# Metro West
# PPP Assessment

## September 2008
## Final Report

## Contents

# SECTION I: INTRODUCTION

## 1.1 Executive Summary

The PPP Assessment is a high level statutory document that outlines the assessment of projects at detailed appraisal stage to establish whether the PPP approach is most appropriate in delivering the Metro West project.

The purpose of the Public Private Partnership Assessment ("**PPP Assessment**") is to assess the potential for a Public Private Partnership ("**PPP**") to deliver improved value for money when compared to traditional procurement.

The contents and the matters to be addressed by the PPP Assessment are dictated by the Department of Finance (DoF) guidelines for procurement of projects as PPPs.

The advice of NDFA was sought regarding all aspects of risk analysis and project bankability and affordability.

The Outline Business Case has been produced in accordance with the DoF main capital guidelines and agreed contents structure with the Department of Transport, to address the requirements for the detailed appraisal of projects.

A number of matters that have been addressed as part of the Outline Business Case ("OBC") and are omitted in this report as a matter of clarity. The PPPA is appended to the OBC and the two should be considered in unison.

Once Metro West is approved in principle to proceed as a PPP by the Department of Transport, the Guidelines for the Provision of Infrastructure and Capital Investments through Public Private Partnerships by Department of Finance would be applicable towards the project implementation, as appended in Appendix 3, in addition to the other supporting PPP technical guidelines and notes.

RPA will then formally adopt the PPP process towards delivering Metro West by setting the project budget and produce a Public Sector Benchmark.

The PSB will be compiled by the National Development Finance Agency (NDFA), and will be used to carry out the Value for Money (VfM) test. At this stage, the project budget will also be confirmed and set, and its affordability established.

The PSB will encompass the cost of the PPP transaction only. It is based on a financial assessment, and cost and risk retained by RPA i.e. risks outside the PPP scope will not be included in the model, to facilitate a like with like comparison with the private sector bids.

The PSB (for the PPP element) will be set before going out to tender.

The first VfM test has been carried out as part of this PPP Assessment exercise and is outlined in Section 3.22 of this report.

Value for money aspects intrinsic in delivering Metro West as PPP are the following:

- Metro West is a large scale project that raises interest among major market players;
- It mobilises much needed private finance for detailed design, construction and commissioning to deliver the project to fully operational service;
- The PPP approach provides potential to achieve cost savings versus traditional methods;
- The project can be expressed in output terms for the service provision;
- The "service availability payment" that will be calculated and agreed with the successful contractor allows budgetary certainty and sustainable budgetary planning;
- The PPP approach provides incentives for accelerated project delivery;
- Detail design will allow for innovation from the private sector and technological accountability;
- Aims at optimal transfer of risks between the public and private sectors.

Based on the assessment carried out to date and considering Metro North as a precedent project, the most appropriate form of PPP would be DBFM contract, with separate Operating contract for operating the service. This is further detailed in Section IV of this report – PPP Format.

The optimum scope of the PPP arrangement is based on RPA retaining the land acquisition, statutory process and planning and necessary advance works. The initial risk allocations for the project are further detailed in section "Project Risk Allocations".

The Metro West should be delivered as PPP on the basis that:

- a significant demand for the project has been demonstrated;
- the services can be expressed in output terms;
- the project scope supports a long term concession contract;
- Payments are made upon the provision of fully operational services and is performance and availability based;
- The Government imposes the regulatory regime and sets the legislative framework for the concession contract;

- Treatment of the PPP is off balance sheet on the basis that the construction/completion risk and availability risk are allocated to the PPP concessionaire.

On the basis of the appraisal undertaken, RPA requires and approval in principle from the Department of Transport to proceed with the project by way of PPP.

## 1.2 PPP Assessment Process Overview

The key elements of the PPP Assessment are described in detail in subsequent sections of this report. The main outcomes arising from the PPP Assessment are summarised as follows:

- a **legal viability assessment** determined that Railway Procurement Agency as a Contracting Authority, has the legal capacity to enter into a PPP contract;

- an **initial output specification** has been established and is based on the technical project Appraisal. It proves that the Project can be expressed in output terms and also provides a high level definition of what is required in terms of service delivery;

- a **value for money assessment**, involving the identification of factors that will determine whether a project is likely to represent value for money and a qualitative assessment of the potential of the project to deliver those factors, using tools such as market sounding;

- a **preliminary risk assessment** including the identification of key risks, the initial allocation of risk between the public and private sectors and an assessment of whether sufficient risk transfer is possible to merit a PPP approach;

- the initial **bankability** of the project which was determined through market sounding with a number of banks and indicates that the project could be part-financed by the private sector; and

- the **PPP contractual form** applicable is determined by the procurement process underway in relation to Metro North yet still meets the strategic objectives of the project and offers the greatest scope for value for money.

# 2. SECTION II: EXAMINATION OF VIRES AND RESOURCES

## 2.1 Vires

A high degree of legal certainty in respect of public authorities having the legal capacity or *vires* to enter into public private partnerships (PPPs) is essential to the success of PPPs.

Many public authorities receive their vires to engage in PPPs via the *State Authorities (Public Private Partnership Agreements) Act, 2002* (the 2002 Act). The Railway Procurement Agency (RPA) is not listed in the schedule to the 2002 Act as one of the authorities to which the Act relates and its vires to engage in PPPs is not derived from the 2002 Act, but instead is derived from its enacting legislation, the *Transport (Railway Infrastructure) Act, 2001* (the 2001 Act).

Section 11(1)(c) of the 2001 Act sets out the functions of the RPA and provides the RPA with the vires to:

*…enter into agreements with other persons in order to secure the provision of such railway infrastructure whether by means of a concession, joint venture, public private partnership or any other means.*

This would include the contracts and agreements envisaged in respect of the Metro West PPP.

It is also essential that the RPA has the power to enter into a direct agreement with the party providing funding to the project, in order to confer certain rights on that funder in the event of default of the contractor. Section 11(6) of the 2001 Act confers the power on RPA to enter into such a direct agreement as follows:

*Where the Agency enters into an agreement with a person and in connection with the agreement another person makes a financial loan to, or provides any other form of finance for, a party to the agreement, the Agency shall be deemed to have the power to enter into an arrangement with that other person*.

RPA therefore has the legal capacity to enter into a PPP arrangement with the private sector for the procurement of Metro West.

## 2.2 Affordability

RPA has considered the affordability of the project from the point of view of the overall project budget and other criteria relating to RPA in order to determine whether it can meet the cost of procuring Metro West as a PPP within the resources available to it.

The funding requirement is comprised of two cost categories:

- financing which is provisionally assigned to RPA through Exchequer funding (current estimate of **[text deleted]** (in nominal values). This will include land acquisition, planning and statutory processes, project management and selective enabling and utility works; and
- financing which is provisionally assigned to the private sector (current estimate of **[text deleted].** in nominal values). This funding is required to finance the capital costs of the detailed design, construction and commissioning of Metro West to enable delivery of a fully operational passenger service.

It is envisaged that there will be no Government capital contributions during the construction and commissioning phase as the PPP arrangement will be fully financed by the private sector.

Both project finance elements, i.e. the exchequer and the private finance elements, would form the project budget.

A further criterion supporting the affordability of the project is the RPA staff and experience in delivering similar projects.

RPA has completed similar light rail projects by means of traditional procurement i.e. LUAS red and green lines from Connolly Station to Tallaght and Sandyford to St. Stephens Green respectively. RPA is currently undertaking a PPP procurement process for Metro North, and is advancing further extensions on the existing LUAS lines.

The processes undergone and lessons learnt together with the gained internal capacity and expertise to deliver similar projects would almost guarantee improved value for money resulting in an overall benefit for Metro West.

## 2.3 Sustainability

In accordance with the guidelines prepared by the Department of Finance (Assessment of Projects for Procurement as Public Private Partnership), sustainability is addressed in terms of the PPP arrangement which would commit RPA to a specified level of ring-fenced expenditure on an ongoing basis for the term of the PPP contract.

The use of the PPP arrangement involving period payments over a long term can in practice allow the Government to start a higher number of projects in the same time period than they would be in a position to do under traditional procurement.

The project finance required to deliver the PPP scope will be privately funded, for which the bidders will be also required to provide a robust financing structure. It is envisaged that the financing risk will be solely taken and managed by the private party, and the interest rate of the private debt will be set and ring fenced, which means that the risk of changing interest rates post financial close will lie with the contractor.

It is envisaged that the bidders will incorporate applicable swap rates on their financing structure and detail relevant information to their debt profile and the hedging strategy adopted.

The NDFA is the only statutory financial advisor that will advise on appropriate interest, swap and discounting rates to be applied to a bidder's financial models to allow comparison on an equal basis and to test value for money at tender evaluations.

At financial close stage, the interest rate hedging strategy will be produced to ensure that interest rate exposure is appropriately ring fenced.

# 3. SECTION III: SUITABILITY TEST

## 3.1 General

One of the principal determinants of project's suitability for procurement as a PPP is its scale. Metro West is the longest light rail route (24 km in length) to be delivered in Ireland to date and also one of the largest financial transactions, which will attract a substantial interest by the largest organisations in this industry.

The Output Specification would define the financial framework for the project including the requirements for private sector finance, the provision of the services and will set the payment framework during the life of the PPP contract.

The Output Specification has been outlined in this section to provide the basis for the development of a comprehensive output specification that will form part of the technical requirements of the tender documents. The output specification will also inform the payment mechanism and will be the basis upon which the Public Sector Benchmark will be developed.

## 3.2 Output Specification Objective

The traditional approach is based on the specification of inputs, whereby a precise description is given in relation to the works and services to be provided. The Contracting Authority then takes full responsibility for the adequacy of these works, provided they are built correctly and in accordance with the designs.

In a PPP context, an alternative approach is used. The Contracting Authority defines the service required and leaves the design of the works necessary to deliver that service to the successful private sector bidder. This description of the operational requirements comprises the "Output Specification".

The Output Specification will be developed as part of the set of tender documents. The tender documents will define the detailed requirements for the project and/or the service, as this is the information on which bidders base their tender price for the project.

The initial Output Specification as outlined below comprises:

- matters in relation to the project, principal requirements, requirements in respect of safety management and quality assurance systems;
- design and construction requirements;
- vehicle requirements; and
- testing and commissioning requirements.

## 3.3 Metro West Initial Output Specification

Metro West will be a double track light rail system connecting Tallaght, in west Dublin, with Metro North, via a connection in the vicinity of the Dardistown Stop.

Subject to final choices of available route options, the length of the chosen route corridor is likely to be around 24 km.

This will allow services to run over Metro North to the airport and / or beyond and / or to the city centre and at a later date there is an option of continuing Metro West towards the DART Line.

Metro West will be a high performance state of the art light metro system designed to combine excellent accessibility and competitive journey times with high levels of productivity and relatively low operating costs. This will be achieved by good design, careful specification choice, sound operational management practices and the use of proven modern equipment and systems.

*Journey Time*

The system will provide a frequent and reliable service, and will be attractive both for relatively short local journeys and longer trips to and from the airport and to the city centre. The objective is to have a journey time of not greater than 50 minutes from Tallaght to the airport. Currently the runtime is estimated at 54 minutes but improvements to this runtime may be achievable during detailed design of the route.

*Headway*

It is envisaged that services will run at 4 minute intervals (15tph) during the morning and evening peaks. In the ultimate service pattern headway may be at 2 minute intervals (30tph). The ultimate service pattern will require Metro West services to terminate at Dardistown. However it is more likely that tram lengths will be increased rather than headways changed, lengths being increased in 10m increments from 45m initially up to a maximum length of 94m.

*Capacity*

The maintenance of close and consistent headways to minimise passenger waiting times will be an important factor. For this reason the emphasis will be upon operating frequent services. These will initially be provided by 45m or longer vehicles. Ultimately the length of vehicles or combination of vehicles may be increased to 94m as demand grows. This will be compatible with Metro North platform length which has also been designed to cater for 94m vehicles.

Metro West will be designed and constructed so that it can provide adequate capacity in a cost effective manner for the projected levels of initial demand and also be capable of being expanded to provide additional capacity as demand increases over time.

Increased demand will be catered for either by lengthening or combining vehicles in multiple units. Capacity may also be increased by decreasing headway if capacity is available.

The estimated initial capacity of Metro West is 5,000 persons per direction per hour (ppdph) with 10,000 ppdph predicted in the future service pattern.

Subject to final resolution of Metro West service options it is envisaged that between 32 and 42 vehicles may be required. Appendix 1 sets out journey options, round trip assumptions, vehicle numbers and related fleet dispositions.

*Interoperability*

Interoperability between Metro and Luas systems is required. In addition, there are potential key interfaces with the Luas Red Line at Belgard Rd / Embankment Rd junction and Luas Red Line at Tallaght and at future locations not yet finalised with the Lucan and Finglas lines.

