Consultant's Report

Project Number: 49166-001

People's Republic of China
TA 8940: Municipality-Level Public–Private Partnership (PPP) Operational Framework for Chongqing

PPP Project Cycle Checklists and Forms

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Asian Development Bank

PPP Project Cycle:

Checklists and Forms

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Abbreviations and Acronyms

Abbreviation	Term
BOOT	Build, own, operate and transfer
D&B	Design and build
DBFM	Design, build, finance and maintain
DBFO	Design, build, finance and operate
DCM	Design, construct and maintain
EOI	Expression of Interest
IRR	Internal Rate of Return
MOF	Ministry of Finance
PPP	Public-Private Partnership
RfP	Request for Proposals
RfQ	Request for Qualifications
VfM	Value for Money

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1 Introduction

The People's Republic of China (PRC) is actively encouraging private investment in infrastructure, and a major part of this is building up a Public-Private Partnership (PPP) program at both the national and provincial levels. In line with this, the Asian Development Bank (ADB) is supporting the municipality of Chongqing to develop its own PPP program. The ADB has since hired Castalia to help develop tools for the preparation and management of PPPs to guide Chongqing in this process.

This paper describes the PPP cycle from development of the business case to contract management. A number of useful checklists and template forms are provided in the Appendices.

A note on terminology

There are many alternate institutional arrangement to undertake tasks in the PPP cycle. For simplicity, this documents directs task to the "Implementing Agency (IA)"—the Department, or other municipal government agency responsible for the particular infrastructure service the PPP project is designed to provide. In other countries, these tasks may be done by any combination of the IA, external advisors, and the PPP Unit (if it exists).

There are also many alternate institutional arrangement for approving PPP projects throughout the PPP cycle. For simplicity, this documents directs task to the "government oversight agency or Unit"—the central municipal Department responsible for overseeing economic development and approving large infrastructure projects.

2 PPP Cycle Overview

All PPPs are to be developed and implemented through the process described in this section. As illustrated in Figure 2.1, this process consists of four Stages: Project Identification, Business Case, Transaction, and Contract Management. Each Stage is made up of a series of defined tasks. At the end of each Stage, projects should be reviewed and approved to proceed to the next Stage. This section describes each Stage and its tasks, and the criteria on which approval of the projects will be based.

2.1 Stages of the PPP Cycle

PPP projects will progress through four Stages of development as shown in Figure 2.1. The purpose of each of the four Stages, and their key tasks, are summarized below.

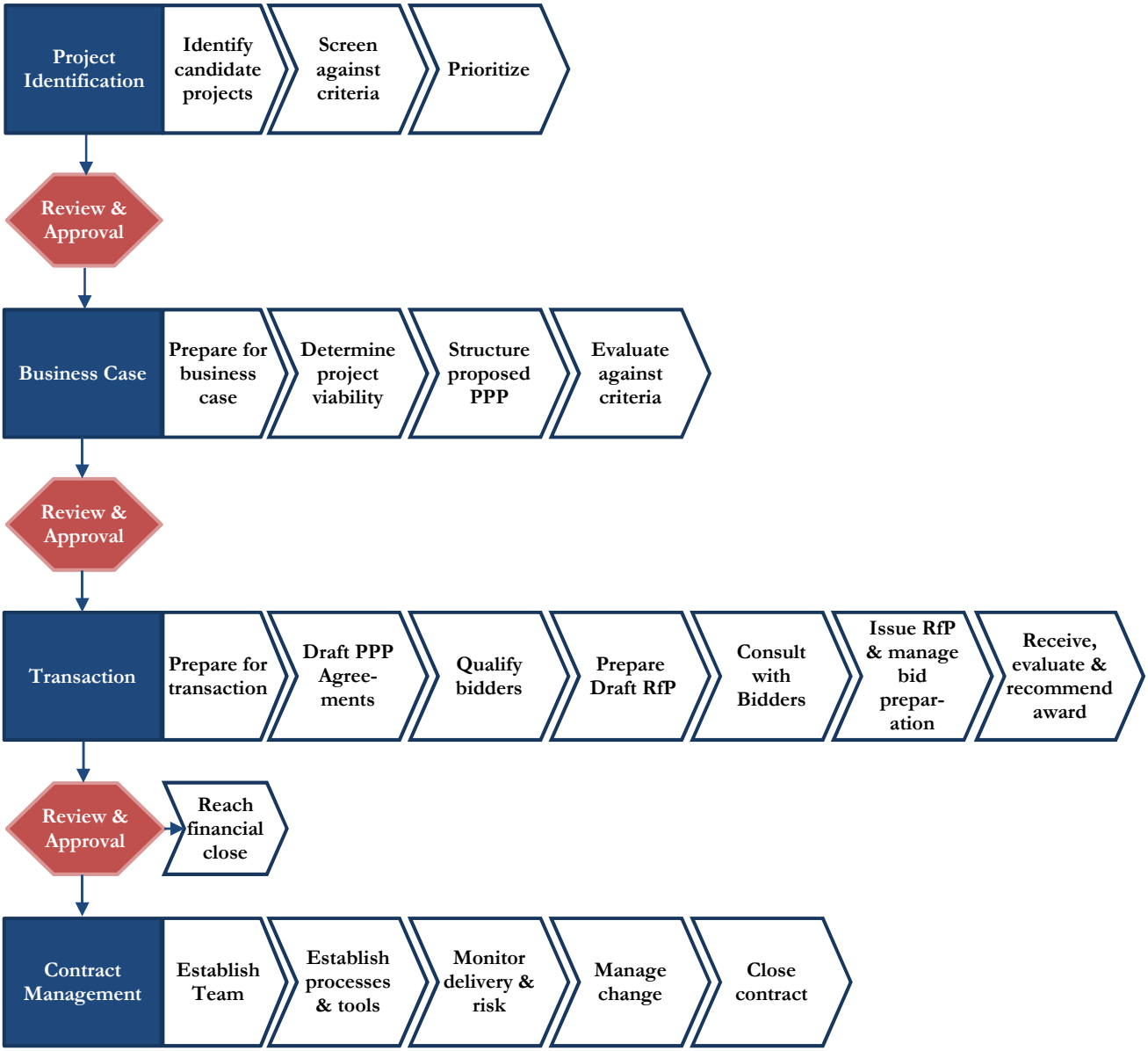
Project Identification Stage—The purpose of this Stage is to find those assets and services—existing or planned—where value for money could possibly be increased if they were done as PPPs. IA will be asked to identify and scope potential projects and submit them to the Unit for screening. Oversight government agencies may also proactively identify projects which, from a strategic perspective, may be desirable to do as PPPs. The projects identified will be screened against criteria, including their probable viability, value for money, fiscal impact, and marketability, and then be prioritized.

Business Case Stage—is the development of a thorough report on the candidate project (the "Business Case"), which will be submitted to the government oversight agency for approval to proceed with procuring the project as a PPP. The purpose is to ensure that only good PPPs are developed. In preparing the Business Case, the IA will check that the project itself is viable (technically, economically, environmentally and socially). They will also determine that the project is best delivered as a PPP—that is, that the project will be attractive to the market, the PPP model creates value for money, and is fiscally responsible. If the analysis does not show these things, then the project will be dropped from the PPP List. This Stage is described in section 3 of this Manual.

Transaction Stage—is when bidders are actually requested for the project, qualified, and then invited to bid. The purpose of this Stage is to promote competitive bidding by well qualified firms, so as to deliver value to the public. The IA will draft the PPP Agreements, qualify bidders, draft the Request for Proposals (RfP), consult with bidders, issue the RfP, evaluate bids and recommend award. This Stage continues past bid evaluation to include negotiation (if needed), contract signature, and financial close. This Stage is described in section 5 of this Manual.

Contract Management Stage—with the closing of the transaction, the PPP itself is just starting. This Stage is where the government needs to ensure that the promises in the contract are delivered, and that new events are responded to intelligently. The IA will establish the Contract Management Team, and the process and tools for managing the Contract. The Contract Management Team will monitor PPP delivery and risk, manage change, and close the contract. This Stage is described in section 6 of this Manual.

