Australian Government

Department of Infrastructure and Regional Development

National Public Private Partnership

Policy Framework

October 2015

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Components of the Guidelines

National PPP Policy Framework

National PPP Guidelines Overview

National PPP Detailed Guidance Material

- Volume 1: Procurement Options Analysis
- Volume 2: Practitioners' Guide
- Volume 3: Commercial Principles for Social Infrastructure
- Volume 4: Public Sector Comparator Guidance
- Volume 5: Discount Rate Methodology Guidance
- Volume 6: Jurisdictional Requirements
- Volume 7: Commercial Principles for Economic Infrastructure
- Roadmap for applying the Commercial Principles

Document Updates

This Policy will be updated from time to time to reflect evolving best practices and lessons learned.

Version control	Last updated	Updated sections
1	December 2008	Original publication
2	October 2015	New content throughout to reflect updated practice and Productivity Commission recommendations

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1 Our commitment

The Australian, State and Territory Governments are committed to public infrastructure being well planned and effectively delivered. A Public Private Partnership (PPP) is a proven infrastructure procurement method that in the appropriate circumstances can make the best use of the resources of both the public and private sectors. The National PPP Policy and Practitioners' Guidelines 2015 have been refreshed to incorporate current practice and address the infrastructure procurement recommendations of the Productivity Commission Inquiry into Public Infrastructure[i].

A key factor in successful procurement of infrastructure and associated services is that it is preceded by an integrated approach to strategic infrastructure planning and robust frameworks for decisions to invest in infrastructure, including the use of project evaluation methodologies such as rigorous cost benefit analysis. The changes to the National PPP Policy and Guidelines focus on assessing modified financing options, improving procurement, maintaining and optimising effective risk allocation, and ensuring effective monitoring of long-term performance based contracts.

The aim of a PPP is to deliver improved services and better value for money, primarily through appropriate risk transfer, encouraging innovation, greater asset utilisation and integrated whole-of-life management, underpinned by private financing.

PPPs using private finance are one way to meet the challenge of procuring productive infrastructure. There is an important distinction between infrastructure funding and finance. Projects are funded by government or directly by users and are financed either through public and/or private borrowings. Modified PPP financing strategies can be incorporated into PPP procurement to reflect market conditions and optimise the value for money in a PPP structure.

The choice between public and private provision of infrastructure will be based on a rigorous value for money assessment as part of a procurement strategy. Where it is determined that private sector provision of public infrastructure and related services will deliver better value for money, the choice of contractors will generally be through a consistent, transparent system of competitive tendering, noting that all jurisdictions also entertain proposals for exclusive mandates where that is judged to deliver value for money (i.e. unsolicited proposals or market-led proposals).

Achieving value for money is a key requirement of government and is a combination of the service outcome to be delivered by the private sector, together with the degree of risk transfer and financial implications for government. Value for money is the driver for adopting the PPP approach, rather than capital scarcity or the balance sheet treatment.

Value for money must also be demonstrated over the full lifecycle of the PPP contract. Sustainable long-term contracting also means a PPP needs to be able to respond to change (services or capital) efficiently and effectively. Active management of contract performance frameworks is critical in ensuring quality service delivery. Effectively managing long-term PPP investments requires a sustainable partnership approach between the public and private sectors.

In all investment evaluation decisions and subsequent project procurement decisions, governments will consider the potential impact on public interest matters such as privacy, accountability, health and safety, consumer rights, public access and equity. Each jurisdiction will have its own methods for considering public interest matters.

Innovation in PPP models will be encouraged. It is important that the processes for delivering a PPP project be able to evolve to reflect experience and the changing environments in which infrastructure is constructed and financed and in which services are delivered. With the assistance of Infrastructure Australia, the Australian, State and Territory Governments will monitor, review and from time to time refine the National PPP Policy and Guidelines.

2 Objectives

2.1 Objectives

This National PPP Policy (Policy) provides a consistent framework that enables public and private sectors to work together to improve public service delivery through private sector provision of public infrastructure and related services.

The objectives of the National PPP Policy Framework are to:

- encourage private sector investment in public infrastructure and related services where value for money for government can be clearly demonstrated;
- encourage innovation in the provision of infrastructure and related service delivery;
- ensure rigorous governance over the selection of projects for PPPs and the competition for and awarding of contracts;
- facilitate a consistent and streamlined approach to procuring PPPs across Australia;
- be sufficiently flexible to respond to strategic priorities, project specific requirements and market conditions; and
- clearly articulate and measure accountability for risk and outcomes adopting a partnership approach to managing long-term PPP contracts.

