

Public Private Partnership (PPP) Guidelines



First Edition 2019



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Glossary

Assets	Assets of the project
BCM	Base Case Model
Bid	Bid for the specific project
Bid Bond	The bond provided for the specified bid
Bidder	Advisor or Consortium of advisors bidding for a specific project
Bidding Process	The process of publishing a Tender and communicating with potential Bidders in order to identify a preferred Bidder
Capex	Capital expenditures related to the project
Consortium	A number of advisors committed to bidding together for a project
Contract Management	Management of the PPP contract as defined in Section 5
Credentials	Past qualifying experiences of Bidders
Deliverables	Outputs of a project
Department of Finance (DOF)	The Dubai Department of Finance
Deviations	Deviations from the Terms and Conditions specified in a Request for Proposal
Design and Build (DB)	Design and Build Public Private Partnership Procurement Contract
Design, Build, and Operate (DBO)	Design, Build, and Operate Public Private Partnership Procurement Contract
Design, Build, Operate, and Finance (DBFO)	Design, Build, Operate, and Finance Public Private Partnership Procurement Contract
Due Diligence	The process of validating inputs provided
EOI	Expression of Interest
Feasibility Study	Feasibility Study addressing the project
Final Approval	The Final Approval provided by the public entity for a specified project





Financial Audit Authority	The Financial Audit Authority is a public authority with the objectives: to audit public funds by verifying that they are legitimately and properly used and managed, to promote the principles of transparency and integrity; to combat all types, forms, and methods of financial and administrative corruption, to verify that the administrative resolutions and procedures adopted by Auditees are in compliance with the legislation in force in the Emirate, to promote and ensure the implantation of effective accountability and to contribute in creation of a supportive audit and risk management environment in accordance with the law No. 4 of the year 2018 which grants the Authority the financial and administrative autonomy as a public authority affiliated to the Ruler
Government Entity (GE)	All entities that are subject to the general budget of the Government, or as otherwise approved by the Supreme Fiscal Committee
Interested Bidders	Any parties coming forward for a specified bid
IRR	Internal Rate of Return
Market Players	Any Players from the relevant industry including developers, investors, and banks etc.
Method of Procurement	Proposed method for procuring an asset or a service
NPV	Net Present Value
O&M	Operation and Maintenance
Partnership Committee	Committee formed by the Government Entity under the Article 11 of the PPP Law
Partnership Contract / Agreement	The contract signed between a public entity and a private sector entity
Partnership Contract Manager	A skilled manager appointed by the Government Entity who will function as the primary Point of Contact with the private sector partner
Performance Monitoring	Monitoring of private sector performance in delivering contracted partnership projects
Pipeline of Priority Projects	Planned important projects by Dubai Government Entities
Private Players	Any players who deemed to be interested in partnership with the government for the specific project
Point of Contact	Specified entity/person designated as primary Point of Contact for a specified project
PPP	Public Private Partnership
PPP Law	The Dubai Public Private Partnership Law No. (22) of 2015 Regulating PPP in the Emirate of Dubai
PPP Project	Public Private Partnership project
Partial Sale	Partial Privatisation of an asset or a service
PQQ	Pre-Qualification Questionnaire
Priority Projects	Projects identified as high priority by the Department of Finance - Dubai





Private Party	A private business entity conducting business in accordance with the laws of the UAE
Privatisation / Full Sale	Privatisation of an asset or a service where the government will no longer have control over
Probability of Occurrence	The chances of occurrence for a specified risk
Project Concept Report	A report which serves as an overview and brief description of the project
Project Lifecycle	The lifecycle of a PPP Project as defined in Section 1.5
Project Procurement Roadmap	Procurement Plan for a specific project
PSC	Public Sector Comparator
RFP	Request for Proposal
RFQ	Request for Qualifications
Risk Allocation	The Risk Allocation between the private and public parties in a PPP Project
Risk Premium	Additional cost to compensate for the risk
Screening	Validation of a project
SPV	Special Purpose Vehicle
Stakeholders	Parties involved in a project and/or have impact on a project
SOQ	Statement of Qualification
Supreme Fiscal Committee (SFC)	Dubai Government Supreme Fiscal Committee
Technical Advisor	The advisor put forward on a project to handle technical aspects of a procurement
Technical Envelope	Technical proposal submitted against a Request for a Proposal
Technical Evaluation	The process of evaluating and grading a technical proposal
Tender	A document put forward by a public entity requesting bids for a project
TOR	Terms of Reference
Threshold	Financial limit
Timeline	Specified Timeline for activities and milestones
Transaction Advisor	Consortium of Financial, Technical and legal advisors, assisting the Government Entity to evaluate and procure the project
UC	Unitary Charge
VFM	Value for Money
VFM Analysis	Value for Money analysis





1 BACKGROUND

1.1 Introduction

These guidelines on public-private partnerships (PPPs) have been prepared by the Department of Finance, and are intended to support the PPP framework being developed, which includes Law No. 22 of 2015 and the governing regulations. This document is intended to provide an introduction to the concept of PPPs and what they entail, inform governmental entities and other key Stakeholders on how projects should be screened for PPP suitability and how projects will be procured as PPPs, and the administration of PPP contracts following their award. Furthermore, it outlines the roles and responsibilities of key Stakeholders across the Project Lifecycle, and how projects should be structured, assessed, and monitored to ensure consistency across all PPPs.

These guidelines have been prepared with the intent of informing and aiding all entities governed by the PPP Law in the procurement process, and, as such, all variations from stated guidelines during the procurement process will be closely monitored by the Department of Finance, and will need the prior approval of the Supreme Fiscal Committee.

1.2 Structure of the document

These guidelines are aimed at assisting Government Entity screen and procure projects as public-private partnerships; accordingly, the document is structured to reflect the procurement lifecycle and enable ease of access to information for the authority aiming to procure the project.

The document is divided into six sections: **Section 1**, which is this section, provides an introduction to the guidelines and places them in the broader context of the PPP framework being adopted by the Dubai government; **Section 2**, which deals with the identification and Screening process for projects, introduces the steps that must be taken by Government Entity to gauge whether projects should be tested for PPP suitability, and outlining how qualitative criteria should be applied to analyse PPP suitability; **Section 3**, which deals with the preparation of a project as a PPP, including the preparation of the Feasibility Study document that encompasses the Value for Money analysis that undergirds the decision to procure the project as a PPP; **Section 4**, which deals with the procurement process, and outlines the procedures and documents that need to be developed in order to ensure a robust and competitive Bidding Process; **Section 5**, which deals with the post-award process, including best practices for Contract Management, monitoring of KPIs, and administering of the penalty/incentive regime; and, the **Annexure (1 and 2)**, which includes guidance on recruiting Transaction Advisors and on the procedure to receive and evaluate unsolicited proposals.

Each section is organised in the following order:

- **Objective**, which outlines the key purpose in undertaking the required tasks under the section, and summarises the deliverable requirements under the section;
- **Guidance**, which are the guidelines directed at Government Entity, enabling them to carry out the feasibility analysis, procurement, and post-procurement Contract Management with minimal assistance, should they so desire;
- **Roles and responsibilities**, which maps key functions across the lifecycle of the section to the key Stakeholders outlined below in 1.6; and,
- **Checklist**, which lists the key questions Government Entity must answer prior to concluding the section. The checklist for each section is provided in Annexure 3.





1.3 What are PPPs?

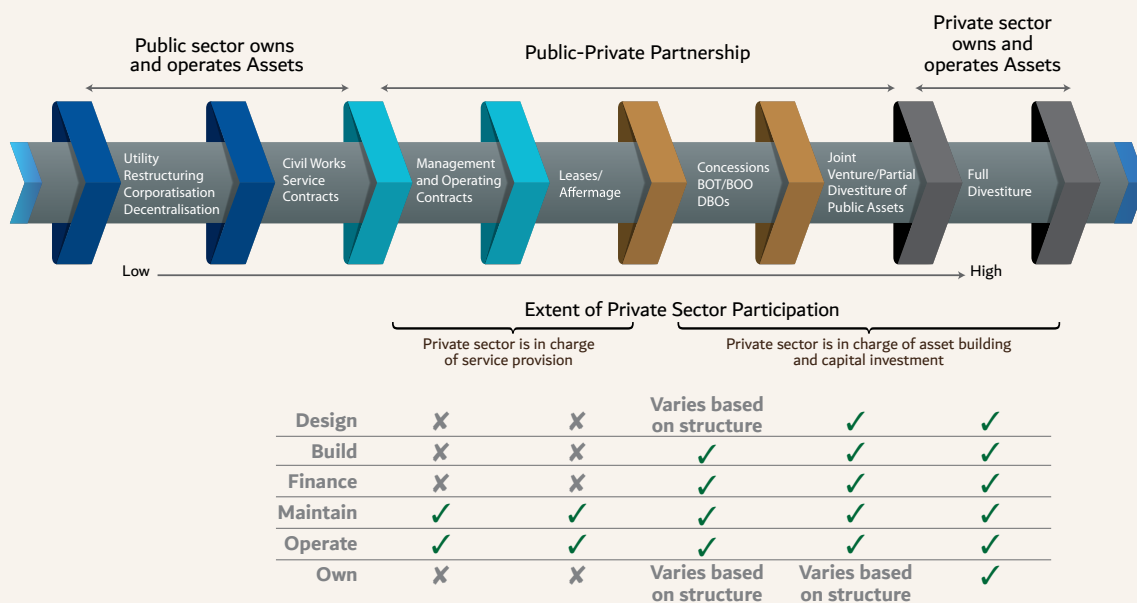
The World Bank defines PPPs as a “long-term contract between a private entity and a Government Entity, for providing a public asset or service, in which the Private Party bears significant risk and management responsibility, and its remuneration is linked to performance.”

PPPs are classified on the basis of three broad parameters – the type of asset involved; what functions the Private Party is responsible for; and, how the Private Party is paid:

- a. **Asset** – many PPPs involve the financing, building, and managing of new public Assets, often called “greenfield” projects; some PPPs involve the transferring of responsibility for the upgrading and managing of existing Assets to a private company, and are known as “brownfield” projects. PPPs tend to be large, capital intensive projects (e.g. roads, bridges, hospitals, metro systems, power plants, waste to energy, water and sewer systems etc.)
- b. **Function** – this can include any or all of the following: design – developing the project from initial concept and output requirements; construction or refurbishment; raising finance; or, the operation, maintenance and removal, demolition or decommissioning of an asset. In most cases, the private sector is responsible for the long term operation of an asset and provision of a service either to a government off-taker or to end users.
- c. **Payment mechanism** – based on the services provided by the private sector party, the payment to the private sector can be “user pays”, or “government pays” or a combination of these:
 - “User pays” PPPs – wherein the Private Party provides a service directly to end users and generates revenue by charging end users directly for that service. This revenue may be supplemented by performance-based or output-based payments from the government.
 - “Government pays” PPPs – wherein the government is the sole source of revenue for the private sector party, and payments can either depend on the asset or service being available at a contractually-defined quality and period (“availability” payments) or can be output-based for services delivered to users. The Private Party’s remuneration is linked to performance.
 - “Hybrid” PPPs – wherein Private Party revenue is generated by charging end users directly for providing a service, supplemented by performance-based or output-based payments from the government.



These characteristics can be combined in various ways to create a wide range of PPP contracts; the World Bank classifies PPPs along a spectrum based on the nature of asset ownership and private sector participation as follows:



Source: "What are Public Private Partnerships?" World Bank

Figure 1: World Bank PPP Spectrum

1.4 Need for a PPP framework

Since 2009, Dubai's economy has recovered steadily, driven by robust GDP growth and improved investor confidence, as evidenced by prevailing market indicators such as Credit Default Spreads, which track and price risk. Buoyed by foreign investment seeking a regional safe haven, along with the formulation of concrete steps to ensure revenue diversification through new measures of taxation and tapping the capital market, the Dubai government has continued to boost spending on infrastructure through its agencies and departments.

Dubai's ambitious strategic vision is underpinned by the need to continue making large scale investments in both social and economic infrastructure. This results in ever increasing budgetary demands both in terms of funding and financing. It is recognised both within the Dubai government and in the wider capital markets that Dubai will have to continue to evolve, innovate, and reform the manner in which these large financial commitments are funded through alternative financing structures.

Alternative financing can also serve as a catalyst and a conduit for the attainment of additional strategic imperatives such as economic diversification, foreign direct investment, encouragement of local entrepreneurship and industry, and the pursuit of sustainable economic growth that is both guarded against volatility and is not resource-intensive. In order to adhere to the targets set out by the Dubai Plan 2021 and the Dubai Industrial Strategy 2030, Dubai must deliver the infrastructure required to meet the needs of a growing population, and develop the Emirate as one of the world's leading hubs for logistics and trade. To achieve this, very large amounts of private and public financing will have to be secured.



All of the above necessitates the leveraging of local and international private sector expertise, efficiency, and innovation. To this end, the Dubai government issued Law No. 22 in 2015 (the “PPP Law”) to provide a legal framework for government agencies to enter into Partnership Contracts with the private sector. The framework is now being developed further, with the issuance of an Emirate-wide PPP policy, the establishment of a PPP unit within the Department of Finance, the development of operating guidelines based on best practices across the procurement lifecycle (this series of documents), and the formulation of a uniform budgeting approach to managing PPP liabilities and managing aggregate fiscal exposure.

1.5 PPP Project Lifecycle

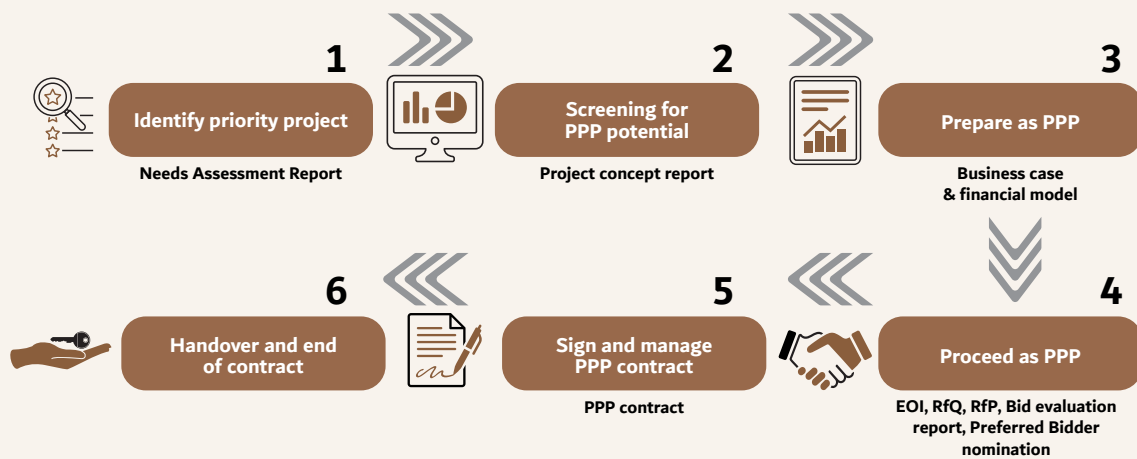


Figure 2: PPP Project Lifecycle and key Deliverables to be produced at each stage

The PPP Project Lifecycle can be divided into six key stages:

1. The identification of the priority project, based on the Pipeline of Priority Projects produced by the Department of Finance in conjunction with the various governmental entities;
2. Screening for PPP potential, wherein the Project Concept Report must be produced;
3. Preparation as a PPP, wherein a detailed Feasibility Study and financial model must be produced;
4. The procurement process, wherein the required documents – including, but not limited to, the Expression of Interest (EOI), Request for Qualifications (RfQ), Request for Proposal (RfP), Bid evaluation report, and the identity of the Preferred Bidder – must be drafted;
5. The signing and management of the PPP contract through the tenor of the agreement; and,
6. The handover stage at the end of the contract.



1.6 Key Stakeholders

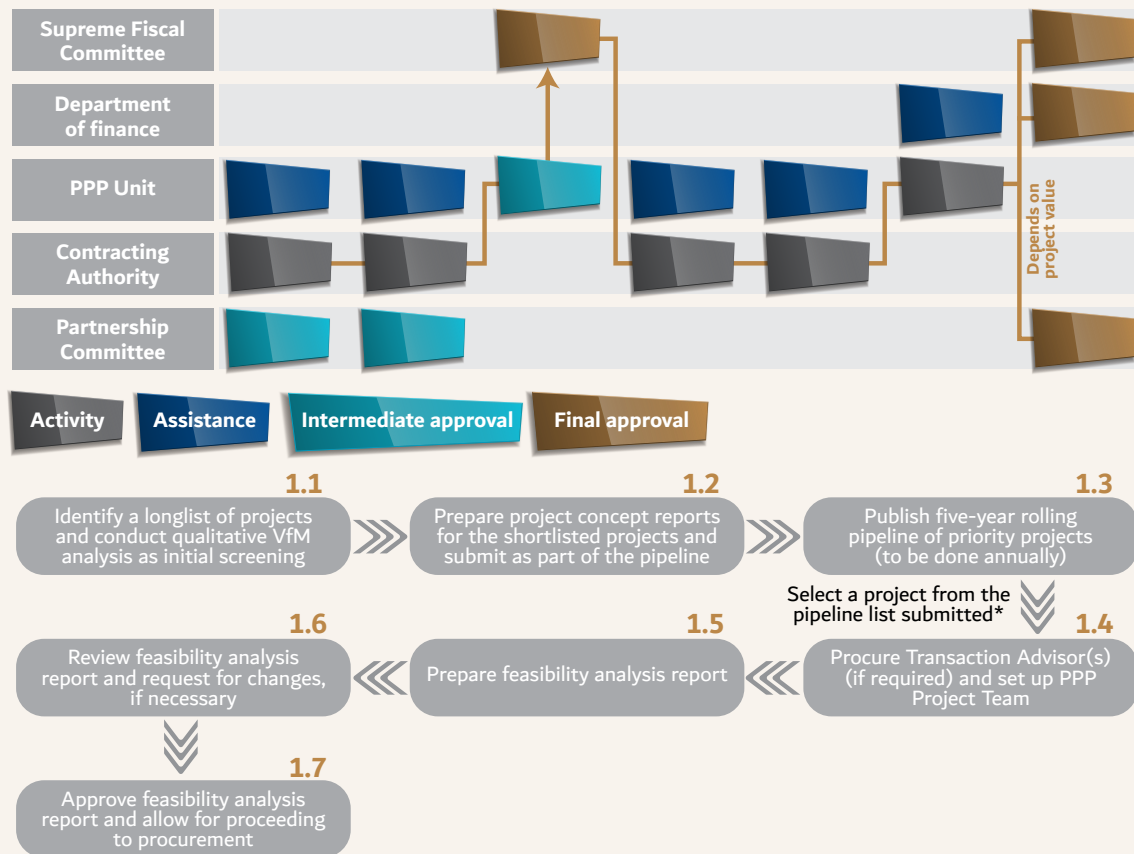


Figure 3: Initiation process lifecycle along with key approvals required at every stage and stakeholder in charge of performing activity, issuing intermediate approval (if any) and providing Final Approval





Supreme Fiscal Committee							2.7	2.8	
Department of finance								2.8	
PPP Unit	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9
Contracting Authority	2.1	2.2	2.3	2.4	2.5	2.6	2.7	2.8	2.9
Partnership Committee	2.1	2.2	2.3	2.4	2.5	2.6	2.7		



Figure 4: Procurement process lifecycle along with key approvals required at every stage and stakeholder in charge of performing activity, issuing intermediate approval (if any) and providing Final Approval





DOCUMENT	PREPARATION	RECOMMENDATION	APPROVAL
Project Concept Report	Government entities	--	Department of Finance
Project pipeline	Department of Finance	--	The Executive Council & Supreme Fiscal Committee
RfP for Transaction Advisory services	Government entities	--	Department of Finance
Feasibility Study*	Government entities	Partnership Committee/Director General of entity/ Department of Finance	Director General of entity/Department of Finance/Supreme Fiscal Committee
Request for Expression of Interest (EOI)	Government entities	--	Department of Finance**
Information Memorandum (IM)	Government entities	--	Department of Finance**
Request for Qualification (RfQ)	Government entities	--	Department of Finance**
RfQ evaluation report	Government entities	--	Department of Finance**
Request for Proposal (RFQ)	Government entities	--	Department of Finance**
Project Contracts	Government entities	--	Department of Finance**
Bid evaluation report	Government entities	--	Department of Finance**

*The approval process for the Feasibility Study is contingent on project value: whilst they are always prepared by government entities, for a project with a value lower than AED 200 million, the Partnership Committee recommends the study for approval, and the Director General of the entity provides the approval; for projects with a value between AED 200 and 500 million, the Director General of the entity recommends the document for approval and the Department of Finance provides the Final Approval; and, for projects with a value greater than AED 500 million, the Department of Finance recommends the document for approval and the Supreme Fiscal Committee provides the Final Approval

**All material Deviations from the guidelines must be approved by the Supreme Fiscal Committee upon the recommendation of the Department of Finance

Figure 5: List of documents to be produced during the course of the procurement process and the Stakeholders responsible for preparation, recommendation, and approval





As outlined in the PPP Law, there are a number of key Stakeholders who will be responsible for performing tasks, accountable for review and approvals, consulted for input on a frequent basis, and informed about project progress on an intermittent basis:

1. **Government Entity:** All entities that are subject to the general budget of the Government, or as otherwise approved by the Supreme Fiscal Committee (see below), are “Government Entity”, as referred to hereinafter in this document.

In order to screen a project for PPP potential, prepare a project as a PPP, and conduct the procurement process, a Government Entity will have to form a **PPP Project Team** (see 6 below), the members and responsibilities of which can be decided at the discretion of the Director General of the Government Entity. The PPP Project Team can also consist of Transaction Advisors hired with the purpose of assisting the Government Entity evaluate and procure the project. As noted in Article 10 of the PPP Law, government entities are responsible for the following:

- Preparing the studies required for determining the rationale behind implementing the proposed Project. These studies must feature the financial, economic, technical, and social feasibility and the beneficiaries of the Partnership, appropriate criteria for selecting a Partner, a Project implementation programme, and an implementation risk analysis;
- Determining the human, financial, and technical resources required for the Project, financing methods, contributions of both parties to the Project, dividend distribution, service charges, exemption from these charges, intellectual property rights, and other relevant matters;
- Coordinating the Government Entity concerned with the Project to determine its impact on their own plans, and on the strategic plans of the Government in general;
- Studying and evaluating all financial aspects of the Partnership Contract and have them approved by the Department of Finance;
- Proposing the standards that must be met by the entity that will be contracted with, and propose preliminary Partnership Contracts and their addenda;
- Coordinating with the Department of Finance to determine the appropriate method of Partnership for the Project or service in accordance with the Partnership methods stipulated in the Law;
- Selecting qualified consultancy companies/Transaction Advisor(s) to conduct studies related to the Project;
- Forming a work team in conjunction with the private sector to agree on work methods; to gather, exchange, and update information; and, to cooperate regarding technical developments and work requirements;
- Supervising the proper performance by the Project Company of its obligations under the Partnership Contract, and take immediate and appropriate measures to remedy any breach or omission in the performance of such obligations in a manner that ensures that the Project continues to achieve its objectives;
- Coordinating with Competent Authorities (as defined in Article 8 of the PPP Law) to overcome any obstacles that may prevent the implementation of the Project;



- 
- Reporting to the Financial Audit Department any financial breaches committed by a Project Company; and,
 - Preparing quarterly reports on work progress throughout the performance of the Partnership Contract, and any obstacles hindering such performance; propose appropriate solutions to these obstacles; and, submit the reports to the Department of Finance.