Figure 2.1: PPP Process Overview



2.2 PPP Project Reviews

The PPP cycle should include at least three review and approval points:

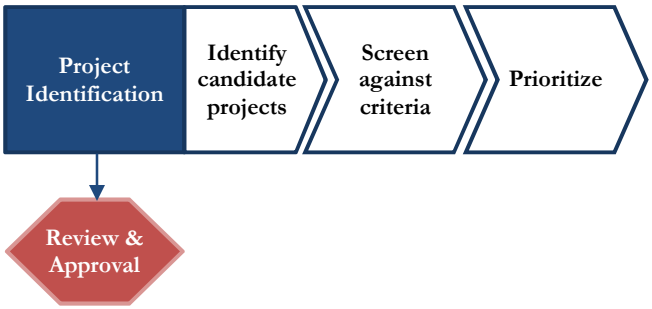
- **After the Project Identification Stage**—to approve the list of candidate PPP projects
- **After the Business Case Stage**—to approve moving forward to the Transaction Stage to procure the proposed PPP
- **Before the contract is signed in the Transaction Stage**—to approve the parameters of the final deal.

Projects should be reviewed against the PPP Criteria—standards that a candidate project must meet to be developed and implemented as a PPP. The assessment will be quick and approximate at the Identification Stage, with the in-depth analysis reserved for the Business Case. Finally, before a PPP transaction is closed it will be checked to ensure the final PPP Contract meets the criteria. This evaluation will form the basis of project approvals.

There are four main PPP Criteria:

- **Project is viable**—the underlying project makes sense, in that it is effective in meeting government objectives, technically and legally feasible, environmentally compliant, socially sustainable, and economically viable
- **PPP achieves value for money**—procuring the project as a PPP will provide greater net benefit than conventional public procurement
- **PPP is marketable**—there are qualified private parties available to do the project and the project is expected to provide a commercial rate of return sufficient to attract such parties and create competitive tension
- **PPP is fiscally responsible**—the project's cost to government is in line with fiscal priorities, and project risks retained by the government would not be fiscally destabilizing.

3 Project Identification



The PPP Cycle begins with the Project Identification Stage. This Stage is described in a separate guidance note—*PPP Assessment and Prioritization*—and thus merely summarised here.

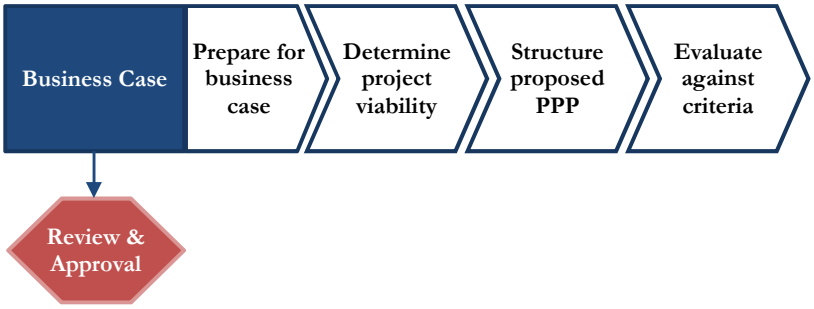
The purpose of this Stage is to identify projects likely to deliver value for money as PPPs, and recommend that such projects proceed to the Business Case stage.

The Project Identification Stage consists of the following relatively high-level tasks:

- Project Profile-what are the basic characteristics of the project being proposed and evaluated?
- Strategic Importance-does the project align with national strategic interests, and sector development plans?
- Initial Feasibility-can the project be implemented based on technical, legal, social and environmental constraints? Are there any red flags?
- Economic Feasibility-is the project expected to produce net economic benefits.
- Financial Feasibility-is the project expected to be financially viable and financeable as a PPP?
- Fiscal Impact-if the project is not independently financially viable, what are the estimated fiscal costs and are public resources available?
- Project Complexity and Preparedness-what is the likely timeline and likelihood for project completion based on the complexity of the project; the stage of project preparation; and, the capacity of the municipality of Chongqing, project proponent and related agencies?

After these tasks have been completed, the potential PPP(s) and prioritization should be reviewed by a municipal government oversight agency.

4 Business Case



A "Business Case" is a detailed proposal that summarizes the project's key features (such as outputs and major risks), the results of all necessary research and analysis, and the proposed structure of the project as a PPP.

In the Business Case Stage candidate projects will be developed and evaluated in detail. The project will only move forward if the Business Case demonstrates that the project is viable, likely to achieve value for money, and fiscally responsible. The purpose of this Stage is to provide the government oversight agency with well-informed recommendations on which projects should proceed to the Transaction Stage to be procured. This section describes the four tasks that will be done to achieve this.

4.1 Prepare for the Business Case

Developing a Business Case is a complex, and often costly, process. The purpose of this preparation task is to ensure the IA is fully equipped to develop a quality Business Case in an efficient and thorough manner. It involves:

- **Assembling necessary resources.** The IA will initiate the Business Case Stage by assembling the necessary resources. The IA will check that funding for the Business Case Stage is available and approved. IAs typically engage external advisors (including economic and financial, technical, and legal advisors) to assist with the business case.
- **Developing a Project Plan.** The Project Plan lists all the tasks required to develop, evaluate, procure, and implement the project, and the estimated time frames for their completion. 0 provides a useful template for a Project Plan.
- **Developing a Communication Strategy.** The IA will use a Stakeholder Analysis Matrix—similar to the template shown in Appendix C—to assess stakeholders and draft a Communication Strategy for the project. The Communication Strategy should include:
  - Indicative dates and venues for consultations
  - An outline of communications materials
  - A media campaign strategy.

4.2 Determine Project Viability

The IA will determine if the underlying project is viable—that is, whether the project itself is practical, beneficial, and could be successfully implemented. Determining if the project would be viable is different from determining if the project would be viable *as a PPP*, which will be assessed later as part of structuring the candidate project as a PPP.

The IA will use Part 1 of the Project Assessment Checklist, shown in Appendix A, as a guide for completing this task. The IA will check that information submitted at the Project Identification Stage is up to date, and facilitate the completion of necessary studies.

If a project does not meet the viability criteria it will not be developed further.

4.3 Structure Proposed PPP

After determining that the candidate project is viable, the IA will structure the candidate project as a PPP. The objective of this task is to design a structure for the PPP that maximizes value for money. Structuring the PPP involves four closely linked elements discussed below.

Specifying outputs

Specifying the outputs desired from a project—rather than prescribing inputs—is a key difference between PPPs and conventional public provision. In conventional public procurement, the private contractor is required to build to a particular design using specified materials. In a PPP contract, the private party should be required to provide services or facilities that meet certain standards, and be given freedom to determine *how* to meet those standards, and to choose the inputs needed to do so. This creates opportunities and incentives for private sector innovation.

The desired outputs will need to be specified in clear and measurable terms, so that provision of the outputs can be made an obligation of the private party in the PPP contract. The specifications should be clear enough that they can be the basis for payment, penalty, and bonus provisions in the contract.

Allocating functions

'Functions' are the actions which need to be done to deliver the facilities or service. These will vary from case to case, but will typically include some or all of the following six functions: design, build, operate, maintain, rehabilitate, and finance.

The IA should first *identify* the major functions that need to be performed in delivering the project. Then it should recommend how to *allocate* those functions in a way that will maximize value for money.

Generally, this means allocating functions to maximize:

- Expertise in performing that function.
- Incentives to perform well.
- Powers required for the function. The result of this analysis should be an indicative view of who should do what under the PPP.

Allocating risks

When functions have been allocated using the above principles, they will carry with them some 'natural risks', that the IA will have been implicitly taking into account when maximizing incentives—for example, the allocation of the construction function naturally carries with it the risk of construction-cost overruns. The IA will now fine-tune the broad risk allocations implicit in the allocation of functions.

This involves identifying all material risks in the project. Appendix E provides a useful checklist of common risks. The IA then needs to allocate these risks between the government and the private party. This risk allocation should be summarized in a risk allocation matrix like the template provided in Appendix D. Risks should be allocated to maximize value for money. Generally, this means allocating risks to the party best able to:

- **Manage** the likelihood of the risk eventuating—the IA will first look to allocate risks to the party best able to manage the likelihood of the risk eventuating.
- **Mitigate** the impact of the risk on project outcomes if it eventuates—where a risk cannot easily be managed by either party, the IA will allocate risks to the party best able to mitigate it. Mitigating a risk involves anticipating its occurrence, and responding to it in a way that minimizes damage.
- **Diversify** the cost of absorbing the risk—where a risk cannot be well managed or mitigated by either party, the IA will allocate risks to the party best able to absorb the risk at lowest cost, by being able to pass on more of the cost of bearing a risk (through higher user fees or third party insurance), or spread the cost of bearing the risk among a large number of people or a large range of other assets.

