



# **Public Private Partnership Handbook**

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**Ministry for Public Enterprises**

## **PREFACE**

This handbook is a revised and simplified version of the Framework for the planning and implementation of the Public Private Partnerships in Samoa which was approved by Cabinet in FK (14)30 of 7<sup>th</sup> August 2014, to reflect new developments in the public sector and the establishment of the Ministry for Public Enterprises in 2015.

The framework consists of guidelines for advance planning, procurement, contracting agreement, and unsolicited proposals for all Government Agencies (Ministry, SOE or department) to follow when planning and implementing Public Private Partnerships. These guidelines will assist in strengthening the existing Public Private Partnerships arrangements that are guided by the traditional public procurement guidelines, to enhance private sector developments and public service delivery in line with objectives of the Strategies for the Development of Samoa. The framework is also part of ongoing Government reforms to strengthen State Owned Enterprises performances as required by the Public Bodies (Performance and Accountability) Act 2001.

For more information about this handbook, please contact PPP and Privatization Division of the Ministry for Public Enterprises.

Ma le fa'aaloalo,

A handwritten signature in blue ink, appearing to read 'Elita To'oala', with a long horizontal flourish extending to the right.

Elita To'oala

**CHIEF EXECUTIVE OFFICER**

## ACRONYMS

Cabinet Development Committee	CDC
Chief Executive Officer	CEO
Economic Planning and Policy Division	EPPD
Manual for Project Planning and Programming	MPPP
Ministry for Public Enterprises	MPE
Ministry of Finance	MOF
Public Bodies (Performance and Accountability) Act 2001	PBA 2001
Public Finance Management Act 2001	PFMA 2001
Public Private Partnership	PPP
Request for Proposal	RFP
Request for Quotation	RFQ
State Owned Enterprise	SOE
Strategies for the Development of Samoa	SDS

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## BACKGROUND

### 1. WHAT IS PPP?

#### General Definition

A PPP can be used to describe an arrangement involving Government and a private partner working together in a structure, where all or most risks which normally born by Government under the traditional public procurement, can be transferred to be managed by the private partner cost effectively in a duration that is typically long term in nature, for example 15-40 years or more.

Government can be represented by a "Government agency" such as an SOE, Ministry or department, and a private partner can be represented by a private business.

PPP differs from the traditional public procurement, mainly as it can bundle all or most of key risks of the partnership such as design, construction, finance, maintenance and often operation, with focus being service outcomes provided by the private partner.

#### PPP Payment Mechanism

These are the two key payment methods to provide a return to the private partner:

1. User-fee. This is where a private partner recoups its investment, operating, financing costs and its profit by charging members of the public a user fee. For example, market rent and road toll.
2. Availability. This has some similarities with the User-fee PPP however, with an availability PPP, Government not the end users, makes payments based upon performance of the private partner. It requires refined specificity of mechanisms to define, monitor, and pay for service by Government and to deduct from payments if there is a lack of performance.

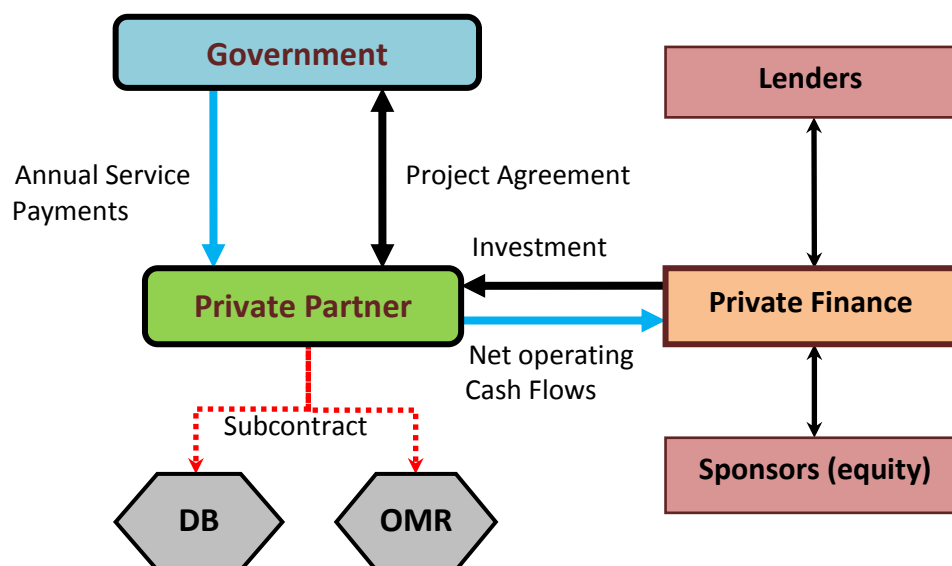
#### Common Types of PPP Models

Choosing a PPP model is a key decision as it will reflect a structure of how risks are allocated between Government and a private partner. The selection of a model depends upon the nature of a project, market conditions for third parties including contractors and suppliers, financial market conditions, and importantly the particular different appetites for risks in the public and private sectors. There are many PPP models, but these are the most common ones:

1. Design Build (DB) or construction management. This is where design and construction are assumed by the private partner, and all financing is provided by Government similar to traditional public procurement. This is considered in case where benefits are limited from long-term maintenance and asset management. For example, a smaller bridge project within a larger highway system.

2. Design Build Finance (DBF). This is a model where construction financing is added to the private partner under the DB model, and that Government refinances the project at substantial completion of construction. This helps Government to defer payments to private partner, especially in case where Government has financial constraints. For example, a transit project where operations and maintenance are system-wide and not asset specific.
3. Design Build Finance Maintain (DBFM). This is the most prevalent PPP model where private partner assumes risks of design, construct, maintain, rehabilitate and finance the asset for a long period of time, and turn management back to Government in a prescribed condition. As most risks are transferred to private partner, this model tends to generate greatest benefits to Government such as efficiency and innovation.
4. Design, Build, Finance, Maintain and Operate (DBFMO). This is a model where an operating function is added to the private partner under the DBFM model, since the operation and maintenance functions are highly integrated. For example, a stand-alone wastewater treatment plant).

The diagram below illustrates a typical structure of a DBFM and DBFMO Availability partnership:



5. Outsourcing of Operations, facility maintenance, and/or rehabilitation. This is a contract-out option where Government defines characteristics of the project (new or replace an expiring arrangement) and contract it out to a private partner to perform.
  - Performance-based maintenance. The private partner maintains the existing public infrastructure to specified performance levels. For example, a private partner is contracted by a Government to maintain a section of the road network to specified standards, such as with respect to smoothness and rutting etc, and is paid a regular service fee (e.g. quarterly). The service fee is abated if performance standards are not met.

- Operations & maintenance (O&M). The private partner maintains and operates the existing public infrastructure to provide services to specified performance requirements. For example, a private partner is contracted by Government to operate and maintain an existing hydro-electric plant to produce electricity in accordance with protocols set out in the contract. The private partner is paid a regular service fee (e.g. quarterly) by Government and as applicable, a payment to cover operating costs. These payments are abated to the extent that contractual performance standards are not met.
6. Joint Venture between Government and private partner. An institutionalized PPP model (mixed companies) implies the establishment of an entity held jointly by Government itself or a Government agency, and a private business to perform a task for the benefit of the public, and in doing so, all or most risks are to be performed by the private business involved. Example, PFL Group jointly owned by PFL Samoa and Neptune Pacific Line, and Virgin Samoa jointly owned by Government and Virgin Australia.

### **PPP versus Privatization**

PPPs are quite different compared to privatizations. Privatization is the transfer of an existing SOE or assets to the private sector in perpetuity, through means such as a share, an asset sale or a management buyout. Government's ongoing role with privatized entities is limited, at most, to a regulatory role. In contrast, in a PPP, Government remains ultimately accountable for the delivery of public services and uses its powers under the PPP contract to ensure that the private sector partner meets contractual service requirements throughout the duration of the contract term. Additionally, in a PPP, assets commonly revert to Government at contract expiry.