3 Scope and application

3.1 Scope of the National PPP Policy

The Policy requires jurisdictions to apply the National PPP Guidelines to the procurement of PPP projects, which are defined as being where:

- the private sector provides public infrastructure and any related services; and
- there is private investment or financing.

PPPs as a procurement method are part of a broader spectrum of contractual relationships between the public and private sectors to produce an asset and/or deliver a service. They are distinct from early contractor involvement, alliancing, managing contractor, traditional procurement (design & construct) and other procurement methods. This policy covers PPPs only. Other types of procurement are covered by other government guidelines.

Compared with other infrastructure delivery methods that are focused on design and construction, PPPs are typically complex given their lengthy contract periods involving long-term obligations and a sharing of risks and rewards between the private and public sectors.

The policy does not apply to the private provision of services for which there is no public infrastructure element (e.g. professional consulting services), nor does it apply to private investment in infrastructure across Australia where government does not have a direct interest in the provision of public services (e.g. a gas pipeline between states, or roads built from a mine to a port).

3.1.1 Public infrastructure

For the purposes of this PPP policy, the term 'public infrastructure' refers to physical assets and related services.

Physical assets cover (but are not limited to) economic infrastructure such as roads, rail, ports, water treatment, communications and social infrastructure such as correctional facilities, health care facilities, educational facilities, convention or recreational facilities, accommodation facilities, public housing facilities, and court facilities.

3.1.2 Scope of services

The term 'related services' may encompass:

- services that support the main service function, including building management, maintenance, IT, security, cleaning, laundry, grounds-keeping and some support services; and
- any main or core services that individual jurisdictions may decide to include. Core services are those services where there is a direct relationship between the service provider and the public (such as clinical services in health and teaching in education) and for which government has particular responsibilities to people using the service and the community.

Individual jurisdictions will determine who provides services on a project-by-project basis at the early planning stages of each infrastructure project.

3.1.3 Financial thresholds

Projects likely to have potential to provide value for money using a PPP delivery method are those with a total capital value exceeding $50 million. Such capital expenditure should therefore trigger evaluation of a PPP as a potential procurement method for the relevant project, with regard to value for money drivers described in 4.3.2. Projects of less than $50 million may also be suitable for PPP delivery if they exhibit sufficient value for money drivers.

3.1.4 Coverage of the Policy

The Policy applies to all State and Territory Governments as well as the Commonwealth Government in relation to the procurement of infrastructure via PPPs.

The Policy does not apply to the Local Government sector. However local government entities may consider the benefits of using this National Policy when developing any PPP project.

It is recognised that the Policy and the associated Guidelines will be applied to a wide range of different types of projects within jurisdictions. Given this, and in the spirit of efficiently procuring infrastructure and keeping bid costs as low as possible, there may be cases where it is appropriate to depart from the processes set out in the associated Guidelines. Any departures must first be approved by the relevant PPP authority (usually Treasury or Finance).

The Policy will apply to all PPP projects to be delivered by government departments and agencies within jurisdictions, unless a specific government decision in that jurisdiction advises of a departure from this Policy and that other provisions will apply.

Application of the Policy to the provision of infrastructure by a Government Business Enterprise (or its equivalent) shall be determined by individual jurisdictions.

4 Assessment of projects as PPPs

4.1 Stages of project approval

Government infrastructure investment decisions are increasingly being informed by the strategic planning of independent infrastructure advisory bodies such as Infrastructure Australia. Individual jurisdictions have in place guidelines for planning and selecting public infrastructure projects including evaluating costs and benefits of infrastructure investment.

The investment and procurement decisions are separate (although from a timing perspective they can occur concurrently or separately). While individual governments will have specific processes, generally there is a staged decision-making process:

- Governments will consider the investment decision based on the business case (or scoping study or feasibility study as the case may be); and
- following the investment decision, governments will consider the procurement method decision based on the Procurement Options Analysis (which may or may not be part of the business case).

The investment decision is required before a decision on the procurement method can be approved.

In addition, a number of jurisdictions also routinely conduct Gateway Reviews of all major infrastructure projects at specific project approval stages.

4.2 Project affordability

The Policy sits within each government's budgeting and asset management framework. PPPs are not a means of pursuing unfunded programmes or projects.

The Policy requires governments to commit to investing in a particular programme or project as a strategic priority prior to its development as a PPP arrangement. This commitment ensures that the prioritisation of public sector projects is not distorted by the availability of private sector finance and traditional delivery is a credible alternative should PPP delivery not meet value for money benchmarks.