2. **Department of Finance:** The Department of Finance, which serves as the chief budgeting body in the Emirate, will serve as the parent agency of the PPP unit, and will have the following functions:

- Developing the general policy regulating Partnership Projects between the public sector and the private sector, and submit the same to the Supreme Fiscal Committee (see below) for approval;
- Proposing updates and developments to the legislation regulating Partnerships based on the relevant best practices, the outcomes of Partnership Projects previously implemented by government entities, and the comments and proposals of these entities, taking into consideration the interests of the public sector and the private sector;
- Providing support and assistance to government entities in the preparation and development of Partnership initiatives;
- Providing Final Approval for feasibility studies for projects with total governmental commitment between AED 200 million and AED 500 million, as defined in the PPP Law No. 22 2015, which will detail the PPP structure, total budget allocation, contingent liabilities, and the PPP procurement plan;
- Reviewing and recommending to the Supreme Fiscal Committee for Final Approval feasibility studies for projects with total governmental commitment greater than AED 500 million, as defined in the PPP Law No. 22 2015, which will detail the PPP structure, total budget allocation, contingent liabilities, and the PPP procurement plan;
- Recommending to the Supreme Fiscal Committee the approval of the identity of the Preferred Bidder prior to commencement of contractual negotiations;
- Recommending to the Supreme Fiscal Committee the approval of all PPP contracts and of the final Bid from the Preferred Bidder;
- Contributing to creating a favourable environment to invest in Partnership Projects, and promoting these Projects within and outside of the Emirate in coordination with competent entities in the Emirate;
- Overcoming all the difficulties that a Project Company may face, in coordination with concerned government entities;
- Proposing necessary measures for developing Partnerships as a method of managing Projects and providing Government Services; and,
- Performing any other duties that are required for the achievement of the objectives of the PPP Law and the governing regulations.



- 
3. **Supreme Fiscal Committee:** The Supreme Fiscal Committee, which has been tasked with overall responsibility for overseeing fiscal policy, in addition to other duties as determined under the requirements of other laws, will be responsible for the following:
 - Monitoring the overall effectiveness, exposure, and compliance with the PPP framework and Law;
 - Providing Final Approval of the Feasibility Study for projects with total government commitment exceeding AED 500 million as defined in the PPP Law No. 22 2015, which will detail the PPP structure, total budget allocation, contingent liabilities, and the PPP procurement plan. The Feasibility Study shall be referred to the Committee after review by the Department of Finance;
 - Providing approval of the identity of the Preferred Bidder prior to commencement of contractual negotiations, following the receipt of a recommendation from the Department of Finance; and,
 - Providing approval of all PPP contracts and of the final Bid from the Preferred Bidder prior to award, following the receipt of a recommendation from the Department of Finance.
 4. **Partnership Committee:** As outlined in Article 11 of the PPP Law, an internal committee named the Partnership Committee will be formed at each Government Entity, the members of which will be nominated pursuant to a resolution of the Director General of the Government Entity. Where the total cost to be incurred by a Government Entity during the course of a Partnership Project exceeds AED 200 million, the Committee must include a representative from the Department of Finance nominated by the Director General. The Committee will serve as the supervisory body on PPP Projects, with the PPP Project Team reporting directly to it, providing updates on project progress and seeking their approval at key stages, as further outlined below.
 5. **Financial Audit Department:** Supreme audit institution of Dubai, with jurisdiction over government departments, public corporations, government-related enterprises, and any organisation receiving a government subsidy, the functions of which are outlined in Article 13 of the PPP Law, including a remit to audit the performance of a Partnership Contract and monitor financial breaches permitted by the Project Company.
 6. **PPP Project Team:** In order to screen a project for PPP potential, prepare a project as a PPP, and conduct the procurement process, a Government Entity will have to form a PPP Project Team, the members and responsibilities of which can be decided at the discretion of the Director General of the Government Entity. The PPP Project Team will be chiefly responsible for carrying out the roles and functions assigned to the Government Entity at all stages of the project. The PPP Project Team will report to the Partnership Committee within the contracting authority and to the PPP Unit in DoF. The composition of the team, its functions, the nature of supervisory bodies, and other administrative protocols are to be exclusively decided by the Director General of the Government Entity, whose sole discretion it is to decide how the Government Entity's functions must be carried out. The PPP Project Team can also consist of Transaction Advisors hired with the purpose of assisting the Government Entity evaluate and procure the project.





2

PROJECT IDENTIFICATION AND SCREENING

OBJECTIVE OF THIS SECTION

Enable the identification of national Priority Projects with the aid of a published pipeline; screen projects to test for PPP suitability and analyse if Value for Money savings can be realised; and, outline how the project is aligned with broader Emirate, national, and agency-specific objectives.

Deliverables: Annual rolling five-year pipeline – comprising of a summary report and a detailed breakdown worksheet – and Project Concept Reports for all initiatives contained therein

Governing articles of the PPP Law and regulations: Articles 6, 8, 9, 10, 11, 12

GUIDANCE

2.1 Project pipeline

In order to encourage long-term planning and institutionalise a public investment framework, a Pipeline of Priority Projects is recommended to be published by the Department of Finance. This pipeline document will serve as the cornerstone of public investment decisions, regardless of the Method of Procurement ultimately pursued. The purpose of such a document is threefold: first, to ensure medium-term and long-term alignment of all infrastructure projects with the strategic vision of government entities, the Emirate of Dubai, and of the United Arab Emirates. Second, by introducing a preliminary filter for all projects, it enables an institutionalised Screening of whether the projects being procured are truly needed. Lastly, it serves as a preparatory signal to private investors and the broader market of the projects being tendered by the government, alerting them to possible investment opportunities.

The pipeline will have two components: a document comprising a summary of the five-year public investment programme, and a detailed breakdown of all the projects with a costing estimate and description included. When the PPP programme commences, government entities will continue to follow traditional budgeting procedures; however, during the first year, all government entities will have to prepare a **five-year pipeline** of all their projects, and **Project Concept Reports** for all the projects mentioned therein. (Guidance on drafting Project Concept Reports follows from Section 2.2 onwards.)

A summary of the public investment management process, described in detail in the section(s) below, is as follows: government entities must prepare a longlist of infrastructure projects that they would like to implement and receive budgetary appropriations for from the Department of Finance. This longlist will be subject to an initial Screening process conducted by government entities, with the requisite assistance from the Department of Finance, to derive a shortlist of infrastructure projects. Then, government entities must prepare Project Concept Reports for all the projects listed in the shortlist, and submit them to the Department of Finance for review, budgetary sanction, and approval. The Department of Finance will review and approve all Project Concept Reports, verify the high-level costing estimates, and ensure that the project is necessary to serve the residents of Dubai. Following the approval of the Project Concept Reports, the Department of Finance will place all shortlisted projects onto the five-year pipeline, and prepare the pipeline documents for publication.





In order to prepare the shortlist of projects that will become a part of the final pipeline, government entities are advised to first develop a **longlist** of projects, based on existing masterplans and internal assessments. In conjunction with the Department of Finance, an **initial Screening process** must be utilised: whether these projects serve a societal need and are tailored towards addressing a particular service gap. Moreover, government entities must apply a more fundamental Screening test that determines if the project addresses sensitive matters, such as national security or defence, wherein there are compelling reasons for the government to retain control. Following this Screening process, a **shortlist** of projects is prepared.

The shortlist of projects will include projects of varying project values and will state if these will be procured traditionally or through PPPs. When testing the PPP suitability of projects, government entities must consider the following factors that act as Value for Money drivers:

- **Scale of the project:** Are transaction costs likely to be justified? – Projects with a capital expenditure of lower than AED 200 million or with an operating expenditure of lower than AED 10 million per year generally do not result in Value for Money savings significant enough to justify the transaction costs.
- **Outputs capable of clear specification:** Is there reason to believe a contract that will hold the provider accountable can be drafted?
- **Opportunities for risk transfer:** Is there good reason to believe that a PPP will provide Value for Money compared to the alternative of traditional public procurement? – i.e., appropriate Risk Allocation should assign risks to the party best able to control or bear them.
- **Market capability and appetite:** Is there a potentially viable commercial project and a level of market interest in the project?

(Source: PPP Knowledge Lab, South Africa PPP Manual)

Once the shortlist of projects has been decided upon, government entities will work in conjunction with the Department of Finance to prepare Project Concept Reports for all the projects, comprising of an initial needs assessment, a costing estimate, and a brief description. These Project Concept Reports will be utilised for the budgeting purposes of the Department of Finance, and for the publication of both the detailed breakdown and summary documents that will comprise the pipeline. The Project Concept Reports will be reviewed and approved by the Department of Finance prior to their inclusion and publication as part of the pipeline.

While the pipeline must include all projects, regardless of project value and the Method of Procurement ultimately pursued, government entities might pursue projects that are not listed, should the need arise. In such cases, project-specific Project Concept Reports must be prepared for all projects comprising of the same content, as denoted above and further detailed in Section 2.3. Following the approval of the Project Concept Report, the Government Entity is either mandated to test for PPP suitability (if project value meets the Threshold of a capital expenditure of over AED 200 million or an annual operating expenditure of over AED 10 million), or can proceed with traditional procurement. If testing for PPP suitability is required, the Government Entity will proceed with the Feasibility Study.

The Department of Finance will be responsible for collating the Project Concept Reports for all shortlisted projects from the government entities and preparing the pipeline for publication. As noted earlier, the published pipeline will comprise of two separate components: a **summary document** and a **detailed breakdown worksheet**. The published summary will be a brief document that aggregates the planned investment in infrastructure, provides a breakdown by sector and by region, and provides a primer on the track record of the programme. The detailed breakdown will be published in the form of a worksheet, comprising of the following details for each project: the project/programme name, the sector, the sub-sector, the number of projects (if bundling is applicable), the total capital expenditure funding estimate, the estimated start of works/construction, the estimated date of service, and the preliminary operating cost estimate for every year from the end of construction till the end of the five-year period.





2.2 Project Concept Report

The primary deliverable at this stage of the Project Lifecycle is the Project Concept Report, which serves as an overview of the project, and includes a brief description, an initial needs assessment, a high-level cost estimate, and a proposed project delivery Timeline. The Project Concept Report must be prepared for all projects that are shortlisted for submission as part of the pipeline. Additionally, whilst the pipeline will be collated and published by the Department of Finance, Project Concept Reports must be prepared by the responsible government entities. **Projects will be included as part of the final published pipeline only after their Project Concept Reports are approved by the Department of Finance.**

The report must be brief in nature, typically not exceeding a length of 5 pages, and comprises primarily of the following sections:

SECTION	DESCRIPTION
Section 1: Objectives of the Project	Establish alignment of the Project with Emirate, national, and Contracting Authority objectives, with specific mention of the Pipeline of Priority Projects and key Dubai and UAE strategic documents
Section 2: Project description	Provide an overview of the Project, including a brief description of what it would entail; outline the public need for the Project and how it would meet a demonstrable service gap; specify the parameters of the Project in terms of technical and operational requirements; determine the broad financial and economic parameters, including high-level cost estimates; and, identify the role of the private sector and how their expertise can be leveraged for the procurement of the Project
Section 3: Roles and responsibilities	Outline the key roles and responsibilities of the Stakeholders, including of the Contracting Authority

Figure 6: Sample contents of a Project Concept Report





2.2.1 Objectives

At this stage, the PPP Project Team should establish alignment of the project with Emirate and national objectives, which are expected to be long-term goals that align with stated strategy such as the Dubai Plan 2021, the Dubai Industrial Strategy 2030, UAE Vision 2021, and any subsequent plans. The project objectives should:

- Align with broad macroeconomic trends;
- Reflect the aspirations, objectives, and culture of Dubai's residents; and,
- Be designed in a manner so as to ensure the provision of a framework within which detailed strategies and implementation plans can be developed, with the aim of fulfilling long-term positive outcomes for the country.

The project should be defined in line with the Government Entity's overarching framework. The key elements to be considered are:

- How the project, given its nature as outlined in the description section, meets the objectives of the Government Entity, or those as determined in broader conformance with the strategy of Dubai and the UAE; and,
- Additionally, were the project to fulfill a particular policy aim of the Government Entity – for example, should the Roads and Transport Authority explicitly desire to accelerate the construction of roadways in the nation in a particular fiscal year, a road PPP would provide for the realisation of that objective – the PPP Project Team would note so in this section.

These objectives will provide a basis for the project-specific objectives and should include a clear definition of what the project will accomplish.

2.2.2 Project description

This section should describe the public need for the project and outline why the current state presents an opposite opportunity to carry out the engagement. It is advised that the section contain a description of the current situation, along with the relevant sector-specific background, in order to arrive at an understanding of why the project is needed.

The project description should detail the nature of the project and what it entails, in terms of construction, structures, area, technical features, etc. In addition, it should include a preliminary capital and operating cost estimate that will help guide the Government Entity set the expectations of the market and of the government regarding the size of the final project. The project cost estimate will also dictate the composition of the Partnership Committee – which must include a representative from the Department of Finance if the project value exceeds AED 200 million – and provide further clarity on the approval mechanism to be followed as per the PPP Law.





2.3 Roles and responsibilities

1. **Government Entity:** The Government Entity is responsible for project identification and Screening. Firstly, each Government Entity must collate a longlist of projects and, in conjunction with the Department of Finance, undertake an initial needs assessment and costing analysis to draft Project Concept Reports, and inform the final shortlist of Priority Projects that will be published. Moreover, the Government Entity must undertake qualitative Value for Money analysis to sort projects on the likelihood that procuring them as PPPs will realise Value for Money savings.

Based on the Pipeline of Priority Projects prepared and published by the Department of Finance, the relevant Government Entity must undertake the Screening process, as shown in the flowchart above, and analyse if testing for PPP suitability is mandatory. If the project value has been estimated at above AED 200 million, the Government Entity must necessarily proceed with testing for PPP suitability. If the project value is below AED 200 million, the Government Entity must make a choice: either the project can be traditionally procured, or, if initial analysis reveals that there are compelling reasons for the procurement of the project as a PPP – such as significant Value for Money savings, or the presence of a truly innovative private sector solution – the Government Entity can proceed with the preparation of the project as a PPP, as outlined in Section 3.

If the Government Entity is proceeding with testing for PPP suitability, it must first constitute a PPP Project Team consisting of members as determined by the Director General of the entity. If a decision to proceed with the hiring of Transaction Advisors as part of the PPP Project Team is made, government entities must ensure that the budget for the Transaction Advisor's fees are sanctioned herein.

2. **Department of Finance:** The Department of Finance will be in charge of reviewing and approving the Project Concept Reports submitted by all government entities and publishing the Pipeline of Priority Projects, from which a project shall be initiated and screened for PPP suitability in line with the flowchart provided above. Whilst the tasks stated herein are to be carried out entirely by the Government Entity in general, the Department of Finance also has the prerogative to initiate a project should it so desire – particularly if it receives an unsolicited proposal directly from the private sector (see Annexure for guidance on unsolicited proposals), or if the Government Entity requests the Department of Finance to lead the initiation stage due to overcapacity. If the Department of Finance initiates a project, it shall coordinate with the Government Entity to prepare the Project Concept Report, which shall be reviewed by the Partnership Committee and approved by the Supreme Fiscal Committee regardless of project value.

If the Government Entity decides to test a project outside the pipeline list for PPP suitability, it must prepare a Project Concept Report, which will then be submitted to the Department of Finance for review and approval, for which they will have a period of two weeks.

3. **Supreme Fiscal Committee:** The Supreme Fiscal Committee will be in charge of approving the Pipeline of Priority Projects prior to publication by the Department of Finance.
4. **Partnership Committee:** The Partnership Committee is to be formed at each Government Entity prior to the publication of the Pipeline of Priority Projects, which shall be approved by them prior to sharing with the Department of Finance. Pursuant to Article 11 of the Law, the members of the Committee must be nominated by the Director General of the Government Entity, and must include a member from the Department of Finance on a project-specific basis if the value of the project being procured is greater than AED 200 million.





3

Preparation of the project as a PPP

OBJECTIVE OF THIS SECTION

Enable the critical analysis of a project through the development of a detailed Feasibility Study that provides a qualitative and quantitative assessment of the Value for Money savings from procuring the project as a PPP.

Deliverable: Feasibility Study

Governing articles of the PPP Law and regulations: Articles 7, 8, 9, 10, 11

GUIDANCE

The primary deliverable to be produced during this stage is the detailed Feasibility Study, which will comprise of, at a minimum, a needs assessment, procurement options analysis, scoping, Due Diligence, risk assessment, qualitative and quantitative Value for Money analysis, procurement method selection, and the project strategy. The Feasibility Study is not intended nor must it be perceived as a tool to gain approval. Instead, it is a necessary procedure that enables the critical assessment of a project and the preparation of a robust implementation plan, regardless of the eventual method and option of procurement adopted. The Feasibility Study development process outlined in this section represents a collation of best practices on how a typical PPP Project is analysed for viability. However, since the circumstances of individual projects vary greatly, government entities are encouraged to consult the Department of Finance in order to discuss how these may need to be tailored to suit the particular circumstances of the project in question.

A PPP Feasibility Study differs from a traditional public services delivery Feasibility Study. The traditional Feasibility Study focusses on the assessment of public policy, and economic and technical feasibility studies conducted by the Government Entity. The aim of a PPP Feasibility Study is to go beyond this, and undertake a detailed procurement options analysis in order to identify the most appropriate Method of Procurement that provides the greatest Value for Money savings. The purpose of this section of the guidance note is threefold: ensure accountability and transparency in identifying the delivery option that provides the greatest Value for Money savings; ensure that sufficient information is provided in order to secure commitment to the best Value for Money delivery option; and, establish a mechanism to gauge and monitor performance at each stage of the project's lifecycle.

3.1 Budgetary process

The PPP Guidelines envisage that all projects that are suitable to be implemented as PPPs are undertaken as PPPs. Hence, all projects with a Project Value of more than AED 200 million should be tested for PPP suitability through a robust process of a feasibility assessment as described in this section.



Project Value:

The project value refers to the sum of:

- Capital expenditure for the Project; and,
- Annual operating expenditure over a period of 20 years.

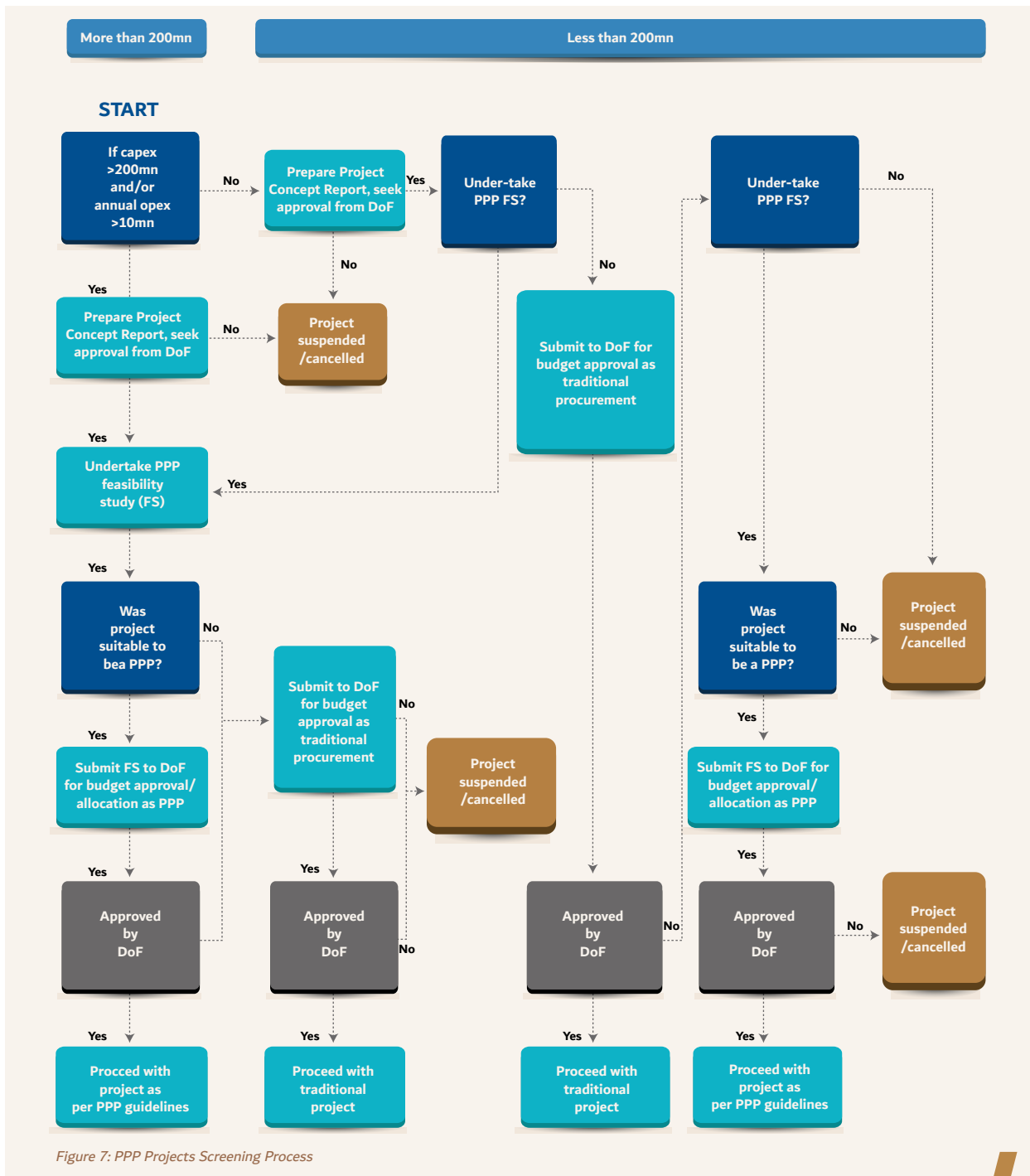


Figure 7: PPP Projects Screening Process



The above flowcharts describe the process that must be utilised by all government entities to determine if a project should be tested for suitability as a PPP and a detailed Feasibility Study is required prior to budget allocation. Typically, projects with a project value of less than AED 200 million are not expected to provide Value for Money savings as a PPP. However, once projects cross this project value Threshold, the leveraging of private sector innovation may result in significant savings to the government. As a result, **the testing of suitability for PPPs through the preparation of a detailed Feasibility Study is mandatory for projects with a Project Value of more than AED 200 million.** Moreover, in brownfield projects or Capex-light projects that have a significant annual operating expenditure, the utilisation of private sector expertise can similarly result in large Value for Money savings through the lifecycle of the project. Consequently, **it is also mandatory for projects with an annual operating expenditure of more than AED 10 million to be tested for suitability as a PPP.**

For projects with a Project Value of less than AED 200 million, the testing of suitability as a PPP is not mandatory. However, in areas where the government has limited precedent experience of procurement, where the private sector has the capacity to produce truly innovative solutions, and where the Government Entity is of the opinion that utilising the private sector can result in Value for Money savings, testing for PPP suitability is permissible and encouraged.