Metro North and Metro West shall be fully interoperable. Metro West vehicles will be required to operate over both Metro North and Luas infrastructure and an integrated approach to systems design is therefore required. It is also envisaged that a single operator will ultimately be responsible for Metro North and Metro West operations.

In order to facilitate the development of interoperable systems in the future Metro North will incorporate, *inter alia*, the following key standards;

- a track gauge of 1435mm
- a standardised structure gauge and developed kinematic envelope (based on 2400mm wide vehicles)
- standardised vehicle/platform interfaces
- compatibility of key control and communication systems, in particular the radio system and the automatic vehicle location system (AVLS), with those in use on the Luas Infrastructure.

As vehicles will have to operate over the Luas Lines they will be required to have a compatible wheel profile. Luas Permanent Way currently utilises RI59N and S49 rail profiles. Additionally, compatible wheel profile specifications will also have to be reflected for Metro North vehicles.

*Systems Interoperability*

To eliminate the need for vehicles to carry a range of different on-board systems, it is very desirable that certain systems in use on Metro West are compatible with those in use on Metro North and the Luas Lines. In particular, this shall include the AVLS and the radio system. Metro West vehicles shall also be fitted with Metro North ATP equipment.

It is also desirable that the payment mechanism systems on Metro West and Metro North are designed in such a way that the exchange of information between the two is seamless.

### *Systems Interfaces*

Due to the nature of the Metro North and Metro West procurements policies and interoperability requirements there are particular interface issues that need to be acknowledged up front which have an effect on the system definition. It will be the case that some of the Metro West systems will most likely have to be developed by the Metro North project such as the combined CCR at Belinstown. This will mean for example that the required cabling and ducting would have to be delivered between the tie-in at Dardistown and the CCR by the Metro North InfraCo. Metro West would then tie in and need access to these ducts etc.

### *Systems Integration*

All Metro West systems shall be integrated, as part of the design process. The process will also involve systems integration with Metro North, Luas Red Line and external (including Local Authority systems) for systems / facilities.

### *Vehicles*

Metro West vehicles shall be of the low floor variety with a floor plate compatible with Luas Red Line and Metro North (nominally 2.40m). The vehicles will initially have a nominal 45m or greater length expandable up to 94m as required. Vehicles will be designed and built to relevant international or equivalent national standards and to meet the requirements and gain acceptance of the Railway Safety Commission and the Draft Guidelines for the Design of Railway Infrastructure and Rolling Stock. The vehicles will be physically able to operate over the whole length of both Metro North and the Luas system.

The vehicle design will follow as far as reasonably applicable the guidelines in respect of the UK Rail Vehicle Accessibility Regulations 1998, including the 2000 amendments and / or best practice in common with the Luas system. The vehicle will be able to operate continuously at 70 km/h.

The power supply for the Metro West system utilises 750V DC feed to the vehicles through an overhead contact system and the vehicle pantograph.

### *Signalling System*

Metro West will constitute a double track system configured for left hand running and will operate primarily as a line of sight system on segregated alignments. All signalling will comply with Guidelines for the Design of Railway Infrastructure and

Rolling Stock Section 7 Tramways and the Guidance Notes: Traffic regulations and signage for the on-street running of light rail vehicles. Signal displays will be of a form consistent with those employed on the Luas Red Line.

### *Access and Fare Collection*

Metro West will be designed as an open access system. Fare collection will be carried out principally using Ticket Vending Machines (TVM) on a similar or improved basis to the existing Luas fare collection system. Through booking arrangements will be available between all Metro / Luas lines and other transport modes, in accordance with the Integrated Ticketing System (ITS).

### *Depot Facilities*

The depot objectives and location will meet the following criteria:

- Readily accessible from the passenger network to minimise running times and operating costs;
- The provision of suitable facilities to maintain vehicles utilising safe systems of work;
- Maintaining the fleet to a level whereby it is safe to operate and can deliver acceptable levels of performance as set out in RAMS criteria;
- Capable of achieving fast turn-round times for rolling stock;
- Be close to a passenger stop to provide good staff access and facilitate driver changeovers at the start and finish of shifts and at meal breaks;
- Adequately sized to accommodate the fleet size envisaged necessary for a 4 minute headway service with the possibility of easy expansion to handle increased vehicle lengths and/or numbers. (See Appendix A)
- Capable of housing the complete range of activities, including if necessary, the possibility of acting as a base for infrastructure maintenance,
- Have good road access for the delivery of rolling stock and materials and for staff access.

### *Operating Pattern & Timetable*

The hours of operation are currently assumed to be 05:30 to 00:30 every operational day. There will initially be a 7.5 minute headway (8 vehicles per hour) service, increasing to 4 minute headways (15 vehicles per hour) for the morning and evening peak periods.

In practice early morning and some afternoon off peak service levels are likely to require adjustment when nominal working timetables are produced in order to optimize the entry of vehicles into service. Off-peak services may therefore be improved resulting in more economical and commercially attractive arrangements. Similar comments apply in respect of vehicles leaving service at the end of each peak.

Saturday and Sunday service levels are anticipated as being similar to off-peak levels with some enhancement to cover shopping trips / regular sporting events.

Additional services will be run to facilitate seasonal and special events.

Services will stop at all stops. Empty vehicles will also have to stop at all stops to enable operation of detection facilities for input to signals.

Standard journey times will be used both peak and off-peak services. The current working assumption for ‘dwell’ times is 30 seconds at all stops and will be used for both the peak and the off peak. In practice it may be possible to reduce the stop “dwell” time in the off-peak and on Sundays. The calculated stop to stop journey times for the route, including the assumed stop dwell times will be subject to refinement during the design process when the alignment geometry and other route elements are finalised.

In performance regimes it is envisaged that there will be a requirement that more than 98 percent of timetabled services will be operated within schedule, and that more than95% of services will operate within 2 minutes of the scheduled departure / arrival times at selected locations.

### *Design and Construction*

Contractor as part of the Works shall prepare and supervise the preparation of the Design so as to allow the construction, and shall ensure that such Design:

- complies with the requirements of the Output Specification
- shall be developed from and be consistent with the Conceptual Design
- complies with the requirements of the [Review Procedure(s)]
- complies with the Third Party Agreements
- complies with the Railway Order
- meets the requirements of, and shall be consistent with the Environmental Impact Statement, including the mitigation of adverse environmental effects
- complies with An Bord Pleanála decisions

- complies with the Railway Safety Commission Guidelines for the Design of Railway infrastructure and Rolling Stock
- complies with Law and Applicable Requirements; and
- accords with Good Industry Practice.
- Contractor shall undertake and complete the Works in such a manner as shall:
- enable Contractor to fulfil its obligations in accordance with the terms of the Infrastructure Contract
- enable Contractor to provide a safe System in respect of its condition, structural safety, use, railway safety and risks affecting personnel, passengers and other persons
- enable the Operator to fulfil its obligations in accordance with the Operating Contract
- enable RPA to fulfil its obligations under any Applicable Requirements
- enable the Relevant Authorities with statutory duties or functions in relation to the System to fulfil such duties and functions
- enable Contractor to take all reasonable measures necessary to prevent the occurrence and adverse effects of accidents and emergencies and ensure that all accidents and emergencies shall be responded to as quickly as possible
- minimise the risk of damage or disturbance to or destruction of any third party property
- ensure that members of the public shall be treated with all due courtesy and consideration
- provide a safe, clear and informative system of signage
- enable standards of reliability, durability, accessibility, maintainability, quality control and quality assurance appropriate to a railway of the character of the System to be achieved and continue to be achieved for the design life
- achieve a high standard in the appearance and aesthetic quality of the Works and achieve integration of the System with the character of the surrounding landscape and environment; and

- provide a logical path for implementation of evolving technologies and for upgrade and extension of existing equipment without the need to reconfigure or replace entire systems.

## 3.4 Testing and Commissioning

The Contractor shall prepare and execute testing and commissioning plans and programmes for all testing and commissioning and performance demonstration activity required to successfully demonstrate the performance of the System including all components, sub-systems, Light Metro Vehicles (LMVs) and fully integrated operation as required by RPA, the Relevant Authorities and to the satisfaction of the Independent Certifier.

The Contractor is solely responsible for all the checking and verification activities relating to the individual components, sub-systems, LMVs, all associated equipment and facilities required prior to the formal testing and commissioning and performance demonstrations necessary to demonstrate the full integrated operation of the System as required by RPA, the Relevant Authorities and to the satisfaction of the Independent Certifier.

The Contractor's testing and commissioning plans and programmes shall describe how Contractor proposes to manage and complete the testing and commissioning requirements of the System in accordance with the requirements of this Infrastructure Contract and of the Relevant Authorities. The scope of the plans shall cover both the tests to be carried out and completed as a condition of obtaining the Infrastructure Certificate and the operational tests and demonstrations required to be completed as a condition of obtaining the Commissioning Certificate and achieving Service Commencement no later than the Target Completion Date.

## 3.5 Operation and maintenance

The Operator of Metro West is responsible for:

- Ensuring the safety of passengers and other members of the public at all times

- Ensuring the safety of staff and creating an effective safety culture

- Operating a reliable high performance service

- Creating various operational and equipment performance regimes based on RAMS criteria and the specification of equipment and vehicles

- Operating a 4 minute headway Metro West peak service to provide an attractive and competitive service with minimum waiting time

- Providing a high quality environment for passengers while at stops and on vehicles

- Providing a high level of central control for the complete Metro/Luas systems including the monitoring of plant, equipment and vehicle operations
- Operating the system with relatively low levels of staffing and high levels of flexibility to enable the system to run economically at high frequencies even when there are comparatively low traffic levels
- Keeping the operational concept and the equipment as simple as possible
- Operating within system redundancy parameters or equivalent safety margins by other means where a failure could lead to unsafe conditions and/or unreliability
- Utilising modular replacement to minimise disruption and down time
- Ensuring that major maintenance tasks can be carried out within the limited time available during system shut down each night
- Organising and staffing the system so that operating and staff can be used in a versatile and flexible way to permit them to react to any situation.

The Operational philosophy will be applied to all aspects of the system design.

The infrastructure and equipment on Metro West will be designed to minimise the necessity for maintenance intervention and maximise reliability.

Maintenance strategy will reflect the policies adopted for procurement, renewal, refurbishment and replacement required by RPA. It will also take into account of RAMS criteria and system performance monitoring.

## 3.6 Health and Safety

All safety requirements shall be in compliance with the Railway Safety Act 2005, the residual sections of the Transport (Railway Infrastructure) Act 2001 and other relevant legislation.

Metro West shall be operated in accordance with statutory requirements, the Metro West Safety Case, Policy Statement, Safety and Health Plan, and all Safety and Health documentation supplied by all designers and contractors.

Safety and risk will be assessed and demonstrably controlled to As Low As Reasonably Practical (ALARP) levels.

## 3.7 Environmental

Metro West will comply with all environmental legislation and will adopt a policy of continual improvement in respect of environmental matters.

The operation and maintenance of Metro West will be to the highest environmental standard, and an environmental management plan will be developed and a strict environmental policy adopted by the operator and maintainers. Specifically reduced energy usage will be encouraged, renewable energy sources adopted where practicable, disposal of waste controlled and recycling of materials promoted.

Metro West will be designed and operated as an energy efficient system and will use where appropriate such measures as regenerative braking and coasting techniques. Careful design of vehicles, depots, workshops and stops will also minimize energy consumption.

## 3.8 Management Systems

Contractor shall develop and maintain an Integrated Management System ("IMS") that shall demonstrate that the Quality Assurance System, the Health and Safety System and the Environmental System are fully integrated. Contractor shall prepare an Integrated Management Plan ("IMP") demonstrating how the IMS will be implemented. This shall be submitted through the Review Procedure as should any subsequent updates.

As a minimum the IMP will demonstrate:

- the hierarchy of appointed Contractors and sub-contractors and how their Health and Safety systems, Quality Assurance systems and Environmental systems will be integrated into the IMS
- Contractor's procedures for ensuring the compliance of their Sub-Contractors.

## 3.9 Quality Assurance

Prior to Construction Commencement Contractor shall institute and maintain a Quality Assurance System (the "QAS") which has full accreditation from an independent third party organisation. It shall comply with the requirements of EN ISO 9001 or EN ISO 9002 as appropriate. The QAS shall ensure and demonstrate that all aspects of the design, construction, installation, commissioning and maintenance of the System and all other matters for which Contractor is responsible under the Infrastructure Contract are carried out in full conformity with the relevant provisions of the Output Specification.

### 3.10 Project Risk Allocations

Achieving optimal risk transfer to the party best placed to manage the relevant risk is the underlying principle in PPPs and a key means of achieving value for money for the Exchequer.

