there is no suitable benchmark data available to assist in the compilation of costs. While it may not be possible to estimate all costs to a high degree of certainty, it is essential that a best estimate is made and supplied to the Sanctioning Authority for use in setting an Affordability Cap (see below).

Upon receiving the PSB, the Sanctioning Authority should compare it with the

[7] The Public Sector Benchmark has some similarities with a Public Sector Comparator (as used in the UK) however, it also has a number of distinctive differences and therefore they should not be seen as interchangeable documents.

Preliminary Assessment outcome and satisfy themselves that the benefits of proceeding with the project outweigh the costs. Once agreed, the Public Sector Benchmark **does not change** throughout the procurement process. In exceptional circumstances the Sponsoring Agency may review the Public Sector Benchmark where non-market forces, external to the Sponsoring Agency (e.g. An Board Pleanala), cause or direct to be caused, changes to the project specifications which have a material impact on that project. Material changes to the Public Sector Benchmark will require a review of both the original cost-benefit analysis and the projects affordability as changes in the original specifications may affect the projects viability. The revised PSB will have to be re-presented to the Sanctioning Authority and receive a new approval to proceed with the procurement subject to a new Affordability Cap. The Central PPP Unit will provide more detailed guidelines on the structure and variables (e.g. the discount rate) for the PSB.

B2. Affordability Cap
- *Approval Point 2*

An essential element of the PPP procurement process is the setting of an Affordability Cap by the Sanctioning Authority. This is used in the evaluation of the submitted tenders. The Affordability Cap is the absolute limit on the outturn capital cost set by the Sanctioning Authority in respect of the project elements provided by the private sector party and included within the PSB. This Affordability Cap must not be exceeded by the Sponsoring Agency. The Affordability Cap will normally be the PSB submitted by the Sponsoring Agency and may include an agreed percentage margin. The margin will depend on the project and provides the Sponsoring Agency with an agreed range for manoeuvre. The PSB and the Affordability Cap, once agreed, **must not change** throughout the procurement process.

A cap may also be agreed on the level of annual payments, over the contract period and/or the Net Present Value of the private sector delivered elements of the project.

The Affordability Cap and the Public Sector Benchmark will both be used by the Sponsoring Agency and its advisors in the evaluation of tenders where they can contribute to an assessment of whether a project can deliver Value for Money for the Exchequer.

If at any point in the procurement process the project exceeds the Affordability Cap the Sponsoring Agency must immediately inform the Sanctioning Authority. On receipt of the notification the Sanctioning Authority must, following advice from the Sponsoring Agency:

- decide that the PPP procurement continues to offer value for money; or
- terminate the whole procurement process and abandon the project; or
- require the Sponsoring Agency to revert to a non-PPP option.

In line with existing policy for traditional procurement and policy approved by the Government for PPP procurement, the Sanctioning Authority / Sponsoring Agency must retain the right to terminate the procurement process at any point before contract close.

C2. PSB and Affordability Cap Recorded by the Sanctioning Authority

The PSB created by the Project Board and the Affordability Cap agreed with the Sanctioning Authority, must be fixed at this point, before tenders are invited. These documents should be recorded by the Sanctioning Authority and be made available to the Accountable Officer and the Process Auditor. These will form the basis for the evaluation of the submitted tenders and the Process Auditor will ensure that the project procurement is fully compliant.

A5. Procurement Process

At this point the Sponsoring Agency commences the procurement process by requesting expressions of interest from the private sector. This is followed by a pre-qualification evaluation and the issue of a tender invitation to the shortlisted consortia. The procurement process **must not** commence before the Affordability Cap is agreed by the Sanctioning Authority. Where the Government has already approved a programme of projects (such as the roads programme) the projects may commence the early stages of the procurement process in parallel with the compilation of the PSB, however, they **must agree** the Affordability Cap before they issue tender invitations.

When using the negotiated procedure the outstanding areas of negotiation should be strictly defined in order to reduce scope for re-opening of issues already agreed. The Central PPP Unit will issue standard contract clauses for insertion into PPP contracts. Where contract terms have been standardised under guidelines issued by the Central PPP Unit or individually agreed with them, then these guidelines must be adhered to and cannot be renegotiated.

Sponsoring Agencies will be aware that some projects may require an additional step in the procurement process: the Best and Final Offer (BAFO). This step will arise mainly in respect of very large or complex projects.

A6 Tender Evaluation

The Project Board will identify the most appropriate evaluation criteria for its project which will be made available to interested parties in line with the requirements within the Directives. These criteria must be used to evaluate the submitted tenders and select the preferred tender or a short-list of tenders if using a BAFO stage.

A7 Value For Money Comparison

This exercise, undertaken by the Sponsoring Agency/Project Board, evaluates the preferred tender/s against the Public Sector Benchmark and the Affordability Cap to ensure that the selected tender/s deliver value for money for the Exchequer over the contract life. Using criteria supplied by the Central PPP Unit[8] they will evaluate all elements of the preferred tender including contingent liabilities against the PSB and Affordability Cap. Where use of the negotiated procedure is permitted the submitted/preferred tender/s may wish to take more or less risk than anticipated in the PSB. This stage allows any variations (e.g. risk, VAT and Capital allowances) in the submitted/preferred tender/s to be accurately compared with the PSB. The Project Board / Sponsoring Agency must then decide whether to proceed with, postpone or terminate the PPP process. Once terminated, the Sponsoring Agency may commence a new procurement process using a non-PPP option. Another value for money comparison will be required on the BAFO tenders if a Best and Final Offer stage is used.