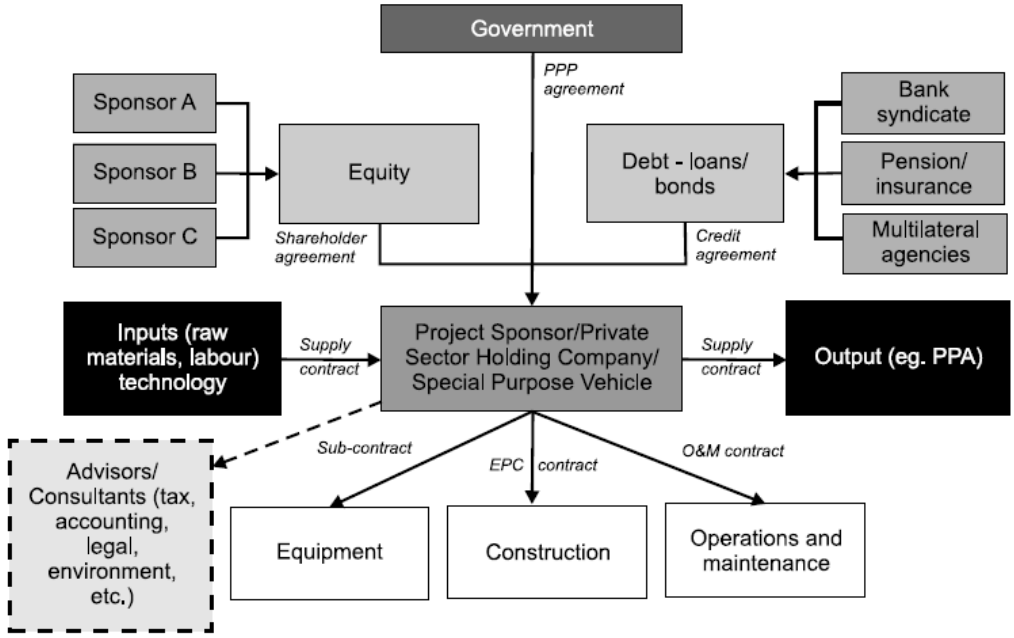
There are two further aspects that should be considered before the risk allocation is finalised:

- **The overall level of risk for each party**. The IA should consider if the overall level of risk to be accepted by the private party would be prohibitively costly (require a higher risk premium to finance than the government values the private party taking on that risk) or discourage private parties from bidding. In such situations, the IA could consider re-balancing the allocation of some shared risks, or otherwise reducing the overall risk profile a private party would be expected to bear
- **The symmetry of shared risks**. Not all uncertainty in projects is negative—'upside benefits' can increase the profitability of the project in unforeseen ways. 'Symmetrical' provisions in risk allocations create entitlements to upside benefits, as well as liabilities from materialized risk. When the government shares the downside of a risk, it may also be desirable for it to share in any upside that materializes (such as traffic risk on a toll road).

Outlining the legal and financial structure

This involves developing an initial picture of the legal and financial arrangements that will achieve the desired allocation of functions and risks. An example of a standard structure for a simple Design, Build, Operate, Manage and Finance (DBOMF) project is shown in Figure 4.1 below.

Figure 4.1: Example Legal and Financial Structure for DBOMF project



Source: Young, HK (2010) Public-Private Partnerships Policy and Practice: A Reference Guide. Commonwealth Secretariat

4.4 Evaluate Proposed PPP against Criteria

In this task, the IA will assess if it makes sense to do the candidate project as a PPP (as opposed to as a conventional public sector project). Having already determined the candidate project is viable (section 4.2), the IA will evaluate the proposed PPP structure against the remaining three PPP Criteria. The IA will use Parts 2-4 of the Project Assessment Checklist, shown in Appendix A, as a guide for completing this task.

Value for money

The IA will determine whether the net economic benefit from the project is higher if it is done as a PPP rather than as a conventional public project. Where a PPP does not meet the criteria, the IA may propose altering the PPP structure, doing the project through conventional public provision, or not doing the project at all.

Marketability

The IA will conduct a market sounding to determine if the proposed PPP would be marketable—and therefore likely to be successful if taken out to bid. Market sounding involves seeking feedback from the private sector to determine if the proposed PPP meets the following criteria:

- **The proposed PPP is a viable "commercial project"**—that is, if the private sector views the proposed PPP's key features (such as the required outputs, project timetable, site or facility) and commercial principles (including the function allocation, expected cash flows, allocation of major risks, and payment

mechanisms) to be reasonable, and sufficient to justify potential investment. The key determinant of the commercial attractiveness of the project will be the likely returns to investors that the project will generate, compared to the risks involved

- **The market has sufficient capacity and appetite for the proposed PPP**—that is, there would be enough private sector interest in the PPP to create competitive tension amongst private parties with the expertise and financial resources to deliver the project. This is critically important because competitive tension is what typically drives value for money outcomes.

Private sector feedback can also be used to identify potential problems and constraints and consider changes to the proposed PPP that may increase the interest of potential bidders (while still serving the public interest).

Fiscal responsibility

A proposed PPP project may otherwise provide value for money, but still not be responsible for the government to undertake. Therefore, the IA should also evaluate whether:

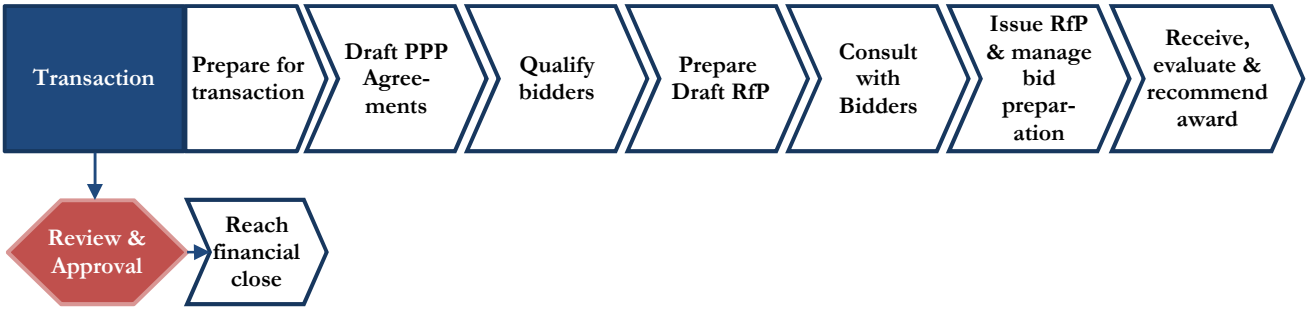
- The likely cost of government support would be affordable: The IA will assess the amount of government support required against fiscal priorities.
- Fiscal risk would not be fiscally destabilizing. The IA will assess the fiscal risks the government will accept under the proposed PPP to determine if any could be fiscally destabilizing—that is, require the government to make difficult and unexpected changes in fiscal variables (such as materially increasing debt or taxes, or suffering a drop in its credit rating). To do this, the IA will assess the expected cost to government under different scenarios, including (at minimum) the "worst-case" scenario—that is the maximum possible cost to government.

Generally, the IA would submit their assessment to the Ministry of Finance for further review against the national budget, liability portfolio, and fiscal priorities.

4.5 Submit for Review and Approval

The IA will generally need to submit the Business Case to a municipal government oversight agency for approval. The Business Case will need to explain how the project meets the PPP Criteria of viability, VfM, marketability and fiscal responsibility, and provide evidence in line with the Business Case evaluation checklist in Appendix A.

5 Transaction



The purpose of the Transaction Stage is to procure the PPP in a way that promotes competition, efficiency, probity, and transparency. This section describes the eight tasks the Project team will complete to achieve this objective, namely:

5.1 Prepare for the Transaction Stage

The purpose of this task is to ensure the IA is fully equipped to successfully procure the PPP. This involves updating the Project Plan (Section 4.1) and engaging transaction advisors.