Unless a project is self-funding (e.g. a user funded toll road) or is funded by a non-budget sector agency (e.g. a GBE), a budget allocation (for the capital and recurrent cost impact) is required for a project to proceed to market under any form of procurement (PPP, Alliance, D&C). The provision of budget allocations at the outset ensures that:

- all potential projects need to compete for the same finite funds, thus ensuring that projects are appropriately prioritised in terms of strategic importance; and
- delivery models are not prejudiced due to their perceived budget or balance sheet impacts.

During the business case stage, and again prior to committing to any PPP arrangements, governments need to ensure that the affordability issues associated with long term payment obligations have been clarified and confirmed. The balance sheet treatment of a project is not a reason for using a PPP delivery approach. Under current accounting standards the majority of PPP projects will be recorded on the government's balance sheet.

4.3 Procurement strategy

It is important that procurement alternatives are analysed thoroughly so that a robust recommendation can be made of a preferred procurement method. A rigorous analysis simplifies the decision-making process and ensures that the best procurement method, whether a PPP or an alternative, is pursued.

The key issue is which method of project delivery provides the best value for money in meeting governments' service objectives. No one delivery method is presumed to be more efficient than another.

The National PPP Guidelines Procurement Options Analysis guideline explains how to consider and select a suitable procurement method for a public infrastructure project where project characteristics indicate that PPP delivery should be considered. It provides a framework for assessing the viability of PPP delivery against other procurement methods.

For all public infrastructure projects meeting the requirements set out in Section 3 of this Policy document, procuring agencies are required to evaluate a PPP as a potential procurement method when conducting a procurement options analysis and seeking government approval. This is to be done in accordance with the *National PPP Guidelines Procurement Options Analysis*.

4.3.1 Determining PPP delivery

In choosing the most appropriate method of delivery, some of the key issues to be considered include:

- **determining core versus non-core services**. Core services are those non-asset-related services which government has decided to retain responsibility for delivering. Outside these, a range of asset-related and other ancillary services will be associated with the project and may be considered for inclusion in the scope of the private sector;
- **value for money**. Whether private sector involvement is likely to deliver value for money. The value for money drivers are used as the basis for this assessment;
- **analysis of market capability and appetite**. Government requires reliable data on which to base a decision on whether to offer a project to the market as a PPP project, or to deliver it by traditional means. This decision, which is based on practical grounds, needs to examine the issues of:
  - whether private parties have the capability to deliver the project and related services; and
  - whether private parties have the appetite, or motivation to do so, which may depend on the prevailing market conditions;
- **analysis of user pays or modified financing options**. Whether a PPP can provide additional value by adopting different funding or financing structures which may facilitate scope for better outcomes through innovation;
- **public interest**. As with all infrastructure projects, this involves considering whether the proposed procurement approach is in the public interest. Each jurisdiction will have its own methods for considering public interest matters; and
- **long-term sustainability**. Consider the ability of the procurement approach to respond flexibly to change over time, and the ability to manage the contract to achieve sustained high performance.

4.3.2 Value for money drivers and PPP suitability

PPPs will be considered as a procurement option where threshold values are met and where value for money drivers exist. PPPs may be a suitable procurement option if the following value for money drivers are present.

- **Sufficient scale and long-term nature**. The project represents a major capital investment (over $50 - $100 million) with long-term requirements. The value could include bundling together a small number of similar projects. Projects that lie below the capital expenditure threshold can also have a significant service component and therefore a significant value in net present value terms, and can exhibit other value for money drivers. Such projects may be suitable for PPP procurement and may be considered in consultation with the relevant PPP authority.

  In determining whether the scale of a project is sufficient, the size of transaction costs to government of procuring the project as a PPP should be considered.

  Based on experience to date, projects with a whole-of-life net present value greater than $100 million attract most market interest.

- **Complex risk profile and opportunity for risk transfer**. Improved risk management and more rigorous risk evaluation underpin transfers to the private sector of those risks it is best able to manage, including those associated with providing the specified services, asset ownership and whole-of-life asset management.

- **Whole-of-life costing**. Full integration, under the responsibility of one party, of up-front design and construction costs with ongoing service delivery, operational, maintenance and refurbishment costs. This potentially delivers improved efficiency through whole-of-life costing as design and construction become fully integrated up-front with operations and asset management.

- **Innovation**. As the PPP approach focuses on output specifications, this provides a wider opportunity to use competition as an incentive for private parties to develop innovative solutions in meeting these service specifications.

- **Measurable outputs**. The nature of the services enables output specifications and a performance-based contract.

- **Asset utilisation**. Reducing costs to government through potential third-party utilisation and through more efficient design to meet performance (e.g. service delivery) specifications.

- **Better integration of design, construction and operational requirements**. Ongoing operational, maintenance and refurbishment requirements become a single private party's responsibility for the length of the contract period.