Regardless of the route pursued, the Government Entity must submit the project to the Department of Finance for budgetary approval for procurement either in the traditional manner (EPC) or as a PPP. Should the initial request be denied, the Government Entity can pursue the alternative Method of Procurement and re-submit the project to the Department of Finance for budgetary approval – viz., were the project to be denied budgetary allocation when submitted as a PPP, the Government Entity can present an estimate of what a traditional procurement would cost, and re-submit the same to the Department of Finance.

3.2 Needs Assessment

The Feasibility Study should justify the need for the project in terms of satisfying an essential public requirement. In this section, it is advised to detail how the project will meet a demonstrable service gap. In order to achieve this and facilitate the remainder of the project initiation process, the following steps should be undertaken:

- **Step 1: Determine to what extent the Project would meet the Government Entity's objectives:** Following the definition of the broader objective(s) of the project, the Feasibility Study should define a specific objective that the project fulfills, in terms of a stated policy aim of the Government Entity.
- **Step 2: Options assessment:** Assess key financial, technical, and legal options available to meet project objectives, and decide on a technical solution that will be evaluated in-depth.
- **Step 3: Decide on the framework and broad parameters of the Project:** In this section, define the key Stakeholders for the project. Engage with these Stakeholders to outline subsequent parameters; and, outline the scope of the project to clarify the roles and responsibilities of government and the private sector across all phases of the project. Key aspects to detail will include:
 - List of state Assets that will be utilised;
 - List of enabling works required; and,
 - Roles and responsibilities of the government and the private sector on the project.



- **Step 4: Specify the outputs required to be delivered:** in addition, the performance indicators that will be utilised to measure the output specifications should be detailed. Certain input specifications can be provided to achieve specific objective; ideally, input specifications should be kept to a minimum in order to provide the private sector with appropriate flexibility to utilise their capacity for innovation.

3.2.1 Project Objectives

Establish the objective of the project:

This objective should be determined by the PPP Project Team through discussions with the Partnership Committee. Moreover, the objective(s) should be defined so as to be clear, measurable goals that can be achieved within a specified timeframe.

These objectives can be utilised as part of a post-implementation review to assess the success of the Project. Objectives should be focused on outcomes, not operations, and on outputs, not processes.

An illustrative list of suggested Government Entity and project objectives for different types of projects can be found in the table below:

PROJECT	SAMPLE GOVERNMENT ENTITY OBJECTIVE	SAMPLE PROJECT OBJECTIVE
Highway PPP	Improve road connectivity and transport infrastructure	Halve travel time between two districts of Dubai, which the highway will achieve, as per initial analysis
E-services PPP	Make provision of essential registration services more efficient	Make services for a particular department available easily online 7/24
Hospital PPP	Ensure conformance of health indicators with developed world standards by 2035	Reduce median waiting time for patients to 10 weeks from referral
Power plant PPP	Ensure 24x7 power access to residential and industrial sectors based on sustainable methods of generation	Double the available power capacity by 2020

Figure 8: Illustrative list of Government Entity and project objectives for different types of projects





This section is important in order to demonstrate that the government is committed to the project, as it fulfills certain specific objectives that the project aims to achieve, in part or in whole, and the concerns of potential investors have been incorporated. Hence, in effect, once the Feasibility Study is approved, it can convince investors during the procurement phase that the Authority is committed to this project as it is designed to meet immediate and specific aims. This objective would ultimately determine the detailed performance metrics for the private sector.

3.2.2 Options Assessment

Prior to scoping the project and deciding the Method of Procurement (detailed in Section 3.2.2 – PPP Options Analysis), the Government Entity should evaluate the possible technical and commercial solutions to address the need the project is aiming to solve. With the assistance of the Technical Advisor, the PPP Project Team should:

- List all the available technical, financial, and legal options available to meet the project objectives – for example, for a waste management project, landfill, incinerations, recycling, and waste-to-energy solutions should be considered, whereas for a hospitals project, varying options such as strategic partnership with existing private hospitals, differential insurance coverage for the target population, capitulation fees should be considered ;
- List the evaluation criteria for the options (strategic, technical, financial, legal, environmental, ease of implementation, and suitability of technology to Dubai);
- Evaluate the options against the criteria; and,
- Recommend the preferred option, which will determine the basis for the scoping and the rest of the feasibility analysis.

3.2.3 Project Scope

In this section, the PPP Project Team should outline:

- The Assets that will be used for the project;
- Any land that will need to be required for the purpose of the project; and,
- Environmental and associated regulatory approvals that the Government Entity (or the Preferred Bidder, eventually) will have to gain in order to proceed with construction.

The PPP Project Team must update the Project's scope once the relevant Due Diligence study (see Section 3.3) is complete. In addition, a list of key considerations and rationale adopted for the allocation of responsibility is also recommended to be prepared. In order to prepare these documents, the PPP Project Team should define the specific roles the private sector and the government will play in the project, and their respective project-specific responsibilities. This aims to provide further clarity on the party that will make payments to contracted third parties, the party that will be responsible for operation and maintenance services, and the party that will be responsible for utility provision, amongst other miscellaneous administrative and operative functions. This allocation of roles will be broadly described, and will be subject to change following the benchmarking of similar projects and the market sounding exercise.





3.2.4 Determining Key Stakeholders

It is advised that the PPP Project Team identify key Stakeholders and consult them throughout the project's life cycle in order to better gauge the needs of the project. In order to provide a better understanding of the approvals that will be required and detailed at a later stage, the Government Entity should organise meetings and workshops between the PPP Project Team and the relevant government agencies – Dubai Municipality, Dubai Electricity and Water Authority (DEWA), Dubai Chamber, Road and Transport Authority (RTA) and the Land Department, amongst others – and any other relevant units, as deemed to be appropriate by the Government Entity.

In addition, the PPP Project Team must outline the key relevant Stakeholders on the particular project: for instance, if a hospital is being procured, government agencies such as Dubai Municipality, DEWA, and the Land Department, might have to be involved. In order to ensure that requisite approvals are in place during the course of the procurement, it is of crucial importance that the PPP Project Team seeks them during the initiation stage. This will also reinforce the faith of the private sector in the Government Entity's determination to achieve a smooth and timely commercial and financial close. Additionally, the Government Entity is advised to set up a Point of Contact at each relevant stakeholder Government Entity in order to ensure that liaison between the PPP Project Team and the Government Entity is seamless during the procurement process.

In summary, the PPP Project Team must list all interested parties that may be impacted – positively or negatively – by the project. As illustrated in the table below, the PPP Project Team can categorise the relevant parties as governmental and private, depending on whether they are part of the public sector or not; and, as key or ancillary, depending on their level of involvement in the project.





STAKEHOLDERS	SAMPLE CONTRACTING AUTHORITY OBJECTIVE
Key – Governmental	
Stakeholder 1	Requirement 1, Requirement 2
Stakeholder 2	Requirement 1, Requirement 2
Key – Private	
Stakeholder 1	Requirement 1, Requirement 2
Stakeholder 2	Requirement 1, Requirement 2
Ancillary – Governmental	
Stakeholder 1	Requirement 1, Requirement 2
Stakeholder 2	Requirement 1, Requirement 2
Ancillary – Private	
Stakeholder 1	Requirement 1, Requirement 2
Stakeholder 2	Requirement 1, Requirement 2

Figure 9: Sample table of key Stakeholders and Government Entity objectives





3.2.5 Output Specifications

Under a traditional procurement, the Government Entity prepares a list of detailed specifications that describe the inputs required to be delivered for the provision of a service. On the other hand, under a PPP procurement, the Government Entity prepares a list of output specifications, specifying the services required against which the performance of the private company will be measured in a particular project.

The output specifications underpin the entire PPP procurement process, and, hence, must be outlined with a great deal of attention. The focus of the Output Specifications is on services required rather than on Assets wanted, and the service standards expected by the Government Entity, regardless of who will deliver them. Output specifications should be clear and unambiguous statements that set out exactly what is expected of the Preferred Bidder on the project. These specifications should be drawn from the project objectives. The PPP Project Team is also encouraged to ensure that they are not so detailed as to discourage innovation, which is one of the drivers of achieving Value for Money in PPP Projects. Additionally, output specification should be clearly identified and quantifiable, so as to define relevant performance indicators against which the performance of the private sector partner can be measured.

Key elements of output specifications include:

- **Organisational structure of the Government Entity:** the structure of the Government Entity needs to be set out, in order to establish the interface between the Bidders and the Government Entity, and offer clarity on communication, reporting, and management protocols;
- **Performance criteria:** determining the required service delivery principles, the operation and maintenance process performance criteria, and the details of monitoring and conformance measures in realistic and quantifiable terms;
- **Quality standards:** the minimum quality criteria that would necessitate adherence from interested Bidders, as determined by the Government Entity. These would include, for example, construction quality requirements when physical structures are involved; hygiene and drug quality standards when medical facilities are involved; sanitation standards when ancillary facilities are involved; or, maintenance and rehabilitation requirements which sets the minimum criteria the Assets needs to satisfy before the private company hands back the Assets to the Government Entity.
- **Constraints:** following extensive discussions with key Stakeholders, any constraints to be placed in the design, construction, and operational phases of the project that may necessitate contractual amendments, are to be detailed;
- **Risk transfer:** the identification, assessment, and allocation of risk between the public and private sectors, in order to ensure an optimum allocation of risk as required by the relevant procurement method;
- **Payment principles:** determine explicit, quantifiable, and pragmatic payment principles;
- **Change mechanisms:** a certain range should be specified for the relevant operating conditions, as determined following extensive consultations with key Stakeholders and the Government Entity, with a provision for direct negotiations should this range be exceeded;
- **Alternatives:** in cases where the Government Entity may recognise that there are certain alternatives that, while not necessarily stated in the Tender documents and specifications, may be worthy of being considered, a general basis for comparison must be evolved; and,



The PPP Project Team is advised to construct a table in order to indicate the list of output specifications, specify the corresponding performance measurement indicator that will be used, and the input specification that could be utilised by interested Bidders in order to address the output required. Provided below herein is an illustrative table for a hospital PPP:

OUTPUT SPECIFICATION	PERFORMANCE MEASUREMENT INDICATOR	INPUT SPECIFICATION
Clinical and No-clinical spaces must have adequate power supply in order to meet operational requirements	Number of power outages during working hours; enforced by sample checks and complaints logged	Ensure that clinics have at least four pairs of 240V power supply sockets; ensure the installment of a generator on the premises to not allow for any power outages
There should be adequate arrangements to ensure the complete safety patients and the staff	Number of incidents of theft, vandalism, other criminal activities during a year	Ensure -24hour security patrol; ensure monitoring of hospital premises with CCTV cameras; ensure that all employees are screened carefully;
Ensure that the hospital is clean enough to provide a safe, hygienic environment, and presents a positive image	Measured by surprise field visits by relevant authority officials	Ensure internal cleaning of a hospital four times in a day

Figure 10: Illustrative list of output specifications, performance measurement indicators, and input specifications for a hospital PPP

3.3 PPP Options Analysis

Potential PPP options should be evaluated against the objectives of the project, whole-of-life costing, the detailed output specifications, the utility of each option in achieving them in an efficient manner, the feedback from the market sounding, and the qualitative and quantitative risk assessment – details of which can be found in Chapter 5 of this Guidance Note.

While evaluating each delivery option, consideration must be given to:

- The capability of the private sector to deliver its portion of the required work and manage the risks allocated to it;
- The ability of the Government Entity to finance and deliver its obligations;
- The achievement of strategic and project outcomes, especially those denoted specifically by the Government Entity;
- The extent to which the model accounts for exogenous changes in conditions;
- Whether the project has any unique characteristics that make it not amenable to traditional methods of delivery; and,
- Whether the project has risks that, even if appropriately allocated, exceed organisational or market tolerance levels.

The methods of delivery considered can range from traditional government-funded procurement through to a design, build, finance, operation, and maintenance contract. Based on the benchmarking conducted and extensive consultations with key Stakeholders, the PPP Project Team can prepare a longlist of the delivery models that can be assessed, which will vary according to the nature of the project and will be refined following the market sounding exercise that will aim to gauge the appetite of the private sector to finance and procure such a project.

Below is an illustration outlining the spectrum of possible options:

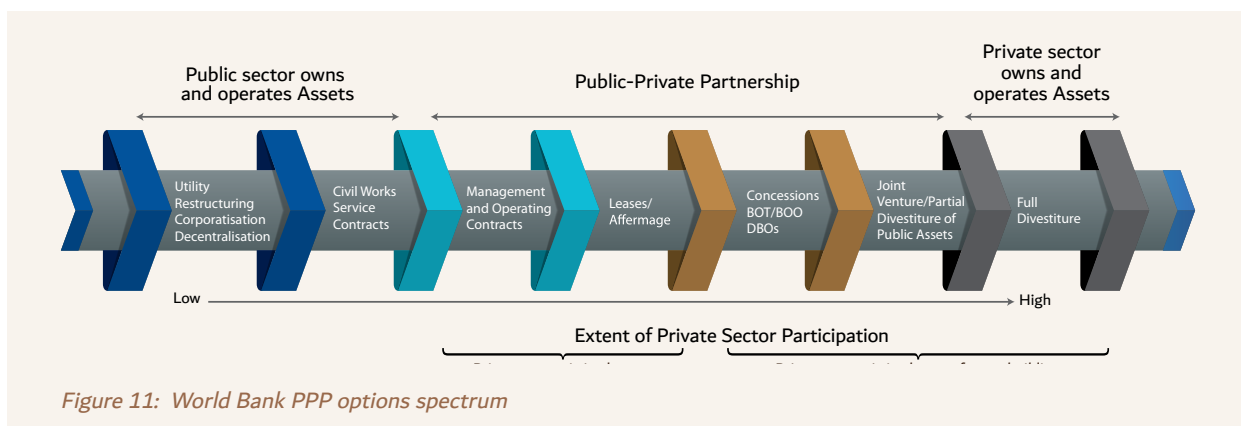


Figure 11: World Bank PPP options spectrum

Source: "What are Public Private Partnerships?" World Bank

Moreover, the PPP Project Team should conduct an assessment of whole-of-life costs, including initial capital expenditure, maintenance and refurbishment costs, operational costs, and the cost of any associated enabling works, ensuring that the comparison then made between delivery models is like-for-like, which will then be used to narrow down the longlist.



Choosing the most suitable delivery model depends on the Project's Risk Allocation structure, Opex, Capex assumptions, as well as its technological and design requirements. A brief summary of most common PPP models are exemplified below:

	SERVICE CONTRACTS	MANAGEMENT CONTRACTS	LEASE CONTRACTS	CONCESSION	BOT AND VARIATIONS
Scope	Multiple contracts for a variety of support services	Management of entire operation or a major component	Responsibility for management, operations, and specific renewals	Responsibility for all operations and for financing and execution of specific investments	Investment in and operation of a specific major component
Asset ownership	Public	Public	Public	Public/private	Public/private
Duration	3-1 years	5-2 years	15-10 years	30-25 years	Varies
O&M responsibility	Public	Private	Private	Private	Private
Capital investment	Public	Public	Public	Private	Private
Commercial risk	Public	Public	Shared	Private	Private
Level of risk assumed by private sector	Minimal	Minimal/moderate	Moderate	High	High
Special features	Useful as part of strategy for improving efficiency of public company; promotes local private sector development	Interim solution during preparation for more intense private participation	Improves operational and commercial efficiency; develops local staff	Improves operational and commercial efficiency; mobilises investment finance; develops local staff	Mobilises investment finance; develops local staff
Challenges	Requires ability to administer multiple contracts and strong enforcement of contract laws	Management may not have adequate control over key elements, such as budgetary resources	Potential conflicts between public body, which is responsible for investments, and the private operator	How to compensate investments and ensure good maintenance during the last 10-5 years of the contract	Does not necessarily improve efficiency of ongoing operations; may require guarantees

Figure 12: Summary of PPP Models

Source: "PPP Options for Toll Road Development", Heather Skilling and Kathleen Booth, 2007



3.4 Due Diligence

The PPP Project Team should outline the enabling and construction works required for the project to be implemented, which includes all technical, environmental, legal, social, and other associated issues related to the Project to be analysed.

3.4.1 Technical Due Diligence

The Technical Advisor, appointed as a member of the Transaction Advisor Consortium, should determine the technical specifications for the project suitable for a PPP. It should undertake a review and visits of the project sites identified by the Government Entity, in order to assess whether the site is feasible to undergo construction, identify potential roadblocks to project implementation, such as the provision of utilities, harmful effects on the groundwater table, whether there are appropriate means for access, parking requirements, and whether the construction would actively harm the existing geology, and other relevant project specific technical issues.

The Government Entity is encouraged to actively support the Transaction Advisor during this period, facilitating site visits and meetings with applicable government agencies, in order to gauge the status of future utility connections, discuss access and egress issues, and discuss the construction of roads near the site, amongst other issues.

The Technical Advisor should develop the costs for the project, including capital costs required to meet stated outputs, operating costs, and maintenance costs. The costs should be estimates based upon benchmarking analysis conducted using local and regional precedent projects, following inputs and validation from the Government Entity. In addition, revenue should also be estimated by the Technical Advisor with the aid of a comprehensive demand assessment that takes into account the scope of the project, benchmarking analysis of comparable projects, and primary and secondary surveys, amongst other project-specific methodology, as determined to be appropriate in conjunction with the Government Entity.

3.4.2 Environmental Due Diligence

The Technical Advisor/Environmental Advisor is advised to prepare an environmental scoping report at this stage, which provides the requisite background information on environmental conditions, as gauged by desk research and site visits, to discuss the process to address environmental impact that must be aligned with the Dubai Carbon Centre of Excellence, social aspects and associated regulatory issues during the procurement stage, and avoid retrospective orders for compliance. The Legal Advisor and the Technical Advisor/Environmental Advisor should consider the existing regulatory framework, summarise relevant environmental legislation, and any project-specific regulations that the Preferred Bidder might be required to abide by.

The PPP Project Team should specify a generic set of environmental standards applicable to all projects, unless specified otherwise specifically by the Government Entity. These standards can be developed by Dubai Municipality, or be aligned with international standards, such as the International Finance Corporation's guidelines or the Equator Principles. For negative impacts of the project that deviate from the specified standards, mitigation strategies will need to be discussed with key Stakeholders.





3.4.3 Legal Due Diligence

The Legal Advisor, hired as part of the Transaction Advisor Consortium, is encouraged to undertake an extensive review of the existing Dubai regulatory environment that covers all the legal aspects relevant to the implementation of this Project. The legal Due Diligence should address the following issues:

- PPP-specific, land, construction, and operation related issues;
- Review of employment law that private sector operators will have to abide by, including regarding the transfer of staff;
- Review of applicable Federal Laws relevant to the implementation of the project;
- Any existing contracts that private sector operators will have to honour;
- The regulations regarding the production of an adequate, bankable security package;
- The rights of private sector operators, such as an ability to grant security over bank accounts receive payment, and collect revenue directly from end users;
- Currency matters and monetary regulation as to whether the Project can be denominated in currencies other than Dirhams; and,
- Any existing loan tenor regulations, exchange controls; and, regulations regarding interest rate swaps.

3.4.4 Financial Due Diligence

The Financial Advisor should undertake a review of the financial estimates utilised as inputs in the Base Case Model, the building of which is described in Sections 3.7 and 3.8 – Risk Assessment and VFM Analysis. The financial Due Diligence section should analyse the relevant cash inflows and outflows for the Project, the Project NPV, Project and Equity IRR, Equity and Debt structures, and bankability.

The Financial Advisor must ensure that a broad costing estimate has been performed, with all the relevant cost items included from Capex and Opex to provide a comprehensive picture, and conduct a secondary review of the estimates provided. This step is particularly important as inaccurate costing can bias the Value for Money calculation which will, ultimately, be utilised as the primary method of determining whether the project should be procured as a PPP or not. In addition, the Financial Advisor should also consider whether or not the Government Entity can afford to procure the project, in terms of the budget and/or the end user of the services, and must evaluate the Project structure to include appropriate accounting and tax considerations.

3.4.5 Economic and Social Impact Assessment

The social impact analysis can be a very important part of the general appraisal of PPP Projects, since many infrastructure initiatives cause severe impacts on communities surrounding the site on which they are implemented.

Social impact analysis is an exercise aimed at identifying and analyzing such impacts in order to understand the scale and reach of the project's social impacts. It also ensures that these impacts are mitigated, to the extent possible, and fully considered in the approval decision.





However, social impact analysis can be expensive and time consuming, so the full analysis process cannot be justified for all projects. At a minimum, all projects should review project data to identify if material social impacts exist. If they do, a full social impact analysis should be conducted.

The social impact analysis can address a very broad set of issues related to changes in the social, economic, and cultural condition in which the surrounding community live and work. Specific types of social issues and possible impacts associated with a project can vary considerably depending on the nature of the project, its size and location. For example, a hospital in a remote rural area may have a much narrower set of social impacts than a greenfield toll road that crosses several communities. In all cases, experienced professionals should use their technical judgment to determine which issues should be subject to inquiry.

The social impact assessment should identify the impacts of the project in the community and classify them in terms of significance. It also provides recommendations for actions that can avoid, minimize, or compensate the adverse social impacts of the project. The social impact assessment indicates the total adverse social consequences that cannot be mitigated, and presents them as a relevant consideration in the approval decision to procure the project.

Infrastructure projects lead to a wide range of direct and indirect economic impacts. Some areas are:

- Positive outcome on the country GDP can be achieved when counting direct and indirect impacts
- Economic growth
- Increased labor market opportunities and job productivity
- Increased taxes
- Environmental impact

Hence, the economic value of any infrastructure PPP project should be analysed by quantifying the economic and social impacts, positive and negative, throughout the life of the infrastructure PPP project.

3.5 Benchmarking Analysis

Conduct a precedent review on how PPP procurements in the same sector have been carried out before, what the existing options are for financing structures, how the implementation and procurement process has been carried out, and associated practices that contribute to an efficient procurement process can provide a valuable insight into the procurement of the project in question. Not only will this exercise enable the Government Entity to adopt best practices during the procurement stage, but it will also inform the market sounding process.

3.6 Market Sounding

For a PPP Project to be successful, the Government Entity should ensure that there is sufficient market interest and that a quorum of interested qualified Bidders and developers are in place. Given that, at this stage, the PPP Project Team is aware, broadly, of the nature of the project and has a working knowledge of the initial version of what outputs might be required, this is the appropriate time to gauge the interest of the private sector in such a project.

Importantly, even if the project were to provide real Value for Money, and satisfy important policy aims and agency objectives, the private sector might be unwilling to invest, either because companies do not have the sufficient economies of scale to realise value from the project, or because they fear the lack of proper





financing options, amongst many other possible reasons. In order to undertake the exercise effectively, the PPP Project Team should perform it jointly with Government Entity representatives and any other key Stakeholders deemed to be particularly important.

For projects where there is an established sufficient interest and expertise, as determined by the benchmarking analysis, the PPP Project Team can focus on the Private Players deemed to be interested in projects of a similar nature, by virtue of having participated previously. It is important to emphasise to any interested participants that the process only constitutes the beginning of the project, and that the project might not proceed to procurement stage, and, if it does, they will not be advantaged. In projects where prior experience has been limited, as determined by the PPP Project Team, a prior information notice can be placed in the form of an advertisement in widely read newspapers locally and internationally – with the Project Team then reaching out to individual companies to “market” the project.

Participants should be provided with project information and a formal questionnaire to gauge details about the company that might be considered important. It is strongly advised to invite the relevant Players from the industry including developers, investors, and banks etc. The PPP Project Team should demonstrate that sufficient number of Market Players have been consulted, and should ensure that the outcome of the market sounding is detailed in the Feasibility Study.