A8. Contract and Financial Close / Award of Contract

When all issues are agreed the signing of the contract marks the point where the construction process starts and the public sector outturn costs[9] are set and sealed

[8] The Central PPP Unit in the Department of Finance will be issuing generic guidance on all aspects of the procurement of PPP projects. Sector specific guidance for the technical elements of these projects should be developed by the relevant Line Departments/Agencies.

[9] The Public sector outturn costs here relate to the cost of the services to be provided by the private sector under the contract. Other project related costs such as the costs associated with compulsory purchase orders and planning risks are retained by the public sector and not included within this figure.

for the duration of the contract. The Sponsoring Agency should provide hard and electronic copies of the documentation to the Sanctioning Authority, the Process Auditor, the NDFA and if requested, to the Department of Finance.

Post Project Review

A comprehensive post project review should be undertaken as soon as contract close is reached. The aim of this review is to conduct a variance analysis of the public sector outturn costs of the project in comparison to the initial budgeted costs and the Public Sector Benchmark. This should be done for each material budget heading.

In the event that the private sector costs are made public after the construction phase and these differ significantly from the public sector outturn costs, then, any verifiable cost differences between the public sector outturn costs and the private sector costs should be reflected in the database. This should ensure that the database will reflect market conditions.

Each sector must maintain a cost database which should be used when benchmarking costs for future projects and in the compilation of future Public Sector Benchmarks. This exercise should be used to inform and update this database with the latest available information. It will also inform on other non-financial elements of the procurement where these lessons can be fed into the Central PPP Unit and the Interdepartmental PPP Group for dissemination to PPP's in other sectors. A detailed exercise undertaken here is invaluable for future projects.

The review should be carried out by a party in a position to write an objective assessment and should be presented to the Secretary General or equivalent in State Bodies, the Sanctioning Authority, the Sponsoring Agency and the Department of Finance.

Implementation - Issues and Implications

5.1 Timescale

To give immediate effect of the guidelines, all Project Boards / Sponsoring Agencies should arrange for the appointment of Process Auditors to monitor and report on the existing PPP projects in their areas. Projects currently in procurement should, where feasible, avail of NDFA expertise to assist in settling on the final form of any financial package.

5.2 Implementation

There are already a number of PPP projects in various stages of procurement and it may not be possible to apply these interim guidelines in full to all these projects. The indents below follow the indicative breaks in the procurement process and denote the elements of the guideline which should be adopted for the remainder of the procurement process.

- **Before Tender Invitation**: In the case of projects where the procurement process is underway but has not reached the stage of issuing a tender invitation, the PPP process set out in this guideline should be applied from the compilation of the PSB (step A4) through to contract close.
- **Between Tender Invitation and Submission:** Where a tender invitation has been issued but tenders have not been returned. A PSB should be compiled and used by the Sponsoring Authority/Project Board in the evaluation of the submitted tenders.
- **After Submission of a Tender:** These projects have essentially progressed through the main stages of the procurement process. An evaluation and review of the projects should be carried out. Benchmark information should be assembled and provided to the Sponsoring Agency to assist in the costing and assessment of future projects.

5.3 Delegated Sanction

New arrangements have recently been put in place to facilitate a structured approach to planning capital investment programmes on a five-year rolling basis. The Minister will be evaluating the mix of Exchequer and private/NDFA funding for these programmes and will be issuing approval for an investment envelope on this basis (in the case of Agencies this will be evaluated by the relevant Department). The recent Department of Finance circular on Public Private Partnerships and the National Development Finance Agency ref.: S430/10/03 should assist State Authorities in their evaluation of the mix of funding their programmes require and how this impacts on their investment envelope. It is a matter for each Department to check the status of the PPP project in this respect with the appropriate Vote section.

5.4 General Government Balance

A simplified example of what impacts on the General Government Balance and the General Government Debt is outlined in circular S430/10/03. This circular also states that in accordance with EU rules, the Minister intends that non-Exchequer funded projects, whether funded through private sector finance in the PPP context, or through the NDFA, which:

- transfer the main risks to the private sector; and
- are funded through user charges, with no subsidy or guarantees, direct or indirect

will be outside the investment envelope once it is clear that they will not impact on the General Government Balance.

It is recognised that the concept of what falls on the GGB in investment terms is not straightforward. The Department of Finance has established a small standing group of officials from the Department of Finance, the Department of the Taoiseach, the CSO, the NDFA, the Departments of Education and Science and Transport, and has appointed an independent expert to advise Departments on the General Government Balance implications of private sector/NDFA financed projects and generally to assist the Central Statistics Office in its statistical work on this matter.

5.5 Further Guidelines

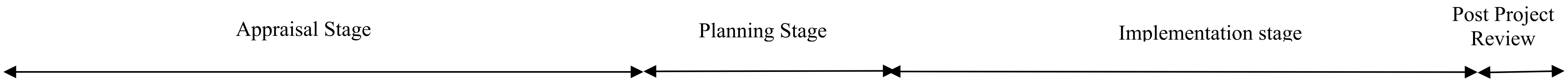
Further and more detailed guidelines will be provided on each stage of this procurement process. These more detailed guidelines will be issued by the Central PPP Unit and submitted to the Inter-Departmental Group and the Informal Advisory Group on PPPs (which includes the Social Partners) for consultation.

Appendix 1 – PPP Procurement Steps

PPP procurement steps integrated into the Guidelines on the Appraisal of Capital Expenditure Projects

	Stream	Responsible party
A	**Project Assessment**	**Sponsoring Agency / Project Board**
B	**Approval**	**Sanctioning Authority**
C	**Audit**	**Process Auditor / Sponsoring Agency**

Guidelines on the Appraisal of Capital Expenditure Stages



Public Private Partnership Steps within the Capital Expenditure