- **Competitive process**. A competitive market exists and the use of a competitive process helps to encourage the private party to develop innovative means of service delivery while meeting government cost and service objectives.

5 Key principles in the application of PPPs

Value for money

Value for money is paramount and achieving the best value for money outcome should be the key consideration at all stages of a project. Value for money is a combination of the service outcome to be delivered by the private sector, together with the degree of risk transfer and financial implications for government. Quantitative factors are tested by comparing the outputs and costs of PPP proposals against a neutral benchmark, called the Public Sector Comparator, which is adjusted for risk (where these risks can be reliably quantified). Just as important are considerations around the qualitative factors such as the impact of design on service provision.

Public interest

Considering public interest requires:

- ensuring that procuring the project as a PPP is not contrary to the public interest; and
- ensuring that after a decision has been made to procure a project as a PPP, the procurement process is structured to ensure the project continues to be in the public interest.

Each jurisdiction will have its own methods for considering public interest matters.

Optimal risk allocation

The principle governing risk transfer is one of optimal risk allocation. Risk will be allocated to whoever is best able to manage it, taking into account public interest considerations. The Government's preferred allocation of risk is outlined in the National Commercial Principles documents.

Output oriented

Projects should focus on the specification of what services are to be delivered rather than how they should be delivered in order to maximise the opportunity for innovation. Performance measures should be established to ensure that the required services are delivered in accordance with the output specification.

Transparency

Transparency and openness are important requirements of all government procurement. The use of PPPs should not diminish the availability of information on the use of government resources to Parliaments, taxpayers and other stakeholders. There should be an emphasis on transparency and disclosure of the rationale, processes and outcomes, acknowledging the need to protect commercial confidentiality where appropriate.

Publishing infrastructure project contracts and a user-friendly Project Summary can help explain PPP commercial arrangements and demonstrates transparency.

Accountability

Agencies are responsible for the delivery of their outputs including where PPPs are used to deliver those outputs. Agencies cannot transfer this accountability to the private sector. The conduct of the public sector should always be such that confidence in the probity of the partnership model and the way in which it is implemented can be maintained at all times.

Engaging the market

Bids will be invited only when it is clear that there is scope for a private proponent to deliver value for money. Projects to be delivered within the Policy must have the government's approval before the formal involvement of the private sector.

Implementation of the Policy and Guidelines will be in a professional, fair, equitable and open manner ensuring probity and minimising tendering costs. Standardised approaches should be used consistently to reduce transaction time and cost.

Modified funding and financing

Modified PPP funding and financing strategies can be incorporated into PPP procurement to reflect market conditions and optimise the value for money in a PPP structure. Modified PPP financing strategies may facilitate or add value to the PPP and should not alter the underlying risk allocations that are the basis of the success of the PPP model.

In considering modified financing, it is critical to maintain the performance incentives for service delivery and continue the disciplines of private finance in managing risk.

The use of modified PPP financing strategies should be guided by objective decision making criteria and market conditions and appetite in order to develop approaches that best suit project characteristics. The modified strategies will require detailed consideration by governments of the project risks, the dynamic PPP market and the potential impact on value for money for particular PPP projects.

Sustainable long-term contracting

PPP contracts are long-term infrastructure assets and services that require active management. Effective contract management over the lifecycle of a project is necessary to meet project objectives, ensure accountability for quality asset and service performance and therefore preserve risk allocation and achieve long-term value for money outcomes. PPP contracts must be flexible to enable future changes to the asset and services to keep pace with economic, technology and social changes.

Contract management must take account of, and adapt to, changing circumstances and significant events through the project lifecycle. A partnership approach between the public and private sector is needed to do this sustainably and efficiently.

6 Policy and project governance

This Policy has been developed by the Commonwealth, State and Territory Government agencies in consultation with key stakeholders in the private sector.

Each jurisdiction will have a Minister responsible for PPP policies and guidelines. Responsibility for the PPP Policy in each jurisdiction will, in most instances, reside with the Treasury or Finance portfolios. The role of the relevant PPP authority is to advise their respective Ministers on issues of PPP policy and to provide assistance and support to all departments, agencies and GBEs in their jurisdiction in the application of PPP policies.

Each PPP project will be the responsibility of the relevant Portfolio Minister, unless otherwise decided by government. Further information on an appropriate governance structure for the delivery of PPPs is contained in the National PPP Practitioners' Guide.

Governments in each jurisdiction will have their individual approval processes for capital investment projects. Specific approval processes for PPP projects in individual jurisdictions will need to be considered on an individual basis.

[i] Productivity Commission Inquiry in to Public Infrastructure No. 71, 27 May 2014