3.7 Payment Mechanism

For each of the shortlisted options, the PPP Project Team must outline the resultant payment mechanism, which details how payments will be made by the relevant Government Entity to the project company or the Preferred Bidder. The mechanism must detail the structure of the payment, milestones upon which they are delivered, any related penalties and incentives and how that regime is structured, and the relation of the nature of the payment to performance indicators or other contractual issues that will be governed by the structure of the option. Types of payment mechanisms that the PPP Project Team must consider, and align with relevant options, include: availability payment, revenue guarantees, viability funding, and operating subsidies, amongst others. Additionally, the form of the payment must also be clearly stated – viz., whether it will operate as a toll, a tariff, or a user fee, for example.

The shortlisted options, along with the relevant payment mechanism structures, will be imperative to informing the risk assessment and the financial model; for each option, as detailed below, risk will be separately quantified and allocated, with the payment mechanism determining the demand Risk Allocation.

3.8 Risk Assessment

The management of risk is an integral part of all infrastructure projects, and the PPP Project Team must outline, in this section, the generic and procurement method-specific risks that the project will face. Whilst proper allocation of risk can be extremely cost-effective, providing Value for Money in terms of lower financing and construction costs, risk misallocation increases project costs and grievously impacts service delivery quality. Therefore, the PPP Project Team must abide by the key principle of Risk Allocation: ensuring that risk is allocated to the party best able to handle it. To that end, the PPP Project Team is expected to accomplish three critical tasks at the end of this section:

- Build a risk matrix that includes the relevant risks that would impact the feasibility of the project;
- Develop a standard risk evaluation mechanism to assess the impact of potential risks; and,
- Formulate appropriate risk management and mitigation strategies before negotiating with Bidders in order to optimise Risk Allocation.





To execute a proper risk assessment process, the PPP Project Team is advised to follow the following sequential steps:

Step 1: Identification of risks

A number of techniques could be used to identify risks associated with the project including:

- Structured review meetings – wherein key Stakeholders participate and articulate the probable risks;
- Risk audit interviews – wherein experienced managers and/or advisers conduct sessions with Stakeholders in order to better understand and quantify the risks involved; and,
- Risk brainstorming workshops – which includes all key members involved with the project and encourages innovative, original ideas.

A generic list of infrastructure project risks can be circulated at the beginning of such sessions in order to better inform thinking. Once sufficient experience has been gained by the Government Entity in such projects, testimonials from prior projects on risk management in practice can also be shared. It is advised that the PPP Project Team involve senior representatives from the Government Entity and the Transaction Advisor Consortium – comprising technical consultants such as design engineers, legal advisers and risk analysts as part of the broader financial advisory team, in addition to other governmental and external representatives as deemed fit – in these discussions.

Step 2: Identify the potential impact and estimate the Probability of Occurrence for each risk

The potential risk impact can be categorised under three elements:

- Effect of risk: The effect that each risk brings to the project, which can manifest itself as cost overruns, Timeline delays, and wrongly ascertained revenue, amongst others;
- Timing of risk: The period of the project the risk manifests itself in; and,
- Severity of risk: The magnitude of the risk on the project – often expressed as a percentage value; for instance, capital cost overrun risk could be expressed as being valued at 20% of the original value.

The measurable impact of the risk will also depend on its Probability of Occurrence. The PPP Project Team could identify the probability of risks by:

- Examining any encountered risks that occurred before in previously executed similar projects; and,
- Estimating the most likely probability depending on the key Stakeholders' similar experiences on other types of projects.





Some risks may be regarded as having low Probability of Occurrence, but their economic impacts may be considerably high. Hence, at this stage, it is crucial to analyse all risks, even those indicating lower Probability of Occurrence.

Step 3: Calculate the cost of each risk

The Probability of Occurrence and the impact of the risk can then be combined into a matrix in order to provide a measure of the combined significance of the risk, and can then be ranked from the highest significance of risk to the lowest, thus providing a measure of which risks need to be prioritised for the particular project, based on extensive consultations with relevant Stakeholders. The PPP Project Team can then prepare a risk management strategy for those risks retained by the Government Entity, with the aim of optimising Risk Allocation.

In order to calculate the project risk value, a five step calculation methodology should be followed:

- Establish the base case – the best estimate for each risk option that necessitates assessment of how much it will cost in economic terms;
- Calculate the impact severity – assign “best” case, “most likely” case, and “worst” case scenario percentages, building up on the potential impact determined in Step-2 ;
- Calculate the potential value – multiply the base case by each percentage to estimate the potential value of each scenario;
- Assign the probability of the risk – estimate the probability of each scenario occurring (sum = 1); and,
- Calculate the expected value of the risk – multiply the potential value by the respective probability.

For example, to calculate the “most likely case” risk of capital cost overruns of a project which has an estimated capital cost of 20M AED (Base case cost): if the risk of a capital cost overrun is calculated as 40% (Impact severity – “most likely” case) and by taking into account the historical trends in similarly procured projects, the average overrun is determined as 20% (Probability of Occurrence of “most likely case”), the expected value of the risk will be calculated as; $\text{AED } 20\text{M} \times 40 \% \times 20 \% = \text{AED } 1.6\text{M}$.





Step 4: Risk Allocation

Identify in this section which party should bear each risk identified in Step 1. The main objective is to allocate risk to the party best able to manage, control, and mitigate it. Risk can be assigned to either the Government Entity, or the Bidder, or a risk can be shared between parties.

An illustrative table providing an allocation of the risk under Design and Build (DB), Design, Build, and Operate (DBO), Design, Build, Operate, and Finance (DBFO), and Concession contracts is provided below:

RISK CATEGORY	DB	DBO	DBFO	CONCESSION
Planning risk	GE	GE	GE	GE
Design risk	C	C	C	C
Construction risk	C	C	C	C
Operating risk	GE	C	C	C
Demand risk	GE	GE	C	C
Residual value risk	GE	GE	C	C
Financial risk	GE	GE	C	C
Legislative risk	GE	GE	GE	GE

Figure 13: Illustrative allocation of risk between parties under various PPP structures

Legend: GE = typically retained by Government Entity; C = typically transferred to the Contractor





Step 5: Build the risk matrix

Following the cost calculation and Risk Allocation exercises, a table summarising the value of risks across the project phases, with allocation divided by cost group should be created for each PPP model being evaluated. An example of a summary of quantified risk matrix for the identified risks is shown below.

RISK	CAUSES	RETAINED RISK	TRANSFERRED RISK
Design	Changes in design standards, changes in public sector requirements, and failure in design to meet the requirements	AED amount	AED amount
Capital expenditure	Risk on capital expenditure from delays and cost overruns, changes in requirements during construction, environmental damage, and defects liability	AED amount	AED amount
Operating	Facilities unavailable, inadequate forecasting of maintenance costs and lifecycle costs during 25 years, interface of the individual services components' availability of labour and handback	AED amount	AED amount
Total cost of risk		AED amount	AED amount

Figure 14: Sample summary risk quantification table

Step 6: Identify strategies for mitigating the risks

As the last step, the PPP Project team is expected to list out certain risk mitigation techniques for each retained risk listed in Step 5. The risk matrix can then be expanded to include mitigation strategies and ways to implement such strategies for the Government Entity.





3.9 Value for Money (VfM) Analysis

Within the context of PPPs, VFM Analysis can be summarised as the process of developing and comparing the Project's total costs, under the two delivery models: conventional procurement and PPP. VfM only exists when the risk adjusted costs of the PPP option are less than risk adjusted costs of conventional procurement. This can be measured in two ways – a Qualitative and a Quantitative Assessment, both of which the PPP Project Team is expected to perform in order to assess VfM with an objective and comprehensive manner. In order to achieve this, sequentially, the PPP Project Team is advised to:

- Carry out a quantitative VfM assessment:
 - Create a Base Case Model (BCM), which reflects the cost of traditional procurement to the government;
 - Develop a risk adjusted BCM, which adds the weighted cost of each risk to the BCM , and functions as the Public Sector Comparator (PSC);
 - In parallel, develop the PPP model(s), which accounts for the required payment to be made by the government to the private partner – depending upon the payment mechanism – the costs of the private sector during construction and operation, required equity return, financing structure, etc.; and,
 - Perform the quantitative assessment, which compares the net present cost of the risk-adjusted BCM to the governments with the net present cost of PPP option.
 - The Contracting Authority will need to use a discount rate to estimate the net present values for the VfM assessment. The Contracting Authority should consult DoF for the discount rate to be used for each particular project,
- Carry out a qualitative VfM assessment, which outlines the benefits of procuring the project as a PPP following consultations with key Stakeholders; and,
- Compare quantitative results of different procurement options along with the qualitative aspects that each option provides.





3.9.1 Quantitative VfM Assessment

The quantitative VfM assessment is a crucial step in determining whether a project should be procured as a PPP or not. Therefore, it must be measured on a project-by-project basis and each project would provide a different potential for delivering Value for Money. Quantitative VfM Analysis will assist the PPP Project Team in completing the following critical tasks:

- Establish the PSC for delivering the project through traditional procurement (the BCM);
- Adjust the BCM model for the risks that would be transferred to the private sector under PPP procurement, and determine whether a PPP option is preferable over the traditional method because potential benefits of PPP prevail over the traditional costs; and,
- Evaluate the procurement options accordingly, and, utilise a combination of which option offers the greatest Value for Money and appears the most appropriate one to be implemented on the project.

Quantitative VfM assessment will cover the development of three different models for comparison:

- Base Case Model (BCM);
- Risk-adjusted BCM; and,
- Risk-adjusted PPP Model (to be compared with the risk-adjusted BCM)

3.9.1.1 Base Case Model (BCM)

The PPP Project Team is advised to develop a Base Case Model as the first step in the development of a PSC model, which will include estimates of the key capital, operating, and lifecycle costs of the public sector undertaking the key requirements of the Project using a traditional procurement method. The BCM does not include the quantification of the risk which would be transferred to the Preferred Bidder under the PPP and, therefore, it is not appropriate to compare the cost of the BCM against the cost of the PPP. The model should include all kinds of cash inflows and outflows including but not limited to:

- Capital costs: cost of constructing the relevant facilities as detailed in the project scope, procuring raw material and associated project-specific equipment, land, etc.;
- Operating costs: includes cost of operating facilities, labour costs, cost of maintaining facilities, and administrative/SPV running costs; and,
- Indirect costs.

3.9.1.2 Risk-adjusted BCM

The risk-adjusted BCM model accounts for risks that are usually retained by the government under traditional public procurement methods. The risk-adjusted BCM equals the BCM plus the costs of risks identified in the Risk Assessment section. This model will then be used for the VfM comparison with the risk-adjusted PPP Model.





3.9.1.3 Risk-adjusted PPP Model

The PPP model serves as a risk-adjusted estimate of the cost of procuring the project as a PPP. The Government Entity must ensure that the underlying base costs in the BCM reflect the costs to government of providing the services to the same specification as expected from the private sector. In addition, it will include PPP-specific financing costs, such as the cost of debt and equity, define a target equity internal rate of return (“IRR”), and solve for the project IRR, which will then be used to compare different scenarios.

Model Assumptions

The PPP Project Team must detail all the assumptions of the model, which will be derived following consultations with the Government Entity and other related Stakeholders. These would include:

- Financing assumptions (Target debt/equity ratio, target debt service cover ratio, tenor of loan, interest rate, target equity IRR, unitary charge indexation percentage, working capital days, etc.);
- Estimation of land value;
- Underlying base costs (Site development, design, construction – including raw materials, plants and equipment, labour, and site management costs – internal fit out and external works of landscaping costs, facility development, SPV costs, administrative costs; facilities management, labour costs, major maintenance costs, etc.); and,
- Discount rate.

Note on discount rate assumption

The discount rate is utilised as a way of calculating the net present value (“NPV”) of future cashflows, and the selection of an appropriate rate is crucial to informing the Government Entity’s decision, as a result of which it must be done only following extensive analysis and consultation. Globally, there are a number of approaches to calculating a suitable discount rate, ranging from a long-term government borrowing rate, to a government rate plus a Risk Premium applied to the PPP model, to the cost of capital of the private sector party. Due to the mechanics of how a discount rate calculation works, a higher discount rate would increase the likelihood of a PPP passing the VfM test.



Attached below is a table benchmarking the discount rates utilised as part of the PSC and PPP models around the world:

COUNTRY	PSC DISCOUNT RATE	PPP DISCOUNT RATE
Australia	Risk-free rate	Risk-free rate plus a Risk Premium that is proportional to the systematic risk which has been transferred to the Private Party
Canada	-365day average of the Government of Canada bond yield with a tenor approximating that of the project's life	Same as PSC
Kuwait	Mid-point of %11-6 range as seen in global PPP Projects – %8	Same as PSC
Portugal	Risk-free rate	Same as PSC
Republic of Ireland	Based on the yield of the Government Bond (choosing one with a maturity period which best matches the project's lifespan)	Same as PSC
South Africa	Risk-adjusted cost of capital to the government. If it is not possible to quantify the costs associated with the risks, then a Risk Premium can be added to the discount rate	Same as PSC
The Netherlands	Private sector project WACC	Same as PSC
United Kingdom	Risk-free rate with Risk Premium	Same as PSC
United States	Based on an annual guideline ("Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs") issued by the Office of Management and Budget	Same as PSC

Figure 15: Benchmarking analysis of discount rates utilised as part of the PSC and PPP models in different countries





In summary, there are three broad options for determining the discount rate:

1. Where the risk-free rate is utilised for the PSC and PPP – as in Portugal, for example;
2. Where the risk-free rate with a project Risk Premium is utilised for the PSC and PPP – as in the United Kingdom, for example; and,
3. Where the risk-free rate is utilised for the PSC and the risk-free rate plus a project Risk Premium is used for the PPP – as in Australia.

Option 1: The government risk-free rate – usually a government bond with a tenor that is similar to the project length – is used for the PSC and the PPP models.

- PSC model – as the government will borrow as a whole, and not on particular projects, in Dubai, it is appropriate to use the risk-free rate; and,
- PPP model – using the same rate allows for a like-for-like comparison for the evaluation of VfM.

Option 2: Sum of the government risk-free rate plus a project Risk Premium is utilised for both the PSC and the PPP models with the purpose of reflecting the project cost of financing for the private sector accurately and incentivising the private sector to participate in riskier projects. The PPP Project Team must note that, for the same project, everything else staying equal, using this higher discount rate is likely to show greater Value for Money than using only the risk-free rate, as shown below.

NPV is the sum of the present values of future cash flows. The formula for calculation is shown below:

$$NPV \text{ of unitary payments} = UC_0 + \frac{UC_1}{(1+r)^1} + \frac{UC_2}{(1+r)^2} + \frac{UC_3}{(1+r)^3} + \dots + \frac{UC_{25}}{(1+r)^{25}}$$

Where UC is the unitary charge/availability payment, r is the discount rate, and the concession period is 25 years. If the discount rate is higher, the denominator in the above equation becomes bigger. Hence, the NPV becomes smaller. As payments in the PPP model are over the whole project term, the benefit of discounting are more apparent in a PPP model than in a traditional procurement model, wherein the payment for construction is done during the construction period only.

Option 3: which is only followed in Australia, the PSC model uses the risk-free rate, whilst the PPP model uses the risk-free rate plus a project Risk Premium. After calculating the project Risk Premium using an asset beta and a market Risk Premium, the systematic risks are listed out to calculate the portion of the Risk Premium transferred to the private sector. While this method is novel, there are some issues with it, particularly in a Dubai context, as deriving an asset beta and a subsequent project Risk Premium is conditional on a liquid equity market, which is not the case regionally.

In general, for Dubai, we would recommend Option 1. If the tenor of Dirham-denominated bonds might not always match the requisite concession period, premium yield adjustments taking account of the USD-denominated international bonds and interpolation should be applied to arrive at a final discount rate. However, over time, as the PPP market becomes more liquid and Dubai extends the yield curve with regular debt issuances, it is recommended that the PPP Project Team consider moving to Option 2 – wherein the risk-free rate plus a Risk Premium is utilised as the rate for the PSC and for the PPP.



3.9.1.4 Sensitivity analysis

Before creating this model, it is expected that the PPP Project Team would have narrowed down the list of delivery options to three or fewer, running separate versions of the base cost model for each option. Then, when the PPP Project Team settles on one delivery option, based upon some combination of greater Value for Money and ease of implementation – amongst others – it is advised to run sensitivity and scenario analyses, testing various iterations of key variables to see how the VFM Analysis is impacted. These key variables could include:

- Inflation rate;
- Capital expenditure and operating costs – with a +/- percentage change;
- Unitary indexation percentage – with a +/- percentage change;
- Gearing ratio – changing ratio of debt/equity;
- Changes in the concession period – +/- shift in the number of years;
- Project delays; and,
- Financing costs.

Ease of implementation is not expected to be objective criteria. However it is expected to be qualitative criteria which is determined through the following parameters:

1. Precedent PPP structures
2. Compliance of the structures' requirement with local legal requirements
3. Capacity of the contracting authority to manage the structures

3.9.1.5 Vfm test

In the initial Vfm test, the PPP Project Team must compare the NPV of the risk-adjusted BCM model, with the NPV of the PPP Model. An illustrative example of how VFM Analysis will look like:

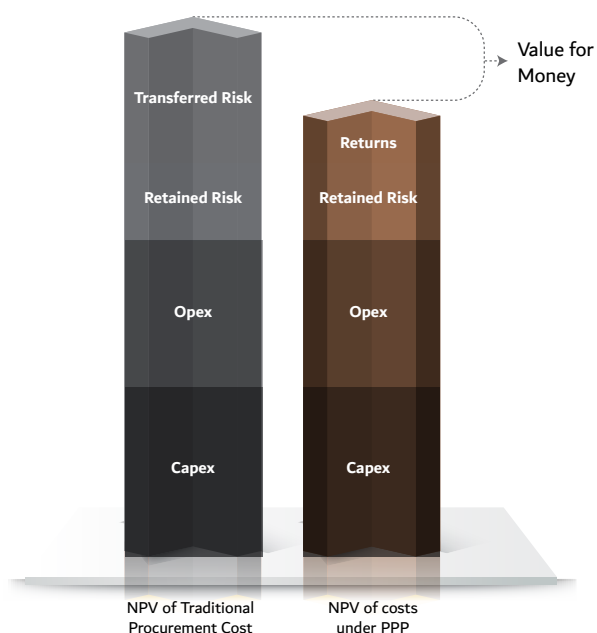


Figure 16: Illustrative example of VFM Analysis



If the NPVs are indistinguishable from each other, the PPP Project Team should consider the qualitative assessment in order to make a final decision on the preferred Method of Procurement, followed by a few additional steps that should be taken with regards to the VFM Analysis:

- Benchmark the VfM results to the VfM results achieved by similar projects with similar transaction structures; and,
- Identify the criteria for the project execution phase to decide when the VFM Analysis will be revisited.

At this stage, the Government Entity must be fully empowered to make a decision regarding whether it would want to retain the project because the Value for Money the private sector provides is negligible and the risks are too high for the project to be procured privately with such minimal gain, or whether the innovation and efficiency the private sector might bring, even on the margins, would be worth transferring the project to the private sector.

3.9.2 Qualitative VfM Assessment

The following is an illustrative list of key Value for Money drivers for PPP delivery:

- Complex risk profile and opportunity for risk transfer: Large, complex projects often have complex risk profiles, and risk management is best performed by allocating some portion of that risk to the private sector, who might be better equipped to handle it;
- Lifespan costing: As the whole service delivery process (including construction, operation, monitoring and asset management phases) turns into the responsibility of one Private Party during the concession period, lifespan costing becomes evident and results in more systematic service provision;
- Innovation: As PPPs focus on deriving Value for Money and reducing fiscal burdens, and allow the private sector to design its own works within the framework of stated output specifications, there is a great incentive for the private sector to provide innovative solutions that deliver the service at specified standards but at lower prices, deriving value through improved productivity as a result; and,
- Measurable outputs: As the government emphasises precisely the outputs it requires as part of the contract, PPPs allow for measurable outputs and alignment of the achieved results with what was stated and agreed upon, creating a performance-based contract.
- Long term budgetary certainty: The fixed price nature of service payments under a PPP structure generally provides greater budgetary certainty than payment arrangements under traditional procurements, as a result of which service quality remains largely constant and unaffected by exogenous budgetary shocks.
- Timeliness of delivery: As a result of contractual stipulations, the private sector partner is compelled to deliver the Project on time, and can also be incentivised to do so before the deadline, by structuring the payment mechanism in an appropriate manner. The loss of income that the Preferred Bidder faces on a PPP Project as a result of delayed delivery is likely greater than that a building contractor faces in additional penalties under traditional procurement.

In summary, the PPP Project Team should justify that risks can be properly assigned to the private sector; that the Project has the potential to utilise the private sector's expertise and that the private sector is experienced in achieving quality and timely delivery on similar projects; that there is a competitive market that will ensure a variety of high-quality bids; and, that the risk transfer will be achieved within the PPP framework in a timely manner.





3.10 Procurement Decision

Drawing upon the qualitative and quantitative assessment conducted earlier, and, having ultimately refined the list of delivery options to one, the recommended model of delivery for procurement should be outlined herein, stating in detail how the proposed commercial structure was arrived at.

As per the commercial structure of the project, the payment mechanism that has been considered is to be explained further in this section, along with the proposed contract structure, the main parties to the PPP contract, the cash flow mechanism (i.e. how cash payments will be made by the relevant parties to each other), the expected budgetary impact of the recommended option to the Government Entity, and the sources and uses of funds is to be outlined.

It is also advised to consider the various configuration of procurement options available for the scope of services within the framework of the chosen delivery method. This can include whether activities such as cleaning, catering, and security, need to be retained or be transferred to the private sector, or, if there are multiple sites to be used for procurement, whether it would be more appropriate to procure them as a group, instead of procuring them as separate projects.

3.11 Procurement Strategy and Roadmap

Identification of the procurement strategy is important to achieve certain key objectives throughout the procurement process – chief among them is the undertaking of a smooth Tender process that combines the overriding principles of transparency, freedom of competition, and the fair treatment of Bidders. (Note: For detailed guidance on the Tender process, refer to Section 4 of this document). This is a crucial step to ensure the setting of an appropriate precedent procurement and establish credibility for future transactions. In order to implement an appropriate project strategy and roadmap for this purpose, it is advised that the following steps be taken:

- Present an implementation strategy for the recommended delivery option, including the policy framework of the project, list of required approvals and key documents to be addressed during the procurement process, and proposed project management structure;
- Create a project roadmap that includes target dates for completion, and the overall project plan; and,
- Outline the key risks and challenges to the procurement Timeline, and suggest mitigation strategies to avoid future complications.
- Identify if the success of a PPP Project is dependent on a required change to the regulation
- Consider the country value addition on a case by case basis, depending on the type of project and the in-country resources available for the project

DoF is the custodian of the PPP Law and the PPP Framework. In the event a change is required, it will be evaluated, if the change can be implemented through the guidelines and if a more fundamental change is required then DoF will implement the changes in the PPP Law, and process the necessary approvals. SFC is the ultimate authority to provide exemption or other changes to the law.





In addition, the roles and responsibilities of the Government Entity need to be clearly identified and stated –videlicet:

- whether there will be any sovereign guarantees to be provided;
- whether the nature, Timeline, and quantum of payments to be provided;
- whether the provision of all other support, including, but not limited to, land; whether there will be any additional subsidies to be provided, and, if so, what the nature of them will be; and,
- whether there will be any shared services between the government and the Preferred Bidder once the project commences.