The IA should also create and complete a checklist to ensure it is ready to proceed with the Transaction. Typical items to check include:

- Are the conclusions of the business case still relevant?
- Is the list of tasks outlined in the Project Plan comprehensive?
- Is the scope of the tasks outlined in the Project Plan appropriate?
- Have members of the IA or advisors with the necessary qualifications been identified to complete each task?
- Is the timing of tasks realistic?
- Does the Communication Strategy for the project need to be updated?

5.2 Draft the PPP Agreements

The PPP Agreements include:

- **The PPP Contract**—the main contract between the public sector and the private party, that specifies:
  - The outputs the private party is to provide
  - How the private party will be paid—for example, what fees the private party is able to charge users, or payments that will be made by the government
  - Provisions for monitoring the arrangement, penalties, dispute resolution, and termination arrangements
- **Other associated agreements** that may be required in addition to the PPP Contract, depending on the project, such as:

- *An Implementation Agreement*—this may specify the responsibilities of the government to support the project—for example through land acquisition, duty waivers, assistance in ensuring that a statutory corporation delivers on its responsibilities, and so on
- *Financing Agreements*—if the project is entirely privately financed, then financing agreements are not necessary. However, where government is involved in providing some of the finance, it will need to draft a Financing Agreement governing the terms on which the finance will be provided, and how it will be repaid
- *Guarantees*—The government may also provide guarantees, for example to the lenders to the project. Where guarantees are necessary, it will be a good idea to draft the legal documents for them at the same time as the other agreements.

The PPP Agreements will specify the rights and obligations of the private and public parties under the PPP arrangement. The IA will ensure these agreements are drafted in way that is enforceable, and properly reflects the structure developed and approved at the Business Case Stage. To do this, the IA should work with a legal advisor skilled in PPP contracts and the sector.

5.3 Qualify Bidders

Generally, the IA will pre-qualify bidders for PPP projects, and invite only prequalified bidders to respond to the RfP. Pre-qualification of bidders is recommended because it ensures that bids are only received from well-qualified parties. Additionally, bidders are likely to invest more in their proposals when there are a limited number of comparable bidders.

To pre-qualify bidders the IA will:

- **Set the bidder qualification process and criteria**. This includes setting the timeline for pre-qualification and developing the qualification criteria that bidders will be evaluated against.
- **Develop the Request for Qualification package**. This should include the following elements:
  - Project Brief—a short description of the opportunity
  - Qualification criteria—as approved by the Enterprise Team
  - Instruction to interested parties—setting out the timeline, and where and how interested parties are to submit their qualifications
  - Template forms to be filled out—standard forms that request applicants provide specific information on one or more of the qualification categories
  - Rules governing the process—including the prohibitions on collusion and other undesirable practices, exclusion of government liability, and government freedom not to proceed with the process.
- **Market the opportunity**. This could include: putting advertisements in the local paper, seeking to get the opportunity written up in the international trade press, paying for advertisements in the Financial Times or similar international

publication, listing the project on various online portals, or presenting the project at a pre-qualification meeting

- **Short-list qualified bidders**. This involves evaluating and scoring applications using the criteria and evaluation method set-out in the RfQ.

5.4 Prepare Draft RfP

In this task the IA will prepare the Draft Request for Proposals (RfP). This involves setting the evaluation criteria and process, and then assembling the package of documents that make up the RfP.

- **Developing the process by which bids will be evaluated**. Generally, it will be desirable to use a three envelope system that includes the following steps: Restatement of Qualifications—Technical Proposal—Financial Proposal. Each of the above will be submitted by the bidder in a separate envelope. The content of each envelope should be evaluated for all bidders, before the next set of envelopes in the sequence is opened. If any bidder fails to pass the criteria on either of the first two envelopes, its bid should be rejected at that point, and its remaining envelopes sent back unopened.
- **Developing the bid evaluation criteria**. These will include:
  - The technical evaluation criteria—for such items as the proposed methodology, implementation structure and management team, and how the technical criteria will be scored
  - The financial evaluation criteria—these may be the maximum price offered for the asset, the least subsidy required, or the lowest user charge or availability payment

  At this point Proposal Templates should be created, to guide bidders and ensure that the information supplied in the bids is sufficient to allow evaluation against the criteria.
- **Establishing how bids are to be received**. This includes specifying:
  - Requirements for bid submission—this includes setting the format, delivery method, and deadline for submitting proposals
  - Rules for bid handling—arrangements need to be made to ensure that the bids are held securely, and cannot be leaked or tampered with. The rules for bid handling and opening should be written down at this point.
- Assembling the complete package of documents that form the RfP:
  - Information Memorandum—which should include a description of the commercial principles the project; as well as the departments, units and other private and public actors with whom the private party will have to interact
  - Draft PPP Agreements
  - Evaluation Criteria and Process
  - Instructions to Bidders—that is, the rules governing the process, including: when and how bids need to be received; prohibitions on collusive and corrupt

practices; and reservation of the governments rights to alter the process, or refuse to accept any bid, at its discretion

- Proposal templates—setting out the information requirements and structure for the proposals

5.5 Consult with Bidders

Before requesting proposals, the IA will consult with prequalified bidders on the Draft RfP and incorporate their feedback into the Draft RfP, as appropriate. The purpose of such consultation is to:

- Identify and address problems early on
- Increase bidder confidence in the quality of the project and process
- Allow for changes to the draft contract and transaction design to be made at the start of the bidding process, if justified, thus reducing the need for changes during bidding or in post-bid negotiations.

In setting up bidder consultations, the IA should be aware of the risk that bringing the bidders together in one place could reduce competition or facilitate collusion, and balance this risk against the desirability of open discussions with all bidders to meet the above purposes. How these consultations should be conducted, and the responses received incorporated into the final RfP is discussed in the sections below.

- Conduct consultations. Bidder consultations should include:
  - Providing bidders with the Draft RfP Package
  - Facilitating site visits for bidders
  - Holding a pre-bid conference in which officials will brief prequalified bidders on the project, the Government's objectives and commitments.
  - Incorporate feedback into the Draft RfP
- After the bidder consultations, the IA will analyze bidder comments, and recommend changes to the Draft PPP Agreements or other aspects of the Draft RfP.

5.6 Issue RfP and Manage Bid Preparation Period

The IA will ensure the RfP has been finalized with any changes from the bidder consultation, and should be satisfied the RfP meets the PPP Criteria for the Transaction Stage. The RfP is then issued to the prequalified bidders.

Bidders will have a defined time in which to prepare their bids—for example 3 months. During this time, the IA needs to manage interactions with the bidders. This will involve providing information, and responding to requests for clarification or change to the PPP Agreements or RfP.

5.7 Receive Proposals, Evaluate and Recommend Award

At the close of the bidding period, proposals will be received. These proposals will then be evaluated, and a recommendation made to the government oversight agency on the preferred bidder.

5.8 Reach Financial Close

Once the preferred bidder has been selected and approved, there are still a number of important steps to complete before the private party can start working. The IA will need to ensure that the contract is negotiated and signed—ideally with the preferred bidder. Further, the IA will need to facilitate a number of additional tasks required for financial close.

Negotiate and sign contract

If not all contract details were agreed on through the tender process, the IA will negotiate the final terms of the PPP Agreements, in accordance with the scope of negotiation approved by the government oversight agency. While extensive negotiation can undermine the competitive tender process, some level of negotiation may be necessary or helpful, to:

- Clarify specific elements of the contract
- Adjust the contract to what the bidder indicated in its proposal that it was willing to accept
- Help to ensure that the project meets the requirements of lenders.

Competitive tension should be maintained during any significant negotiations. Therefore, it will generally be a good idea for the IA to conduct parallel negotiations with the first and second ranked bidders, or to at least keep the second ranked bidder interested and available. This allows the Government to see if a better deal is possible with the second ranked bidder, in the event that negotiations with the preferred bidder reach an impasse.