Set out below is a list of key risk headings typical in an infrastructure project procured under a PPP and how it is anticipated these would be allocated between RPA and the private sector in relation to Metro West.

| RISK CATEGORY | RPA | PRIVATE SECTOR | SHARED |
|---|---|---|---|
| Land Acquisition | √ | | |
| Planning risk and Railway Order | √ | | |
| Advance Works | √ | | |
| Project Procurement & PPP Contract Management | √ | | |
| Detailed Design, Construction, Commissioning & Supply | | √ | |
| Maintenance | | √ | |
| Availability and Performance | | √ | |
| Demand | √ | | |
| Regulatory and Legislative | | | √ |
| Force Majeure | | | √ |
| Environment | | √ | |
| Financial | | √ | |
| Safety | | √ | |
| Technology and Obsolescence | | √ | |
| Interface risk with other transport infrastructure (including Metro North) | | √ | |

In order to meet the current programme for project implementation, RPA has undertaken a significant amount of work toward securing a Railway Order, establishing land scoping requirements and considering the interfaces with the existing infrastructure affecting the proposed route.

Based on an initial assessment, the following key cost and risk elements are to be removed from the scope of the main PPP arrangement and borne by the Exchequer as being the party best place to manage these risks:

- Planning and Railway Order;

- Land Acquisition;
- Advance Works; and
- Project Management.

A discussion of the individual risks listed above and the rationale for these being borne by the Exchequer is set below:

- Planning risk and the Railway order

The planning and statutory risk is left with the public sector as the party best placed to manage it, hence contributing to achieving value for money for the project as the private sector would only take these risks at a high cost. The statutory process remains within the control of the RPA and can be run in parallel to the PPP procurement process as is being done in relation to the Metro North project.

- Land Acquisition

The very nature of the PPP model proposed dictates that land acquisition risk is allocated to the public sector. The public sector will retain ownership of the site (or obtain ancillary rights to land required for the project) pursuant to the Railway Order process or separate third party arrangements. RPA will issue the private sector with a long term licence for the period of the contract to enable the private sector to deliver the maintenance services as outlined in the Output Specification. This will mirror the approach taken in relation to the Metro North project.

- Advance Works (Selective Enabling Works and Utility Diversions)

Utility works form a key and critical part of any linear transit project due to their geographic expanse, possible complexity and in particular the volume of interfaces they introduce to the project structure. In order to protect utilities from interference by the proposed infrastructure and vice versa, all major parallel utilities are relocated away from the proposed alignment in advance of the main infrastructure contract.

By relocating the utilities by means of an enabling works package, RPA not only provides the infrastructure contractor with a ‘clean’ site but also achieves a considerable programme benefit. Utility works are often seen as risky contracts for the private sector to manage as they primarily involve agreement from many independent and sometimes competing entities and as RPA has developed working agreements and relationships with the majority of the utility companies, it is better placed to deal with the relocation of utilities by means of an enabling works package. A separate enabling utility works package allows the works to proceed immediately on securing the required statutory approvals.

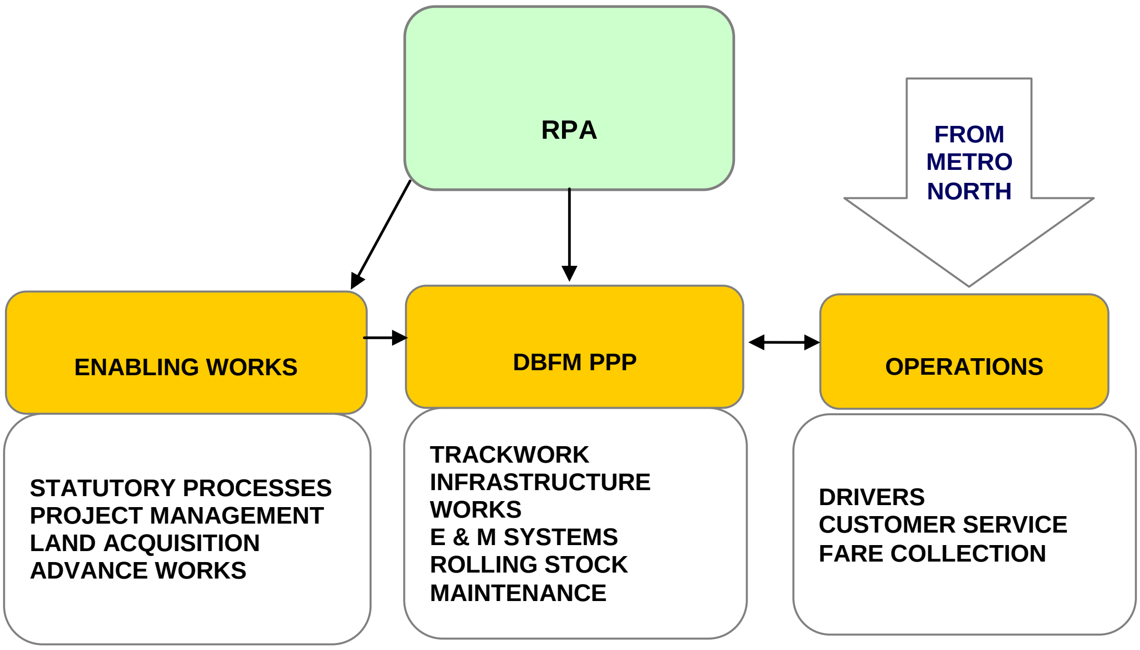
Similar to the requirement to undertake advance utility works, some minor enabling works are often required at key interfaces where opportunities exist to put infrastructure in place now (where works are currently underway) as part of the existing contract to reduce the construction impact of retrospective Metro West works at a future stage thereby providing best value for money to the Exchequer. These enabling works packages are however difficult to define and usually only emerge as the design of the project progresses and consultation with stakeholders evolves.

- Project Management

As with any contract and large construction project, the contracting authority must ensure that the scope of services is being delivered in accordance with the project agreement and contract conditions, which will involve the use of considerable resource. On this basis it would not be reasonable to pass this risk to the private sector and therefore RPA concludes that all risks and the costs arising there from should be borne by the Exchequer.

### 3.11 Scope of the PPP Arrangement

Based on the above considerations, the following diagram outlines the scope of the PPP contract for Metro West:




RPA have approached the NDFA as a Statutory Financial Advisor to the project to advice on the proposed risk transfer. The NDFA have in principle approved the proposed risk transfer as set out in section 3.10 above.

The treatment of risk on the project will continue to be developed throughout the Railway Order and procurement stages to ensure:

- best value risk transfer;
- a commercial structure that maximises competitive interest; and

- the proper treatment of whole life costs.

### 3.12 Is the use of private finance justified?

It is proposed that the main project risks in relation to price, time delays, programme, construction, commissioning, etc. will be taken by the private sector which will justify the cost of the private finance and furthermore confirms the suitability of procuring Metro West as a PPP.

Additionally, at the end of the contract term, the infrastructure asset will be returned to the Government at zero cost.

The use of the PPP arrangement involving period payments over a long term can in practice allow the Government to start a larger number of projects in the same time period than they would be in a position to do under traditional procurement.

### 3.13 Generation of User Charges and Third Party Income

It is envisaged that Metro West will earn revenue in respect of carriage of passengers, park and ride revenue and standard fares. This revenue is comprised of user charges generated and will be used to pay the operator's fee. It is envisaged that the user charges will be collected by the Operator, with any excess returning to RPA that will subsequently be used to offset any outstanding availability payment.

Third party income is envisaged from selling advertising spaces on the trams and stops, which income will be directly generated by RPA.

Additionally, the use of PPPs allows the State to limit its annual expenditures by spreading the costs of developing infrastructure over a long period of time, thus improving its cash flows. In the context of increased borrowings, States also have to comply with the various Maastricht criteria, and in particular debt ratios. These are calculated by reference to the Eurostat rules (SEC 95) which provide specifically for the accounting treatment of PPPs (see Eurostat Decision 18/2004 dated 11 February 2004) and recommend that assets linked to PPPs be classified as non-public assets and hence not recorded on the public body's balance sheet if two conditions are met:

- that the private entity supports the construction risk; and
- that the private entity supports at least either the availability risk, or the demand risk.

In the case of Metro West, the construction/completion and availability risk is allocated to the private sector, and hence the project is to be confirmed to be off balance sheet.

### 3.14 Optional Market Sounding

An optional market sounding has been carried out to inform the OBC and the PPPA reports. Its main objective was to establish the market interest in delivering the project determines the initial bankability of the project and assesses private sector appetite for risk transfer and to verify responses with the procurement strategy.

The optional market sounding was carried out in accordance with the Department of Finance main PPP guidelines. Information regarding the optional market sounding was posted on the RPA website under the “Metro West” section. The information provided in the questionnaire was not confidential and is available as public information in the public domain.

The responses from the market sounding relate to the planning process and design, risk allocations and commentary and project finance.

The respondents have expressed major interest in the project.

The market sounding required participants to indicate which factors would cause their willingness to bid ("WTB") to either increase or decrease.

The prevailing factors that would increase the participants WTB are as follows:

- Optimal risk sharing mechanisms;
- Metro West to be procured with no more than three bidders short listed;
- Certainty about granting of the Railway Order;
- Good preliminary design produced by RPA;
- Demand risk to RPA;
- The integration of the operation together with the design, build, finance and maintenance;
- Metro West payments to the contractor to be availability and performance based;
- Metro West to be procured efficiently with comprehensive information released to the market;
- Working in partnership with RPA in order to deliver project;
- The possibility of partial funding by the public sector would decrease the fundraising challenge; and
- A long concession period.

The prevailing factors that would decrease the participants WTB are as follows:

- Interfaces with Metro North;
- Limited exclusion of property acquisitions and/or enabling works;

- Lack of compensation for geotechnical risk and/or archaeological risk; and
- Significant potential problems with funding and insurance borne out of interface issues with Metro North.

## 3.15 The Planning Process

In terms of the planning requirements, the planning process will require a significant amount of detailed design to achieve approval. In order to accommodate this, it is envisaged that RPA and its consultants will develop the design to a sufficient level.

RPA has already developed the design to a level which has enabled the selection of a preferred route and indicative station locations. Further work is required to develop the Output Specification (i.e. the system concept is to be defined and certain features are required).

In general, the market did not feel that the design level would restrict the scope for innovation. In particular, the design level would not limit the innovation in regards to aspects such as construction delivery, operation, finance, etc.

The Risk Matrix in principle as presented here is acceptable by the market.

## 3.16 The PPP Arrangement

RPA has determined that selective enabling works, utility diversions, planning and land acquisition is to be carved out from the PPP contract.

In terms of utilities, the market has expressed no reservations in taking over the risk of known utilities. It is, however, the opinion that the risk associated with these should be shared between RPA and the private sector partner in a manner that allows the private partner to agree and implement the solution while RPA would mediate between the private sector partner and the Statutory Service Provider, in order to agree the value of any additional works.

The market sounding revealed that the scope of the PPP is such as to warrant a workable solution.

## 3.17 Financing Options & Structure

The private sector is highly capable of raising funding and providing the innovation necessary to ensure maximum value for money whilst maintaining financial robustness and deliverability. Given the present state of credit markets, additional flexibility from the RPA around capital contributions can provide an additional dimension of financial solutions which can potentially offer further value and robustness.

The structuring of the finance for the Metro West project depends on the project size, the envisaged payment mechanism and the risk profile of the project. The respondents informed that more information is needed to make an informed decision however, it is envisaged that a **[text deleted]** would be applicable.

Furthermore, the market reponses suggested that up to 80% of the financing could come from CPI- linked senior bonds from Senior Credit Providers providing a close natural hedge to protect against low inflation sensitivities with the remainder of the financing coming from mezzanine facilitites and pure equity.

The larger organisations and key syndicators in this market also highlighted the f0llowing considerations in ensuring a successful financing solution:

- A strong consortium with financially strong sponsors;
- Ability of arranging banks to leverage their relationships across the global banking market;
- Engaging the banks early in the process; and
- Running a bank and bond solution in parallel.

## 3.18 Bankability Assessment

The main objective of the initial bankability assessment was to conduct a preliminary view of potential bankability of project and assess the private sector's appetite for risk transfer. NDFA has commented and advised on the bankability questionnaire. Information regarding the optional market sounding was posted on the RPA website under the “Metro West” section. The information provided in the questionnaire was not confidential and is available as public information in the public domain.

From an investment point of view, the project was deemed to be attractive and rated at level 3 on a scale of 1-4 numbers, with 4 being the maximum awarded score.

## 3.19 Willingness to Finance

We have asked the market to state their willingness to finance and which factors would cause their willingness to finance ("WTF") to either increase or decrease.