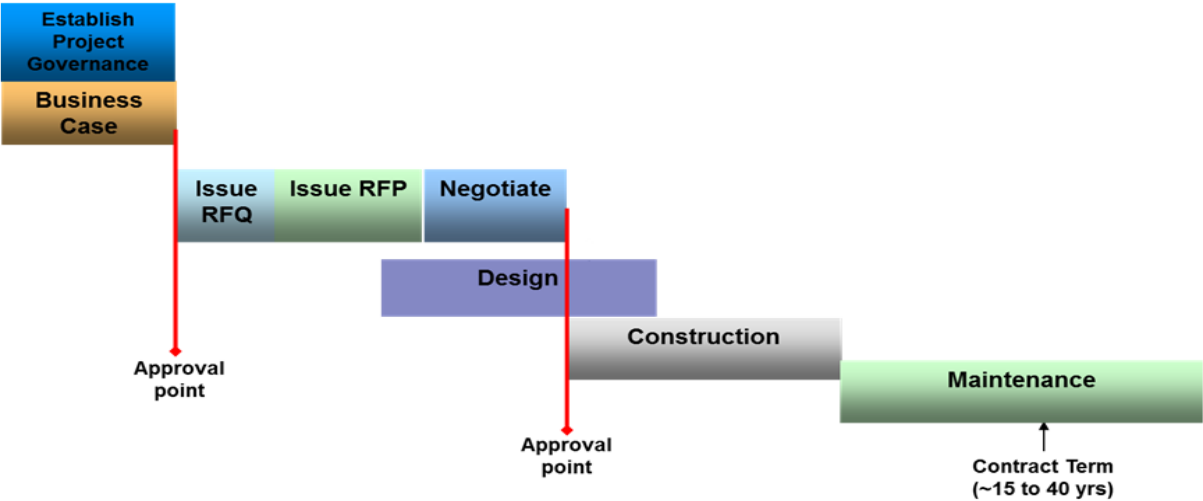
## **2. Realizing PPP Benefits**

PPP framework is designed so that the following benefits are realized:

1. *Greater efficiency* in the use of resources over the lifetime of the asset as private partner has an incentive to consider long-term implications of costs of design, construction or expansion.
2. *Whole-life and optimum asset management* can be secured via setting a fixed price, or an indexed maintenance budget (with penalties in event maintenance is not performed), or a scheduled rehabilitation (for example, a new roof) in the contract.
3. *Capital at risk to ensure good performance* reflects explicit exposure of capital to long term performance risk, which then gives private partner an incentive to design and build the asset on time and within budget, and to ensure that it will perform and be available.
4. *Transparency and scrutiny* reflects benefits of having an early advanced planning, which requires full analysis of the project long-term risks and costs, generating a more informed and realistic debate on project model, and places a focus on outputs and results rather than inputs.

5. *Strong long-term mutuality of interest* reflects the long-term nature of a contract, which differs from the traditional procurement contract where Government tempts to micro-manage decisions and carries much of associated risks.

To ensure the above potential benefits of PPPs are realized, it is necessary to have good planning, structures, processes, contract design and management, as well as clear regulation for PPPs by drawing on Samoa's own experience with PPPs and on global knowledge of what does and does not work. The description of the PPP Framework generally follows the typical process for developing and implementing PPPs as shown in the diagram below, that is Advanced Planning, procurement, and contract negotiation:



Samoa is well placed to achieve the potential benefits of PPPs because in addition to developing and implementing PPP Guidelines, it already has put in place a range of complementary measures to improve infrastructure performance, such as an independent multi sector regulator and a Ministry to monitor the performances and governance of SOEs. While there is certainly scope to significantly enhance regulatory, corporate governance and SOE performance monitoring in Samoa, the foundations already exist. The PPP Framework seeks to contribute to Samoa securing the value for money benefits that well-designed and executed PPPs can provide.

**3. Process for Capital Projects**

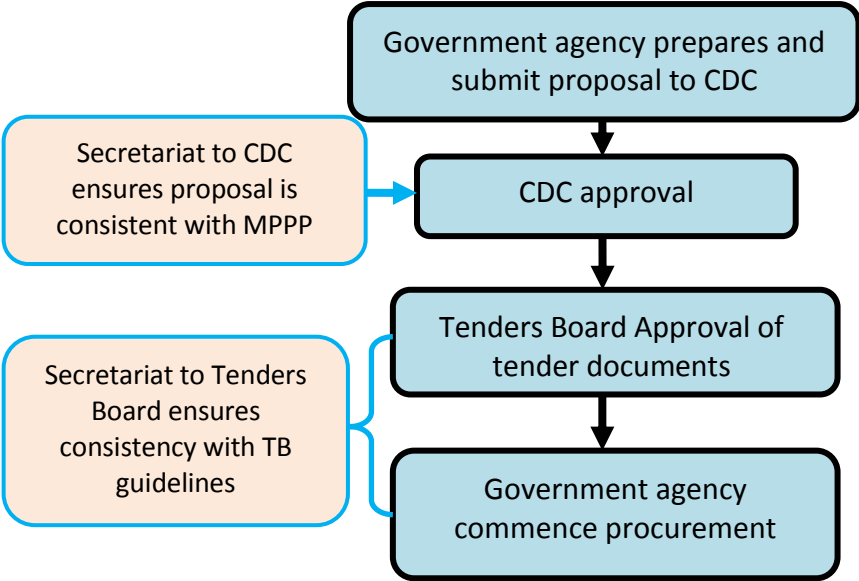
**Current process for approving Capital projects**

Requests for major capital projects require the approval of CDC in line with requirements of the MPPP issued by EPPD of MOF, secretariat to CDC. Following approval by CDC, the responsible Government agency can commence a procurement process once the tendering documents have been reviewed and cleared by the Tenders Board and the AG's office. These tendering documents are developed in accordance with Treasury Instructions, B4 Schedule, and Procurement and Contracting guidelines issued under section 127 of the PFMA 2001 by MOF (Procurement division), the secretariat to the Tenders board. The evaluation of proposals will be done by an Evaluation Committee which normally includes representatives of the responsible Government agency, MOF, the AG's office, and possibly technical experts from other Ministries or SOEs. The evaluation results must be subject to the approval of the Tenders Board, and final contract must be approved by the AG's office before it is executed



and implemented.

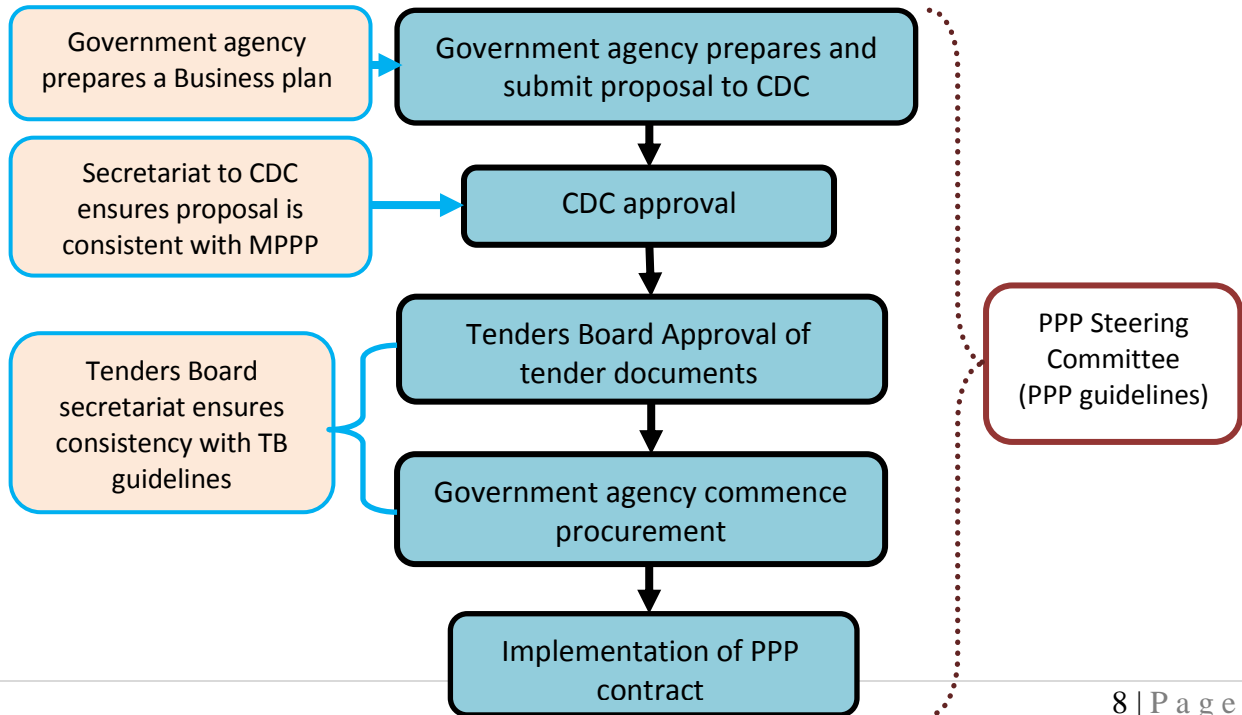
Diagram below provides a summary of the current process.