3.12 Implementation Strategy

- **Policy and procurement framework:** Identify legislative and policy authorities to undertake the PPP procurement as well as any other related Stakeholders to be delegated to the project team to ensure successful implementation. Additionally, a resourcing plan demonstrating the time commitment required of governance and project team members, the training required to assist team members in effectively executing their responsibilities, and the budget associated to fund time and training commitments should be outlined.
- **Approvals:** List out all approvals that will be required post-Feasibility Study to move the project from procurement to financial close with key target dates. Additionally, list the approvals that have been received to date and set out a Timeline and the processes to be followed to achieve all outstanding approvals.
- **Key documents:** List out the key transaction documents – RfQ, RfP, project agreement, etc. – that are to be produced during the procurement process; describe the types of contracts that the Government Entity intends to enter into; and, produce a Timeline for the development and approval of critical project documents.
- **Project-specific stakeholder management:** Describe who will conduct communications with the Bidders, communications and reporting protocols, through the planning, procurement, construction and operation phases of the project and present a high level stakeholder communication method for liaising and consulting with the relevant key Stakeholders.



3.13 Project Deliverables Roadmap

An illustrative example on setting out a roadmap for project Deliverables is outlined below:

PROCUREMENT STAGE	DESCRIPTION	DURATION	DATE
Expression of Interest (“EOI”) phase Develop the EOI documentation Evaluate and shortlist			
Request for Proposal (“RfP”) phase RfP development phase Assisting shortlisted Bidders during the RfP Bid phase through an interactive Tender process RfP evaluation phase Selection of a preferred Bidder			
Negotiation and completion phase Settling the negotiation framework Executing the contract Financial close			

Figure 17: Illustrative example of a project Deliverables roadmap

3.14 Project Procurement Roadmap

The overall Timeline for the Project from financial close to construction completion should also be formulated, as outlined in the sample table below:

PROCUREMENT STAGE	DESCRIPTION	DATE
Design		
Construction		
Operation		
Handback		

Figure 18: Illustrative example of a Project Procurement Roadmap





The proposed evaluation procedures for both the procurement and post-procurement phases should also be set in this section, in addition to the outlining of the key risks and challenges to the procurement Timeline along with proposed mitigation strategies.

For instance, on a typical project, there is a risk that there is no precedent for this sort of procurement in Dubai, specifically – which can be mitigated by regional and international benchmarking. Similarly, on every project, there is always a risk present that there is a lack of Bidders or that the bids they do submit are not of a sufficient quality. This can be mitigated by using the market sounding process effectively, providing clear information, carrying out a robust procurement exercise with well-defined Risk Allocation, adhering to the established timetable, committing to confidentiality, and ensuring good information management and transparency, which reassures Bidders and the market that the Government Entity is committed to procuring the Project.

Evaluation

The procurement evaluation process should also be outlined in this section; as the PPP Law states, Tender methods can include any mechanism approved by the Government Entity, including two-phase Tendering, auction, and competition, with the only applicable rider that the awarding of the contract not be based on the price criterion alone. To this end, it is advised that the technical and scoring methodology be outlined including the weightage provided to the technical and price criteria and applicable and minimum credential eligibility requirements. The reason for adopting a specific evaluation methodology should be provided to maximise Value for Money for the government and demonstrate that the evaluation methodology lead to the selection of Bidder most beneficial for the purpose of the Project.

Negotiation

Additionally, the project-specific negotiation methodology should also be noted in this section, including the minimum consensus conditions that must be met for negotiations to be considered successful and the procedure to deal with negotiations breaking down. The Law is agnostic as to the conduct of the negotiations, which it regards as the prerogative of the Government Entity, but stipulates that material contractual conditions or terms stated in the Tender Documents as being non-negotiable conditions must not be affected. Moreover, no amendments shall be permitted to the terms that would result in risks included in a Successful Bidder's Bid being reallocated, in whole or in part, from the Successful Bidder and based upon which the Bid has been evaluated.



3.15 Sample contents of a Feasibility Study

BUSINESS CASE SECTION	OUTPUT	ISSUES TO BE ADDRESSED
Section 1: Executive Summary	<ul style="list-style-type: none"> o Summary of the document, outlining key results, figures, recommendations, and the next steps 	<ul style="list-style-type: none"> o Provide an overview of the business case document
Section 2: Project Overview	<ul style="list-style-type: none"> o Project description o Project's alignment with Emirate, national, and Contracting Authority objectives 	<ul style="list-style-type: none"> o Provide an overview of the business case document
Section 3: Needs Assessment	<ul style="list-style-type: none"> o Needs assessment o List of outputs specified o Due Diligence analysis o List of key Stakeholders 	<ul style="list-style-type: none"> o Outline the scope of the Project o Analyse key Stakeholders for the Project o Determine output specifications o Due Diligence analysis – technical, legal, financial, environmental, and social
Section 4: PPP Options Analysis	<ul style="list-style-type: none"> o Project-specific PPP benchmarking analysis o PPP options matrix o Market sounding results o Recommended 2-3 PPP options to be analysed in depth in the next stage 	<ul style="list-style-type: none"> o Conduct a review of similar PPP Projects regionally and internationally o List the possible methods of PPP procurement applicable to the project being procured o Assess market interest in the Project by conducting discussions with relevant Market Players
Section 5: Risk Assessment and VFM Analysis	<ul style="list-style-type: none"> o Risk analysis (identification, quantification, allocation, and mitigation) o Financial model o Determine Value for Money for the shortlisted options from Section 4 	<ul style="list-style-type: none"> o Conduct a robust project risk assessment, comprised of risk identification, quantification, and allocation to parties best equipped to manage it o Detail the Contracting Authority's risk management strategy o Develop a detailed financial model and run sensitivity and scenario analyses o Demonstrate that the Project will provide Value for Money and transfer appropriate technical, operational, and/or financial risks to the private sector o Demonstrate advantage in terms of strategic and operational benefits for the implementation of the Project as a PPP
Section 6: Procurement Decision	<ul style="list-style-type: none"> o Project delivery model 	<ul style="list-style-type: none"> o Determine the Method of Procurement that will be undertaken for the Project o Determine the type of fiscal commitment needed from the government by providing an estimate of the capital cost, any payments required from any Contracting Authority, and any Government support in the form of government guarantees or via any other mechanism
Section 7: Procurement Strategy and Roadmap	<ul style="list-style-type: none"> o Procurement plan o Tender evaluation methodology o Project Procurement Roadmap 	<ul style="list-style-type: none"> o Identify project resourcing and budget, execute bankability assessment, and provide a detailed procurement plan including the Tender process specifics, high level Bid evaluation methodology, and timetable

Figure 19: Sample contents of a Feasibility Study



3.16 Roles and responsibilities

1. **Government Entity:** The Government Entity is chiefly responsible for the preparation of the project as a PPP. Following the approval of the Project Concept Report by the Department of Finance, as outlined in Section 2.3, the Government Entity must hire Transaction Advisors as part of the PPP Project Team, should it so desire (detailed guidance on this is provided in the Annexure). Prior to commencement, the Government Entity should ensure that the entire PPP Project Team and Partnership Committee have been set up and its members nominated pursuant to the requirements of the Law. Moreover, clear roles and responsibilities, and a reporting structure must be outlined in order to ensure that the Feasibility Study is prepared within a reasonable timeframe.

The approval mechanism for the Feasibility Study is identical to that followed for the Project Concept Report, and must align with Article 8 of the Law. The approval of the Feasibility Study is subject to the value of the project: for projects with a value of less than AED 200 million – wherein the Government Entity has decided to proceed with the preparation of the project as a PPP even though it is not mandatory – the Project Concept Report is to be submitted to the Partnership Committee for review, following which approval is provided by the Director General of the Government Entity; for projects with a value between AED 200 million and AED 500 million, the Department of Finance will approve the Feasibility Study, following the review of the Partnership Committee; and, for projects with a value greater than AED 500 million, the Department of Finance will review the Feasibility Study and recommend to the Supreme Fiscal Committee, which will provide the Final Approval for the Government Entity to proceed with the project as a PPP.

2. **Department of Finance:** The Department of Finance will be the chief provider of assistance during the preparation of the project as a PPP. Whilst no content will have to be directly provided by the Department of Finance, government entities – particularly at the start of the PPP programme, or those with limited experience of procurement when the programme matures – will require varying degrees of assistance at different stages of Feasibility Study preparation. Moreover, if the project value is greater than AED 200 million, the Department of Finance representative will be a member of the Partnership Committee, and will be able to monitor progress on a more frequent basis.

In addition to the provision of assistance to government entities, the Department of Finance will, pursuant to Article 8, be the primary approver of the Feasibility Study for projects with a value of between AED 200 million and AED 500 million, and shall review and recommend for approval to the Supreme Fiscal Committee reports for projects with a value of greater than AED 500 million.

3. **Supreme Fiscal Committee:** For projects with a value of greater than AED 500 million, the Supreme Fiscal Committee will serve as the final approver of the Feasibility Study prepared by the Government Entity and recommended for approval by the Department of Finance. In addition, were the Government Entity to seek permission to deviate materially or substantially from these guidelines on any aspect of the Feasibility Study, or if the Department of Finance were to report Deviations upon review, the Supreme Fiscal Committee will be the final approver of whether the amendments are permissible.
4. **Partnership Committee:** The Partnership Committee, which must be set up prior to the commencement of the Feasibility Study preparation, and must be formed pursuant to the requirements of the Law, will function as the primary internal supervisory body, monitoring the performance of the PPP Project Team, observing progress and adherence to stated Timelines, ensuring adherence to these guidelines, and providing reviews and detailed comments on drafts of the Feasibility Study which must be submitted in accordance with a project charter agreed to at the start of every project.





4

Project procurement process

Deliverables: Expression of Interest, Request for Qualification, Statements of Qualification evaluation report, Request for Proposal, PPP contract and other miscellaneous agreements, Bidder clarifications report, Bid evaluation report

Governing articles of the PPP Law and regulations: Articles 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

4.1 Expression of Interest (EOI) and Pre-Qualification Phase

OBJECTIVE

The Expression of Interest (“EOI”) and Pre-Qualification phase is the first step in the procurement process. The purpose of this phase is to:

- Inform the market of the Government Entity’s desire to Tender the project, setting out basic specifications in order to gauge the level of market interest for the project;
- Provide private sector Players with the requisite information to make an informed decision regarding the Tender process; and,
- Allow the Government Entity to identify, with a level of confidence, the Bidders best suited for the project who provide necessary pre-qualifying performance characteristics that would be required in order to deliver the services required.

By the end of this process, the Government Entity is expected to come up with the shortlist of preferred Bidders who have the requisite skills and resources to deliver the required output specifications and have the financial capability to engage in the project. The steps to be followed herein are:

1. Develop the EOI document;
2. Advertise the EOI; and,
3. Submit a Request for Qualification (“RfQ”) and evaluate Bidders’ Statement of Qualifications (“SoQs”).

GUIDANCE

4.1.1 Develop the EOI document

The EOI document should provide clear guidance and sufficient detail on the project’s service delivery requirements and the Government Entity’s evaluation processes. At a minimum, it should contain:

- A summary of the Government Entity’s primary function, and its purpose for Tendering the project;
- A brief description of what the project entails, including why it is being Tendered, what essential public need it fulfills, and who it intends to serve;
- The chosen delivery model for the project including clear scope of services to be delivered by the private sector;
- Proposed Risk Allocation mechanism, outlining the roles of both private sector and Government Entity;



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- Length of the concession expected;
 - A description of the project site – including location, area, layout, etc.;
 - Any relevant background information, policies, laws, or regulations associated with the project, or any infrastructure that the project serves to fulfill, as deemed relevant by the Government Entity;
 - A physical address or website where interested companies can obtain the Request for EOI document – ideally free of charge;
 - A deadline for submission of the EOI responses, and to whom it must be submitted;
 - Clarification of the Timeline of the Project – when the process will be deemed to be complete, and when the RfQ phase can expect to be announced, amongst other details; and,
 - Any qualifications or disclaimers that the Government Entity deems necessary to include – such as stating unconditionally the right to amend the scope of the Project, modify, cancel, or suspend the EOI process or any or all stages of the investment opportunity, at any time or any reason without any liabilities.

4.1.2 Advertising the EOI

The request for EOI shall be advertised in state broadcasting outlets, local and regional Arabic and English-language dailies, and on the relevant Government Entity's website. If the Government Entity believes that international Bidder expertise might be required on the project, advertisements should also be placed in international newspapers, magazines, and journals which have a wide circulation.

4.1.3 RfQ and SoQ Evaluation

Bidders expressing legitimate interest by responding to the request for EOI should then be sent a Request for Qualification ("RfQ") document, which will also include an Information Memorandum ("IM"). The Government Entity can charge a small fee from the Bidders for the IM and the RfQ.

This step will carry out a Bidder pre-qualification process, by inviting interested Bidders to submit a Statement of Qualification ("SoQ") in response to RfQ document, with the purpose to assess whether they are qualified for procuring the project in the first place.

The main purpose of this process is to select a limited number of the Bidders that are qualified- technically, financially- and have adequate experience and commitment to implement the project, as well as to set out the rules of involvement in the procurement process noticeably and explicitly.

The IM will allow the Bidders to understand the scope of the project and evaluate their interest in and ability to participate in the Tender process. The IM should include the following information at a minimum:

- **Project Background:** providing a brief background and definition of the nature of the Project;
- **Commercial and Financial Matters:** summary of the financing responsibilities, the anticipated payment structure for the Project, and other commercial matters;
- **Legal Matters:** overview of some of the key legal and regulatory aspects relating to the Project;
- **Procurement Process:** indicative project Timeline, the clarification process, and other details of the procurement method;
- **Pre-Qualification Questionnaire ("PQQ"):** specifies the information that is required from a potential Respondent as part of its SoQ;



- **Submission Instructions:** provides instructions with respect to the submission of the Statement of Qualification (“SoQ”), which serves as the response to the RfQ;
- **Evaluation:** describe the evaluation process that will be utilised in order to prepare a shortlist of respondents who will be qualified to participate in the Request for Proposal (“RfP”) stage; and,
- **Appendices:** provide any additional documents and forms that are relevant to the RfQ and the submission of a SoQ.

SECTION	DESCRIPTION
Section 1: General information	Provide a disclaimer that stresses that the RfQ document does not constitute the making of an offer or an invitation to make an offer in relation to the Project; state the terms and conditions of the RfQ document, including the absence of a contract or implied contract, conflict of interest declarations, and confidentiality; and, outline the purpose and structure of the RfQ document
Section 2: Project description	Provide an overview of the Project, including a brief description of what it would entail; outline the public need for the Project and how it would meet a demonstrable service gap; specify the parameters of the Project in terms of technical and operational requirements; determine the broad financial and economic parameters, including high-level cost estimates; and, identify the role of the private sector and how their expertise can be leveraged for the procurement of the Project
Section 3: Legal information	Describe the governing legal framework of the PPPs, including key articles of the Law and regulations that apply; introduce the PPP agreement and contractual structure (to be elaborated in the RfP); outline regulations regarding the participation of consortia and shareholding between members; and, delineate specific matters of interest, such as provisions regarding FDI, the governing law, and land matters.
Section 4: Financial and commercial information	Denote the party responsible for financing for the Project, the term of the Project, revenue parameters and payment mechanism, and handover and transfer procedures
Section 5: Procurement process	Outline the indicative timetable for the procurement process; explain the clarification process, providing the logistical details necessary for adherence; and, provide a brief introduction to the RfP process and associated logistical details such as clarification meetings and site visits
Section 6: Instructions for submission	Provide the requirements that SoQs must comply with prior to being submitted; provide the logistical details, such as the deadline and address, necessary for seamless submission of SoQs; and, clearly outline grounds for disqualification from the procurement process
Section 7: Required information from respondents	Describe the structure of the SoQ, including, but not limited to, an executive summary, details on corporate structure, financial capability, technical capability, legal information, any additional information, and requisite appendices, such as a confirmation of receipt template, submission letter, confidentiality agreement, and a form of declaration

Figure 20: Sample contents of an RfQ document





4.1.4 Pre-Qualification Questionnaire (“PQQ”)

The PQQ is aimed at assessing whether Bidders meet the minimum competency and eligibility requirements, as decided by the Government Entity and other key Stakeholders of the Project.

A broader questionnaire should be detailed to focus on establishing the applicant’s Credentials, assessing their ability to raise finance, and their technical competence. At a minimum, the questionnaire should seek answers for:

- Basic information on the respondent:
- Address;
- Contact details;
- Company and Consortium profile;
- Selected key financial indicators;
- Credit rating (if applicable);
- Number of employees; and,
- Number of projects in a similar role successfully carried out.
- Financial information, including audited statements for the past five years, that enable the calculation of tangible net worth;
- Summary of precedent projects, which will serve as detailed Credentials emphasising the applicant’s role in the project which may include examples of past experience of having undertaken Projects of a similar nature;
- Summary of similarly structured precedent projects that the Bidder has carried out in the region and internationally; and,
- Experience of having provided and/or raised funds for similar Projects.

Should the Government Entity desire greater international participation on the Project, eligibility requirements should weigh international transaction experience heavily and make global presence a mandatory requirement, for instance. Minimum eligibility requirements could include a minimum tangible net worth, relevant experience in precedent transactions of a similar nature and scope, and international project experience in a country outside the one in which the Bidder derives the greatest proportion of its revenue, amongst others. The Government Entity must ensure that the eligibility criteria are not so restrictive so as to qualify a limited number of Bidders, while still ensuring only high quality Bidders qualify. Generally, 5 to 7 is a good number of pre-qualified Bidders per Project. A significantly higher number will reduce the interest of strong Bidders due to a lower probability of success.





4.1.5 Evaluation

While undertaking the evaluation of the submitted responses, the PPP Project Team must ensure that it is done in an objective manner so as to ensure a level playing field. The following broad evaluation measures should be taken into consideration:

- **Capacity to deliver the stated service:** chiefly, the capacity of the Bidder/Consortium must be considered, in order to determine if they have the capability in terms of the ability to raise finance, technical expertise, and construction and operation experience required;
- **Suitability of Consortium:** if the Bidder is bidding as a Consortium of members, as is advisable, care must be taken to ensure that each Consortium member is individually capable and has not been added only in order to satisfy minimum eligibility requirements. In order to see to it, it is recommended that the PPP Project Team designate a “lead” member who will have to fulfill a designated number of key minimum eligibility requirements; and,
- **Credentials:** in order to determine experience, precedent transactions and Credentials – emphasising those in the region – must be studied carefully, including the ability to adhere to Timelines, the innovation displayed in the method of service delivery, and any specifications adopted that might have maximised Value for Money.

The PPP Project Team should develop an evaluation matrix weighing each financial and technical competency and eligibility requirements reflected in the PQQ in terms of their importance. The Government Entity will then decide which interested Private Party or Consortium qualifies to Tender for the project according to the evaluation table results.

4.2 Request for Proposal (“RfP”) Phase

Objective

The Request for Proposal (“RfP”) phase is intended to receive and assess qualified Bidders’ proposals by setting up a comprehensive, transparent framework, and prepare the PPP Contract and its associated Transaction Contracts. At the end of this process, the Government Entity is expected to choose a Preferred Bidder that meets the criteria set out for successfully delivering the project and provides the best VfM, by ensuring an open and satisfactory competition among Bidders.

Guidance

4.2.1 Introduction

The RfP is intended to be the definitive document that defines the project and its nature and scope in detail, outlines the requisite input and output specifications along with their corresponding performance indicators, the legal and commercial information that needs to be conveyed to Bidders, and the financial information, amongst other components.

As one of the formal documents released by the Government Entity, the RfP Document serves to attract



As one of the formal documents released by the Government Entity, the RfP Document serves to attract and convince interested Bidders and the broader private sector of the seriousness of the organisation's desire to procure the project. Moreover, given that the document will serve as the primary source for Bid submissions, it is important to invest a considerable amount of time and resources to ensure that the document is of the highest quality and that it outlines the project's specifications, scope, and requirements appropriately. It is recommended that the RfP be structured in such a manner so as to invite responses in three separate volumes:

- Technical information;
- Legal/commercial information; and,
- Financial information.

The Government Entity must ensure that Bidders fill in standard forms so as to enable a like-for-like comparison of submissions. The document and Bid forms shall be developed by the Government Entity, with the assistance of the Department of Finance, based on the feasibility analysis prepared during the initiation stage.

SECTION	DESCRIPTION
Section 1: Introduction	Provide an introductory summary of the Project, including the need for it, how the project fulfills that particular need, an overview of the technical specifications; the chosen procurement option, and what the private sector operator's role will be; provide a brief description of the Bidding Process and a Timeline indicating milestone dates; and, outline the list of government entities participating in the Project
Section 2: Project participation and structure	Outline the agreements the Preferred Bidder will be involved in, along with a brief description of them and how they relate to the responsibilities of the SPV; and, briefly denote the responsibilities of the Preferred Bidder in the Project Company
Section 3: Project features	Provide an introduction to the technical aspects of the Project, including the scope, location and site, capacity requirements, and approvals to be obtained; outline prudent engineering and operating practices, Contracting Authority specifications and standards, and request the provision of information demonstrating technical qualifications; request specification of proposed EPC and O&M contractors; and, provide the stated project schedule.
Section 4: Legal and commercial information	Denote legal information required from Bidders, including a certified copy of the JV or Consortium agreement, powers of attorney authorising execution of said agreement, and details of corporate structures; denote the party responsible for obtaining all permits and licences, and outline general environmental and social standards the Project must meet; and, request provision of information regarding the insurance programme of the Bidder.
Section 5: Financial information	Request provision of the full breakdown of the total Project budget, as provided in a separate formsheet; request provision of a breakdown of operating and maintenance costs over the term of the agreement, as provided in a separate formsheet; denote whether the Bidder will be responsible for arranging the financing of the capital costs of the Projects, and a proposed mechanism for funding the Project; denote for what portion of the equity and debt the Bidder is required to obtain committed terms for, how the commitment should be expressed, and whether they are conditional upon particular terms; request Bidder to submit a detailed financial model, outlining the general requirements, the format, best practice techniques, and broader modelling guidelines, and requesting a provision of a summary of the assumptions and benchmarks utilised, the requisite financial outputs that must be produced by the model, the sensitivities that must be run as part of the model, procedures and guidelines that must be followed in order to ensure standardised presentation of proposals; and, provide Bid model financing assumption terms
Section 6: Bid preparation and submission	Include logistical details, such as the address proposals must be submitted to, the number of copies, the stated deadline, and regulations surrounding the furnishing of a Bid Bond, amongst others; and, outline the Bid clarification process in detail

Figure 21: Sample contents of an RfP document





4.2.2 Development of the RfP Document

Technical information

The RfP should outline the technical features of the Project, emphasising an accurate description of the Project's technical design and specifications, including the following elements:

- Project's background information, including the particular economic and social objectives it aims to achieve;
- Project scope and requirements;
- Location and site – depicted through layout drawings;
- Capacity requirements (if applicable);
- Establishment – what the Project will focus on providing;
- Technical information required from the Bidder – completed form sheets and technical data sheets, supplemented by additional descriptions, explanations, drawings, and any other information necessary for a thorough Technical Evaluation;
- Engineering, procurement, and construction – prudent practices, Government Entity specifications, standards, and requirements that Bidders must adhere and respond to;
- Operation and maintenance – relevant term sheets with agreed pricing and associated long-term service agreements, if applicable;
- Service and facilities specifications – expressed in terms of the outputs that are expected on the project, in a refinement of the stated specifications in the Feasibility Study, and, sometimes, as inputs; additionally, the condition of the Assets at the end of term should also be specified; and,
- Project implementation schedule; and,
- Formsheets to ensure all the technical information is received on a like for like basis from the Bidders.