The prevailing factors that would increase the WTF are as follows:

- RPA’s reputation and successful track record in efficient procurement management and delivering of similar type projects;
- Availability and performance based revenue streams from the Exchequer are highly attractive;
- Well defined concession agreement with balanced and clear risk transfer coupled with transfer of risk to suitable parties;
- Clear Information Memorandum setting out the rationale for project, contractual arrangements and procurement process together with a credible timetable; and

- Government's commitment towards delivering projects by PPP and evidence that Metro West has strong political support.
- The prevailing factors that would decrease the WTF are as follows:
- If the proposed risk transfer deviates from accepted norms, interest from the wider project finance market would diminish; and
- Adverse change in approach of Irish Government/Authorities to PPP projects in respect of commercial terms, procurement process or political support.

## 3.20 Project Bankability

The banks have considered the project to be bankable and outlined that the project needs to be evaluated throughout the whole procurement process to determine its bankability.

In the current financing market, the respondents have stated that it is likely that a club of c. 4 or 5 banks, as means of reducing syndication risk, will be the most efficient and deliverable senior debt funding package.

Taking into account the current market situation, a bond solution would be viable to finance the project.

Whilst this may change over time it would be better to assume that a bank financed transaction is the more likely solution.

It was suggested that RPA will maximise value if it is able to structure its procurement to keep as broad a range of financing options open for as long as possible.

## 3.21 Views on project finance structure

The financial markets are familiar with projects with and without capital contributions that supplement availability payments. Capital contributions obviously bring the benefit of a reduced funding requirement which would be relevant if the project financing requirement is very large. It was viewed that the majority of the banking base case revenue stream would need to comprise availability-based payments in addition to the user charges revenue.

From a senior lending perspective the key to making the structure deliverable (particularly in the current conservative credit environment) would be mitigating usage risk i.e. maintaining "user charge" at levels which do not have a material impact on overall debt service (i.e. mainly equity risk). Otherwise higher debt service cover ratio requirements are likely to offset against any perceived savings in the relative proportions of the deferred Capex subsidy (or availability payment).

The term of the contract for the project was expected to be in the range of 30-35 years.

Based on the available information, the project is considered bankable.

## 3.22 Value for money

Value for money in the context of a PPP project involves, inter alia, consideration of the overall impact that the project could have on the Exchequer or other source of public funds.

It is envisaged that the PPP arrangement will be fully financed by the private sector and as a result, the PPP project will have no impact on the Exchequer until the project is delivered as a fully operational passenger service.

According to the Department of Finance Guidelines for assessing Value for Money, it is important to note that a formal value for money tests constitutes assessment of the potential for a project to secure value for money at a particular point in time and in light of the available information. The overall value for money of a project can only be fully determined at the end of the PPP contract term.

At this detailed appraisal stage of the project, the value for money assessment is considered on two levels:

- Overall VfM of the project; and
- VfM of the PPP contract.

## 3.23 Overall VfM of the project

Unlike the traditional contract form where cost overruns are directly covered by the Exchequer, the PPP contract form tends to incorporate all project risks that are allocated to the private sector and the portion of the shared risk allocated to the private sector to be capped under the tendered price. This in return allows budgetary certainty and enables advance and informed planning of the governmental expenditure related to the project.

The overall value for money of the project is also reflected in providing private finance for the project implementation, until the point in time when the service becomes fully operational. There will be no payments for provision of the passenger services, until the service is fully operational.

The optimal risk allocation, i.e. project risks related to bringing the project into an operational service are capped and borne by the private party. This puts an additional incentive on the private sector for accelerated project delivery, as the private sector will not be compensated for cost and time overruns over the tendered price.

Another aspect that may contribute to the value for money is the refinancing aspect of the project debt. The risks related to the construction and commissioning will be allocated to the private party to manage and once the operational phase commences, a significant portion of the risks have been overcome which allows for the project to be re-financed and in order to obtain a more favourable and lower cost of capital, based on the decreased portion of risks for the remaining contract term, which may result in decreased annual availability payments.

The total capital requirement of the project, if financed by the public sector would have imposed constraints on the Transport 21 budget allocations, which in return would have brought the project realisation into question. Allowing the project to be financed by the private sector provides an asset to the Government that will be paid back periodically over the contract term, envisaged for 30 to 35 years. Once the contract term expires, the Government is handed back the asset at zero cost.

Additionally, the VfM aspect is reflected in the following items:

- Metro West is a large scale project that raises interest among major market players;
- It mobilises much needed private finance for detailed design, construction and commissioning to deliver the project to fully operational service;
- The PPP approach provides potential to achieve cost savings versus traditional methods;
- The project can be expressed in output terms for the service provision;
- The “service availability payment” that will be calculated and agreed with the successful contractor allows budgetary certainty and sustainable budgetary planning;
- The PPP approach provides incentives for accelerated project delivery;
- Detail design will allow for innovation from the private sector and technological accountability;
- The market accepts in principle the allocation of risks between the public and private parties.

### 3.24 VfM of the PPP contract

The VfM of the PPP contract will be defined and outlined at a detailed planning stage, when the PSB will be developed to assess the cost of achieving the same project objective by traditional procurement.

The PSB will then be used to compare the tendered cost and assess whether the project procured with private sector partnership secures the delivery of the service at a lower price.

As the planning process will run in parallel with the project design, it is envisaged that the PSB will be finalised prior issue of ITN, in order to ensure that as much ready available information regarding project design and output specifications are incorporated into the PSB model. It is initially envisaged that the issue of the notice for the ITN will coincide with the Railway Order ("RO") Planning Application, which will allow the PSB to incorporate the planning and technical aspects in relation to the work undertaken as part of the RO process.

The PSB will be compiled by the National Development Finance Agency (NDFA), and will be used to carry out the Value for Money (VfM) test. At this stage, the project budget will also be confirmed and set, and its affordability established.

The PSB will encompass the cost of the PPP transaction only. It is based on a financial assessment and cost and risk retained by RPA i.e. risks outside the PPP scope will not be included in the model, to facilitate like with like comparison with the private sector bids.

Costs will be derived from output specifications and will be the starting basis for developing the payment mechanism.

### 3.25 Other considerations

*Employees* - An important consideration on entering a PPP arrangement is whether it necessitates a change to the employment relationship for existing employees. A PPP arrangement may not be appropriate if this issue will present a real problem for the public authority. In the case of the Metro West project there are no existing employees and thus this issue does not need to be examined.

*Existing assets and contracts* – There will be a number of interfaces between Metro West and the existing infrastructure (including Metro North). The management of these interfaces will need to be addressed in order to ensure efficient integration and cooperation and to this end the contracts prepared in relation to the Metro North procurement recognise this requirement.

*Interface risk* – The significant reduction in interface risk as a result of a single contract being concluded with the private sector party for the design, construction and commissioning of the Metro West project warrants the use of the PPP model proposed.

*Does a competitive market exist in this Sector?* - RPA has been involved in market consultations, as similar projects have been previously procured by RPA, and market consultations have been done as part of previous work in both current and past projects.

Formal market consultations will be further held for Metro West upon approval in principle by DoT to proceed to procurement phase, as further consultations with the market to assess its competitiveness may expose RPA to EU rules on procurement. The experience of RPA on previous projects, including Metro North tendering process, shows that a competitive market does exist.

*Stability of the future demand -* The demand for the project has been reflected in section Transport Planning of the Outline Business Case.

*Have similar projects been procured previously? -* RPA has a successful track record in delivering similar type of projects, such as the Luas red and green lines, and Metro North serves as a precedent project that is during the procuring process.

*How soon the Project must commence? –* Detailed programme for the project delivery including main steps are included in the Outline Business Case.

## 3.26 Advantages to using PPP as procurement mechanism

The Metro West should be delivered as PPP on the basis that:

- Metro West has identified a significant demand for the project;
- Demonstrated that the service can be expressed in output terms;
- It has the framework to agree the longevity of the contract concession term;
- Payments are made upon fully operational service provision and are performance and availability based;
- The Government imposes the regulatory regime and sets the legislative framework of the concession contract;
- The PPP is off balance sheet treatment on the basis that the construction/completion risk and availability risk are allocated to the PPP concessionaire; and
- the potential to offer value for money, measured in monetary and non-monetary terms to be further identified and established as the process progresses.
- In general, PPPs can generate improved value for money through a number of ways including, inter alia:
- *Reduced whole life costs* - the integration of infrastructure design, build and maintenance, facilitating private sector innovation in design and improved service scheduling;
- *Better allocation of risk* - cost effective transfer of risk to the private sector, enabling efficiency benefits to be generated across the term of the contract;
- *Faster implementation* - the transfer of design and construction risks, together with the principle of no payment until commencement of service delivery, will provide significant incentives for the private sector to deliver the Metro West projects within short construction timeframes. This is highly relevant in the context of Transport 21 Investment Framework; and
- *Improved quality of service* - resulting from better integration of services, improved economies of scale on the basis of project scale, the introduction of new technology and innovation in design, and the performance incentives.

## 3.27 Conclusion

The requirement that Metro West be delivered by 2015 puts extra focus on the importance of timing for the completion of this infrastructure investment.

The proposal to deliver Metro West as a PPP project demands that a number of issues are analysed and considered.

The option to handle the construction of the railway as a long-term PPP project, while the operation service is tendered separately with a different contract length proves to be acceptable and viable option to the market.

Metro North is the precedent to the Metro West and is also being delivered as PPP. The interface between the two projects in terms of technical and operational requirements including procurement process must be considered in parallel with the project implementation going forward.

Based on the bankability, suitability and affordability tests discussed in this report, it is envisaged that Metro West is suitable to be delivered as PPP.

# 4. SECTION IV: PPP FORMAT

## 4.1 Regulatory Framework

The procurement regulatory framework applicable to the procurement of the Metro West Contract comprises Directive 2004/17/EC of the European Parliament and of the Council, coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (the Directive) implemented into Irish law by European Communities (Award of Contracts by Utility Undertakings) Regulations 2007 (S.I. No. 50 of 2007). In addition to the specific rules set out in the Directive and Irish Regulations, the case law of the European Court of Justice (ECJ), makes clear that procurement by regulated bodies is subject to rules stated in the EC Treaty and the principles deriving from these rules. These rules include: equal treatment, transparency, proportionality, mutual recognition, confidentiality.

The procurement process leading to the award of the Metro West Contract will be conducted in compliance with the requirements established by this framework. In view of the potential for legal challenge to the procurement process for such a high profile Project, a low risk approach will be adopted to the interpretation and application of the regulatory framework

## 4.2 Metro West Contractual Structure

The Metro West contractual structure, although determined by the contractual structure adopted for Metro North is considered below from alternative commercial and financing structures. The commercial structure looks at initial structuring of payment elements of the Metro West project. The contractual structure looks at contractual relationship between the various elements.

The probability that the Metro West project would quickly follow Metro North gave RPA the opportunity to create a commercial structure for Metro North which anticipated the Metro West extension from the outset and to facilitate the integration of the two systems from the earliest opportunity. Issues of shared running, infrastructure and rolling stock compatibility, and in particular, the ability to effect a transition, over time, to a single operator for the entire Metro System were critical considerations which influenced the commercial structure selected for Metro North.

Key features therefore of the Metro North commercial structure are the following:

- A single PPP, involving two long term contracts: a Design Build Finance & Maintain (DBFM) contract of 25 – 30 years, with a separate, shorter Operating Contract of 5 years from service commencement, extendable at RPA's election, by up to a further 5 years. The shorter operating period is designed to facilitate a convenient "break point" at which to re-tender the Operating Contract to appoint a single Operator for Metro North and Metro West (and possibly subsequent Metro lines and/or LUAS).

- To maximise transfer of and single point responsibility for testing and commissioning risk, the Operator be subcontracted to the DBFM contractor, during the testing and commissioning phase of Metro North.

- At RPA's election, which may be exercised at any time up to 2 years prior to the anticipated service commencement date for Metro West, the Metro North Operator will assume responsibility for operation and commissioning of Metro West for the remainder of the term of its Operating Contract.

- The payment mechanism for both the DBFM and Operating Contracts makes provision for an alternative series of measures and valuations to apply when service has commenced on Metro West, to make allowance for shared tracking, timetable variations and changed infrastructure maintenance burdens.

- An interface agreement amongst the DBFM contractor, the Operator and RPA regulates areas of common concern amongst the parties, addressing matters such as design review, emergency operational response and fault attribution.

RPA has examined the commercial and contractual arrangements which might be used to deliver Metro West as a PPP in accordance with the Government's policy guidance, in a way which is consistent with the wider aim of a fully integrated metro system for Dublin and consistent with the procurement and commercial structure choices made for Metro North. Key considerations are:

- Compatibility of commercial and financial structure with that already selected for Metro North;

- Appropriate risk allocation; and

- Flexibility to extend the network, increase capacity and make changes in fares.

As explained below in more detail, RPA believes that DBFM is likely to offer the most appropriate balance.

If Metro West were viewed as a stand-alone project without consideration of Metro North, essentially four PPP options would present themselves for consideration:

- a single PPP (DBFOM),

- an infrastructure PPP with a separate operator (DBFM),

- a long term contractor with public sector finance (DBOM); and

- public sector finance with a separate operator (DBM).