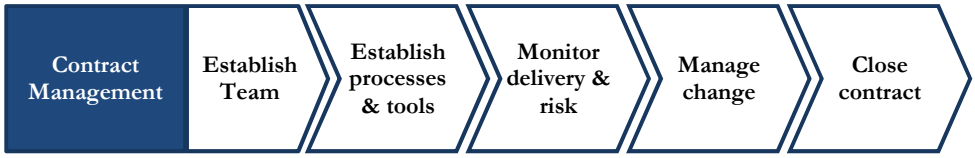
Reach Financial Close

There are typically several additional steps required to reach financial close, including

- **Finalizing financing agreements**. In most cases, interested lenders are identified when bidders submit proposals. However, before those lenders will commit to providing finance, they often carry out their own detailed due diligence on the project and PPP Agreements. There are risks associated with this process—lenders may require changes in the PPP Agreements before agreeing to finance the project, or financing terms may change from what was assumed in the proposal. Sometimes the most effective way to mitigate this risk is to involve lenders in the final negotiation with the preferred bidder
- **Finalizing and executing all project agreements and contracts** with other parties in the PPP structure—for example, sub-contractors, and insurers
- **Securing final approval from relevant government entities**—for example, review and approval of the procurement process and final contract
- **Fulfilling government obligations** such as securing permits and planning approvals, and commencing project land acquisition.

The PPP Contract typically includes these elements as 'Conditions Precedent', which must be met for the contract to become effective. PPP contracts often specify a final date by which the contract terminates, and/or a bid bond is forfeited, if the Conditions Precedent is not met.

6 Contract Management



With the contract signed and the financing closed, it's easy to feel that the work on the PPP is done. In reality, the job is just beginning. The focus shifts now to making sure that the private party delivers what was promised, that the government facilitates that delivery as agreed, and that when the unexpected happens both parties adapt effectively.

The aim of contract management is to ensure that:

- Services are delivered continuously and to a high standard, in accordance with the contract
- Payments to the contract are made as promised, on time
- Penalties are imposed or other enforcement actions taken when necessary
- Contractual responsibilities and risk allocations are maintained in practice
- The government is aware of developing risks and changes in the external environment, and is proactive and effective in managing risks and responding to opportunities.

This section discusses the processes required to achieve these aims.

6.1 Establish Contract Management Team

There must be a government body responsible for monitoring, managing and enforcing the contract. Generally, this is the IA which is also the public party to the contract. This IA will appoint a Contract Management Team.

International experience also shows that the Contract Management Team should be supported by Technical Specialist Teams (such as finance, engineering, and so on). Contract Management Teams manage one PPP throughout the project cycle but draw on technical specialists who apply their skills to multiple projects as required. This approach has the following advantages:

- Flexibility; this is important given that the workload for each project will vary over time
- Better transfer of experience and knowledge as the PPP portfolio increases.

Continuity through the PPP project cycle is highly desirable. Ideally the Contract Management Team would have worked on the business case and the transaction. This has the following benefits:

- Staff are incentivised to think about how the project will be implemented while developing the project and writing the PPP contract. This means that staff will take the time to ensure that the project can be easily implemented, that risks are

fully identified, and that risk mitigation measures are included. These incentives can help balance any political pressure to develop and award as many projects as possible in a short time period

- Staff are already familiar with the project and the PPP contract at the start of the implementation phase.

6.2 Establish Contract Management Processes and Tools

Good contract management requires good processes. The processes will define the responsibilities and communication mechanisms that will enable an effective relationship between the public and private parties to the contract. During the transaction design, or at the latest on contract signature, the IA should define a number of processes and tools, as discussed below.

Communication protocols

Communication protocols should be developed for communication between:

- The private party and the IA
- The private party and other agencies in government (for example environmental agencies)
- Agencies within government, for example, communication between the IA and the Ministry of Finance.

These protocols should cover: what information is to be communicated, to whom, and when this occurs.

Contract Management Matrix

A contract management matrix is a tool to keep track and manage issues as they arise. The matrix should include everything that needs to be done, or monitored, by either party, on a regular basis. A template contract management matrix is provided in Appendix F. The matrix will typically include:

- Performance standards as set out in the PPP Contract
  - What they are (such as service standards, delivery milestones, etc.)
  - How they are measured
- Payments by both users and the government, as set out in the Contract
  - Amount
  - Frequency
  - Contingencies
- Monitoring Arrangements set out in the Contract and clarified within the roles of the Contract Management Team
  - Type of monitoring (physical inspections, reporting, etc.)
  - What is to be monitored
  - Who monitors

- How often monitoring is to be done or monitoring reports received.

The Contract Management Team can then use this matrix to check off that everything is delivered as planned—and in this way catch exceptions that need to be addressed and remedied.

Risk Management Plan

A template risk management plan is provided in Appendix F. The Risk Management Plan should list the major risks the project is exposed to, drawn from the Risk Matrix (Appendix D) prepared at the Business Case Stage. For each risk, the Management Plan should identify:

- Which party the risk is allocated to
- Which contract terms achieve and enforce this risk allocation
- Which are fiscal risks, and their seriousness
- Which could undermine the viability of the project and their seriousness
- The information needed to monitor the risk (which is likely to be more than the information needed to monitoring performance)
- Possible actions to mitigate the risk or its impact, where this can be controlled.

Fiscal Risk Monitoring

All major risks should be monitored, but fiscal risks are particularly important for the government. The Ministry of Finance needs to be kept informed of developments that could have an adverse fiscal impact.

A Fiscal Risk Report for the project should be created during contract drafting, or immediately after contract signature, using the template shown in Appendix F. The Report should list:

- The major fiscal risks posed by the project—taken from the Business Case analysis, updated for any changes between the Business Case and Contract signature
- Indicators for the likelihood of these risks eventuating—as an example, one of the fiscal risks for a highway PPP might be the traffic level, if the government provided a minimum traffic guarantee. The indicators for this risk would be the actual level of traffic, compared to the forecast level for the period, and the minimum guaranteed.
- Other indicators of the project's stability—these could include the project company's operating and net cash flows compared to forecast, as these may be indicators of financial stress that could result in early termination.

The private party should be required to complete the Report, and submit it to the Contract Management Team. The Team will then forward the report to the Ministry of Finance, along with any other issues identified that could have fiscal implications. The Ministry of Finance should designate an officer to be responsible for monitoring the fiscal risk of the contract, using these reports.

6.3 Monitor PPP Delivery and Risk

Throughout the lifetime of the contract, the Contract Management Team needs to constantly monitor different aspects of the project. Monitoring activities change over the life of the concession as described below.

Monitoring and enforcing contract compliance

During the construction phase, the Contract Management Team needs to check that the asset is being constructed to the required specifications and quality. This may be done by engaging an independent engineering firm to check the work.

In the operations phase, the Contract Management Team needs to receive and check regular reports against contract targets. These should be required by the contract, and prepared by the private party. The Team needs to take corrective action in case of any shortfall in performance, following the provisions established in the contract. This may involve enforcing penalties against the private party.

While the private party is typically responsible for providing performance data, the Contract Management Team cannot just rely on this data. The Team needs some independent verification of the information being provided, and also to be able to spot performance problems that may be developing but are not picked up in the reporting system. To achieve this, the Team can use: independent auditors, user feedback, a sector regulator. These arrangements should be specified in advance in the contract.

Monitoring and mitigating risks

The Contract Management Team should follow the risk management plan set up at the start. This should include monitoring the levels of the risk indicators against their expected values. Where indicators stray from expected levels, the Team needs to investigate, and see what corrective action is needed. The information gathered from the performance monitoring can also be useful in spotting emerging problems.

If there are signs that things are going wrong, the Contract Management Team should discuss the emerging problems with the private party managers, in accordance with the communication protocols. If this does not rapidly resolve the problem, the Team should escalate the issue with the government in line with the communication protocol.

Monitoring and ensuring government compliance

The government also has responsibilities under a typical PPP contract. These may include: availability payments, financing, land acquisition, or import clearances. Failing to meet those responsibilities can make the government liable for compensation, and undermine the performance and sustainability of the PPP. To make the PPP succeed, the Contract Management Team also needs to monitor the performance of government agencies with responsibilities under the contract.

6.4 Managing Change

Change in the contract environment is inevitable, given the long term and complex nature of PPP contracts. For example, changes in hydrological conditions may mean that there is less raw water available for a PPP water treatment plant than was anticipated in the contract.

The contract should include mechanisms to adjust to such changes. These contract mechanisms will typically include adjustment provisions, dispute resolution, and force

majeure and termination provisions. The Contract Management Team needs to understand these provisions, when they apply, and how they can be used.