Legal/commercial information

- Legal form – proof of existence as a legally recognised business organisation or a certified copy of the complete joint venture or Consortium agreement, signed by all parties, as evidence of the legal structure of the bidding Consortium, should be provided. Moreover, to indicate the legal relationship among the Consortium members and the role and responsibility of each Consortium member, Bidders must be required to submit details of their corporate or other constitution including certificates of incorporation and commercial registration sufficient to carry on business in accordance with the laws of the Emirate of Dubai;
- Approvals, emphasising those that the Preferred Bidder will be responsible for – all consents, permits, and licences necessary during the construction and operations stage should be outlined, including the minimum environmental standards that must be adhered to, as discussed with the Dubai Municipality. The associated costs related to the approvals shall be included in the Bid as well;
- Customs duties and taxes – any relevant customs duties and taxes required and applicable to the Project must be stated as requiring inclusion in the Bid by Bidders;



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- Insurance – Bidders must be required to provide a summary of their insurance programmes tailored to the risks associated with the construction and operation of the Project; and,
 - Proposed Project structure – specifying, for example, if the Preferred Bidder will be required to participate in a Project Company that will be established as a Special Purpose Vehicle (“SPV”), and who the Stakeholders might be in that company – and associated agreements that the Preferred Bidder would have to sign with other noted entities upon awarding of the contract.

Financial information

➤ Project Cost Estimates:

- Project budget costs (full details of the breakdown of the total project budget, including development costs, construction costs and contingencies, O&M mobilisation cost, amongst others, with the timing of the incurrence of the costs included to be set out in the relevant formsheet);
- Operating and maintenance costs (breakdown of the O&M costs over the term of the agreement and categorised as either fixed or variable, and then further divided between local and foreign portions)

➤ Financing requirements:

- The general financing structure should be outlined, with the debt and shareholder equity proportions;
- Financing commitments: Bidders must be required to obtain committed terms for a stated percentage of the equity and debt required for the Project, demonstrated with the use of signed letters of commitment and detailed Term Sheets from the Financiers to be included as part of the submission; and,
- Interest rate and foreign exchange hedging strategy.

➤ Financial model: Bidders must be required to submit a detailed financial model for the Project in support of their bids which are to be linked to the relevant form sheets, including:

- General requirements – Bidders should be required to take relevant regulations as determined by the Government Entity into consideration, as, for instance, that the model must be capable of generating all calculations, that a given concession period should be assumed, that the model should be supplied both in hard copy and on a CD, amongst other requirements. Moreover, broader modelling guidelines can also be supplied – such as the usage of logical operators instead of complex nested functions, the usage of notes where formulae are complex, flexibility in terms of the ability to run sensitivities, etc.;
- Model inputs – Bidders must also be required to provide a summary of the financial and economic assumptions utilised for the model using a given formsheet template (preferably, as an appendix to the RFP) that must be linked to the rest of the model and be fully functional upon submission to enable a detailed evaluation by the Government Entity;
- Model outputs – Bidders must be notified of the requisite financial projections that are required to be produced by the model, such as a cash flow statement with ratios, a P&L account, and a balance sheet, etc.; and,
- Model sensitivities – Bidders must be notified of the sensitivities that must be run as part of the model, which can include EPC cost overruns, O&M cost overruns, and inflation, for example.





Bid preparation and submission requirements

In order to ensure strict adherence to the stated guidelines, the Government Entity should mandate that all Bidder proposals respond adequately to the RfP Document, submit completed versions of all formsheets and data forms, and provide all the requisite information as outlined in the document. Emphasis must be given to:

- The address Bidder proposals must be submitted to;
- The number of copies required, strict adherence to the stated deadline;
- The separation of the technical and financial proposals so as to enable separate storage and objectivity of assessment; and,
- The requisite regulations surrounding the furnishing of a Bid security (in the form of a Bid Bond) in favour of the Government Entity. Bid Bond should comprise of the formsheet, the amount, and the date of validity which was also set as an RfP requirement, and should be issued by a recognised bank that is acceptable to the Government Entity. Suggestive conditions for forfeiture of the Bid Bond, which must be stated clearly, include:
 - If the Bidder withdraws its Bid during the Period of Validity; or,
 - If, in the event that the Period of Validity is extended by the Government Entity, the Bidder fails to comply with any condition of re-validation or confirmation or fails to deliver a replacement Bid Bond within the timeframe notified by the Government Entity.

Bid clarification process

As part of the same section, the RfP must also include the procedure adopted by the Government Entity regarding clarifications, noting the following:

- A Timeline and a Point of Contact must be specified for the submission of Bidder clarifications;
- A provision stating that the Government Entity shall endeavour but is not obliged to respond to all clarifications;
- If the response to the clarification is significant, such information must be shared with all Bidders and not advantage only the Bidder who presented the question;
- A date for a mid-Bid clarification meeting, which is highly recommended, should be stated, noting that attendance, while not mandatory, is encouraged;
- State certain matters of legal import:
 - The procedure to deal with late bids;
 - The period of validity of the bid;
 - The potential forfeiture of the Bid Bond;
 - The procedure regarding the modification or withdrawal of a bid; and,
 - Confidentiality regulations.





4.2.3 Project Contracts

The Partnership Contract is the legally binding document that the Preferred Bidder will have to sign with the Government Entity if awarded the project. It must be ensured that the draft of the contract is flexible enough in order to accommodate necessary changes that will arise during negotiation and throughout the project's lifecycle.

A draft contract must be attached to the RfP, allowing Bidders, finance providers and their legal advisors to examine the contents and provide their comments and mark-ups on. Any redrafting of the contract will be solely at the discretion of the Government Entity, which must consent to all changes, and must obtain approval from the Department of Finance and the Supreme Fiscal Committee for any material Deviations. As outlined in Article 26 of the Law, the Project Contract must contain the following fundamental provisions:

- The type and scope of the works and services that must be performed by the Project Company;
- The ownership of Assets and intellectual property rights pertaining to the Project, obligations of parties pertaining to the handover of the Project site, and provisions pertaining to the transfer of ownership upon expiry of the term determined in the Partnership Contract;
- The responsibility for obtaining licences, permits, and approvals;
- The mutual financial and technical obligations of both contracting parties and financing methods;
- The rules governing the sale price of the product or charges of the service on which the Project is based, and the principles and rules of determining and changing such price or charges;
- The quality assurance methods; financial, administrative, and technical audit and supervision tools required for operating, utilising, and maintaining the Project; and, the performance indicators of the Project Company;
- The rules regulating the right of a Government Entity to revoke or amend a Partnership Contract, compliance by the Project Company with these amendments, and grounds or methods of compensation in the event of such amendment;
- The types and amounts of insurance covering the Partnership Project and its operational and utilisation risks, the performance guarantees provided to the Government Entity, and the provisions and procedures related to refunding these guarantees;
- The bases for the distribution of Project risks in cases of force majeure, emergency situations, or material hardships, and the grounds for assessment of the relevant compensation;
- The term of contract; cases of early, partial, or complete termination; and, the rights and obligations of the parties;
- The cases where a Government Entity may unilaterally terminate the contract;
- The penalties that may be imposed on a Project Company if it fails to meet its contractual obligations;
- The rules and procedures for recovering the Project upon expiry, unilateral termination, or early or partial termination of the contract;



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- The procedures for ensuring continuity of the Project and works subject matter of the Partnership Contract upon expiry or revocation of the contract, or upon failure by the Project Company to meet its contractual obligations;
 - The provisions related to using the services of the employees of government entities at the Project Company, and allocation of a percentage of UAE nationals in such companies;
 - Measures that must be taken by the Project Company to preserve the environment;
 - Specifications of the end product, the service level that the Project Company must comply with, including performance indicators, safety, security, environmental, and any other standards, and electronic systems and programmes that must be used by the Project Company; and,
 - Any other obligations determined by the Supreme Fiscal Committee, the Department of Finance, or the Government Entity in accordance with the resolutions issued by such entities in this respect.

In addition, all other documentation, which will differ according to the type of the Project, should be outlined in the RfP, with sample draft versions attached to the end in order to allow Bidders to submit mark-ups that will be examined by a legal representative of the Government Entity, and utilised as the basis for signing agreements.

4.2.4 Bid Evaluation

The aim of the evaluation is to determine which Bid delivers the best Value for Money and displays the greatest amount of technical competence and adherence to the stated specifications, while introducing a deal of innovation that maximises savings. The RfP must clearly specify the Bid evaluation mechanism that will be utilised by the PPP Project Team in evaluating the submitted bids. Specifically, the evaluation mechanism must outline whether:

- Financial and technical proposals will be scored separately, and, if so, what the exact weightage given to each component in each proposal will be;
- There will be a technical score Threshold to meet, following which the lowest price will automatically win;
- The technical offers will be evaluated, and a Best and Final Offer (“BAFO”) process followed wherein Bidders will be asked to price the best solution, with the “winning” Bidder receiving favourable scoring; or,
- The best technical solution will be re-Tendered through a competitive Bidding Process with the output specifications replaced entirely or to a certain degree, amongst various options.

Although detailed guidance on bidding and evaluation is provided in the following sections of this document, broadly, the following should be considered as part of the evaluation methodology:

- Comparison of the Bid submitted to the PSC – although financial analysis would have revealed that procuring the project as a PPP results in Value for Money savings as compared to traditional procurement (“PSC”), the extent of the deviation must be observed and scored accordingly in order to reward lower pricing;



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- Compliance with stated requirements, adherence to the stated scope and output specifications, and provision of information as required by the RfP; and,
 - Response to the technical aspects, and commercial and financial information – including the accuracy of the financial model, a clear adherence to the stated model presentation guidelines, and a consideration of the requisite insurance programmes and taxes – as outlined in the RfP.

The evaluation methodology section outlined in the RfP should comprise of the following components:

- An introduction section that summarises the evaluation criteria utilised, introduces important terms and their definitions, and specifies section-specific disqualification measures;
- Procedure for technical envelope completeness and compliance check, which must be the first step followed during the evaluation process, in order to establish whether the Bidder has met the requisite minimum requirements, has complied with all formalities, and has included all documents as required by the RfP in respect of the technical envelope;
- Detailed technical envelope evaluation section, which notes that the Technical Evaluation will focus on, amongst other issues, the following: project management strategy, organisation, and staffing; design solution; construction strategy and schedule; and, FM/O&M strategy and approach. In tabular form, this section must contain the criteria to be evaluated, the weightage granted to each criterion, the maximum raw score, and the maximum adjusted score that can be awarded. Following this, the inclusion of a technical scoring summary section is recommended, that grades scores in the following order: “outstanding”, “very good”, “good and/or satisfactory”, “poor”, “very poor”, and “unacceptable and/or wholly unsatisfactory”;
- Detailed legal evaluation section, based on the evaluation conducted by the Legal Advisor of the mark-up of the Project Agreement included as part of the RfP, with proposals that are based entirely on the original form receiving a full 100 points. In tabular form, this section must contain the criteria to be evaluated as derived from the requisite agreements, the weightage, the maximum raw score, and the maximum adjusted score that can be awarded. The legal scoring guide must emphasise that the scoring is based on a sliding scale wherein lower scores correlate wholly with greater transfer of risk to the Government Entity as compared to the Risk Allocation in the PPP Agreement;
- The Technical Envelope Score should be clearly mentioned, with a weightage assigned to the technical and legal evaluation scores. In addition, a minimum technical envelope Threshold, if applicable, should be stated;
- Summarise the technical envelope evaluation phase and provide an indicative Timeline of when Bidders will be notified of their shortlisting;
- Introduce the financial envelope evaluation section, noting that it would comprise of a price evaluation – viz., an evaluation of the Bid price proposed by the Bidder – and a commercial evaluation – viz., an evaluation of the commercial robustness and deliverability of the Proposal;
- Procedure for financial envelope completeness and compliance check, in order to establish whether the Bidder has met the requisite minimum requirements, has complied with all formalities, and has included all documents as required by the RfP in respect of the financial envelope;



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- Detailed financial envelope evaluation, which notes that the evaluation will include a detailed analysis of the following commercial aspects, at a minimum: proposed financial structure, funding plan including the cost of funding, level of committed financing, completeness of term sheets, deliverability of the funding solution including the likelihood of securing finance within the Project implementation schedule, security requirements from lenders, and the timing and amount of equity funding. In tabular form, a commercial scoring guide with criteria such as funding strategy, debt strategy, equity strategy, overall quality of the financial model, deliverability of the solution within the cost, and taxation and accounting assumptions must be listed, along with their weightage, maximum raw score awarded, and maximum adjusted score awarded. A commercial scoring guide sorting the scoring in a manner similar to the technical scoring guide must be prepared;
 - A formula for price evaluation that takes into account the lowest price, which is assigned a score of 100, should be stated clearly; in addition, a formula for the financial envelope score should be prepared that takes into account the weightage for financial evaluation and the commercial and price scores. Based on the evaluation criteria determined by the Government Entity, the overall scoring formula must be clearly stated, emphasising that it is a summation of the technical and financial evaluation scores; and,
 - State the clarification procedure during evaluation in detail, including logistical and administrative details for submission, clarification meetings, and the procedure for the Government Entity to request clarifications on a proposal from a particular Bidder.





CRITERIA TO BE EVALUATED	WEIGHT	MAX. RAW SCORE	MAX. ADJUSTED SCORE
Project management, organisation, and staffing			
Project management proposal	2%	10	2
Project management plan and strategy	7%	10	7
Project management team organisation	3%	10	3
Overall project delivery schedule	3%	10	3
Total project management weighting	15%		15
Design solution			
Design management proposal	2%	10	2
Design approach, strategy, and design solutions	27%	10	27
Design team organisation	3%	10	3
Design delivery schedule	3%	10	3
Total design weighting	35%		35
Construction strategy			
Construction management proposal	2%	10	2
Construction management plan, strategy, and construction methods	17%	10	17
Construction team organisation and resource capabilities	3%	10	3
Construction schedule	3%	10	3
Total construction weighting	25%		25
Facilities management strategy and approach			
FM management proposals	2%	10	2
FM service delivery proposals	4%	10	4
FM Performance Monitoring and reporting	6%	10	6
FM asset management	6%	10	6
FM integration	4%	10	4
FM financial and commercial	3%	10	3
Total facilities management weighting	25%		25

Figure 22: Illustrative Technical Evaluation and scoring criteria





BASIS FOR SCORING FOR EVALUATION OF TECHNICAL CRITERIA	SCORE
Outstanding: The information submitted provides outstanding evidence that the specified requirements can be met. The technical proposal demonstrates outstanding levels of quality, substantial additional benefits, and appreciation of Contracting Authority requirements and the relevant technical, organisational, operational, and environmental requirements	9-10
Very Good: The information submitted provides very good evidence that the specified requirements can be met. The technical proposal demonstrates a very good level of quality, substantial additional benefits, and appreciation of Contracting Authority requirements and the relevant technical, organisational, operational, and environmental requirements	7-8
Good and/or Satisfactory: The information submitted meets the Contracting Authority's requirements. The solution demonstrates an adequate level of quality and shows a satisfactory appreciation of the relevant technical, organisational, operational, and environmental requirements	5-6
Poor: The information submitted has some omissions against the specific requirements. The solution demonstrates only a limited level of quality and shows a fair appreciation of the relevant technical, organisational, operational, and environmental requirements	3-4
Very Poor: The information submitted provides insufficient evidence that the specified requirements can be met. The solution does not demonstrate an acceptable level of quality or shows a poor appreciation of the relevant technical, organisational, operational, and environmental requirements	2-3
Unacceptable and/or wholly unsatisfactory: Information is either omitted so there is insufficient evidence to support the proposal to allow the Contracting Authority to evaluate or the information provided is fundamentally unacceptable and/or wholly unsatisfactory	0-1

Figure 23: Sample technical scoring summary





4.3 Bidding Process

OBJECTIVE OF THIS SECTION

The purpose of this section is to oversee the Bidding Process by outlining and following the Bid evaluation procedures upon receiving Bidders' proposals, including the different components of evaluation that must be considered. Important considerations to be cognisant of managing the Bid process and evaluation procedures should also be deliberated, and a diligent negotiation process should be followed to finalise the Partnership Contract with the Preferred Bidder.

GUIDANCE

4.3.1 Receiving Bids

A foolproof mechanism must be developed and utilised to receive bids, given that confidentiality is paramount, and to ensure that sensitive information is protected from the possibility of being tampered with. It is highly recommended that it be made mandatory to separate the submission of financial and technical bids in separate, sealed envelopes so as to ensure that evaluation of technical qualifications is not biased by the price criterion. Financial bids must only be opened for Bidders that pass the minimum Threshold dictated as being necessary in the Technical Evaluation.

4.3.2 Bid Evaluation Procedure

The Government Entity must consider both financial and non-financial criteria; however, on each project, the Government Entity has the right to take an informed decision regarding whether a criterion will dominate. The evaluation of the Bid Submission will consist of the evaluation of the technical qualification or credential requirements of each Bidder (or Bidder Consortium); the Financial Submission; the Technical Submission; and, the Legal Submission. Weightage given to these submission components, the scoring, and the requirements will be reflected in the RfP document.

Technical Qualification or Credential Requirements

The technical qualification or the minimum credential requirements of each Bidder or Bidder Consortium shall be evaluated on the basis of the matters set out in the RfP. If the Bidder is a single entity, it must satisfy each of the Credential Requirements ("CRs"). A Bidder that is a Consortium must designate a leading member. Where not all Credential Requirements are satisfied by the leading member, the experience of the Consortium will be evaluated in respect of the remaining CRs. Any CR that is not met by the leading member must be met by another member of the Consortium (a "Qualifying Consortium Member"). Moreover, each CR needs to be passed by a leading member or Qualifying Consortium Member as an individual entity and not in aggregate with another entity.

Financial Evaluation

Financial submissions shall be evaluated on the basis of the matters set out in the RfP, including the evaluation of:

- The tariff proposals (if applicable);
- The Bidder's Financial Model;



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- The Bidder's cost proposal; and,
 - The Bidder's plans for financing the Project.

Bidder's Financial Model

The Bidder's Model should comply with all requirements specified in the RfP that include, but are not limited to, the following:

- Be capable of generating all calculations required by the RfP and faithfully reflect the terms of the form of any additional agreements, as deemed relevant and attached to the RfP document;
- Submitted in the specified format;
- Adhere to best practice standards as outlined in the RfP;
- Subjected to an independent audit;
- Supply detailed operating instructions for the Financial Model as described in the RfP; and,
- Generate VfM for the Project.

Bidder's Financing Plans

An assessment of a Qualifying Bidder's Financing plans will take the following into consideration:

- Adequacy of the financing commitments to meet the project funding requirements as set out in the formsheet, including interim financing. Qualifying Bidders will be required to submit as part of their Bids evidence of the financing commitments necessary to undertake the Project;
- Where financing plans are based on limited or non-recourse financing, Bidders must provide a Bank Commitment Letter;
- Level of procurement of Export Credit Agency ("ECA") eligible goods (if applicable) and services to which the Bidder's proposed EPC contractor is willing to commit;
- If the financing assumes any support from ECAs, the ECA(s) will also be required to provide commitment letters evidencing that they have fully reviewed the Financial Submission and that they have approved the availability of financing and/or guarantee facilities that form part of the Bidder's Financing Plan;
- Bids which are assessed not to have adequate financing commitments to undertake the Project may be rejected;
- Evidence that the financing commitments have been provided after the review of project agreements by the financial institutions; and
- The submission should show evidence of bankability, through committed equity and debt.





Technical Evaluation

The objective of the evaluation of technical submissions is to assuage the Government Entity that the contractors who will construct the Project have the requisite technical expertise and relevant prior experience necessary to deliver the specified services adhering to the stated Timeline. Technical submissions shall be evaluated on the basis of, but not limited to, the following:

- Technical Compliance of the Bid submission with the requirements of the RfP, including as detailed in the project requirements section, functional specifications, as well as other relevant sections;
- The extent and nature of Deviations, if any, from the requirements of the RfP;
- Bidders' proposed operation and maintenance plans in relation to the Project, and the alignment of their financial model with the plans will also be evaluated;
- Bidders must demonstrate that their proposals for the Project comply with the architectural, geotechnical, environmental, and technical requirements as detailed in the functional specifications section and additional agreements attached to the RfP. Bids that fail to satisfy this requirement may be deemed non-compliant;
- Bidders must demonstrate by way of drawings that their proposed designated layout of the physical structure on the site is practical and that this takes full account of site safety, access to equipment and environmental requirements and that all necessary site services can be made available;
- Bidders' proposed construction programme in respect of the Project must be detailed as specified in the relevant formsheet. Evidence to support the achievability of the Construction Programme, such as confirmation dates for availability of the Main Equipment items must be provided. Credit will be given for firm evidence of the availability of the Main Equipment;
- Bidders must provide details of all major proposed subcontractors and suppliers/vendors defining the type of work or service to be subcontracted and the country of origin;
- The eligibility of the Bidders' contractors to satisfactorily perform their duties with respect to the Project will be evaluated; and,
- Compliance with Health, Safety, and Environmental guidelines and Dubai Municipality guidelines.

Legal Evaluation

The legal evaluation of the Bid submissions shall take into account, amongst other requirements, the following:

- An assessment of the extent of any deviation from the requirements of each of the agreements annexed to the RfP, including the nature of the Deviations and the extent to which the allocation of risk in each of the agreements and the project as a whole is affected;
- The compliance of the qualifying Bidder's Bid Bond;



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- An assessment of the impact of the qualifying Bidder's proposal being conditional on any material outstanding issue;
 - Submission of a Letter of Commitment;
 - Compliance with the Credential Requirements; and,
 - Confirmation from the Bidder that the Bidder will procure the letter of consent, i.e. Letter from Dubai investors in the project company if the Bidder is to be appointed as Preferred Bidder.

Development Security

On behalf of the Project Company, the Preferred Bidder will be required to provide the Government Entity a Development Security equal to a certain percentage of the EPC Contract Price, as determined by the Authority. The Development Security must be an irrevocable and unconditional guarantee issued by a recognised bank or banks having a long-term unsecured credit rating that is "investment-grade", which can be defined as possessing a "BBB" or the equivalent from Standard & Poor's Rating Services or "Baa2" or the equivalent from Moody's Investor Services, Inc.

4.3.3 Important Considerations for Managing the Bid Process

Anti-Corruption

Due to the weightage placed on evaluations by the Government Entity, there is a considerable risk of corruption impacting proceedings, skewing the process in favour of certain Bidders. Moreover, as all it takes for investor confidence to be negatively impacted is one example of corruption, extreme care should be taken at the highest levels to ensure that a stringent anti-corruption policy is prepared and signed off by all members involved in the Project along with the representatives of the Transaction Advisor, with clearly stated penalties for deviation.