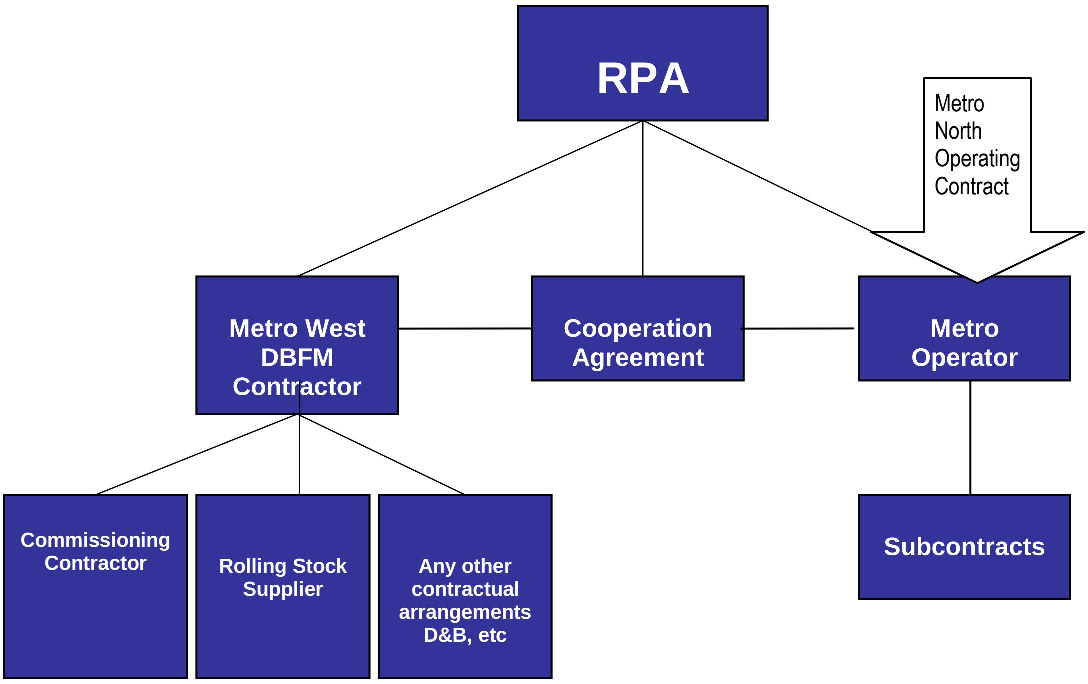
Two of these options, DBFOM and DBOM were eliminated from consideration as inconsistent with the structure of Metro North, and with RPA's view to select a structure consistent with its longer term ambition of a unified, integrated Metro System, ultimately operated by a single private sector entity. For consistency and integration with Metro North including ensuring a seamless interface between Metro North and Metro West, and to maximise and to achieve RPA's longer term goals, it is preferable to separate operations from design, construction and maintenance.

Were a DBM structure to be selected, then, as with the other models under discussion, RPA would contract out to private entities the design-build construction, maintenance and operation functions. There is one key difference however: the private sector partner would not raise any capital for the project, but would receive the proceeds of debt that had been raised by a public sector entity (possibly but not necessarily RPA). This would have the effect of placing the Government wholly or partly at financial risk for the performance of the Project and the Government is likely to assume an obligation to pay for a service which is not conditional upon project delivery.

RPA have concluded that DBFM (with operations contracted separately) is preferable to DBM because:

- The Government only pays if the Metro West service is provided and its costs are capped;
- the risk of raising capital for the infrastructure development is undertaken by the private sector;
- it allows more policy flexibility for the further development of transport regulation and integrated ticketing;
- it allows for the construction of further infrastructure to meet the requirements of Transport 21 without terminating any existing DBFM contracts i.e. those contracts concluded in respect of Metro North;
- The providers of private finance have an incentive to ensure that Metro West is built and opened on time; and
- The DBFM contractor has a strong incentive to provide high quality infrastructure in order to minimise whole life cost.

The DBFM (with operations contracted separately) model is depicted below:




Under this model:

- It is likely that the Metro North Operator will assume responsibility for Metro West operations or if the progress of the two procurements permits or requires, the Metro North operations contract can be re-tendered upon expiry to allow RPA to engage a single operator for the two Metro lines;

- The Metro North Operator will assume commissioning risk for Metro West; and

- Rolling stock provision and maintenance (which is likely to be supplier provided) can form part of either the operating or the DBFM contract. It is recommended that rolling stock provision and maintenance be the responsibility of the DBFM contractor. **[text deleted].**

- Comprehensive interface arrangements will be put in place to regulate the relationships between the Metro West DBFM Contractor, the Metro North Infrastructure provider and the Metro North Operator.

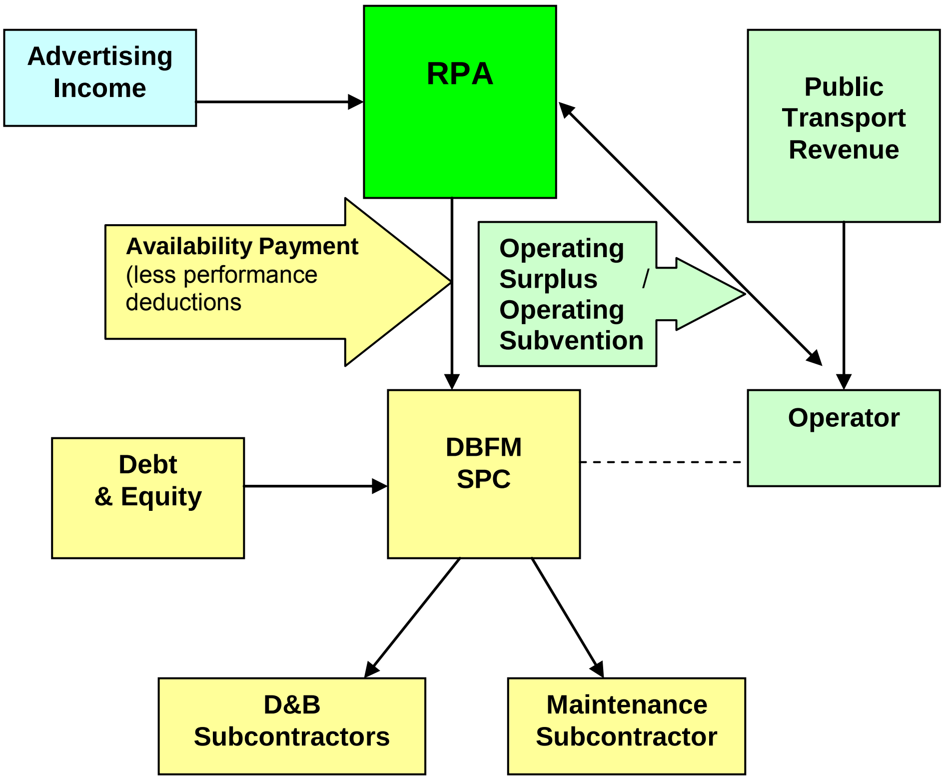
## 4.3 Metro West PPP Commercial Structure

The emerging commercial structure of the PPP arrangement establishes that the payment mechanism will be based on an "Annual Availability Payment" less performance deductions from the service commencement date until the end of the contract term.

The Annual Availability Payment would reflect the availability and performance of the main elements of the contract, such as infrastructure, rolling stock and maintenance of the same, for which it is envisaged that the bidders would bid a price as part of their tender submission.

The DBFM contractor has a strong incentive to provide high quality infrastructure in order to minimise whole life cost.

The Commercial Structure of the PPP scope (with operations contracted separately) model is depicted below:



As a result, it is envisaged at this stage that there will be no requirement for capital contributions towards the Metro West if it is undertaken in the form of a PPP project.

The success or otherwise of a similar PPP project would be a defining factor in deciding whether to opt to procure Metro West as a PPP. The Metro North project is currently being procured as a PPP and accordingly, was deemed suitable for this procurement method. Furthermore, as described elsewhere in this document, Metro North was given a contractual structure specifically to cater for extension projects such as Metro West.

It should also be noted that a 25 to 30 year contract as would be required in a PPP arrangement is viable in the case of Metro West as there is a stable future demand for the asset and services. The contracted service is required for the term of the contract and any variations required can be addressed in the contract.

## 4.4 Procurement Option

As noted under paragraph 2.3, the PPP procurement option for Metro West is dictated by the procurement process underway in relation to Metro North and will be in the form of a Design-Build-Finance-Maintain structure. Operations will be contracted separately to the Metro North operator.

The private sector, in the form of a SPV, will raise capital on its own balance sheet and enter into sub-contracts for the design-build construction and the maintenance of Metro West.

During the term of the contract with the SPV, RPA will make regular scheduled payments to the SPV for the availability of the infrastructure which would be sufficient to meets its maintenance expenses, debt interest, scheduled principle amortisation and reserve requirements.

The asset will be returned to RPA at the end of the contract term at zero cost.

## 4.5 Procedure

It is anticipated that the Metro West Contract will be awarded in accordance with the negotiated procedure.

## 4.6 Next Steps

Once Metro West is approved in principle to proceed as a PPP by the Department of Transport, the Guidelines for the Provision of Infrastructure and Capital Investments through Public Private Partnerships by Department of Finance would be applicable towards the project implementation, as appended in Appendix 3, in addition to the other supporting PPP technical guidelines and notes.

The next step will involve proceeding to the next stage of the PPP implementation process:

- Detailed Planning Stage

- Appointment of project advisors
- Establishment of Project Board and appointment of Process Auditor
- Initiating the procurement process

RPA will then formally adopt the PPP process towards delivering Metro West by setting the project budget and produce a Public Sector Benchmark.

The PSB will be compiled by the National Development Finance Agency (NDFA), and will be used to carry out the Value for Money (VfM) test. At this stage, the project budget will also be confirmed and set, and its affordability established.

The Project Board will be established to oversee the procurement process and its establishment will initiate the start of the procurement phase.

On the basis of the appraisal undertaken, RPA requires approval in principle from the Department of Transport to proceed with the project by way of PPP.

## Appendix 1 – Resources and related Fleet Dispositions

Overleaf is a table outlining the possible Metro West Service Option / Resource / Depot disposition. There are three main assumptions made and they are as follows:

- Assumes Main Depot at either Abbottstown or Silloge.
- Assumed initial service
- Subject to optimisation of journey times and split service patter

| Option | Service Option (No. of trams per hour tph) | Round trip time | Turnarounds | Total Time | Headway | Service Fleet | Spares | Fleet Total | Main Depot Service | Main Depot Spares | Main Depot Total | Red Cow Depot Stable | Fleet Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 15 Tallaght to Belinstown (turn round north of stop) | 144 | 8 | 152 | 4 | 38 | 4 | 42 | 28 | 4 | 32 | 10 | **42** |
| 2 | 15 Tallaght to Airport (turn round Fosterstown) | 120 | 8 | 128 | 4 | 32 | 4 | 36 | 22 | 4 | 26 | 10 | **36** |
| 3 | 15 Tallaght to Howth Junction / Baldoyle | 128 | 8 | 136 | 4 | 34 | 4 | 38 | 24 | 4 | 28 | 10 | **38** |
| 4 | 15 Tallaght to City Centre | 140 | 8 | 148 | 4 | 37 | 4 | 41 | 27 | 4 | 31 | 10 | **41** |
| 5 | 7 Tallaght to Belinstown (turn round north of stop) | 144 | 8 | 152 | 8.6 | 18 | | | | | | | |
| | 8 Tallaght to City Centre | 140 | 8 | 148 | 7.5 | 20 | | | | | | | |
| | Total | | | | | 38 | 4 | 42 | 28 | 4 | 32 | 10 | **42** |
| 6 | 7 Tallaght to Airport (turn round Fosterstown) | 120 | 8 | 128 | 8.6 | 15 | | | | | | | |
| | 8 Tallaght to City Centre | 140 | 8 | 148 | 7.5 | 20 | | | | | | | |
| | Total | | | | | 35 | 4 | 39 | 25 | 4 | 29 | 10 | **39** |

| | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 7 | 7 Tallaght to Howth Junction / Baldoyle | 128 | 8 | 136 | 8.6 | 16 | | | | | | | |
| | 8 Tallaght to City Centre | 140 | 8 | 148 | 7.5 | 20 | | | | | | | |
| | | | | | | 36 | 4 | 40 | 26 | 4 | 30 | 10 | **40** |
| | Total | | | | | | | | | | | | |
| 8 | 15 Tallaght to Dardistown | 104 | 8 | 112 | 4 | 28 | 4 | 32 | 18 | 4 | 22 | 10 | **32** |
| 9 | 7 Tallaght to Dardistown | 104 | 8 | 112 | 8.6 | 14 | | | | | | | |
| | | 140 | 8 | 148 | 7.5 | 20 | | | | | | | |
| | 8 Tallaght to City Centre | | | | | 34 | 4 | 38 | 24 | 4 | 28 | 10 | **38** |
| | Total | | | | | | | | | | | | |
| 10 | 5 Tallaght to Belinstown (turn round north of stop) | 144 | 8 | 152 | 12 | 13 | | | | | | | |
| | | 140 | 8 | 148 | 12 | 13 | | | | | | | |
| | 5 Tallaght to City Centre | 104 | 8 | 112 | 12 | 10 | | | | | | | |
| | 5 Tallaght to Dardistown | | | | | 36 | 4 | 40 | 26 | 4 | 30 | 10 | **40** |
| | Total | | | | | | | | | | | | |