**Process for the Planning and Implementing PPPs in Samoa**

In order to effectively deliver PPP projects within Samoa in line with the framework, the existing Samoa process as shown above, needs to be strengthened with the creation of a specialized division within the MPE that would ensure that the PPP Guidelines have been accurately applied, and a PPP Steering Committee with commercial backgrounds to advise on the commercial viability of proposed PPP capital projects. The MPE would maintain a knowledge bank of PPP best practices and template documents, and as a member of the PPP Steering Committee, provide advice to a Government agency on the procurement of specific projects.

Diagram below provides the summary of the whole process for PPPs:



## ADVANCE PLANNING GUIDELINES

This is a crucial step in ensuring value for money in any procurement, be it a traditional public procurement process or a PPP. The first step is to develop and/or clarify a governance structure to guide decision making for the early stages of the project. It should be clear how decisions are being made. Basic organizational structures including a PPP Steering Committee, with its Project Management Team particularly if there are multiple stakeholders, can be very effective to move the project forward. The second step is to complete a business plan/case to assist a responsible Government agency whether to proceed with a PPP, or otherwise, and if the decision is to proceed with the PPP, what best options to consider to ensure that the project will be successfully implemented.

### 1. PROJECT GOVERNANCE

#### Governance Policy

A critical component of an effective PPP procurement is to ensure that the appropriate governance framework is in place throughout the life of the project, from Advanced Planning through procurement, construction, maintenance and operation phases. Governance involves both the institutional arrangements to support PPP project development, but also the processes through which projects are implemented. Good governance is characterized by:

- Probity - honest, proper, and ethical conduct in project dealings.
- Compliance - ensures that the project meets legal, regulatory and policy requirements.
- Fairness, openness, transparency - assures public and potential partners of integrity of procurement

In Samoa, the Governance Policy for PPPs is designed to support effective delegation of day-to-day decision-making duty from CDC (or Cabinet) to the PPP Steering Committee, and then from PPP Steering Committee to its Project Management Team. It is also designed to achieve a fair, open and transparent procurement process, and clear relationships between stakeholders and accountabilities of each.

#### Role of Government key stakeholders in PPPs

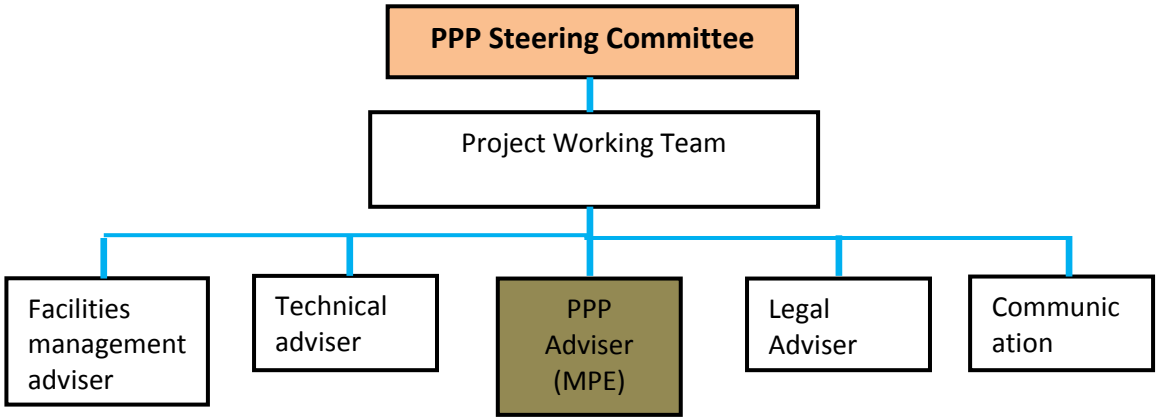
1. MPE. Given the complexity of PPP projects, the PPP & Privatization Division is established in the MPE to facilitate consideration of project proposals in line with the requirements of the PPP guidelines. Its advisory role begins with identifying potential PPPs that will improve the delivery of public services, assisting the PPP Steering Committee in assessing the relevance of a PPP or otherwise, and working with the responsible Government agency in developing PPP projects and guidance materials to support the PPP project implementation.
2. MOF. In addition to its role as the secretariat to CDC and Tenders board, MOF also has a direct role in PPP projects given their potential to require Budget funding and expose Government to contingent fiscal liabilities.

3. Responsible Government agency. As highlighted throughout the guidelines, the responsible Government agency can represent Government in the PPP arrangement. It originates the project, supports its development throughout the project cycle, and oversees its implementation. It establishes a contract management unit to manage the contract following contract execution and financial close (i.e. where financiers release their debt funding to the private sector party) through until the expiry of the contract.
4. Ministers. Ministers will play no direct part in the project tender process but, as necessary, policy decisions will be elevated to them for decision and the outcome of the tender process will be submitted to Cabinet for endorsement.

**PPP Steering Committee & Project Management Team**

A PPP Steering Committee comprising of key Government officials representing the Government agency, may include CEO MPE, CEO MOF, Attorney General and CEO of the responsible Government agency, will be an oversight body for the whole PPP project cycle, from concept to implementation. Any member of the committee must be elected as chairperson.

A Project Management Team to be chaired by a relevant senior member of the responsible Government agency or his or her nominee will be appointed to manage the day to day work of the project. Diagram below illustrates how a PPP Steering Committee and the Project Management Team can be organized:



- To achieve the above objectives, project governance typically has the following key elements:
- A project charter approved by Government that documents roles and duties of the PPPSC and each member of project team. The elected officials thereby have a clear understanding of extent and nature of delegated decision-making to the PPP Steering Committee and to Project Working Team. PPPSC will have regular meetings with an agenda and formal minutes.
  - Project team will provide regular status reports to the PPPSC, and the PPPSC will provide regular status reports to Cabinet.
  - PSC will ensure that the project team has adequate resources for the procurement process.

**2. BUSINESS PLAN/CASE**

A business plan/case typically includes the following:

1. Objectives of the Project
2. Service Delivery Alternatives
3. PPP Models Analysis
4. Cost Estimates
5. Risk Assessment
6. Market Sounding
7. Early Capital Screen
8. Funding Analysis
9. Decision Request

### **Objectives of the Project**

This is where an opportunity or a need that creates benefits for people is determined, and which should be linked to Government's vision and priorities as provided in relevant Corporate Plans, relevant Sector plans and SDS. Impacts on other services should also be reviewed, such as impact of increased diesel generation if more solar energy is contracted.

### **Service Delivery Alternatives**

This is where a preferred service delivery scope that better suits the above objective is determined. This can be done by identifying alternative service delivery options, and then compare and analyze their:

- physical scope
- technology
- quantity and quality of service
- capital cost
- lifecycle costs
- related capital requirements
- approvals required
- property acquisition requirements, and
- utility impacts.