Disclosure

All members of the PPP Project Team, including the representatives of the Transaction Advisor, must be asked to disclose any personal or familial conflict of interest that might be associated with any of the Bidders or with the Project. In addition, the Government Entity must decide, in advance, what the procedure will be to deal with such conflict, such as the removal of any potentially conflicted members from managing the Project.

Code of Conduct

All members of the PPP Project Team, including the representatives of the Transaction Advisor, must be required to sign off on a code of conduct that requires compliance with certain rules and regulations which will be applied in a uniform manner on every project. A similar code of conduct will also need to be developed that will be signed by all prospective bidding Consortiums and their advisors on every Project.





Prohibited Suppliers

The Emirate of Dubai should provide a list of suppliers who are proscribed from working with government agencies to every Government Entity in order to ensure that they are prohibited from bidding on projects for a period of time as decided by the government.

Security Environment

A security plan should be prepared by the Government Entity in order to ensure confidentiality, secrecy of data and work, and prevent acts of industrial espionage and economic theft.

Clarification Meetings

The Government Entity is highly encouraged to hold clarification meetings with Bidders during the interim period between the release of the RfP and the receipt of bids. The purpose of these meetings will be to clarify issues in the RfP that Bidders can discuss openly and to introduce Bidders to key representatives of the Government Entity. One-on-one meetings between the Government Entity and Bidders can also be organised, provided they are done so in advance, and that any non-proprietary clarification provided to a Bidder is shared with all Bidders, ensuring a level playing field.

Bidder Due Diligence

In order to receive Bidder Due Diligence, the Project's prior Due Diligence shall be provided and access to the Project site should be made possible for the Bidders. To facilitate this process, the communication and access details of when and how those permissions will be granted should be defined in the RfP.

Bid Validity Period

Bid validity period should be reflected in the RfP that all the Bidders' proposals should be valid for a certain period time which is determined by the Government Entity.

4.4 Negotiations with the preferred Bidder

Once the Bidders have been ranked by the Government Entity, the identity of the highest ranking Bidder must be submitted to the Partnership Committee for review, which will then recommend it for intermediate approval to the Department of Finance. If the Department of Finance provides its approval after conducting a review of the evaluation process, negotiations can commence between the Government Entity and the Preferred Bidder relating to the terms of the bid.

4.4.1 Issues for Consideration

- Ensure that the negotiations do not affect material contractual conditions in the Partnership Contract or the terms stated in the Bidding Documents (such as EOI, RfP, etc.), which must be treated as being non-negotiable conditions, unless such amendments are expressly approved by the Supreme Fiscal Committee;
- The Preferred Bidder must be invited in writing to attend negotiations, and careful records must be kept of all subsequent correspondence and meetings, including pre-determined agendas, minutes, any evolving formal documentation, and action items;



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- The Government Entity may reserve the right to start negotiations with other Bidders if the Preferred Bidder deviates from its written proposal or the proposed Risk Allocation;
 - The Government Entity should be empowered to make decisions during the course of negotiation meetings, and can draft in new members as required, should their presence be deemed relevant.

The negotiation team is advised to focus initially on common ground, enforcing a climate of mutual respect by resolving minor issues before proceeding to potentially pricklier matters;

- The negotiation team and the Preferred Bidder should arrive, by the end of the negotiation period, at a consensus on minimising conditions precedent, a definitive Timeline for signing the Partnership Contract, and a detailed system of contract and Performance Monitoring, which is discussed in the next section of this document;
- If the negotiation process is deemed successful, the Partnership Contract and all relevant ancillary agreements will be finalised by the Government Entity, with the aid of the Department of Finance. The Department of Finance will then recommend it for approval to the Supreme Fiscal Committee, following the approval of which, the Partnership Committee will award the Contract to the Preferred Bidder.
- If the negotiation process break down with the Preferred Bidder, and the Government Entity has reached a conclusion that the differences are irreconcilable, meetings with the Preferred Bidder should cease. Subsequently, the Government Entity should then communicate, in writing, to both the Preferred Bidder and the Department of Finance, expressing the reasons for the breakdown in negotiations, the chief unresolved issues, and the differences in stated positions. The Department of Finance, in consultation with the Supreme Fiscal Committee, then will have the prerogative to decide upon the course of the process: whether the project should be re-Tendered, whether the highest-ranked Bidder should be given another chance, or whether the Government Entity can proceed with negotiations with the second Bidder on the list, whose identity must then be approved; and,
- Debriefs must be offered to unsuccessful Tenderers. Government obligations for disclosure of signed agreements must also be observed.

4.5 Roles and responsibilities

1. Government Entity: The Government Entity is chiefly responsible for the procurement process. Following the approval of the Feasibility Study by the competent authority, as outlined in Section 2.3, the Government Entity must proceed with the procurement, convening the PPP Project Team in order to outline a project charter that sets out a clear Timeline with milestones for the procurement documents to be produced. Interaction with the Partnership Committee and the Department of Finance on a regular basis is highly encouraged, and it is advised that the charter outline periodic meetings to inform key Stakeholders of project progress. The EOI, IM, RfQ, RfQ evaluation report, RfP, project contracts, the Bid evaluation report, and the identity of the Preferred Bidder must all be submitted by the Government Entity, following internal review by the Partnership Committee, to the Department of Finance for approval prior to publication. A Timeline of two weeks must be provided for the Department of Finance to review and provide comments on documents, following the lapsing of which the document will be assumed to be approved.





The identity of the Preferred Bidder must be approved by the Department of Finance (which will inform the Supreme Fiscal Committee), following which the Partnership Committee can commence negotiations. The Government Entity should ensure there is adequate representation from the Department of Finance and other key Stakeholders on the negotiation team. Any material amendments from the guidelines and the standard PPP contract must be cleared with the Supreme Fiscal Committee prior to agreement with the Preferred Bidder. When negotiations have concluded, the Government Entity must approach the Department of Finance and the Supreme Fiscal Committee to approve the final Bid and transaction contracts, for which they will be provided with a period of two weeks. Following their approval, the Government Entity will sign the PPP contract and award the Project to the Preferred Bidder.

2. **Department of Finance:** The Department of Finance will be the chief provider of assistance to the Government Entity during the procurement process. The Department is encouraged, particularly at the start of the PPP programme, to provide regular assistance and feedback to the Government Entity on procurement document drafts, even prior to the official review period. The Department will be in charge of reviewing and providing formal feedback over a two-week period following submission by the Government Entity. Following the Government Entity's re-submission of the amended document (if there are substantive changes to be made), the Department must provide formal approval within one week. If there are any material Deviations from the guidelines, the Department must refer the issue to the Supreme Fiscal Committee for approval before the Government Entity can proceed with the procurement.
3. **Supreme Fiscal Committee:** The Supreme Fiscal Committee is in charge of approving all material Deviations from the guidelines and the standard PPP contract, and of approving any explicit requests from the Department of Finance during the course of the regular approval process. In addition, the Committee is informed of the identity of the Preferred Bidder prior to the commencement of negotiations, and must approve the final Bid and the terms of the final PPP contract prior to signing and award by the Government Entity.
4. **Partnership Committee:** The Partnership Committee will be the primary internal supervisory body that reviews all documents prior to submission to the Department of Finance for approval. In addition, the Committee is in charge of inviting Bidders to a session in which bids are opened; responsible for reviewing and assessing the technical, financial, and legal aspects; determining accepted and disqualified bids; assessing conformity to announced terms and specifications; and, awarding an assessment score to all bids.
5. **Post-procurement process**



5.1 Contract Management

OBJECTIVE

The purpose of this section of the document is to outline how the Government Entity must manage its relationship with the Preferred Bidder during the Project Lifecycle – from the time the contract is signed until the end of the concession term. The Contract Management phase aims to set out the project governance and reporting structure to be followed, the procedure for changing aspects of the contract as well as settling disputes with the private partner, and the procedure for managing asset handover at the end of the concession term.

Governing articles of the PPP Law and regulations: Articles 9, 10, 11, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

GUIDANCE

There are three key aspects of Contract Management that need to be noted by the Government Entity:

- **Contract Management structure:** the responsibilities, communication mechanisms, and protocols that will govern the relationship between the public and private sector will need to be outlined clearly prior to signing the agreement.
- **Change management:** stating the procedure for dispute resolution, contract modifications, termination, and renegotiation.
- **Contract expiry:** managing the procedure to be followed at the end of the concession term, such as whether the project will be re-Tendered or whether the relevant Assets will be transferred back to the government, and, if so, how that will be handled.

Contract Management begins at the initiation stage of the PPP Project Lifecycle in order to address all concerns related to the implementation of the Project until the end of the procurement stage, and is put into practice after the signing of the Partnership Contract for the development, delivery, and handover phases.

5.1.1 Contract Management structure

Managing a PPP contract is more complex than managing a traditional government contract. The PPP version is necessarily incomplete given that all scenarios and corresponding regulations cannot be envisioned and, hence, a skilled Partnership Contract Manager, who will function as the primary Point of Contact with the private sector partner, is required. The Partnership Contract Manager should be appointed by the Government Entity as part of the Partnership Contract ideally prior to its signing.

Moreover, there will be several other governmental entities whose presence might be required whilst managing a contract, working in concert with the Government Entity as well as the Partnership Contract Manager, including but not limited to:

- **Sector regulators:** In charge of managing tariff structures when government is not the primary offtaker in a Project, and a private sector partner has been chosen to provide crucial services to the public directly; and,



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- **Department of Finance:** While not as directly involved as the Government Entity, the Department of Finance will continue to be a key stakeholder even during the Contract Management process, especially if contractual changes directly lead to Deviations in fiscal implications; in addition, the Department will provide institutional strength to the Government Entity, forming taskforces and sub-units should more extensive analysis or support be required during the management phase.

After identifying key Stakeholders for the Partnership Contract, a whole-of-life communication structure should be outlined, which would include a primary Point of Contact at the Government Entity. Preferably, the personnel who have been involved during the procurement stage would be in charge of scheduling meetings, forming specific teams to deal with the concerns of the Preferred Bidder, and dealing with day-to-day management of the project.

5.1.2 Change Management

The Partnership Contract, as discussed earlier, must be drafted in a manner dissimilar to traditional government contracts given that it needs to retain enough flexibility to adjust to changes over the concession period. Changes to key, agreed elements of the Partnership Contract after signing must be taken carefully with due consideration and thorough review, ideally by a formal agency or committee set up by the Government Entity, which will review its budgetary impact as well as its effect on VfM calculations.

Additionally, there should also be a clear, swift dispute resolution mechanism in place to deal with the settlement of any disputes that might arise during the Project Lifecycle. While disputes can be avoided through careful negotiations and contract drafting before the signing phase, transparent and fair resolution procedures will only serve to increase private sector confidence and make them more likely to participate in future Projects. For Dubai's PPP market, where international Bidder expertise might be particularly valuable, it is recommended that international arbitration practices are followed and that out-of-court methods of dispute settlement are encouraged in order to avoid investors from being trapped in legal wrangles. Contract termination procedures, as well as deciding how, whether, and when re-negotiation with the Private Party should occur must also be considered while drafting the Partnership Contract, and should be agreed upon before signing.

5.1.3 Contract Expiry

The final task in the management of a Partnership Contract is to ensure a seamless handover of Assets at the end of the concession period. Depending upon the project-specific Method of Procurement, there might be conditions that need to be fulfilled regarding asset quality at the handover stage, related incentive payments or fines, and the need for formalised definitions of what constitutes said quality. It is worth considering the usage of independent assessors in order to determine such requirements in order to ensure fairness in evaluation and further contribute to private sector confidence.





5.2 PPP Performance Monitoring and Risk Management

5.2.1 Objective

Performance Monitoring is imperative in order to achieve the Value for Money promised by a PPP, and it must be ensured that the intended Risk Allocation of responsibilities are put into practice during the implementation phase. Throughout the lifetime of the contract, an assigned government responsible, preferably the Contract Manager, should ensure that the private sector partner is delivering services to adequate standards as specified in the contract, that the government is making its payments to the private sector partner on time and in the stated manner with no Deviations, and that risk is being allocated and mitigated appropriately as modelled.

5.2.2 Performance Monitoring

In order to implement a robust Performance Monitoring strategy, the following steps should be taken:

1. **Develop a performance management model as part of the Partnership Contract and integrate it into the Contract Management plan:** The Preferred Bidder's performance requires constant measurement against agreed performance indicators, so that any decline or improvement in the provision of services can be noticed early and be penalised or rewarded accordingly. Any alterations to the agreed standards set for quality, delivery, performance, or monitoring methods should be formalised under the Project Contract.
2. **Bring together performance improvement methods:** The project's performance indicators require regular review so that any decline or improvement in service delivery can be monitored and corrective action can be taken if necessary. This should also ensure adherence to the Risk Allocation strategy.
3. **Execute effective Performance Monitoring:** While chiefly expected to be conducted by the Partnership Contract Manager and the Contract Management team as chosen by the Government Entity, in sectors where there is a chief regulator, some of the monitoring can be performed by that entity.

Sources of monitoring include:

- Data provided by the Private Party: Usually, the private sector party is responsible for sending regular performance update reports to the Government Entity, the content, frequency and format of which should be specified in the contract;
- Independent experts: Spot checks and audits can be carried out by independent agencies in order to avoid bias or provide a second opinion, as with the utilisation of independent engineers in order to monitor compliance during the construction phase; and,
- Service users: During the operation phase, if the private sector partner has a direct interface with users, the government can set up an interface for direct feedback from the community on the Project Company's performance.



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4. **Assess performance and take curative action:** In line with the agreed contractual terms, the Government Entity must then evaluate the performance against the stated monitoring standards, and take the relevant action. As outlined in the Partnership Contract, there must be a gradation of penalties for poor performance, with the requisite fine progressively getting worse in line with the severity of the transgression. As agreed between the parties, warnings, formal notifications, fee deductions, step-in clauses, and other relevant responses must be considered by the Government Entity, along with the curative measures that are required to be taken accordingly. In considering such practice, the Government Entity must perform a balancing act – if the practice is seen as too rigid, Private Players will be deterred from bidding and existing provision of services will be impacted, whilst if the regime is too lenient, a situation of moral hazard might be encouraged.

5.2.3 Risk Management

The Government Entity needs to ensure that the risks allocated to government are being monitored appropriately and that outlined mitigation strategies are being actioned. In doing so, the Contract Management team will often need to develop a “risk management plan” that lists out the risks and their allocation as determined during the initiation and procurement stages, along with monitoring and mitigation strategies to be decided upon and outlined in the Partnership Contract. The Contract Management team is expected to:

- **Establish key indicators to detect evolving risks at certain levels:** for instance, if the identified demand risk has been underestimated, and demand is actually much lower than expected, a payment might be triggered, which will have to be identified in advance, with provisions subsequently made accordingly.
- **Monitor and manage in-time mitigation activities:** the Government Entity and the Preferred Bidder would have agreed upon mitigating actions in order to reduce the impact of a particular risk on the project, as outlined in the Partnership Contract. Both parties must ensure that either the government or the private sector is performing the necessary controlling strategy, depending upon whom the risk is allocated to, and assure that appropriate and timely action is taken, if necessary. This could be done by either escalating the strategy to a higher level or renegotiating the contract to transfer mitigation responsibility to the party best positioned to handle such risk.
- **Implement emergency measures:** if there are certain unforeseeable circumstances, emergency action might have to be taken, which will have to be discussed with the Preferred Bidder and performed immediately.

A reporting system should be established to achieve a systemised risk management strategy comprising all the activities summarised above. The reporting system should be owned by the Government Entity and will be designed to facilitate upward reporting about how risk is being managed. The Contract Manager should deliver regular reports on the work performed to keep risk mitigation procedures up to date and in line with PPP agreement management objectives.





5.3 Roles and responsibilities

1. **Government Entity:** The Government Entity is responsible for the Contract Management and Performance Monitoring phase, regulating the performance of the private sector operator through the tenor of the contract till the handover (if applicable). The Government Entity must work in conjunction with the Department of Finance to regularly request progress reports from the private sector operator, and consistently track performance to administer the corresponding/penalty incentive regime, and observe risks that could materialise so that mitigation measures can be adopted.
2. **Department of Finance:** The Department of Finance will be the chief provider of assistance to the Government Entity during the post-procurement process. The Department will maintain an oversight role over the monitoring and risk management process, ensuring that the Government Entity is adopting the requisite mitigation measures and is implementing the penalty/incentive regime in a fair manner. The Department is also in charge of ensuring that the performance of the private sector operator adheres strictly to the signed contract, with all material Deviations reported to the Supreme Fiscal Committee for further review and action.
3. **Supreme Fiscal Committee:** The Supreme Fiscal Committee is in charge of approving all material Deviations from the guidelines and the standard PPP contract, and of approving any explicit requests from the Department of Finance during the course of the post-procurement process.
4. **Partnership Committee:** The Partnership Committee will continue to function as the primary internal supervisory body within the Government Entity, reviewing the performance of the Contract Management team, and constantly monitoring adherence to the signed PPP contract.





Annexure 1

Procuring Transaction Advisors

OBJECTIVE OF THIS SECTION

In this section, the role and the process of recruitment of the Transaction Advisor will be outlined with an emphasis on how the Terms of Reference framework and the Request for Proposal (RfP) document should be structured and how the recruitment process will be handled in order to choose the most appropriate Transaction Advisor.

GUIDANCE

1.1. The Role of the Transaction Advisor

Transaction Advisor(s) is a Consortium of professional consultants – which may include commercial, financial, technical, legal, environmental, insurance, or other services – from one or more firms who work in concert with the PPP Project Team during both the initiation stage and the procurement stage. Their roles should be clearly outlined before the selection phase to ensure that all the requirements and Deliverables expected from advisors are addressed.

1.2. Recruitment Process

After identifying the role of each Advisor, the Government Entity should ensure that enough qualified Transaction Advisors are shortlisted to be informed of the process, and that the competition among them is promoted appropriately. The recruitment process for the Transaction Advisor is akin to the one followed for project procurement: An RfP, the contents of which are detailed below, is issued to provide clarity regarding the extent of work the Transaction Advisor is expected to provide on the project. A Transaction Advisor's proposal generally includes a technical proposal responding to the scope of work in the RfP with a working methodology, and a financial proposal that includes pricing services for that purpose. These proposals are then submitted to, and collected by, the designated Government Entity, following which a competitive Bidding Process follows for the selection of the Transaction Advisor.

The Transaction Advisor's technical proposal will generally be evaluated on the below criteria, amongst others:

- Local, regional, and international experience over the past 5-10 years working on procurement projects – first, in the same sector as the project in question; and, second, in other procurements;
- Past relevant experience working with either the Government Entity or other organisations within the Emirate of Dubai;
- Past relevant experience of leading the development of similar projects, or with the structuring of relevant payment mechanism; and,
- Past relevant experience in developing government-guaranteed or subsidised projects, supporting to ensure bankability, and raising finance.





1.2.1. Terms of Reference

At the beginning of the recruitment process, a Transaction Advisor Terms of Reference (“ToR”) should be prepared. The ToR should provide the Government Entity with a comprehensive evaluation mechanism and will be used as a basis whilst drafting the RfP. The clearer and more carefully prepared the ToR, the higher quality the average Bidder response will be, and the more assured the procurement process will be. At a minimum, the ToR shall include the following; in parentheses, inclusion of the terms suggested to be included in the RfP:

- **Background (should be included in RfP):** An outline of the Project, including a description as prepared in the Project Concept Report, along with a summary of why the Government Entity/State are interested in procuring this project based on the needs that the particular project aims to fulfill.
- **Scope of work (should be included in RfP):** Indicate the clear extent of the scope of work, including the output specifications and reference drawings – if applicable – for which the Transaction Advisor is being procured.
- **Deliverables schedule (should be included in RfP):** The entire list of Deliverables that the Transaction Advisor is expected to prepare, along with suggested dates of delivery, should be stated clearly in order to help the Transaction Advisor price their services accurately.
- **Skills and experience (should be included in RfP):** The range of skills and project-specific experience that is required – particularly on niche, complex projects that Dubai has had no precedent experience in – must be stated clearly. Additionally, particular emphasis must be given to the requirement that the resources named in the submitted proposal are available – on the ground, if required – once the project commences, and are committed to devoting their time to successfully closing the Project.
- **Budget for the Transaction Advisor’s professional fees (if declared, should be included in RfP):** Based upon the careful costing performed by a technical specialist within the Government Entity, a budget for the project and, subsequently, for the Transaction Advisor’s services, is set and can either be declared or not declared.

If declared, the Government Entity has a definitive yardstick to measure all technical responses against, as a result of which there is no incentive for Bidders to submit cheap but technically poor proposals, improving the quality of the average bid, in principle. However, there is a risk that inaccurate costing may price out highly competent advisors who would have provided technically superior solutions, but do not prefer to Bid as a result of the underestimation of services costing.

If undeclared, there is a higher chance of receiving well-diversified bids, as both components of the submission – the response to the RfP scope of work (technical proposal) and the pricing (financial proposal) – will be weighed, and an incentive to compensate quality in one for the other will be reduced. However, there is a risk present that some advisors, who have poorer Credentials and technical expertise, might deliberately underprice their services. Moreover, it is also possible that were an extremely low Bid to be rejected, despite obvious technical flaws, the Government Entity will be required to justify it as a loss to the exchequer.

In summary, the decision is to be taken individually on every project by the Government Entity, in consultation with the Department of Finance. On projects where specific technical expertise is required, the budget can be declared in order to ensure that scoring is done exclusively on the quality of the technical response; and, on projects where there is local and regional precedent and sufficient competition amongst Bidders, the budget need not be declared, so as to encourage competition.



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- **Remuneration system and schedule (should be included in RfP):** The Transaction Advisor must be paid on a fixed schedule using a combination of retainer fees, which are disbursed at the completion of every agreed deliverable, and success fee(s) – which is usually paid upon reaching financial close. On large, complex projects, it is entirely possible that the work performed by the Transaction Advisor goes beyond the agreed scope. If so, a method of payment to compensate the Advisor for this additional work, such as utilising stated daily rates, should be agreed upon. The scope of work agreed with the Transaction Advisor must contain Deliverables at the end of every stage, and, pending their successful submission, retainer fees must be disbursed. It is important not to subject the disbursement of retainer fees to competent authority approval, as disapproval by these bodies is not necessarily a reflection on the quality of work performed by the Transaction Advisor.

- **Payment arrangements (should be included in RfP):** There are two options of disbursing payments:
- Expenses such as travel are paid as reimbursement of costs, conditional on the submission of supporting invoices, up to a ceiling as stated by the Transaction Advisor in its proposal; or,
- The Transaction Advisor can be asked to Bid a price inclusive of its internal budgeting of expenses, and the Government Entity disburses the winning payment as a series of retainer payments.

On balance, the second option, as followed by most nations in the region, is recommended. The first option involves excessive administrative burdens, given that each individual expense will have to be approved, while the second option solves this hassle by quoting a lump sum that is inclusive of budgeted expenses and mitigates the risk that firms might have over-budgeted for expenses.