## Appendix 2- List of Acronyms

| | |
|---|---|
| Headway | Operating time between successive service vehicles |
| Luas | Dublin light rail system |
| AFC | Automatic Fare Collection |
| AVP | Automatic Vehicle Protection |
| AVLS | Automatic Vehicle Location System |
| CCR | Central Control Room |
| CCTV | Closed Circuit Television |
| CWR | Continuous Welded Rail |
| DC | Direct Current |
| EHP | Emergency Help Point |
| ESB | Electricity Supply Board (third party) |
| HMI | Human Machine Interface |
| MW | Megawatt |
| NDA | National Disability Authority |
| OCS | Overhead Contact System |
| OTMS | On-train Monitoring System |
| PA | Public Address |
| PABX | Private Automatic Branch Exchange (telephone system) |
| PHP | Passenger Help Point |
| PIDS | Passenger Information Display System |
| RAMS | Reliability, Availability, Maintainability and Safety |
| RPA | Railway Procurement Agency |
| RSC | Railway Safety Commission |
| SCADA | Supervisory Control and Data Acquisition |
| Tram | A single or combined vehicle |
| TVM | Ticket Vending Machine |
| UPS | Uninterruptible Power System |

## Appendix 3- Department of Finance Main PPP Guidelines

Public Private Partnership
Comhphháirtíocht Phoiblí Phríomháideach

**Guidelines for the Provision of Infrastructure and Capital Investments through Public Private Partnerships:**

**Procedures for the Assessment, Approval, Audit and Procurement of Projects**

**July 2006**

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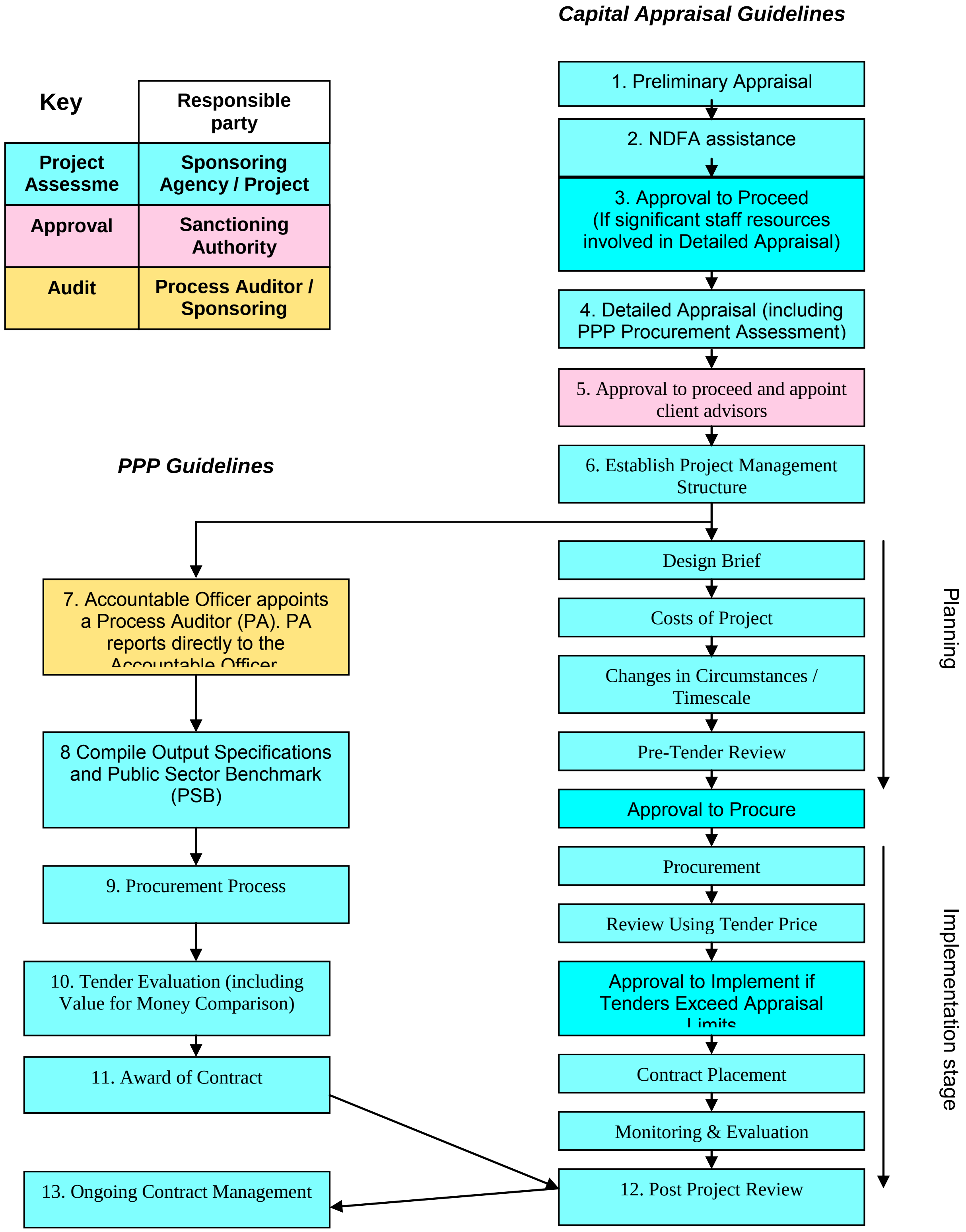
**PPP Procurement Steps within the Capital Appraisal Guidelines framework**



# 1. INTRODUCTION

## 1.1 Background and Other Relevant Guidelines

These Guidelines replace the Interim Guidelines published by the Department of Finance in July 2003 and reflect recent changes in policy on PPP Procurement, in the light of experience and policy developments such as:

- the multi-annual Capital Investment Framework announced in Budget 2004;
- the delegated sanction arrangements now in place under the multi–annual Capital Envelopes;
- the revised Department of Finance "*Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector*"[1] issued in February 2005, which apply to all capital expenditure proposals, including PPPs;
- the additional value for money measures, building on existing guidance in relation to capital appraisal, public procurement, ICT projects and consultancies, announced by the Government on 11 October 2005 and the Minister for Finance in his address to the Dublin Chamber of Commerce on 20 October 2005 respectively and now codified in a Department of Finance Circular Letter of 25 January 2006[2];
- the "*National Procurement Policy Framework*" published by the National Public Procurement Policy Unit in 2005 and;
- the Government Decision of 25 July 2005 to expand the role of the NDFA to include responsibility for the procurement and delivery of all new PPP projects funded directly from Departments'/Agencies' Votes (except roads and rail), and to concentrate activity on progressing projects in three key sectors - Education, Health and Justice – in the initial stages.

**Note: All references to the *Capital Appraisal Guidelines* should be read as referring to the Capital Appraisal Guidelines as amended by the Department of Finance Circular Letter of 25 January 2006.**

The revised PPP guidelines should also be read in conjunction with the *Framework for Public Private Partnerships*[3], EU and national procurement rules and guidelines, the *Working Rules for Cost Benefit Analysis*, the State Authorities (Public Private Partnership Arrangements) Act 2002, the National Development Finance Agency Act 2002 and other relevant Department of Finance guidelines.

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[1] Referred to throughout this document as the Capital Appraisal Guidelines (CAG) - available at the following link: www.finance.gov.ie/documents/publications/other/capappguide05.pdf

[2] Available at the following link: www.finance.gov.ie/documents/publications/other/pubproc&cap.app.pdf

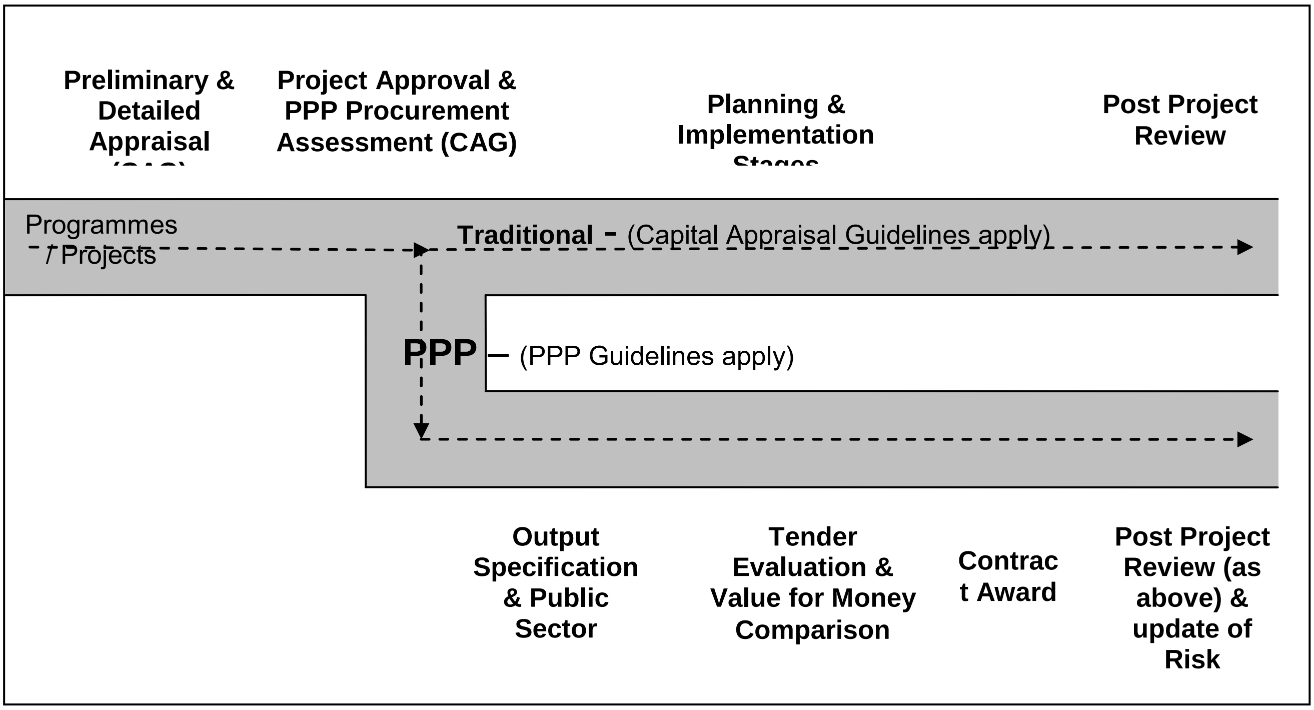
[3] The Framework for PPPs was agreed by the relevant social partners and published by the Department of Finance in November 2001. This Framework must be adhered to in all PPP projects.

As further experience is gained in developing PPPs in different sectors, further updating of existing guidance may be necessary.

### 1.2 Scope

The *Capital Appraisal Guidelines* set out the major stages that must be undertaken for the appraisal and procurement of all public infrastructure projects. However, some of the steps followed in PPP procurement, following detailed appraisal of the project and approval in principle (i.e. after completion of the Appraisal Stage of the *Capital Appraisal Guidelines*) differ from those set out in Stage 2 Planning Stage of the *Capital Appraisal Guidelines* – see diagram on page 3, and summary diagram at Figure 1 below. The Central PPP Unit issues PPP-specific policy guidelines and, in addition, may issue more detailed technical notes on individual steps specific to the PPP process.

**Figure 1: Traditional and PPP Procurement Stages - Summary**




In practice, many PPP projects may not be wholly procured as a PPP, but rather may include elements that are procured using traditional procurement means[4]. For example, in a number of sectors the land required for the project is acquired directly by the Sponsoring Agency[5] itself (using traditional procurement methods or compulsorily purchased) and not procured as part of the PPP under the actual PPP contract. Any elements of a PPP project that are procured separately from, and outside of, the PPP contract itself are not covered by these Guidelines, but are subject to the mainstream *Capital Appraisal Guidelines*.

[4] "Traditional procurement means" is the realistic, public sector alternative to procuring the project using a PPP arrangement, employing the normal procurement method used in the relevant sector.
[5] For a definition of this term see the Glossary of Terms at Appendix 1.