### **PPP Models Analysis**

This is where a preferred PPP model that better suits the role for the private sector to play in order to achieve the above service delivery scope, is determined. This can be done by identifying relevant PPP models, either DB, DBF, DBFM, DMFMO, outsourcing or JV, and then compare how they can deliver the service in terms of the way in which they allocate risks, to achieve cost efficiency over the project's life cycle, and provide long-term service quality. Typical criteria for PPP models comparison is provided below:

- Quality of service - do options impact service quality?
- Operations efficiency - do options impact operations efficiency, maintenance and lifecycle costs?
- Delivery schedule - do options impact schedule and commencement of service delivery?
- Innovation and creativity - do options encourage innovation and creative solutions?
- Risk transfer scope - do options enable cost-effective transfer of commercial risks from Government?
- Market interest and capacity - is there sufficient bidder interest across the various options?

- Legality - do options fit within existing legislative, regulations and guidelines?
- Service disruption and transition - do options impact service delivery during procurement, construction and transition?
- Staff impact - do options reflect quality recruitment, training, retention and outsourcing of staff?
- Asset quality - do options influence quality of asset over its life cycle?
- Flexibility and adaptability - do options meet key specifications for flexibility and adaptability for future growth?
- Stakeholder impacts - how do options meet/not meet stakeholders needs or priorities?
- Cost and schedule certainty - do options provide Government with price and schedule certainty during design and construction phase, and over the whole asset's life?
- Accounting treatment - would options result as liabilities under public accounts?
- Net present cost (NPC) - quantitative cost based on life cycle costing of various options discounted into a NPC estimate. In assessing options that include private finance, NPC estimate must take account whether project is too small to enable cost-effective private finance.

## Cost Estimates

This is where reliable cost/budget estimates are developed, and reassessed throughout the planning and procurement process. Estimation is based on key elements of capital project budget, which includes capital budget and operating, maintenance and lifecycle budget. In terms of comparing cost estimation of PPP models, adjustments can be made to reflect expected impact upon costs of using different procurement models. Elements of Capital Project Budget include:

1. Capital Cost Estimates. Includes costs for site investigations, survey, design, engineering, equipment, construction, Government's costs (during planning, procurement and construction) such as internal costs, advisors and any honoraria, and proponents costs during procurement and construction (set up, bid preparations, advisors, upfront financing fees and insurance) as proponents will expect recovery of these costs if they are the successful bidder. Cost estimates may also include:
  - Provision (say 10%) for design and construction contingencies. PPP cost estimate can be reduced by 10 - 15% reflects proponents efficiencies and innovativeness. Ideally, capital cost estimates would be built up from a working drawing or plan; and
  - Governments reserve of 5% of capital costs for a PPP option and 10% for a CM/DB option, as contingency for expected consequences of retained risks.
2. Operating, Maintenance and Lifecycle Cost Estimates include:
  - Cost of the base asset management services package for routine planned and reactive maintenance (it may be possible to assume cost efficiencies for PPP model).
  - Cost of other packaged services: for accommodation projects, examples include cleaning, food services, and for transportation projects such as tolling and ticketing.
  - Operating costs.
  - The cost of asset rehabilitation over the life of the concession, based upon the asset management plan and the hand-back standards included in the PPP contract.

## Risk Assessment

This is where risks that can be best transferred to a private partner are determined. This can be done by identifying possible consequences to Government of retaining risks, and then assess them against costs of transferring them to private partner, to check whether they can be managed cost effectively, or not. A risk register should be completed by asking whether any of the related risks could be cost effectively transferred to a private partner. Typically transferred risks are:

1. Construction.

- Penalty payments to Government if there are schedule delays due to private partner. For example, bankruptcy of architect, construction contractor. Typically, for a schedule delay, private partner will pay Government with liquidated damages of a certain amount per day. It will be further penalized due it having to service its financing costs during construction despite it isn't receiving any revenues. Finally, in event of private partner defaulting, equity also exposed to loss.
- Increased costs to private partner due to design or drawing errors, where design and scope changes are required to meet conditions of the agreement.
- Increased costs to private partner due to design and scope changes required to enable construction. This refers to variations or changes required to meet terms of an agreement that is, price is fixed and private partner takes risk of delivering project at that price.
- Increased costs to private partner due to job actions, labour shortages, scarce materials, errors in estimating materials cost, including escalation.

2. Post-construction.

- Increased costs to private partner due to failure to commission asset, obtain occupancy permit, and meet specifications in the agreement.
- Increased facility maintenance and rehabilitation costs private partner due to job actions, revised labour contracts, errors in estimating costs of labour and materials (include escalation) and high insurance costs.
- Increased costs to private partner in order to meet hand-back provisions at the end of the term as specified in the agreement.
- Reduced costs to Government (penalty deductions) if operating and maintenance specifications are not met.
- Increased costs due to failure of facility maintenance provider.

3. Financing. Increased costs to private partner if private financing is more expensive than in RFP response.

### **Market Sounding**

This is where market interests, insights and feedbacks to key aspects of the project, are investigated, and to be utilized for planning process. This can be done through consultation or survey with relevant participants, using various topics and questions that must be shaped specifically to different types of market participants, such as, for developers, for an equity investor, or for a financial institution. Typical questions might include:

- Is the procurement schedule viable?
- What is your view on responsibilities taken by private partner? Is it the right bundle of

design, construction, maintenance, rehabilitation and other responsibilities? Are there particular services that you think should be included or excluded?

- What is your view of risks being transferred? Are risks balanced with prospective returns?
- What is your view of way private partner is compensated during the project's life? Does PPP model has the right balance of public and private sectors financing?
- Do you anticipate any labour/workforce issues?
- Do you anticipate any environmental issues that have not been resolved by the Government?
- Would you be a prospective bidder in the project? If not, why not?
- Any further comments?

### **Early Capital Screen**

This is where the project's quality is analyzed to determine the best PPP model compared to traditional procurement, or otherwise do nothing. Key available project information such as knowledge about related services the project is intended to support, must be identified and then screen them against preferred PPP models, to determine whether there are any compelling factors that are inconsistent with the key objective, and that PPP option must be eliminated. At early screening stage, in most cases, evaluation of criteria will be qualitative in nature, and will require only high-level knowledge of key quantitative aspects including estimates for things such as desired in-service completion date, project construction, life cycle and maintenance costs, as well as key risk factors.

Early Capital Screen application can be done by asking questions in line with procurement objective. Government must attach priorities to the objectives, such as inability to meet a low-weight objective may be less important than achieving the other benefits of the PPP option. Each question should be answered Yes, No or No but with mitigation strategy. The latter answer would reflect a situation whereby PPP is inferior to traditional procurement, but if certain actions were taken, the objective could be met. For example, if PPP model falls outside of regulatory requirements, Government would have the option of amending the regulations. Typical questions might include:

- Would a PPP increase the quantity/quality of services?
- Would a PPP increase the efficiency of operations, maintenance and/or lifecycle costs?
- Would a PPP increase the probability of meeting schedule milestones?
- Does the project have scope for innovation and creativity?
- Does the project has scope to transfer key commercial risks such as cost certainty, schedule certainty, functionality and constructability, on a cost effective basis and would the private partner accepts transfer of these risks?
- Would a PPP attract sufficient bidder interest? Has there been a market sounding?
- Would a PPP fit in existing regulatory & policy requirements?
- Would a PPP have greater/lesser impact on service disruption and transition issues?
- Would a PPP have impact on recruitment, training, retention and outsourcing staff resources?
- Would a PPP improve the management of the asset over its life?
- Would a PPP allow for flexibility and adaptability to assist future changes and growth?
- Would a PPP meet stakeholders needs or Government priorities more effectively, or not?
- Are there benefits from including design, construction into one contract?
- Is there scope to cost-effectively transfer demand/revenue risk?