In some cases, the government may decide to seek changes in the contract that cannot be accommodated through the contractual adjustment provisions—or the private party may suggest such changes, and the government may be inclined to agree. In such cases, the contract can be renegotiated. While there are times that renegotiation is the best thing to do, it should always be approached with caution. Since there is no competitive pressure in a renegotiation, the private party may take advantage of the chance to improve its position, to the detriment of value for the public.

In light of these risks, it will generally make sense to take a formal and well-structured approach to renegotiation, modelled after the approach used to create the PPP in the first place. This may include:

- Ensuring that specialized legal, financial, economic and technical advisors are engaged
- Only entering renegotiations if it seems likely that to do so will improve value for money (compared to not renegotiating) and there are no mechanisms to achieve the same end within the terms of the contract itself
- Conducting a formal VfM analysis, compared to a non-renegotiation counterfactual, before agreeing to the renegotiation.

6.5 Close Contract

Most PPP contracts are for a limited duration. While the contract end date may be a decade or more in the future, it is still necessary for the Contract Management Team to think about the end of the contract, and to be prepared for what will happen at that time.

Some years before the planned end of the contract, the Team should consider whether the provision of the service or maintenance of the asset should be:

- Taken into the public sector
- Bid out again to competing private firms
- Left with the existing contract, through extension or renewal of the existing contract.

This choice should be supported by a Business Case and VfM analysis, comparing the options and recommending the one likely to maximize value for money for the public.

Where the existing private party will not continue in place—either because of a rebid, or bringing the service or asset into the public sector—the Team will need to develop a checklist of items that need to be managed to ensure a smooth hand-over in line with the contract. A template Checklist and list of common items is provided in Appendix I.

Appendix A: PPP Project Assessment Checklist

Criterion	Definition	Question to check if the project meets the criteria		Enclosed Supporting Information
Project is Viable				
Effective in meeting government objectives	The project is an effective method of meeting government objectives, and is consistent with the sector's strategy and relevant development plans	Is the project identified in a sector plan? (please attach)	**Y / N**	
		Is the asset or service one that the Government has a continuing interest in ensuring are provided, but does not necessarily need to provide itself?	**Y / N**	
		If neither of the above, please attach an explanation of how the project will otherwise meet sector objectives.	**Y / N**	
Technically feasible	The project can be implemented technically, as planned, using known and proven technologies and engineering methods	Does a prefeasibility study indicate technical feasibility? (please attach)	**Y / N**	
		If not, please attach an explanation of why you believe the project is technically feasible	**Y / N**	
Legally feasible	All aspects of the project are permitted by law, the parties involved in the project are legally empowered to do what they will need to do under the project, and the agreements that will be required can be made legally binding on all parties concerned	Has a legal analysis been conducted that indicates feasibility? (please attach)	**Y / N**	
		If not, attach an explanation of how the proposed project and PPP structure align with sector and other applicable laws.	**Y / N**	
Environmentally compliant	The environmental impacts of the project are in compliance with environmental laws and	Has an initial environmental impact assessment been conducted that indicates likely environmental compliance? (please attach)	**Y / N**	

Criterion	Definition	Question to check if the project meets the criteria		Enclosed Supporting Information
	regulations, or can gain the necessary permits, etc. to become compliant	If not, please provide a list of the project's potential environmental impacts and indicate why you expect it to be environmentally compliant	**Y / N**	
Socially sustainable	All substantial social impacts of the project have been assessed, including providing individuals and groups impacted ample opportunity to provide feedback and voice concerns, mitigation solutions have been incorporated into the PPP contract as appropriate, and the likelihood of any one group blocking or undermining the project successfully is low	Has a social impact assessment been conducted that has identified affected parties, and indicates social sustainability of the project? (please attach)	**Y / N**	
		If not, attach a list of potential social impacts, including the parties that would be affected, and describe why you think the project would be socially sustainable.	**Y / N**	
		Please include an explanation of how the potential social impacts could be managed and what public consultation strategies are planned.	**Y / N**	
		Please attach an explanation on any site specific issues (such as land claims, squatters, etc.), and mitigation strategies.	**Y / N or N/A**	
Economically viable	An economic analysis of the project shows the expected economic benefits exceed the expected economic costs, and that the project is the least cost way of achieving the benefits that is practical and feasible	Has an economic analysis of the project been conducted that indicates the project is economically viable? (please attach)	**Y / N**	
		If not, attach a list of expected economic benefits and costs, and explanation of why the project is likely to be cost-benefit justified and least cost.	**Y / N**	
PPP achieves value for money				
Project scale is sufficient	The value of the project should be sufficient to invest resources to seek greater value for money through a PPP. Generally, if the net present value of the project's costs are below US$10	Is the project cost or value more than US$10 million? (please attach cost estimate)	**Y / N**	

Criterion	Definition	Question to check if the project meets the criteria		Enclosed Supporting Information
	million the transaction costs for both the public and private parties may prohibit achieving value for money. It may be possible to bundle related projects to achieve this threshold	If not, do you think the project scale is viable for a PPP? (please attach a description of the project scale and your reasoning)	**Y / N**	
Project duration is sufficient	The duration of the proposed PPP project should be for the life of the project asset and service, or at least 10 years if the project life is longer than 10 years. Projects with durations below 5 years will not generally make good PPPs	Would the PPP contract be more than 10 years? (please attach project timeline)	**Y / N**	
		Would the PPP contract be for more than 5 years and for the life of the project asset or service? (please attach project timeline)	**Y / N**	
		If neither, please attach an explanation of why you think the project duration is viable for a PPP.	**Y / N**	
Outputs are clearly specified	Required outputs are defined in clear and measurable terms around which performance mechanisms can be effectively structured	Can the project's required outputs be specified in clear and measurable terms? (please attach draft output specification)	**Y / N**	
Functions are optimally allocated	Functions are optimally allocated between the private and public sectors, maximizing incentives for performance, accountability, and the use available expertise	Please explain what would be the private partner's role in the project and why this makes sense.	**Y / N**	
Risks are identified and allocated optimally	All material project risks have been identified and optimally allocated to the party best able to manage, mitigate or diversify the risk so as to maximize value for money	Please identify the major project risks, which ones the private partner would take on, which would be left with the government, and why this makes sense.	**Y / N**	

Criterion	Definition	Question to check if the project meets the criteria		Enclosed Supporting Information
Value for Money: PPP achieves greater net economic benefit than public provision	An economic cost-benefit analysis indicates that the proposed PPP is likely to provide greater net benefit then public provision	Explain the main reasons for doing this project as a PPP, rather than through traditional government procurement, and why you think this will provide better value for the government.	**Y / N**	
PPP represents a genuine business opportunity				
PPP is a viable "commercial project"	The PPP's revenues cover costs and provide a rate of return that is sufficient for the private sector to consider the project commercially viable	Do the revenues of the proposed PPP cover its costs and provide a sufficient rate of return? (please attach revenue and cost estimate)	**Y / N**	
		If not, please explain why you think the project would be commercially viable.	**Y / N**	
Market has sufficient capacity and appetite	There is sufficient market interest to generate competitive tension amongst private parties with the capacity and resources to deliver the project	Has an initial market sounding been conducted that indicates private sector interest? (please attach)	**Y / N**	
		If not, please explain why you think there would be sufficient private sector interest.	**Y / N**	
PPP is fiscally responsible				
Likely cost of government support is consistent with fiscal priorities	The amount of government support, including scheduled payments and contingent liabilities, under the outcomes most likely to occur (the modal value), is within fiscal priorities	Is the project's cost to government within your Ministry or Agency's projected budget? (please attach project cost estimate and budget projection)	**Y / N**	
		What percentage of your Ministry or Agency's budget would the cost of the PPP represent?	**___%**	
Fiscal risk would not be destabilizing	The expected value of the cost to the Government under the "worst case" scenario would not require	Is the government expected to bear any risks that could be fiscally destabilizing? (please attach explanation)	**Y / N**	

Criterion	Definition	Question to check if the project meets the criteria		Enclosed Supporting Information
	the Government to make difficult and unexpected changes in fiscal variables—such as materially increasing debt or taxes, or suffering a drop in its credit rating	What would be the maximum government pay out in a worst-case scenario?	$__	