There are a number of different types of PPP projects, including:

- Projects without private financing and remunerated directly by the Exchequer (e.g., Design, Build, Operate and Maintain or DBOM, often referred to as "DBO");
- Projects financed by the private sector and/or the NDFA, and remunerated by deferred annual payments (unitary payments) from the Exchequer (e.g., Design, Build, Maintain and Finance or DBMF; Design, Build, Operate, Maintain and Finance or DBOMF);
- Projects partly or fully financed by the private sector and remunerated by user charges, mainly in the roads area (DBFOM with a Concession to levy user charges for a period); and
- Projects funded from State Authorities' own resources, mainly in the local authority area (e.g., Design, Build, Operate and Maintain, often referred to as "DBO".)

Some PPP projects are stand-alone in that they relate to one particular project – for example, the pilot project for the bundle of five post-primary schools. Other PPPs may be part of a programme – for example, the PPP Roads Programme being implemented by the National Roads Authority (NRA).

As regards a programme of PPP projects, where:
(a) each project is formally appraised (as required by the *Capital Appraisal Guidelines*) prior to its inclusion in a proposed programme of projects, and;
(b) the proposed programme is formally approved by the relevant Sanctioning Authority under these Guidelines,
The Sponsoring Agency can proceed from the 'Establish Project Management Structure' step of these Guidelines (section 2.5) for each individual project.

### 1.3 Responsibility for Implementation of Guidelines

As in the case of the application of the *Capital Appraisal Guidelines*, when applying these PPP guidelines it is the responsibility of each Sanctioning Authority[6] to draw up / update (as appropriate) its own procedures applicable to its area of control based on, and consistent with, the principles set out in this document. Each Sanctioning Authority should also ensure that bodies under its aegis follow the procedures laid down by it. If there is an intermediary body between the Sanctioning Authority and the Sponsoring Agency, it is the responsibility of the Sanctioning Authority to define clearly the roles and responsibilities of any such intermediary body in regard to the appraisal and management of PPP projects, consistent with these guidelines.

### 1.4 Role of Government and Ministers in relation to the Assessment, Approval, Audit and Procurement of PPP Projects.

As outlined in the Preface to the *Capital Appraisal Guidelines*, the Government has collective responsibility for formulating overall budgetary policy. Within this overall framework, Government agrees the annual aggregate and Departmental Vote levels

[6] For a definition of this term see the Glossary of Terms at Appendix 1.

of expenditure, including capital expenditure, which should be submitted for Dáil approval. The Government also approves the five year rolling multi-annual capital investment envelopes. Ministers and their Departments have extensive delegated sanction from the Minister for Finance in relation to capital allocations, although the specific approval of the Minister for Finance or Government may be required in some instances.

These guidelines are intended to assist Ministers and their officials in carrying out their responsibilities and functions in regard to the assessment, approval, audit and procurement of PPP projects, particularly within the context of the rolling multi-annual capital envelopes. However, in arriving at policy decisions on either investment programmes or individual projects, Ministers have to take all relevant factors into account – the economic costs and benefits associated with programmes or projects may not be the only relevant factors. Nothing in these guidelines should therefore be taken as precluding Government or Ministers under the delegated sanction arrangements set down by the Minister for Finance from deciding to approve projects independent of the detailed application of these guidelines. Such decisions still require Departments to ensure that best practice is followed as regards public financial procedures generally, in terms of ensuring that necessary terms and conditions are applied to secure full accountability and transparency for the funds concerned.

### 1.5 Stakeholders in the PPP Procurement Process

PPP projects involve the coming together and interaction of a number of interests and parties. It is a condition of the agreed *Framework for Public Private Partnerships*[7] that the Sponsoring Agency should consult with relevant stakeholders at appropriate points throughout the procurement process. "*Stakeholders include employees and their trade unions, the public, the people who will use the assets and services provided, local community groups and sectoral interest groups*" (see paragraph 7.1 of the *Framework for Public Private Partnerships*).

The Department of Finance issued central guidelines for State Authorities undertaking PPP Projects on *Stakeholder Consultation for Employees and their Representatives*[8] in January 2005. It is important that State authorities familiarise themselves with the relevant guidelines on Stakeholder Consultation and apply them in an appropriate manner. As stated in the *Guidelines for Stakeholder Consultation with Employees and their Representatives*, the aim of employee consultation is to provide a process for meaningful two-way communication between State Authorities

[7] Available at the following link: www.ppp.gov.ie/keydocs/guidance/central/Framework%20for%20Public%20Private%20Partnerships.pdf

[8] Available at the following link: www.ppp.gov.ie/keydocs/guidance/central/Stakeholder%20Consultation%20for%20Employees%20and%20their%20Representatives.doc

and employees and their representatives, in the course of which relevant issues arising in connection with PPP projects are signalled, communicated and discussed.

Section 7 of the *Framework for Public Private Partnerships* states that "*existing structures and agreements should be used to ensure extensive consultation and open communication in respect of PPP projects. Public service employees should be informed at the earliest possible stage of proposals for the introduction of PPPs and of significant developments throughout the process. They should also have the opportunity to contribute positively to the development of projects, building on progress in the development of workplace partnerships under the PPF. The partnership approach should be maintained throughout the project's lifetime*."

Primary responsibility for ensuring stakeholder consultation takes place rests with the Sponsoring Agency. However, it is open to employees to have the issue of stakeholder consultation in a particular project raised at the appropriate Partnership level, i.e., workplace partnership committees, etc.

Section 2.3 and 2.4 of the *Stakeholder Consultation Guidelines* outline the 'Principles of Consultation' and 'Approach to Consultation' and all State Authorities must be fully familiar with these.

It is also important that the Sponsoring Agency consider any policy issues that may emerge during the process of consultation – see section 1.12 below.

### 1.6 Best Practice in PPP procurement: separation of Appraisal / Approval / Audit / Procurement Functions

The PPP procurement process is comprised of separate but interrelated elements, ranging from the initial appraisal / assessment of a proposal and consideration as to whether it is suitable for procurement as a Public Private Partnership, to final approval of a contract and ongoing contract management. In the context of any PPP project, there are four distinct strands or functions: the project appraisal function, the approval function, the procurement function and the audit function. Best practice would require an appropriate separation of functions between these strands.

The parts played and the responsibilities borne by the various bodies involved in the PPP procurement process will vary depending on the nature of the project/programme, e.g., a Department might be the Sanctioning Authority for one project while in others it might be the Sponsoring Agency. Also, a Department/Agency may carry both the Sponsoring Agency and Sanctioning Authority functions through separate divisions of work within the organisation. This would entail an internal separation at the level of that Department/Agency, between those who propose expenditure and those who sanction it.

### 1.7 Project Appraisal Function

The Sponsoring Agency is responsible for appraising projects, which involves the Preliminary and Detailed Appraisal (in accordance with the *Capital Appraisal Guidelines*), for providing the Sanctioning Authority with the necessary information to perform its approval function and also for:

- finalising any policy issues involved (see section 1.12);
- assessing the suitability of the project for procurement as a PPP;
- at a later stage in the process, compiling the detailed Output Specifications for the project and the associated Public Sector Benchmark (PSB) or agreeing the PSB if compiled by the NDFA on behalf of the Sponsoring Agency; and the post project review.

### 1.8 Approval Function

This should be carried out as a separate function from project assessment and by a different Agency/Department/Section, i.e. the "Sanctioning Authority". It involves the decision on whether a project should proceed to Detailed Appraisal (where this would involve significant cost) and, following the Detailed Appraisal, deciding whether the project should be approved and whether it is suitable for procurement as a PPP[9]. Under a delegated sanction from the Department of Finance, a Department may have the authority to sanction projects itself, provided that they are acceptable in principle and provided that the capital cost[10] over the construction phase can be accommodated within the Sponsoring Agency's Capital Envelope amount[11], and also subject to any other general conditions of sanction. The Sanctioning Authority may also specify other conditions, such as an overall budget limit for the project (see section 2.4).

In a PPP project, approval to proceed with a project carries with it approval for the appointment of client advisors in respect of non-financial advice to assist the Sponsoring Agency in the planning / implementation of the project. The NDFA is the sole financial advisor for the Sponsoring Agency and, where other financial, risk and/or insurance advisors are required; these must be appointed by the NDFA[12]. The Sponsoring Agency may not need to recruit client advisors directly when the Centre of Expertise for PPP Procurement in the NDFA[13] is procuring a project on its behalf.

[9] Suitability or otherwise of a project for procurement as a PPP is assessed by carrying out a PPP Procurement Assessment – see section 2.3.1 below.
[10] The full capital cost comprises all of the costs (including VAT) associated with the construction or acquisition of physical assets to the point of becoming available for use.
[11] Where a PPP project is to be funded through unitary payments the capital costs of the project must be capable of being met from within the capital ceiling of the Capital Envelope. (It should also be noted that capital investment funded by user charges is additional to the PPP/NDFA allocation in the Capital Investment Envelopes for Departments.)
[12] Where financial, risk and/or insurance advisors were appointed prior to the enactment of the NDFA legislation the arrangements entered into will be honoured.
[13] Referred to throughout the rest of this document as the Centre of Expertise.

The Sponsoring Agency needs to be in a position to assure the Sanctioning Authority that:

- the project should be approved, on the basis of the appraisal undertaken;
- all policy issues involved are clear and fully agreed, and the project is suitable for procurement as a PPP;
- there is no conflict with public sector numbers or HR policy or any other general policy;
- the scope / specifications are clear and agreed, and conform with sectoral norms;
- the capital cost of the project (both PPP and non-PPP elements) over the construction phase can be accommodated within the relevant Capital Envelope amount(s); and
- a PSB (for the PPP element) will be set before going out to tender.

## 1.9 Procurement Function

PPP projects must be procured in line with all regulatory and EU procurement requirements in regard to tendering and bid evaluation.

In general, the procurement function is the responsibility of the Sponsoring Agency within the terms of the sanction received from the relevant Sanctioning Authority (see section 2.4). However, in the case of new PPP projects funded directly from Departments'/Agencies' Votes[14] (with the exception of roads and rail), the procurement delivery function will be undertaken by the Centre of Expertise (see Appendix 2 for a summary example of the practical arrangements currently in place).

After handover of an approved project from the relevant Department, the Centre of Expertise will be responsible for the procurement through contract close stage to turnkey stage within the parameters laid down by the relevant Sponsoring Agency (which should include any conditions of sanction imposed by the Sanctioning Authority for the project) and for handing the project over to the Sponsoring Agency after construction is complete.

## 1.10 Audit Function

There is a particular audit requirement in regard to PPP which is additional to the requirements outlined in the *Capital Appraisal Guidelines*, i.e. the appointment of a Process Auditor. A Process Auditor must be appointed for all PPP projects or grouped PPP projects where the capital cost is in excess of, or is likely to exceed, the limit specified by the Department of Finance (currently €20 million). This appointment must take place as soon as a decision is taken to proceed with a project on a PPP

[14] As stated in section 1.1, the Centre of Expertise is initially dealing with projects in the Education, Justice and Health sectors.

basis. The role of the Process Auditor is to support the Accountable Officer by checking, on his/her behalf, that the proper procedures and processes have been followed. (See Appendix 1 for further details of the Process Auditor's role.) This role is distinct from that of the Project Manager, referred to in section 2.5.

### 1.11 Steps in PPP Procurement

Each of the separate PPP functions outlined above contains specific steps which must be followed in the correct sequence, as outlined in the diagram on page 3, in order to ensure the development of a robust, including financially robust, value for money project and the smooth operation of the overall process. These steps are set out in detail in section 2 below.

### 1.12 Policy Issues

PPP procurement is complex and the associated advisory costs may be high. In this light, in the interest of both the public and private sectors, it is imperative that, **before** projects proceed into the procurement phase, all major policy issues (e.g., issues impacting on Public Sector Numbers or HR policy) which could give rise to delays or impediments to further progress on a project, are identified and addressed up front. Where a PPP may involve transfers of staff to a PPP company, it is vital that all aspects of such transfers have been fully examined and that positions have been adopted on all staffing issues arising before the project proceeds to the procurement phase. Departments should avail of their in-house expertise on HR issues. If necessary, Personnel and Remuneration Division of the Department of Finance will assist with general HR policy issues, including pensions. Projects should not be handed over to the Centre of Expertise to be procured until all policy issues are identified and resolved.

### 1.13 Affordability

The issue of affordability is fundamental to the proper planning / assessment / approval of any project. PPPs typically give rise to a 25-30 year repayment mechanism. At a macro level, therefore, it is vital that some control mechanism is in place to ensure that projects are "affordable" in the longer term, taking account of other budgetary demands.

In the case of unitary payment-funded PPP projects, the setting of PPP/NDFA targets in the Capital Envelopes for Departments (set out in Annex D of the Budget) and charging the capital costs of PPPs against these amounts over their construction period provides an overall control mechanism for sustainable investment at a macro level. At project level, the issue of affordability is addressed in the context of the overall capital envelope amount available to the Sponsoring Agency, and by the setting of a project budget and the compilation of a PSB.