- Is there a negative impact on Government's financial statements due to accounting?
- Does PPP reduce expected NPC of project (where life cycle quantitative costs are estimated for each of the various options and then discounted into a NPC estimate).

### **Funding Analysis**

This refers to decision-makers to be made aware of any funding impacts on Government itself, of the preferred PPP model. Typical questions include:

- Are there any borrowings impacts on Government's balance sheet/operating budget?
- Are there any budgetary impacts on Government during construction phase?
- Are there any operating, maintenance or rehabilitation expenditure impacts on Government's budgets?, and
- In what years all these may occur?

### **Decision Request**

This is where a clear statement as to what Government is being asked to approve is made, and should provide commentary in the following:

- Reiteration of the consistency of the project with Government priorities.
- Immediate consequences of approval in terms of communications and stakeholder impacts.
- Implementation plan including governance structure, key individuals on the project team, the procurement process and schedule, and any required procurement budget.
- Requirements for subsequent approvals.

## **PROCUREMENT GUIDELINES**

### **1. TRANSPARENCY**

Transparency is a key feature of successful PPP procurement processes just as with traditional public procurements, as it builds confidence that the process has integrity, fairness, competitive, and there is strong accountability. This can be achieved through the following:

#### **Conflict of Interest**

Any conflicts must be clearly identified, declared and mitigated in accordance with guidelines issued by the Tenders Board. Government and proponent (or member) must not have conflicts during the procurement process.

#### **Request for Quotation (RFQ) and Request for Proposals (RFP)**

These must be prepared in line with templates in Annex A and B, and must reflect options from the advance planning stage.

#### **Disclosure Requirements**

All information must be provided to proponents in line with RFQ and RFP, but must not jeopardizing ability of Government to generate best value agreement for taxpayers. While



transparency is important, openness should not result in harm to the process or to Government's negotiating position and, in addition, it is important to maintain a process that attracts and retains bidders. The disclosure practices should be explained to key stakeholders at earliest stages of a project. It may vary from project to project, but typically these information must not be disclosed:

- Draft contract, as it is subject to change after commercial negotiations, and
- Responses to RFQs and RFPs, as it can undermine commercial and competitive interests of bidders, and undermine appeal of market going forward.

### **Lobbying and Contact with Government representatives**

A proponent (or member) should not engage in any form of political or other lobbying whatsoever in relation to selection process, including for purpose of influencing the outcome of selection process. In event of any lobbying by the proponent, Government in its discretion may at any time, but will not be required to, reject any or all responses submitted by proponent without further consideration.

### **Data Room**

This is a depository of all information being provided to bidders, to ensure all bidders have access to exactly the same information. It may be a physical place or virtual such as a website. The amount of information may be limited and non-confidential at RFQ stage, but greatly expanded and include confidential information at RFP stage. Short-listed candidates from RFQ respondents should sign confidentiality agreements to have access to the data room.

## **2. EVALUATION ALTERNATIVE APPROACHES**

The goal is to provide a fair, credible and comprehensive evaluation process which is to be governed by the terms of RFP, and all evaluation activities must be consistent with the RFP. Deciding between approaches depends upon Government's priorities, such as, cost versus scope, or compliance versus innovation. Any approach can be used if consistent with the evaluation principles. These are key alternative approaches:

### **Lowest price**

This approach chooses a preferred proponent that can provide required facility at lowest price, insofar as its proposal is materially compliant with RFP technical requirements.

### **Maximum scope**

This approach structures the process to provide best facility at or below budget set by Government. Submissions are received, evaluated for material compliance, and ranking of proponents is based on numerical score obtained based on achieving different levels of scope.

### **Adjusted Lowest Price**

This approach chooses a preferred proponent that can provide required facility at lowest price after taking into consideration operational benefits of design. This is appropriate for

accommodation projects where Government is responsible for large operating costs (for example: hospital). This incentivizes bidders to optimize facility within allowed budget to reduce operating costs to the extent possible. This focuses both proponent and Government on specific outcomes the facility is being designed to achieve, and thereby maximizing benefits.

### **Mix of Price and Scoring**

This approach chooses a preferred proponent that produces highest score. There are points associated with major project components, such as design, services, etc and a specified formula for points (to a maximum) based upon price.

## **CONTRACTING AGREEMENT GUIDELINES**

### **1. KEY COMMERCIAL TERMS**

#### **Change Requests during Construction**

This refers to a desired change in design or construction, which could affect how the service will be delivered. It can be initiated by *Government* due to reasons such as change in Government's overall vision, response to changing environmental, technical conditions, or concerns from project stakeholders, or by the *private partner* due to reasons such as inadequate specifications in the design just being identified, or when it discovers an opportunity for innovation that may or may not lead to cost savings. Government may consider such request, but is not obligated to approve them. Any change request must be documented, and assessed before and after implementation. To determine prioritized requests, Government must use criteria such as ease of implementation, estimated timeline for completion, and resource constraints. A cost/benefit analysis can be also conducted.

#### **Compensation on Termination**

This refers to terms and mechanisms used to compensate a private partner when a project is terminated before end of term is reached. Compensation on termination applies only under the following specific types of termination:

1. *Termination due to Government's default.* The principal underlying this clause is that private partner and any lenders should be kept whole in that they receive compensation that puts them in same financial position as if contract had been in place until end of the term. This level of compensation provides for a full payment of debt, related termination payments to employees and subcontractors, and an equity return. Compensation for foregone equity return can be calculated as future equity returns as per original assumptions included as part of contract, or an estimate of the market value of equity currently in the project.
2. *Termination due to Private Partner Default.* Government can terminate contract after providing written notice to private partner, and typically, it requires Government to pay private partner a fair market value of the project and then assume control. Ideally, such compensation would reflect actual market value of asset as determined by a rebidding in a liquid market of at least two willing bidders. This is designed to protect Government's

interest while not imposing unreasonable penalties on private partner. It also encourages any lenders to step-in and rescue the project rather than risk a situation in which termination payment determined by market is not sufficient to recover their debts. In absence of a market valuation, an alternative method of determining compensation amount would be to calculate cost to Government of making payments to private partner over remaining life of the contract and then deduct estimated costs to Government of actual service delivery by itself. The compensation payment would be calculated as present value of this net payment stream, using the project internal rate of return as discount rate.

3. Termination for Force Majure. This is an uncontrollable event at project level such as, extreme weather, general strike such that construction or operations cannot be continued permanent basis. The principle underlying this clause is that Government should pay lender's costs with returns, and Government's costs without returns on equity, as these risks are reasonable for equity providers to take. Compensation would effectively cover outstanding debt and legitimate costs of termination to employees and subcontractors, but not to compensate for an equity return.

### **Step-in Rights**

This allows Government or lenders to step-in to private partner's role to rectify certain issues before contract is terminated and typically, lenders have the first right to step-in. Lenders can step-in if private partner is in default or imminent default, or if there has been a persistent lack of performance. Government can then step-in if lenders fail to rectify issues and also in certain emergency situations, such as threat to public safety or health. When Government exercises its step-in right, various typically conditions must be attached to it such as:

- Government may suspend construction/operations and/or the rights of private partner.
- no action of Government can be deemed to be a termination of an agreement or a relief of the obligations of private partner.
- private partner shall pay Government's costs that result from the step-in, unless the step-in is the result of a compensation event, and
- Government can terminate.

### **Supervening Events**

These are events that are outside direct control of the private partner and which may have an effect on its ability to perform as required. Supervening events risks must be fairly allocated between Government and private partner. Key principles in allocating these risks are:

- Fair balance between Government and private partner. An unfair balance in favour of Government will impose extra financing costs or project may be un-financeable.
- Encourage both parties to fully consider cost effective ways to reduce potential impacts, and to achieve return to full operating condition if a supervening event occurs.
- Risk allocations for supervening events tend to fall on one of following categories:
  - ✓ for events which are wholly the result of the Government's action or inaction, in general, the Government carries the risk and provides the appropriate remedy to private partner.
  - ✓ for events which can't be controlled nor anticipated, Government expects contractor to share risks with conditions that private partner will carry insurance where requested and where feasible, and that private partner will be financially incentivized to mitigate

impact, and return service to normal as rapidly and cost-effectively as possible.

