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Construction

# Achieving Contract Effectiveness and Financial Close

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Once the government and the preferred bidder have signed the PPP contract, they are contractually committed to implementing the PPP. However, there are several additional steps before project implementation can begin. The preferred bidder may need to finalize the financing agreements for the PPP and will likely need to sign contracts with other parties in the PPP structure—for example, sub-contractors and insurers. The implementing agency typically also has tasks to fulfill, such as finalizing permits. Detailed contract management protocols and manuals are often also developed during this period (see Managing PPP Contracts for more details).

The PPP contract typically includes completion of (some of) these elements as Conditions Precedent, which must be met for the contract to become effective. PPP contracts often specify a final date by which the contract terminates, and/or a bid bond is forfeited, if the Conditions Precedent are not met. As noted in the **PPIAF Toolkit for PPPs in Roads and Highways** (WB 2009a) section on Contract Award, failing to specify requirements and stipulate a period for financial close can hold up project implementation for years.

**Finalizing financing agreements**

**EPEC Guide to Guidance** (EPEC 2011b, 31–33) describes the range of financing agreements for a typical PPP. These financing agreements are often not finalized until after the contract has been awarded. In most cases, interested lenders are identified at the proposal stage. However, before those lenders will commit to provide finance, they often carry out detailed due diligence on the project and PPP agreements (as described in **Farquharson et al** (Farquharson et al. 2011, 124–125). There are risks associated with this process—lenders may require changes in the PPP agreements before agreeing to finance the project, or financing terms may change from what was assumed in the proposal. One way to mitigate these risks can be to ask for firm financing commitments at the proposal stage—but this can be difficult and expensive to procure, and risk reducing competition.

How PPPs Are Financed provides more information on the risks associated with PPP financing and reaching financial close.

**Meeting conditions for contract effectiveness and financial close**

Financial close occurs when all the project and financing agreements have been signed, all conditions on those agreements have been met, and the private party to the PPP can start drawing down the financing to start work on the project. As noted in **Yescombe**, financial close conditions are often circular—the PPP contract does not become effective until funding is available for draw down (that is, funding availability is a Condition Precedent for contract effectiveness), and vice versa (Yescombe 2007).

The **EPEC Guide to Guidance** (EPEC 2011b, 34) briefly describes common Conditions Precedent, and includes a checklist for governments on finalizing the PPP contract and reaching financial close. Example

requirements include:

- Finalizing all project agreements and contracts
- Securing final approval from relevant government entities—for example, review and approval of the procurement process and final contract
- Securing permits and planning approvals
- Commencing or completing project land acquisition

This process often requires a lot of detailed work and effort by both the public and private parties to bring the transaction stage to a close and begin project implementation.

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- **Dealing with Unsolicited Proposals**

- **Key References - PPP Cycle**

**Additional Resources**

- Towards Financial Close in Asset Recycling

Find in pdf at PPP Reference Guide - PPP Cycle or visit the PPP Online Reference Guide section to find out more.

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