Appendix B: Project Plan Template

Stage	Task	Sub-Task	Months	1				2				3				…		
			Weeks	1	2	3	4	5	6	7	8	9	10	11	12	…	…	..
Business Case																		
	Prepare																	
		Assemble necessary resources																
		Develop Project Plan																
		Develop Communication Strategy																
		Review the Project																
	Determine Project Viability																	
		Effective in meeting government objectives																
		Technically feasible																
		Legally feasible																
		Environmentally sustainable																
		Socially sustainable																
		Economically viable																
	Structure Proposed PPP																	
		Specify outputs																
		Allocate functions																
		Allocate risks																
		Outline legal and financial structure																
	Evaluate Proposed PPP against Criteria																	
		Develop PSC and MC																
		Compare MC and PSC																
		Conduct market sounding																
		Evaluate proposed PPP and adjust																
		Evaluate likely cost of government support																
		Evaluate if fiscal risk would be destabilizing																
	Submit for Review and Approval																	
		Prepare and submit project proposal																

Stage	Task	Sub-Task	Months	1				2				3				…		
			Weeks	1	2	3	4	5	6	7	8	9	10	11	12	…	…	..
		Government review																
		Approval/disapproval of the project																
Transaction																		
	Prepare																	
		Update project plan																
		Engage transaction advisors																
	Draft PPP Agreements																	
		Output specifications																
		Monitoring and enforcement arrangements																
		Payment mechanisms																
		Regulation																
		Changes external to the contract																
		Dispute Resolution mechanisms																
		Other government obligations																
		Termination provisions																
	Qualify Bidders																	
		Set bidder qualification process and criteria																
		Develop the RfQ package																
		Market the opportunity																
		Pre-qualify bidders																
	Prepare Draft RfP																	
		Set process and criteria for evaluating bids																
		Develop the Draft RfP																
	Consult with Bidders																	
		Conduct consultations																
		Incorporate feedback into the Draft RfP																
	Issue RfP & Manage Bid Preparation Period																	
		Issue RfP																
		Manage Bid Preparation Period																

Stage	Task	Sub-Task	Months	1				2				3				…		
			Weeks	1	2	3	4	5	6	7	8	9	10	11	12	…	…	..
	Receive Proposal, Evaluate, and recommend Award																	
		Receive proposals																
		Evaluate proposals																
		Recommend award																
	Reach Financial Close																	
		Negotiate and sign contract																
		Reach financial close																
		Transition to Contract Management																

Appendix C: Stakeholder Analysis Matrix Template

Stakeholder group	Interests or Concerns	Key influencers	Relevant background	How to engage with these stakeholders
Local government bodies				
Businesses				
Households				
Company staff				
Unions				
Customers				
…				
…				
…				

Appendix D: Risk Matrix Template

Risk	Allocation (Private/Public /Shared)	Rationale	Consequence
Site Risks			
Delay in acquiring			
Site condition			
Geotechnical composition			
Construction Risks			
Design			
Construction			
Commissioning			
Cost over-runs			
Operating Risks			
Operating costs			
Production			
Availability of inputs			
Risks X			
…			
…			
…			

Appendix E: Checklist of Common Risk Categories

Risk	Definition	Example(s)	Description of the nature of the risk
Pre-contract risks	The risk that the procurement process will experience any of the following: (a) failure to attract sufficient qualified bidders and/or responsive offers; or (b) prolonged and expensive negotiations; or (c) collapse of negotiations.	Risk that procurement process for a bulk water BOT project fails to attract qualified bidders because of poor project opportunity marketing and/or poorly prepared bidding documents	Pre-contract risks are often associated with poor project preparation, which may result from lack of experience or capacity. These risks can be mitigated by careful transaction preparation and management. This includes establishing a competent transaction team, hiring experienced transaction advisors and setting a schedule commensurate with project complexity.
Site Risk	The risk that the project land will be unavailable or unable to be used at the required time, in the manner or at the cost anticipated, or that the site will generate unanticipated liabilities, with the result that the contracted service delivery and/or projected revenues are adversely affected.	▪ Risk of delays in acquiring the right of way for a toll road because of legal, title, or resettlement-related difficulties ▪ Risk that the geological composition of a tunnel site will vary significantly with tunnel depth, and result in higher construction costs ▪ Risk that during construction of a dam, ground conditions are found to be different to those anticipated from engineering studies, preventing or delaying construction completion	▪ Site risk encompasses all risks to do with land required for the project, including site suitability, problems in acquiring land, environmental liabilities and requirements for planning and other approvals. ▪ Site risk is greatest during project inception and construction. Its importance decreases in the operational phase. However, environmental risk may materialize during the operational phase if previously unidentified problems come to light, or the project operation itself pollutes or contaminates the area.
Design, construction and commissioning risk	Risk that the design, construction or commissioning (start-up) of the facility are carried out in a way which results in cost overruns (in the design, construction, or operations), and/or poor service delivery.	▪ Design risk—risk that the baggage handling system at a privately operated airport is poorly designed, resulting in lost, misrouted or delayed baggage, and the consequent user dissatisfaction ▪ Construction risk—risk that the pavement sub-base on a road is not compacted to specifications, resulting in early pavement failure ▪ Commissioning risk—risk that a new wastewater treatment technology will	▪ The consequences if design, construction or commissioning risks materialize may include delays and/or cost increases in those project phases. Consequences may also include design or construction flaws which render the infrastructure inadequate for effective service delivery, either immediately or over time. ▪ These are the core risks of the development phase and are among the most likely risks to materialize.

Risk	Definition	Example(s)	Description of the nature of the risk
		not work and that the treatment plant will not operate to the specified performance standards	
Sponsor and financial risk	Sponsor risk is the risk that: ▪ Where the Special Purpose Vehicle (SPV) created by the private partners to contract with the government is unable to fulfil its contractual obligations, government will be unable to enforce those obligations, or recover compensation or remedy from the sponsors for loss sustained as a result of the SPV's breach ▪ The private party(s) is, for security or other probity reasons, inappropriate or unsuitable to be involved in, or connected with, the delivery of a project, and in so being may harm the project.	Sponsor risk—risk that the private party SPV goes bankrupt and is dissolved only after 25 percent of the construction works have been executed, and that the compensation available from performance bonds is insufficient to cover remaining construction costs, not to mention the associated delays and court costs	Sponsor risk can be difficult to assess prior to the start of the project. Since the SPV is a legal entity created to act on behalf of the project consortium, the SPV itself has no historical financial or operating record which government can assess. The IA must therefore rely on the historical performance of the consortium members to assess the ability of the SPV to fulfil the project obligations.
	Financial risk is the risk that: ▪ Investors and lenders will not provide or continue to provide funding to the project ▪ Financial parameters (such as interest rates, tax rates) will change prior to the private firm fully committing to the project, potentially adversely affecting price ▪ The financial structure of the project is not sufficiently robust, meaning the project is vulnerable to financial risk	Financial risk—risk that a private party that has financed a project with a very high proportion of debt faces bankruptcy due to a sudden change in interest rates	The SPV is supported by a complex web of financial arrangements (including investors and lenders who rely on the project's ability to provide a return on investment), which are subject to conditions that must be fulfilled before financing can be drawn down. Good practice in contract design is to make financial closure a condition precedent to contract effectiveness and to have a date by which financial closure needs to be reached as a bid bond is called. To minimize risk of bankruptcy, some contracts set maximum debt to equity ratios.