Types of supervening events include:

1. Compensation Events. This is where private partner is compensated by Government and is entitled to relief from obligations, financial compensation and protection from termination for the duration of the event. There is no extension of contract term. Events include those involving a breach by Government of its obligations, and risks that can't be cost-effectively transferred to private partner. Examples include discovery of contamination on site, failure by Government to provide access to or acquire lands within agreed timeframe, failure of Government to receive required permits, or labour disputes.
2. Relief Events. This is where private partner is entitled to additional time to perform obligations. Examples include fire, explosion, lightning, storm, tempest, flood, bursting, overflowing of water tanks, apparatus or pipes, earthquakes, and industry or general labour dispute.
3. Excusing Events. This is where private partner will not suffer financial penalty despite not providing services as extenuating circumstances which makes providing all or part of services unreasonable.
4. Force Majeure Event. These are events that are beyond control of project and which frustrate the project, making it impossible for private partner to materially proceed with design or construction, or provide operations or maintenance services. During the event, private partner is relieved of its obligations, typically for a period of 180 days, after which, if the event continues, Government or private partner may terminate the agreement (see termination for force majeure mentioned above).
5. Damage or Destruction. This is measured by the cost of repairing the damage or as a delay of more than 180 days. In these situations, Government may elect to terminate the project and rebuild, in which case insurance proceeds can be used to finance reconstruction.

Events such as change in law, variations, defaults, and termination are outside the scope of supervening events. Typical sub-categories of supervening events include delay events, force majeure, an eligible force majeure, compensation events, excusing events, relief events, abnormal circumstances and excepted closures.

## **2. PERFORMANCE SPECIFICATIONS**

### **Purpose of Performance Specifications**

These are a key component of the agreement through which Government defines the set of criteria that directs the planning, design, construction and provision of services for infrastructure facilities. They are customized to meet specific needs of a project and, in principle, should describe a desired performance or output, rather than prescriptive specifications characteristic. This also allow proponents to consider provision of an asset from a lifecycle perspective by allocating responsibility for design, construction, and

operations/maintenance under one contract. In effect, proponents will consider how design and construction will impact lifecycle operating efficiency, and then make trade-offs between upfront capital investment and ongoing maintenance expenditures. The agreement must clearly define the relationship between Government and private partner, and performance specifications play a major role in defining allocation of risks and duties between two parties.

### **Design Development Process**

Proponents are asked for proposals earlier in the design process at a schematic concept or indicative design phase, where design is 20-30% complete. They must respond with a proposed design solution and a committed price that meets broader, performance-based requirements of Government. Under traditional procurement, normally project calls for tenders at end of the working drawing phase, where design is 95% complete. Proponents respond with a firm price for work specified on a highly prescriptive basis.

### **Guiding Principles of Performance-Based Specifications**

Developing performance specifications must clearly articulate what needs to be achieved rather than how it is to be achieved. This differs from what normally conducted under the traditional procurement, in that the emphasis is on output-driven approach or performance-based outcomes, which allows for innovation.

#### Example #1:

- Traditional: Room that measures 10 metres by 20 metres.
- PPP: Room that can hold 150 people.

The above example illustrates the broad differences between the traditional approach which specifies exactly how a room is to be built, versus the PPP approach which emphasizes what the room is required for that is, the outcome desired. In many circumstances it is necessary to balance prescription with performance in the development of performance specifications by describing certain detailed physical characteristics that are critical for operational success. For example, in situations where a performance specification provides too much uncertainty or does not provide sufficient clarity, a prescriptive specification should be used. The prescriptive specification may contain performance components but it must be comprehensive and complete in areas critical to users.

#### Example #2:

If a hospital group knows exactly how their pneumatic tubing system must be configured, this can be specified using appropriate drawings and text to capture the critical elements, such as "The system will be a pneumatic-controlled tube materials distribution system, consisting of tubing, stations, transfer units, blower packages, carriers and a control system with a 150mm diameter tube". Within a PPP framework, prescriptive specifications should be used sparingly as risk transfer and innovation are compromised by excessive use (that is, design risk is not transferable for prescriptive elements). Principles for performance-based specifications include:

- Ensure that the specifications are based upon Government's vision and clearly-stated objectives.
- Achieve risk transfer with clearly identified roles, responsibilities and accountabilities.
- Focus on performance by describing what the asset must do, rather than prescribing how

it must do it, and indicate minimum and mandatory performance standards.

- Balance control with incentive for innovation by specifying prescriptively those requirements that Government knows it wants.
- Focus on long-term lifecycle performance certainty and integration of design, construction and lifecycle.
- Allow sufficient flexibility for anticipated changes in requirements over the life of the project.
- Use clear, concise and unambiguous language.
- Ensure that proposals that deliver the scope of requirements contained in performance specifications are cost effective.

### **3. FINANCIAL COMMITMENT**

This refers to the level of commitment that proponents are required to provide in responding to RFP. With respect to equity, the level of commitment that Government requires from proponents can vary depending on the project's objectives. At a minimum, in RFP responses, proponents must be asked to provide a support letter from their lenders, subject to credit approval. Typically this would require lenders to complete only a preliminary review of the project. A higher level commitment would be to ask proponents to provide proof of full credit committee approval from their lenders, with no material conditions. This would require lenders to complete a thorough credit committee review and approval process on part of arranging lender.

## **UNSOLICITED PROPOSAL GUIDELINES**

### **1. OBJECTIVE**

Unsolicited proposals will be considered by Government, but will require additional procedures and rules in order to strike the difficult balance between incentivizing private sector to develop projects, and ensuring sufficient transparency and competition that will achieve value for money for Government. Generally, if Government finds the proposal to have merit, it then subjects the proposal to the competitive process guidelines as mentioned above. Critical to evaluating the merits of unsolicited proposals will be to assess their public financing requirements against those of other, already approved projects. As public funds are finite, it must be recognized that the financing of unsolicited proposals will necessarily come at the expense of other, pre-approved projects in the national budget.

### **2. REQUIREMENTS FOR AN UNSOLICITED PROPOSAL**

#### **Preliminary discussions**

To consider an unsolicited proposal, there must be a preliminary discussion to be conducted between Government and the potential proposer of the unsolicited proposal. Government will provide an early evaluation of the merit behind the proposal. Government may accept or reject the proposal at this point.

#### **Business Plan**

Base upon the above preliminary discussion, the proposer may be encouraged by Government to submit a business plan proposal which follows the advanced planning guidelines as mentioned above. This requirement will minimize incentive to submit poor-quality or frivolous proposals and avoid creating unnecessary workload in assessing unsolicited proposals.

The proposer must also submit a *statement of qualifications*, similar to an RFQ response, providing information on the proposing team, the relevant experience of team members and key individuals, as well as the team's financial capacity to implement the project. The proposer must also submit a *statement of expenses* relating to the preparation of the business case proposal, in event that such expenses are reimbursed.

### **Assessment by Government**

This is to determine whether the proposed project meets a Government priority and whether the proposed procurement method (PPP or otherwise) reflects a value-for-money strategy for Government. Otherwise, the business plan proposal should be rejected.

### **Proposal is accepted**

In case the proposal meets a priority need and procurement strategy is deemed to be appropriate, the procurement guidelines must be followed where Government must first define project specifications in greater details so that the project scope and risks are fully understood, and to prepare the RFP.

- If proposal is based upon unique intellectual property of proposer, specifications in RFP can be defined on an output or performance basis, such that proposer's intellectual property rights can be protected in a selection process.
- In case of low probability there could be other effective bidders (unique intellectual property or other market characteristics such as bidder remoteness), there should still be a competitive selection process based upon RFP. To encourage proposer to submit a proposal, Government can offer reimbursements for preparing business plan if proposer is not a successful bidder.