- **Government Entity's management arrangements:** This will set out the reporting and management protocols the Transaction Advisor will have to follow.
- **Conflict of interest (should be included in RfP):** Full disclosure regarding any vested interest Bidders might have in the Project should be sought, and the Transaction Advisor should be informed that, should they be selected as the winning advisor, they will be precluded from advising one of the Bidders on the procurement.
- **Bidding rules (should be included in RfP):** The rules surrounding the submission of the Bid by the Transaction Advisor should be detailed. Typically, the Transaction Advisor will be asked to submit a proposal combining a technical response which responds to the RfP scope of work, and a financial response which comprises of the stated price for the services.
- **Bid submission requirements (should be included in RfP):** The rules surrounding the submission of the Bid must be outlined clearly, including requisite supporting documentation, the format to be submitted in, and the address to which it must be delivered, amongst other details. Importantly, the submission must be carried out in two separate envelopes – one for the technical response and one for the financial response, so that the price is not known when the technical proposal is being evaluated.
- **Bid process (should be included in RfP):** The processes regarding the conducting of the bidding and the briefing session are to be detailed.
- **Bid evaluation weightings and criteria (should be included in RfP):** The criteria for evaluating the Transaction Advisor's response should be outlined clearly, with weightings given to the technical and financial responses, as well as other components including Credentials, the experience of team members, relevant finance-raising experience, etc.



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- **Background and supporting documentation:** If deemed appropriate, any non-confidential supporting documents, prior work or research, and background knowledge shall be made available to all interested Bidders, preferably through a Data Room. This could include any prior internal feasibility studies, any needs assessment performed, any relevant policy or regulatory documents that the project might help fulfill, and any project-specific objectives that have been outlined by the Government Entity in advance. This is important in order to assess pricing, as reviewing and updating prepared work will be priced very differently from preparing entirely new feasibility studies.
 - Draft agreement (should be included as part of the RfP) – Bidders have a right to be informed of the contractual provisions of the agreement they will enter into should they be awarded the project, and, to this end, a model draft version of the final agreement should be attached to the ToR in order to enable Bidders to submit their comments and mark-ups on it, if applicable.

1.2.2. Advertisement

An advertisement shall be prepared to be published in the popular Arabic and English-language newspapers, journals, and on relevant Government Entity websites. The advertisement should provide brief details about the project, provide a Point of Contact at the Government Entity, and provide details on any briefing sessions, which are usually conducted at some point in the middle of the preparatory period allotted.

Sufficient time must be provided to Bidders so that the Transaction Advisor can construct the best possible Consortium, prepare a detailed response that abides by the RfP, and can cost the project accurately. Once the advertisement is published, Bidders must be allowed to send queries to a designated Point of Contact at the Government Entity, and it must be ensured that all responses to queries should be shared widely, especially if they provide clarity on a matter in the RfP that would benefit all Bidders.

1.2.3 Briefing Session

It is advised that the Government Entity hold a briefing session for Bidders usually sometime midway through the preparatory period allotted. The session should focus on summarising the ToR and on answering Bidder queries. Attendance, while not mandatory, should be encouraged. However, it must be ensured that attendance does not privilege Bidders, and that any information shared therein is also shared with all prospective Bidders. In addition to presenting an opportunity for clarifications, briefing sessions would also allow the Bidders to become more familiar with the Government Entity key representatives, whose attendance should be highly encouraged – and, also, allow Bidders to familiarise themselves with the competition.

1.2.4. Finalising and Signing the Agreement

A Point of Contact within the Government Entity shall be designated for receiving the bids from interested Bidders on or before the stated date. The two envelopes containing the technical and financial proposals, respectively, should be received and kept separately. If bids are opened upon submission, it must be ensured that the guidelines provided in the Tender document(s) have been strictly adhered to, and that Bidders are made aware of potential disqualification as soon as possible.





Following evaluation of the bids, the Government Entity shall invite the preferred Bidder to finalise the terms of the contract, which should take into account both the ToR and the submitted markup of the draft contract as part of the winning bid.

It should be made clear that the Government Entity holds the right to negotiate pricing with the Preferred Bidder, and, failing the achievement of a consensus, is permitted to begin conducting negotiations with the next highest scoring Bidder. In that case, the lead Bidder will be informed in advance and in writing of why they are not eligible to continue negotiations anymore.

After the successful completion of negotiations with the preferred Bidder, the parties should successfully agree and write down terms and sign the contract. As a last step in the process, unsuccessful Bidders should be informed of the decision.

CHECKLIST

- Has it been made sufficiently clear what the role of the Transaction Advisor will be on the Project?
- Has there been a clear demarcation made of the Terms of Reference that will be included as part of the RfP for recruiting the Transaction Advisor and the ones that will be utilised for internal purposes?
- Has a scope of work for the Transaction Advisor been prepared that details the functions the Advisor will be expected to perform after being hired?
- Is there clarity – both within the Government Entity and with the Transaction Advisor – regarding the budget for the fees, remuneration system, payment schedule, and disbursement arrangements that will be utilised?
- Are prospective Bidders aware of submission rules and associated code of conduct expected of Transaction Advisors regarding matters such as conflict of interest, for example?
- Has a Point of Contact been designated at the Government Entity to receive and answer queries following the advertisement, to coordinate briefing sessions with prospective Bidders, to receive and store the technical and financial proposals from Bidders, and to evaluate the bids?
- Does the Government Entity in question have a version of a draft contract to be circulated to prospective Bidders that can then incorporate prospective changes following review by the winning Bidder to serve as the contractual agreement?





Annexure 2 Unsolicited Proposals

OBJECTIVE

In this section, the procedure to submit and evaluate unsolicited proposals will be outlined, emphasising a balance between encouraging the private sector to submit innovative solutions and be rewarded accordingly, and ensuring a fair and competitive Tendering process.

GUIDANCE

An unsolicited proposal refers to a study prepared by a private Bidder which is submitted directly to either the Department of Finance or to a Government Entity for consideration of procurement. It must be an original, innovative, and comprehensive proposal that directly addresses the need for an issue that is recognised as pressing and demanding of immediate attention by the Emirate of Dubai. The proposal submitted by the private Bidder must function either as a brief version of the Feasibility Study, or as a comprehensive one:

- The brief version would serve as an extension of the Project Concept Report which will be similar to the one prepared by government entities for projects prior to their shortlisting as part of the pipeline. The purpose of the brief version of the Feasibility Study is to serve as an initial overview of the project in order to gauge if the broader idea is worth pursuing, before the private Bidder spends an unreasonable amount of time and resources on the preparation of a comprehensive feasibility analysis. Should the initial version of the study be approved by the Department of Finance in conjunction with the relevant Government Entity, the Bidder in question that submitted the unsolicited proposal would be required to prepare a comprehensive feasibility analysis, as would be done on regular PPP Projects.
- The comprehensive Feasibility Study shall include a detailed description of the project; describe the need that the Project addresses; refer to particular Emirate-wide, national, or agency-specific objectives, if applicable; make a case for why the private sector's solution is particularly innovative and worth considering; include a high-level costing estimate; and, include a brief version of the needs assessment – stating the broad parameters of the Project, outlining the key Stakeholders, and detailing the scope of the project. The comprehensive Feasibility Study shall be similar to the feasibility analysis prepared by the Government Entity with the assistance of the Transaction Advisor on traditional PPP Projects. In summary, this study shall include project-specific objectives, the determination of key Stakeholders, outline of the project scope, output specifications, as well as the technical, legal, and environmental Due Diligence analysis.

The Feasibility Study should be submitted to the Department of Finance, who will review it and provide its initial approval. Following the approval, the Department of Finance will nominate the relevant Government Entity, which will set up the PPP Project Team, add a representative from the Department of Finance if the project value is greater than AED 200 million, and review and recommend the feasibility analysis.





The approval of the feasibility analysis follows the same procedure based on Threshold values, as outlined earlier: if the project value is below AED 200 million, the Director General of the Government Entity provides the approval; if the project value is between AED 200 million and AED 500 million, the Department of Finance provides the approval; and, if the project value is above AED 500 million, the Supreme Fiscal Committee will provide the approval. However, before proceeding to procurement, the Government Entity must take a decision regarding the status of the Bidder who submitted the unsolicited proposal. It is recommended that the Bidder be awarded for its effort in one of two ways, as outlined below:

- Either the Bidder in question is designated the sole Bidder on the Project, with the PPP Project Team empowered to carry out negotiations with them, which, if they break down, would result in the procurement process being suspended; or,
- Were the project to be openly tendered, the Bidder in question could be privileged in terms of the evaluation – either in terms of preferential scoring around the margins, or by allowing them to match the lowest bid.

The process for recruitment of the Transaction Advisor by the PPP Project Team remains the same as outlined in the “Annexure 1 – Procuring Transaction Advisors”.



Annexure 3 Checklists

Project identification and Screening

Description

Project identification and Screening enables the identification of national Priority Projects with the aid of a published pipeline, the Screening of projects to test for PPP suitability and analysis on if Value for Money savings can be realized and, outlines how the project is aligned with broader Emirate, national, and agency-specific objectives.

SNo.	Criteria	Description/ Review Criteria	Evaluation ✓		
			Adequate	Partially	Not Covered
1.	Measure of Value for Money savings	Does the project being procured as a PPP have the qualitative and quantitative drivers to realise significant Value for Money savings as compared with traditional procurement?			
2.	Abide by the Thresholds	Does the Screening process abide by the Thresholds outlined in the flowchart – i.e., has a PPP test been performed?			
3.	Envision the project	Will it be possible for the reader to envision the project, in terms of nature of the asset to be constructed/service to be provided, project size and initial value estimate, and other key features?			
4.	In line with Government Objectives	Is it evident that the proposed project to be procured is in line with the relevant Government Entity's objectives and conforms to Emirate and national objectives?			



Project Concept Report

Description

The Project Concept Report serves as an overview of the project, and includes a brief description, an initial needs assessment, a high-level cost estimate, and a proposed project delivery Timeline. It is prepared by the responsible government entities for all projects that are shortlisted for submission as part of the pipeline and is approved by the Department of Finance.

SNo.	Criteria	Description/ Review Criteria	Evaluation ✓		
			Adequate	Partially	Not Covered
1.	Project Concept Report	Has a Project Concept Report been prepared for all shortlisted projects that is brief in nature and does not exceed 5 pages?			
2.	Objectives of the project	Does the Project Concept Report include the objectives of the Project which align with Emirate, national, and Contracting Authority objectives, align with broad macroeconomic trends, reflect the aspirations, objectives, and culture of Dubai's residents and, ensure the provision of a framework within which detailed strategies and implementation plans can be developed?			
3.	Project description	Does the Project Concept Report include a project description which provides an overview of the Project including a brief description of what it would entail, outline the public need for the Project and how it would meet a demonstrable service gap, specify the parameters of the Project in terms of technical and operational requirements including high-level cost estimates and, identify the role of the private sector and how their expertise can be leveraged for the procurement of the Project?			
4.	Submitted for review	Has all the Project Concept Reports been submitted to the Partnership Committee for review?			
4.	Government approval	Has the Director General of the Government Entity approved the Project Concept Report?			



Preparation of the project as a PPP (Feasibility Study)

Description

The critical analysis of a project can be achieved through the development of a detailed Feasibility Study. The Feasibility Study is a necessary procedure that enables the critical assessment of a project and the preparation of a robust implementation plan. A PPP Feasibility Study goes beyond a traditional public services delivery Feasibility Study (which focusses on the assessment of public policy, and economic and technical feasibility studies conducted by the Government Entity) by including a detailed procurement options analysis in order to identify the most appropriate Method of Procurement that provides the greatest Value for Money savings. The PPP Feasibility Study comprises of, at a minimum, a needs assessment, procurement options analysis, scoping, Due Diligence, risk assessment, qualitative and quantitative Value for Money analysis, procurement method selection, and the project strategy.

SNo.	Criteria	Description/ Review Criteria	Evaluation ✓		
			Adequate	Partially	Not Covered
1.	Need for Project	Does the Feasibility Study justify the need for the project in terms of satisfying an essential public requirement?			
2.	Understanding of Government objectives	Is there a clear understanding of the Government Entity's objective for this specific project?			
3.	Stakeholders identified	Have the key Stakeholders relevant to this particular project been identified?			
4.	Output specification	Have the relevant elements of the output specification been appropriately detailed, such that they can be explained in Tender documents to interested Bidders and address the need for the project in a proper and efficient way?			
5.	Aware of Project aspects	If a Government Entity proceeds with the project, is it aware of all the required technical specifications, environmental and social conditions, legal and financial aspects related to the project – which are aligned with the output specifications – approvals required?			
6.	Land requirement	If any land needs to be acquired – and, if so, how it could proceed with the enabling works.			
7.	Scope to pair with similar projects	If there are any similar projects that other government agencies are carrying out that this project could potentially be bundled with in order to achieve efficiencies?			





SNo.	Criteria	Description/ Review Criteria	Evaluation ✓		
			Adequate	Partially	Not Covered
8.	Benchmarking exercise on similar projects	Has a benchmarking exercise been conducted in order to determine projects of a similar nature that can be utilised as guideposts for this project?			
9.	Delivery options	Have the relevant project-specific delivery options been identified?			
10.	Market sounding	Has a market sounding exercise been conducted with the relevant Market Players, either by invitation after conducting the benchmarking exercise or following the placement of an advertisement?			
11.	Refinement of delivery options	Has there been a refinement and narrowing down of delivery options following the market sounding stage?			
12.	Detailed risk assessment	Has a detailed risk assessment been conducted, including the identification, allocation, and quantification of risk, along with the outlining of mitigation strategies for the retained risks?			
13.	VfM assessment	Has the PPP Project Team conducted a detailed qualitative VfM assessment in order to outline the benefits of procuring the project as a PPP?			
14.	Costing and financing assumptions	Has the PPP Project Team considered, carefully, in the financial Due Diligence following extensive benchmarking and consultations with key Stakeholders, the costing and financing assumptions they will utilise?			
15.	Scenario and sensitivity analyses	Has the PPP Project Team conducted sufficient scenario and sensitivity analyses on the model in order to see how the results vary?			
16.	Understanding of the Project Value for Money	Is there a clear understanding of the final value-for-money for the project were it to be procured as a PPP?			
17.	Single delivery option	Is there a single delivery option that is recommended by the PPP Project Team to procure the project as a PPP?			





SNo.	Criteria	Description/ Review Criteria	Evaluation ✓		
			Adequate	Partially	Not Covered
18.	Option analysis refinement process outlined	Has the “refinement” process of the options analysis been outlined clearly, stating how, starting with the listing of options, and through every subsequent stage, the final option was arrived at?			
19.	Delivery option outlined	Is the delivery option clearly outlined, with particular emphasis on the contractual structure and cash flow mechanism – “who pays whom”, effectively?			
20.	All funding sources identified	Have all funding sources related to public resources been identified and justified in the maximisation of VfM, as well as the uses of funds?			
21.	Uses of funds	Are the uses of funds aligned with the description of project costs based on the Due Diligence study conducted before?			
22.	Outline of delivery option implementation strategy	Has the implementation strategy for the delivery option been outlined appropriately, including the setting of policy and procurement framework (by identifying relevant authorities, the resourcing plan, required approvals, and the project-relevant stakeholder management comprising who will be responsible for communication, reporting protocols, etc.?			
23.	Procurement Deliverables Roadmap	Is there a clear idea of a “roadmap” for procurement Deliverables, with the stages listed out along with their outlined duration and target dates for achievement/delivery?			





DESCRIPTION

Checklist

1. Does the Feasibility Study justify the need for the project in terms of satisfying an essential public requirement?
2. Is there a clear understanding of the Government Entity's objective for this specific project?
3. Have the key Stakeholders relevant to this particular project been identified?
4. Have the relevant elements of the output specification been appropriately detailed, such that they can be explained in Tender documents to interested Bidders and address the need for the project in a proper and efficient way?
5. If a Government Entity proceeds with the project, is it aware of all the required technical specifications, environmental and social conditions, legal and financial aspects related to the project – which are aligned with the output specifications – approvals required?
6. If any land needs to be acquired – and, if so, how it could proceed with the enabling works.
7. If there are any similar projects that other government agencies are carrying out that this project could potentially be bundled with in order to achieve efficiencies?
8. Has a benchmarking exercise been conducted in order to determine projects of a similar nature that can be utilised as guideposts for this project?
9. Have the relevant project-specific delivery options been identified?
10. Has a market sounding exercise been conducted with the relevant Market Players, either by invitation after conducting the benchmarking exercise or following the placement of an advertisement?
11. Has there been a refinement and narrowing down of delivery options following the market sounding stage?
12. Has a detailed risk assessment been conducted, including the identification, allocation, and quantification of risk, along with the outlining of mitigation strategies for the retained risks?
13. Has the PPP Project Team conducted a detailed qualitative VfM assessment in order to outline the benefits of procuring the project as a PPP?
14. Has the PPP Project Team considered, carefully, in the financial Due Diligence following extensive benchmarking and consultations with key Stakeholders, the costing and financing assumptions they will utilise?
15. Has the PPP Project Team conducted sufficient scenario and sensitivity analyses on the model in order to see how the results vary?
16. Is there a clear understanding of the final value-for-money for the project were it to be procured as a PPP?



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17. Is there a single delivery option that is recommended by the PPP Project Team to procure the project as a PPP?
 18. Has the “refinement” process of the options analysis been outlined clearly, stating how, starting with the listing of options, and through every subsequent stage, the final option was arrived at?
 19. Is the delivery option clearly outlined, with particular emphasis on the contractual structure and cash flow mechanism – “who pays whom”, effectively?
 20. Have all funding sources related to public resources been identified and justified in the maximisation of VfM, as well as the uses of funds?
 21. Are the uses of funds aligned with the description of project costs based on the Due Diligence study conducted before?
 22. Has the implementation strategy for the delivery option been outlined appropriately, including the setting of policy and procurement framework (by identifying relevant authorities, the resourcing plan, required approvals, and the project-relevant stakeholder management comprising who will be responsible for communication, reporting protocols, etc.?)
 23. Is there a clear idea of a “roadmap” for procurement Deliverables, with the stages listed out along with their outlined duration and target dates for achievement/delivery?
 24. Has a clear strategy been developed in order to engage with key Stakeholders during the course of the procurement process?
 25. Has the procurement Timeline been outlined clearly, with a target date for the duration and close date of every component step?
 26. Have the key risks to the procurement Timeline been stated clearly, along with their respective potential mitigation strategies?
 27. Has the Feasibility Study been submitted to the Department of Finance for budget approval/allocation as a PPP?





EOI and RfQ

DESCRIPTION

The Expression of Interest document is issued to inform the market of the Government Entity's desire to Tender the project, setting out basic specifications in order to gauge the level of market interest for the project. The EOI document should provide clear guidance and sufficient detail on the project's service delivery requirements and the Government Entity's evaluation processes.

The Request for Qualification ("RfQ") process allows Government Entity's to invite interested Bidders to submit a Statement of Qualification ("SoQ") in response to RfQ document, with the purpose to assess whether they are qualified for procuring the project in the first place. The main purpose of this process is to select a limited number of the Bidders that are qualified- technically, financially- and have adequate experience and commitment to implement the project, as well as to set out the rules of involvement in the procurement process noticeably and explicitly. The RFQ document will also include an Information Memorandum ("IM") that will allow the Bidders to understand the scope of the project and evaluate their interest in and ability to participate in the Tender process.

CHECKLIST

1. Has a request for EOI document been developed that is ready for advertisement and contains sufficient detail so as to inform interested Bidders of the nature of the project, the basic specifications, and how they can respond and register their interest in the Project?
2. If yes to the above, has the request for EOI been advertised in state broadcasting outlets, local and regional Arabic and English-language dailies, and on the relevant Government Entity's website?
3. Has a detailed Information Memorandum and RfQ document been prepared that will be sent to Bidders who have registered interest?
4. Does the IM and RfQ document include a Pre-Qualification Questionnaire designed so as to ensure the Bidders have the requisite resources, expertise and experience to deliver the stated services if awarded the Project?
5. Has an evaluation matrix developed so as to ensure that an objective assessment took place in order to choose the merited qualified Bidders?





RfP

DESCRIPTION

The RfP is intended to be the definitive document that defines the project and its nature and scope in detail, outlines the requisite input and output specifications along with their corresponding performance indicators, the legal and commercial information that needs to be conveyed to Bidders, and the financial information, amongst other components. It is one of the formal documents released by the Government Entity and as such, serves to attract and convince interested Bidders and the broader private sector of the seriousness of the organisation's desire to procure the project.

CHECKLIST

1. Has the relevant technical information, including the design of the site(s), output specifications, detailed scope, and the project implementation schedule, been stated in the RfP document clearly so as to enable Bidders to present detailed technical proposals?
2. Has due consideration been given to assure that Bidders are provided enough leeway in order to utilise their innovative capacity and encourage them to provide unique technical solutions?
3. Have Bidders been made aware of an exhaustive list of approvals, standards, taxes, and duties that they will have to apply for or adhere to during the construction and operation phases?
4. Is there a clear outline of the structure of the model that is to be submitted as Bidder proposals, including best practice suggestions and an overview of presentation and submission requirements?
5. Have the Bid proposal, submission, and clarification requirements been stated clearly, including a Point of Contact at the Government Entity who can be contacted by the Bidders regarding the same?
6. Has a draft Partnership Contract been developed in line with Government Entity's objectives in delivering the Project, to be included as part of the RfP?
7. Does the RfP specify, clearly, the Bid evaluation mechanism including the specific weightage that will be given to different components of the submission and a scoring criterion?





Bidding Process

DESCRIPTION

The Bidding Process comprises of receiving bids and a Bid evaluation procedure followed to finalise the Partnership Contract with one Preferred Bidder. A foolproof mechanism must be developed and utilised to receive bids, given that confidentiality is paramount, and to ensure that sensitive information is protected from the possibility of being tampered with. The evaluation of the Bid Submission will consist of the evaluation of the technical qualification or credential requirements of each Bidder (or Bidder Consortium); the Financial Submission; the Technical Submission; and, the Legal Submission. Weightage given to these submission components, the scoring, and the requirements will be reflected in the RfP document.

CHECKLIST

1. Have the general guidelines and Bid submission protocols been outlined in an appropriate manner, so as to ensure that the Preferred Bidder is aware of what requires to be signed?
2. Has the negotiation methodology been stated, including minimum consensus conditions that must be agreed upon?





Post-procurement process (Contract)

DESCRIPTION

The purpose of post-procurement process is to outline how the Government Entity must manage its relationship with the Preferred Bidder during the Project Lifecycle – from the time the contract is signed until the end of the concession term. It aims to set out the project governance and reporting structure to be followed, the procedure for changing aspects of the contract as well as settling disputes with the private partner, and the procedure for managing asset handover at the end of the concession term.

CHECKLIST

1. Has the structure of Contract Management been outlined, including who the Stakeholders will be, what the reporting structure will be for the Preferred Bidder to follow, and what communication protocols will govern the working relationship?
2. Have the procedures to manage any contractual changes been clearly outlined, with the implicit understanding that all such changes following their mutual agreement during the negotiation phase must be taken only after careful deliberation?
3. Has a mechanism to resolve disputes been outlined clearly, with an emphasis on transparency and swiftness of resolution, preferably with a structure substantiated in international arbitration procedures?
4. Is there clarity around asset handover procedure, building upon the procurement method structure to be followed, and other related end-of-concession issues?
5. Has it been made sufficiently clear how the Preferred Bidder's performance will be monitored, including in writing as part of the Partnership Contract, comprising the precise indicators that will be gauged?
6. Is there a payment structure (reward or penalty) linked to the achievement of the Project's performance goals, and what will be the procedure(s) to change any of the indicators that assess the Bidder's performance?
7. Has a risk management plan been outlined by the Government Entity, which details a system that detects evolving risks and triggers mitigation activities as stated in the Partnership Contract?
8. Does the risk management plan have the flexibility to implement emergency measures if the situation demands them?