Risk	Definition	Example(s)	Description of the nature of the risk
	factor shocks during the project, such as interest or tax rate changes		
Operating risk	The risk that the process for delivering the contracted service or facility function will be adversely affected in a way which prevents the private firm from delivering the contracted services or facility function according to the agreed specifications and/or within the projected costs	Risk that a privately operated transit system relies on a local supplier for spare wheels, for which quality decreases. Wheels crack early on and have to be replaced twice as often, resulting in incidents, higher maintenance costs, and reduced profits	▪ Operating risks typically relate to production and functioning, availability and quality of inputs, quality and efficiency of management and operation, maintenance and upgrade requirements. ▪ The consequences of operating risks materializing are that the costs of running the facility exceed projections and therefore diminish projected returns and/or that the facility will not perform to the required standards.
Demand risk	The risk that the demand for a service or the use of a facility will vary from forecast levels, generating less revenue from users than expected.	Risk that, under a transit system where the compensation mechanism to the private party is a function of ridership demand, actual ridership is well below the forecast, resulting in a significant loss to the private party.	Demand risk arises in the operating phase of the project when the contracted services or facility are offered to the end-user. This end user may be the government (for example, a hospital or school project), government on behalf of consumers (for example, water treatment plants), or the public directly (for example, a road or mass transit). Wherever payment for service is volume-based and therefore depends on the level of usage, the project is exposed to market forces and their inherent risks.
Network and interface risk	Network risk is the risk that the network(s) needed for the private party(s) to deliver the contracted service or facility functions will be removed, not adequately maintained or otherwise changed in a way that: (a) hampers the delivery of the contracted services or facility function; (b) affects the	▪ Network risk—risk that a privately operated toll road which is part of a series of interconnected toll roads, and relies on other stretches of the toll network for feeder traffic, does not receive sufficient traffic due to non-completion of other stretches ▪ Interface risk—risk that a public transport project which relies on	▪ Network and interface risks relate to the points of intersection between the project infrastructure or services and other privately or government-controlled networks or services. These risks have unique characteristics for each different project, and therefore require some flexibility in applying the principles of risk allocation. ▪ Network risk arises where the contracted

Risk	Definition	Example(s)	Description of the nature of the risk
	quality of the specified outputs; or (c) affects the viability of the project.	interface with other forms of public and private transport is prevented from establishing an effective interface, for example by restrictions on car parking	services or facility function are linked to, depend on or are otherwise affected by certain other infrastructure, inputs and services (collectively referred to as a network) ▪ Interface risk occurs where a private partner(s) and government both provide services from within or in relation to the same infrastructure facility
Industrial relations risk	The risk of any form of industrial action (for example, strikes, lockouts, work bans, work-to-rules, blockades, go-slow action, etc.) occurring in a way which, directly or indirectly, negatively affects commissioning, service delivery or the viability of the project.	A labor strike that causes delays in obtaining supplies, construction, and/or in service delivery, leading to increased costs, reduced or lost revenue to the private party, and possibly a contractual liability to pay liquidated damages to government.	Industrial relations risk may realize in both construction and operational phases of the project, but is usually highest during construction.
Legislative and government policy risk	Risk that the government will exercise its powers and immunities (including but not limited to the power to legislate and determine policy), in a way that adversely impacts the project.	▪ Risk that the implementing agency will not have the power to enter the contract or its ability to do so will be limited ▪ Risk that government will be immune from legal action (sovereign risk) ▪ Risk that government will use its power to propose or alter legislation, in a way that adversely impacts the project ▪ Risk that relevant government actors will grant or refuse to grant statutory consents in a way that adversely impacts the project ▪ Risk that government will adopt or change policy in a way that impacts the project's operation or alters the relationship between the project and competing public infrastructure	These are some of the most critical factors that the private sector considers when entering a PPP and one of the most important contributions that government guarantees can make

Risk	Definition	Example(s)	Description of the nature of the risk
		▪ Risk that statutory regulators will exercise their powers to adversely affect the project ▪ Risk that government will require changes in service specifications or will interfere with the private party's business operation in a way that adversely impacts the project.	
***Force majeure* risk**	Risk that a specified event, entirely outside the control of either party, will occur and will result in a delay or default by the private firm in the performance of its contractual obligations. *Force majeure* events traditionally fall into two categories: acts of God and political events.	▪ Acts of God—risk of storms, lightning, cyclones, earthquakes, natural disasters, actions of the elements, tidal waves, floods, droughts, landslides, mudslides and nuclear, chemical and biological contamination ▪ Political Events—risk of civil riots, rebellions, revolutions, terrorism, civil commotion, insurrections and military and usurped power, malicious damage, acts of a public enemy and war (declared and undeclared)	▪ *Force majeure* events can be divided into those that can be insured, or foreseen and mitigated against by taking reasonable care, and those that cannot. These "insurable" and "uninsurable" *force majeure* risks are typically handled differently in a PPP agreement. ▪ The events that could be insured or mitigated may vary by project. Individual contracts must therefore expressly define events that will constitute insurable or uninsurable *force majeure* events, even where the starting point is apparently very broad.
Asset ownership risk	Risk that events such as technological change, construction of competing facilities or premature obsolescence will occur, with the result that the economic value of the asset may vary, either during or at the end of the contract term, from the value upon which the financial structure of the project is based.	▪ Risks that half-way during the contract term of a PPP airport, demand for air travel will be affected by concerns about climate change ▪ Risks that public road enhancements will undermine demand for a toll road	In accordance with the "whole of life" value driver, these risks are often best allocated to the private party, where they have also been allocated the associated project functions. However, this risk allocation may need to be adjusted for individual projects, depending on government requirements for the particular site and/or the facility and the plan for its operation at the end of the contract term. If government decides at the outset that it needs the site and/or facility—whether because the asset is an integral part of a public network, is integrated with other government operations, is critical for

Risk	Definition	Example(s)	Description of the nature of the risk
			government's own service delivery or simply to preserve a strategic site—it must ensure that the project structure delivers it into government hands at an appropriate point, at an acceptable price and in an acceptable condition. If the facility is to revert to, or to be transferred to government at the end of the contract term, the government is potentially exposed to residual value risk.

Appendix F: Contract Management Matrix Template

Action	Date/ frequency	Responsibility						Reference documents			
● has responsibility ○ involved in this step 👍 gives formal approval 📄 document used		Contract manager	Contract management team	Legal team	Specialist advisor x	Engineering consultant	xxx	Risk management plan	Contract—general conditions	Contract—Performance management provisions	xxx
Monitoring arrangements											
Physical inspection of asset	Every quarter	👍				●				📄	
...											
Payments											
Availability payment	1st Monday of every month	👍	●						📄		
…											
Obligations											
Escrow account	60 days after financial close	👍	●	○					📄		
Deliver ROW	1 year after financial close	👍	●	○					📄		
…											
…											
…											

Appendix G: Risk Management Plan Template

Risk	Allocation	PPP Agreement reference	Key risk*	Fiscal risk**	Monitoring information required	Risk mitigation and management strategy
Site Risks						
Delay in acquiring			Y / N	Y / N		
Site condition			Y / N	Y / N		
Geotechnical composition			Y / N	Y / N		
Construction Risks						
Design			Y / N	Y / N		
Construction			Y / N	Y / N		
Commissioning			Y / N	Y / N		
Cost over-runs			Y / N	Y / N		
Operating Risks						
Operating costs			Y / N	Y / N		
Production			Y / N	Y / N		
Availability of inputs			Y / N	Y / N		
Risks X						
…			Y / N	Y / N		
…			Y / N	Y / N		
…			Y / N	Y / N		

* Key risks are risks that could undermine the project's ability to achieve its objectives.

** Fiscal risks are risks that if realised would require a government payment. They are also referred to as contingent liabilities.

Appendix H: Fiscal Risk Report Template

Subject Ministry/ Agency		**Fiscal Risk Report**			**Contract Manager**		
Project Name					**Date Submitted**		
Risk	**Indicator**		**Q1**	**Q2**	**Q3**	**Q4**	**YTD**
E.g. Minimum Traffic Guarantee							
	Traffic Level						
		Actual					
		Projected					
		Minimum Level					
		Comments					
	Other						
		Actual					
		Projected					
		Minimum Level					
		Comments					

Appendix I: Close of Contract Checklist

Criteria	Responsibility	Due date	Complete?	Action required
Termination payment				
Is the asset in the contractually specified condition?			Y / N	If Yes: none If No: Make financial adjustment to termination payment
Are there any other penalties or deductions to be made?			Y / N	If Yes: Make financial adjustment to termination payment If No: none
Does the contract specify a termination payment			Y / N	If Yes: Make payment accounting for any adjustments required If No: none
…			Y / N	
Financial obligations				
Have all obligations under the contact been discharged?			Y / N	If Yes: release funds from the escrow account release all performance bonds If No:
…			Y / N	
Transferring assets, staff, and contracts				
Have securities over land been removed?			Y / N	If Yes: Transfer title to land and assets back to the government
Have staff been transferred to the new operator?			Y / N	If Yes: none If No: transfer staff
Have supplier contracts been transferred to the new operator?			Y / N	If Yes: none If No: transfer contracts
…			Y / N	

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