### **Proposal is rejected**

If the proposal is rejected, but a procurement of a similar project is commenced within a certain period, in a way that excludes the proposer from the procurement, the proposer will have the costs of preparing the business case proposal reimbursed, subject to previous negotiation between Government and the Proposer.

## **ANNEX A: TEMPLATE FOR RFQ (DBFM PPP)**

### **Purpose of RFQ**

The purpose of the RFQ is to solicit among PPP market participants their responses indicating their interest in, and qualifications for, entering into a Project agreement for a PPP. Based on these responses, Government intends to select, in accordance with the terms of the RFQ, a shortlist of up to three (and possibly four) proponents to be invited to participate in the next stage of the Competitive Selection Process, the RFP stage.

### **Project Brief**

The Government has prepared and attached a separate document entitled the Project Brief for the purpose of providing an informal and convenient summary of aspects of the project. The Project Brief is not included as part of the RFQ or RFP so that there can be no conflict or ambiguity with respect to the precise requirements of the Project that are specified in the RFQ and RFP documents.

### **Project Objectives**

The purpose of the Project is to [design, build, finance and maintain] a [insert a brief description of the Project]. The Project site (the Site) is [insert brief site description including location]. The Project will be designed to [insert brief description of the Project]. The successful Proponent will be required to [design, build, finance, and provide building maintenance and repair services, as well as life cycle maintenance and repair services] for the Project for a period of [insert number] years commencing from the anticipated date of occupation.

### **Advance Work by the Government**

Work undertaken by the Government on the Project to date, and work planned to be undertaken prior to Financial Close includes:

1. Approval - The Project has been approved to proceed to procurement by [Government of Samoa] and was announced on [insert date]. Further government approvals are expected to be required prior to issuance of the RFP and Financial Close.
2. Site Zoning - [provide a description of zoning, including a map].
3. Site Preparation - [provide a description of work done on the site].
4. Programming - Government is in the process of completing its programming and drafting of performance specifications.
5. Other Advance Work - [insert]



## Project Agreement

The Project will be managed under one Project Agreement. Government intends to attach an Initial Draft Project Agreement to the RFP which will include performance specifications for the [design, construction and maintenance of the Project] and the scope of services to be provided by the successful Proponent; and proposed commercial terms. Government will issue a Final Draft Project Agreement, which will be the basis upon which the Proposals will be prepared in response to the RFP. Government anticipates that the general scope of Project Co's responsibility under the Project Agreement will be as follows:

1. Design. Project Co will be responsible for all aspects of the design for the Project including the integration of the various building components with each other. The final design will comply with the Performance Specifications that will be included in the Project Agreement, and all applicable laws, including [insert name of city] zoning.
2. Construction. Project Co will be completely responsible for (a) obtaining all permits and approvals necessary for construction of the Facility, excluding zoning approvals already in place; (b) providing all utilities and other site services required to support the Project, including off-site works as required to connect the Project to existing City infrastructure; (c) design and construction of the Project; and (d) substantial completion of the Facility by [insert date].
3. Equipment. [Insert a short description of Equipment requirements for the Project and responsibilities of the various parties]. The relevant categories of equipment, and responsibilities for each, will be set out in the Project Agreement.
4. Finance. It is anticipated that Government and other contributors will make capital contributions during construction (the amount, timing and terms and conditions of which will be set out in the RFP, but which are anticipated to be in the range of [insert value or per cent] of Project capital costs). Project Co will be required to provide all other required funding for design, construction, finance costs and maintenance, by way of equity and/or debt financing. The Authority will pay Project Co annual service payments over the term of the Project in accordance with the Project Agreement. The annual service payments are subject to deductions if performance requirements are not met. Details will be available in the RFP. [Insert description of Affordability Ceiling, if appropriate. An Affordability Ceiling is either: (a) a capital cost estimate; or (b) a net present cost estimate of all project costs over the life of the PPP contract. The Affordability Ceiling is stated in the RFP document. The purpose of the Affordability Ceiling is to communicate to the bidders that if their bids are above the Ceiling, Government may not proceed with the competition. As the bidders prepare their RFP responses, they can communicate to Government that their bid is not going to be under the ceiling, and Government then has the opportunity to decide either: (i) to not proceed with the competition; or (ii) to reduce the scope of the project for all bidders, so as to ensure the project remains affordable.]
5. Maintenance Services. During the term of the Project Agreement, Project Co will be

required to provide facility maintenance services, which may include [modify as appropriate]: general management services; plant services; environmental services; grounds maintenance and landscaping services; help desk services; utility management services; waste management and recycling services; and pest control services.

6. *Life Cycle Maintenance*. Project Co will be responsible for the life cycle maintenance of the Project. In addition, Project Co will be required to maintain the Facility to the agreed physical and performance standards during the term of the Project Agreement, and to return the project to the Authority in the specified condition at the end of the term.
7. *Communication and Consultation*. Government and Project Co will work together on all aspects of public communication and consultation as set out in the Project Agreement.

### **Key Commercial Terms**

The following are some of the key commercial terms that the Government anticipates will be included in the Project Agreement:

1. *Term*: the term of the Project Agreement will commence on signing, and a [insert number]year maintenance term will commence from the anticipated substantial completion of the Project. It is anticipated that construction will commence in [insert month, year] and the Project will be substantially complete and available for use in [insert month, year].
2. *Payment*: Government will pay monthly service payments to Project Co commencing on the month when the Project is available for use by Government in accordance with a move-in schedule to be established under the Project Agreement. At this time the Government does not anticipate starting payments earlier than the date the Project is scheduled to be completed.
3. *Payment Deductions*: the Project Agreement will permit Government to make deductions from the service payments if Project Co fails to make the functional areas available for use as required by the Project Agreement, or fails to meet the defined performance standards.
4. *End of Term*: the Project Agreement will describe the hand-back requirements for the Project at the end of the term and describe the provisions to enforce those requirements.

### **Competitive Selection Process**

This section describes the process that Government expects to use in the selection of a Preferred Proponent and the execution of the Project Agreement. The anticipated Competitive Selection Process includes two stages: (a) the RFQ stage and (b) the RFP stage, which includes Financial Close.

1. *RFQ stage*. The Government intends to select, in accordance with the terms of this RFQ, a shortlist which Government anticipates will be no more than three Proponents, and then issue an RFP to that shortlist only, from which the Preferred Proponent will be selected in accordance with the terms of the RFP. *(Note: Unless there is tie for third, limiting the shortlist to three qualified firms is recommended because: (a) the Government can still have a*

*competition between two if one bidder drops out; and (b) the shortlist is small enough that the bidders are motivated because they think there is a reasonable probability of winning).* The Government's objective at the RFP stage is to select the Preferred Proponent with whom it may enter into the Project Agreement. The RFP stage is expected to include one or more Collaborative Meetings relating to technical and commercial matters through workshops and topic meetings in accordance with the terms of the RFP, to allow Proponents to provide comments on Project-specific issues raised through the process. The Government anticipates that the RFP stage will allow Proponents to provide comments on the Initial Draft Project Agreement, and ultimately the Authority will issue a Final Draft Project Agreement as the common basis for the preparation of Proposals by the Proponents.

2. RFP Submission. The form of RFP submission will be described in the RFP. It is anticipated that:
  - Key performance specifications will include:
    - a) [insert text], and
    - b) [insert text].
  - Key financial requirements will include:
    - a) fully committed financing, including confirmation from the Proponent's funding sources confirming acceptance of the terms of the Project Agreement.
    - b) a commitment to enter into the Project Agreement by Project Co.
    - c) committed pricing for the Project, inclusive of all taxes except GST.
3. Competitive Selection Timeline. [insert dates for RFQ release; introductory Project Meeting with all interested Proponent parties; RFQ Submission; Proponent interviews (if any); announce shortlist Proponents; issue RFP and Initial Draft Project Agreement to Proponents; collaborative meetings (if any); submission of Responses; selection of Preferred Proponent; financial close; construction commences; Substantial Completion].
4. No Obligation to Proceed. The RFQ does not commit Government in any way to proceed to an RFP stage or award a contract, and Government reserves the complete right to, at any time, reject all Responses and to terminate the Competitive Selection Process established by this RFQ and proceed with the Project in some other manner as the Authority may decide in its discretion.

## **Evaluation**

Evaluation of RFQ Responses will be based upon Minimum Requirements and Evaluation Criteria.

1. Minimum Requirements. Government will evaluate Responses and determine in its discretion if the Proponent Team adequately meets the Minimum Requirements. Should any Proponent Team fail to adequately meet the Minimum Requirements, Government may discontinue the evaluation of that Proponent Team's Response. [Insert Minimum Requirements - which typically include: (a) the Respondent Team is identified complete with contact information and an organization chart showing the responsibilities and inter-relationships between team members; and (b) whether each Proponent Team member (equity provider, contractor, service provider, and toll collector) has sufficient financial capacity to undertake their respective obligations to the Project Agreement].

2. *Evaluation Criteria*. For those Proponent Teams that adequately meet the Minimum Requirements, Government will evaluate Responses by applying the following Evaluation Criteria and weighting. *[Insert a table that provides criteria and weighting. Criteria can include strength and relevance of demonstrated experience and capability of the various team members including, as appropriate, Team Lead, contractor, service provider; and any other component Team Members. The evaluation in each category will take into account the experience of each Team Member, but also the experience of Key Individuals assigned to the Project for each Team Member].* Responses in each evaluation category should include relevant experience including nominated example projects, where the nominated projects highlight the experience of the Respondent Team Member in a similar role as for this Project, and of the Key Individuals assigned to the Project for each Team Member.

## **ANNEX B: TEMPLATE FOR RFP (DBFM PPP)**

### **Purpose of the RFP**

The purpose of this RFP is to invite eligible Proponents to prepare and submit Proposals to [insert description key roles, such as design, build, finance and maintain] the [insert a brief description of the Project (the Project)] under a long term Project Agreement. Through an RFQ issued [insert date] by the [insert Government's name, the following consortia are qualified to participate in this RFP:

1. [insert Proponent name];
2. [insert Proponent name]; and
3. [insert Proponent name].

Only these three Proponents, subject to changes in Proponent Team membership as permitted by this RFP, may submit Proposals or otherwise participate in this RFP.

### **Competitive Selection Process Schedule**

*Competitive Selection Schedule* - [insert dates for issue of RFP and Initial Draft Project Agreement to Proponents; collaborative meetings with Proponents (if any); issue of Final Draft Project Agreement; submission of Responses; selection of Preferred Proponent; financial close; construction commences; Substantial Completion].

### **Collaborative Meetings - Consultation with Proponents**

The purpose of Collaborative Meetings is to provide a process that will assist the Proponents to develop optimal solutions for the Project while minimizing the risk that a Proponent's solution is unresponsive to Government's requirements. In particular it permits each Proponent, in a one-on-one environment, to provide Government with comments and feedback on material issues such as affordability or provisions of the Initial Draft Project Agreement; and to permit a Proponent to discuss with Government potential solutions and approaches that the Proponent may be considering for various aspects of its Proposal. To facilitate free and open discussion, Proponents should note that any comments provided by or on behalf of Government during any Collaborative Meeting, and any positive or negative views or encouragement expressed by or on behalf of Government will not in any way bind Government and will not be considered to be an indication of a preference by Government.

Government intends to coordinate a session with Proponent Teams and contractors and suppliers in a Business-to-Business Networking Session to provide an opportunity: for potential suppliers and potential employees meet the Proponent Teams; and for Proponent Teams to enhance their understanding and awareness of goods and services, and to build relationships with contractors, suppliers and businesses.

### **Data Room**

Government has established a website to be used as an electronic data room (the Data Room) in which it has placed documents in the possession of Government that Government has identified as relevant to the Project and to the Project site, and that may be useful to Proponents. The Authority does not make any representation as to the relevance, accuracy or completeness of any of the information available in the Data Room, and Proponents will undertake to keep all information confidential.

### **Key Project Elements**

The Project will be managed under one Project Agreement. Government intends to attach an Initial Draft Project Agreement to the RFP which will include performance specifications for the [design, construction and maintenance of the Project] and the scope of services to be provided by the successful Proponent; and proposed commercial terms. Government will issue a Final Draft Project Agreement, which will be the basis upon which the Proposals will be prepared in response to the RFP. As indicated in the Initial Draft Project Agreement, Government anticipates that Project Co's responsibility under the Project Agreement will be:

1. *Design*. Project Co will be responsible for all aspects of the design for the Project including the integration of the various building components with each other. The final design will comply with the Performance Specifications that will be included in the Project Agreement, and all applicable laws, including [insert name of city] zoning.
2. *Construction*. Project Co will be completely responsible for:
  - a) obtaining all permits and approvals necessary for construction of the Facility, excluding zoning approvals already in place;
  - b) providing all utilities and other site services required to support the Project, including off-site works as required to connect the Project to existing City infrastructure;
  - c) design and construction of the Project; and
  - d) substantial completion of the Facility by [insert fate].
3. *Equipment*. [Insert a short description of Equipment requirements for the Project and responsibilities of the various parties]. The relevant categories of equipment, and responsibilities for each, will be set out in the Project Agreement.
4. *Finance*. Government and other contributors will make capital contributions during construction [insert amount, timing, terms and conditions]. Project Co will be required to provide all other required funding for design, construction, finance costs and maintenance, by way of equity and/or debt financing. The Authority will pay Project Co annual service payments over the term of the Project in accordance with the Project Agreement. The annual service payments are subject to deductions if performance requirements are not

met. Details on the Payment Mechanism are in Section \*\*. [insert details on the Affordability Ceiling, if appropriate]

5. Maintenance Services. During the term of the Project Agreement, Project Co will be required to provide facility maintenance services, which may include [modify as appropriate]: general management services; plant services; environmental services; grounds maintenance and landscaping services; help desk services; utility management services; waste management and recycling services; and pest control services.
6. Life Cycle Maintenance. Project Co will be responsible for the life cycle maintenance of the Project. In addition, Project Co will be required to maintain the Facility to the agreed physical and performance standards during the term of the Project Agreement, and to return the project to Government in the specified condition at the end of the term.
7. Communications and Consultation. Government and Project Co will work together on all aspects of public communication and consultation as set out in the Project Agreement.

### **Proposal Requirements**

1. Participation Agreement. As a condition of participating in this RFP each Proponent and each of its Equity Providers must sign a Participation Agreement, which provides for confidentiality, and for the terms of any honoraria or partial compensation to be paid to losing Proponents.
2. Proposal Form and Content. Proposals should be in the form and include the content described in [attach Appendix A]. Each Proponent may only submit one Submission.
3. Financing Plan. Proponents should include a Financing Plan whereby each Proponent advises Government as to the form, terms, conditions and cost of its lending facility, if any, and the extent to which the facility is committed until Financial Closing.
4. Intellectual Property Rights Grant of License. By submitting a Proposal, each Proponent will be deemed to have granted to Government a royalty-free license without restriction to use for this Project any and all of the information, ideas, concepts, products, and other intellectual property or trade secrets (collectively the Intellectual Property) contained in the Proponent's Proposal. [Insert any exceptions to License].
5. Changes to Proponent Teams. If for any reason a Proponent wishes or requires to add, remove or otherwise change a member of its Proponent Team after it was shortlisted by the Authority under the RFQ; or to remove a member of its team; or to include new members on its team; or there is a material change in ownership or control of a member of the Proponent Team; or there is a change to the legal relationship among any or all of the Proponent and its Proponent Team members then the Proponent must submit a written application to Government for approval, including supporting information that may assist Government in evaluating the change. Government, in its discretion, may grant or refuse an application, taking into account the objective of achieving a competitive procurement process that is not unfair to the other Proponents. For clarity, Government may refuse to permit a change to the membership of a Proponent Team if the change would, in Government's judgment, result in a weaker team than was originally shortlisted.