A Sanctioning Authority should not allow a project to proceed unless it is satisfied that the overall capital cost of the project as a whole, including both PPP and non-PPP elements, can be accommodated within the Capital Envelope allocation(s) available to the Sponsoring Agency – Voted Capital and/or PPP/NDFA amount, as appropriate[15].

### 1.14 Value for Money

An overarching consideration in the procurement and delivery of every public investment project is the achievement of value for money for the Exchequer. In the context of a PPP project, as indicated earlier, there may be additional costs associated with a project that are not covered by the PPP process itself (e.g., the cost of land), but that will nevertheless contribute to the overall cost of the project. As a result, there are two different levels at which "Value for Money" (or VfM), needs to be considered:

(a) the **overall** VfM of the project – i.e. does the project as a whole offer good value for money, and

(b) the VfM of **the PPP contract** – i.e. do the aspects of the project that are being procured by **PPP** represent good value for money, particularly when compared with the cost of achieving the same objective by traditional procurement (as represented by the Public Sector Benchmark (PSB)).

VfM testing under (a) above is a test that should apply to all public expenditure on an ongoing basis (to be managed by the Sanctioning Authority/Sponsoring Agency) and should take account of overall project costs, including any elements of the project that are not to be procured under the PPP contract itself. However, this overall value for money test is much wider than, and should not be confused with, the VfM test for the PPP approach itself – the objective of which is to ensure that using the PPP approach compares favourably with the alternative cost of using traditional procurement means to achieve the same result as the PPP contract.

As these Guidelines are PPP-specific guidelines, they are only concerned with the PPP-specific VfM tests. Sponsoring Agencies should continue to monitor both PPP and non-PPP costs associated with any PPP project in accordance with the *Capital Appraisal Guidelines* and the value for money measures, and should be satisfied that, in the wider value for money consideration of the project (taking both PPP and non-PPP elements into account), the project continues to represent value for money.

With regard to the PPP-specific VfM tests, four formal VfM tests should be carried out during the PPP procurement process at the following points:

(i) at PPP Procurement Assessment – a test carried out to determine whether, and in what form[16], a PPP arrangement has the potential to offer the best value for

[15] As stated previously, it should be noted that Capital Investment that is funded by user charges is additional to the PPP/NDFA amount in the Capital Envelopes.

[16] For example, Design Build and Maintain (DBM), Design Build Finance Operate and Maintain (DBFOM), etc.

money solution for the procurement, by reference to a number of criteria (see section 2.3.1 below);

(ii) at Completion of the PSB – to determine whether, in light of the quantifications in the PSB, the conclusion reached in the PPP Procurement Assessment still holds;

(iii) at Tender Evaluation stage - to compare the highest ranking bid against the PSB, allowing for the differing impact of taxes, etc., to assess whether the highest ranking bid offers a potential value for money solution; and

(iv) at Financial Close – a final test carried out (a) to assess the impact of any changes in the interest rate(s) and/or discount rate and (b) where the project has been procured using the Negotiated Procedure, to examine the effect of any proposed changes in the contract terms.

## 1.15 Special Purpose Companies (SPCs)

Because of the integrated nature of many PPP projects, a number of different private sector parties can be involved in the delivery of the project over its lifetime. The norm would be for these parties to form a consortium. On award of a PPP tender, best practice would require that this consortium would form a financially robust Special Purpose Company (SPC). The arrangement would be expected to facilitate mitigation of interface risk in a project, i.e. it should help ensure that a problem arising in the delivery of one aspect of the project would be addressed by the consortium as a whole and that such a problem would not compromise the ability of other service providers in the PPP arrangement to meet their contractual commitments. Also, such an arrangement should allow the Sponsoring Agency to have a single point of contact with the private sector for the delivery of the project.

In addition, this approach would be consistent with taxation guidance regarding PPPs and should help to facilitate the objective of achieving value for money through appropriate allocation of risk.

## 1.16 Use of Licences in PPP projects

Departments and agencies pursuing PPP projects should ensure that the private sector is given a licence to enter and occupy land rather than a lease. Licences do not convey any proprietary interest in land and Landlord and Tenant legislation does not apply. Also, paragraph XVIII of the Corporation Tax guidelines[17] on PPPs is predicated on the use of licences rather than leases for PPP contracts.

## 1.17 Tax and PPPs

### *1.17.1 VAT and Corporation Tax Declaration*

[17] Central Guidance on Corporation Tax Treatment of PPP arrangements – available at the following link: www.ppp.gov.ie/keydocs/guidance/central/Central%20Guidelines%20on%20Corporation%20Tax%20treatment%20of%20Public%20Private%20Partnership%20Agreements.doc

**Bidders should be asked to provide confirmation that they are aware of and have constructed their bids on the basis of the published tax guidelines on Corporation Tax and on VAT in PPP projects**.

Where bidders advise that they will not be within the charge to Irish Corporation Tax and/or that they will be paying Corporation Tax in another jurisdiction, the Irish Revenue Commissioners should be advised, accordingly.

VAT and Corporation Tax are specifically addressed in the VfMC exercise because the treatment of these taxes may differ as between traditional procurement and procurement through a PPP. Other taxes, such as employer taxes, are generally paid on the same basis regardless of whether it falls to the public sector or the private sector to pay them.

### *1.17.2 VAT on Construction*

The Sponsoring Agency should be aware that, in a number of PPP accommodation projects, the VAT liability arising on the construction of the PPP asset has been paid in total up front by Sponsoring Agencies when unitary payments commence[18], i.e. this cost is not included in the unitary payments going forward. This approach avoids spreading the construction VAT liability over the whole contract term which would result in additional financing costs for the project. When this approach is taken in a given project, the cost and the timing of the upfront VAT-related payment has to be factored into the overall project budget.

VAT may also arise in relation to the ongoing unitary payments as well as other payments by the Sponsoring Agency and other public bodies.

### *1.17.3 Identification of impact of taxation payments and / or material tax reliefs*

Bidders should be asked to declare and clearly identify, in a tab in their financial model, taxation payments (such as VAT and Corporation Tax) and material tax reliefs applicable to their bids (based on self-declaration) and should be advised that these will be used to assess the potential of the highest ranking bid received to offer value for money for the Exchequer when compared to the PSB (see section 2.9.2 Value for Money Comparison (VfMC) exercise).

It should be noted however that, under Revenue guidance, the issue of capital allowances should not arise where a consortium adopts the preferred structure of forming a Special Purpose Company for the purposes of the Public Private Partnership arrangement (see section 1.15 - Special Purpose Companies). In this

[18] This is triggered when the design and build of a facility is invoiced up front and VAT is accounted for on the basis of this invoice – see Central Guidance Note No. 5 VAT Implications for PPPs – available at the following link: www.ppp.gov.ie/keydocs/guidance/central/Final%20VAT%20Implications%20for%20Public%20Private%20Partnerships%20April%202006.doc

context, Sponsoring Agencies and bidders should also note the provisions of section 1.16 - Use of Licences in PPPs and published guidance on the treatment of VAT and Corporation Tax in PPPs.

### *1.17.4 Treatment of Taxation and Material Tax Reliefs*

The general principles which apply in relation to the treatment of taxation are as follows:

(i) The gross cost of tenders (i.e. "price" including VAT but disregarding the Exchequer impact of VAT, Corporation Tax or material tax reliefs) should be taken into account when evaluating the cost of the project for affordability purposes against the overall budget for the project.

(ii) However, in evaluating bids against each other no competitive advantage should be given to a tenderer who may not be subject to VAT, or who may be subject to a VAT rate lower than our national rate. (This would also apply to traditionally procured projects.) Bids must, therefore, be compared on a VAT-exclusive basis.

(iii) The cost of a bid included in the Value for Money Comparison (VfMC) exercise should reflect the cost net of VAT and Corporation Tax (as outlined at section 2.9.3). Similarly, to allow for a like-with-like comparison, the cost of the PSB included in the VfMC should reflect the cost net of VAT.

(iv) Material tax reliefs (tax expenditures) attaching to the highest ranking bid should be added to the Exchequer cost of the highest ranking bid in the Value for Money Comparison (VfMC) exercise (as outlined in section 2.9.4).

## 1.18 Glossary of Terms

A glossary of terms relating to the PPP procurement process is attached at Appendix 1[19]. For ease of reference, and consistency, the terminology used is, as far as practicable, the same as that used in the *Capital Appraisal Guidelines*.

[19] For a definition of "Representative" (in the context of Stakeholder Consultation) see footnote 2 on page 4 of the *Stakeholder Consultation Guidelines*.

## 2. GUIDELINES ON THE STEPS INVOLVED IN THE PPP PROCUREMENT PROCESS

### 2.1 Preliminary Appraisal (prior to choice of PPP or Traditional Procurement)

In preparing the appraisal, the Sponsoring Agency should refer to Stage 1: Appraisal Stage of the *Capital Appraisal Guidelines* which require it to:

- state clearly the needs which the project is designed to meet, and the degree to which it would aim to meet them;
- identify all realistic options, including the option of doing nothing, and where possible quantify the key elements of all options;
- compile a preliminary assessment of the costs and benefits[20] of all options;
- choose a preferred option and make a judgement on whether its benefits are sufficient to warrant incurring its costs;
- on the basis of the above, decide whether to seek sanction to proceed to Detailed Appraisal (if warranted by the scale of the proposal).

### 2.2 National Development Finance Agency (NDFA) Assistance

Having completed the Preliminary Appraisal and received sanction to undertake a Detailed Appraisal, the Sponsoring Agency should seek the advice of the NDFA. The NDFA is the sole financial advisor for the Sponsoring Agency[21]. Under current guidelines issued by the Minister for Finance, the advice of the NDFA must be sought for major projects and grouped projects with a capital cost in excess of the limit set by the Department of Finance (set at €20 million initially and under review as of July 2006). The majority of privately financed PPP projects will fall within this category. (See Appendix 1 for further details of the role of the NDFA.)

### 2.3 Detailed Appraisal

In preparing the Detailed Appraisal, the Sponsoring Agency should again refer to the *Capital Appraisal Guidelines*, which require it to:

- define clearly the needs the project should meet and its objectives;
- list the possible options;
- list the constraints;
- quantify financial costs (full capital costs and costs over life-cycle, including risk and contingency), and sources of funding;
- analyse the main options, valuing and quantifying the costs and benefits of each option (using multi-criteria analysis, cost benefit analysis, cost effectiveness

[20] Not a full Cost-Benefit Analysis.

[21] As stated previously, where financial, risk and/or insurance advisors were appointed prior to the enactment of the NDFA legislation, those arrangements will be honoured.

analysis, financial analysis, Exchequer cash-flow analysis - as appropriate – and using the NPV approach to costs/benefits arising at different times);

- identify the risks associated with each option, potential impact and strategy for dealing with risks;
- decide on preferred option.

This appraisal should produce a reasonable estimate of the overall budget required to procure the project.

### *2.3.1 PPP Procurement Assessment*

As part of the Detailed Appraisal, the Sponsoring Agency should determine the most appropriate procurement mechanism and, if a PPP approach is being considered, a PPP Procurement Assessment should be carried out. The PPP Procurement Assessment addresses a number of key issues in detail, some of which are:

Is the project of sufficient scale and risk/operational profile to justify a PPP approach and to carry the high transaction costs that will be involved?

Does the project have the potential to deliver value for money if procured as a PPP?

Which form of Public Private Partnership would provide the greatest potential to deliver value for money for the Exchequer?

Has the Sponsoring Agency the statutory power or *vires* to enter into a PPP arrangement – is it listed in the Schedule to the State Authorities (Public Private Partnerships) Act, 2002 or does its governing legislation give it the power to enter into PPP arrangements?

**Is there potential for third party income which could significantly reduce the level of Exchequer funding required?**

Are all policy issues relevant to the project clear and fully agreed?

Are the technology and other aspects of the sector stable, and not susceptible to fast-paced change?

The NDFA will provide financial, insurance and risk analysis advice to State Authorities in order to assist in determining the most appropriate procurement mechanism. Detailed factors to be taken into consideration in the context of a PPP Procurement Assessment will be issued in a separate technical note.

## 2.4 Approval to Proceed

Following appraisal of the proposed project, the Sponsoring Agency should approach the Sanctioning Authority for approval to proceed with the procurement of the project as a PPP. In deciding whether to grant approval, the Sanctioning Authority must take account of the priority of the proposed project in the context of the Authority's overall programme of expenditure, within the available Capital Envelope allocation(s). If the Sanctioning Authority is satisfied that:

the project should be approved, on the basis of the appraisal undertaken;

all policy issues involved are clear and fully agreed, and the project is suitable for procurement as a PPP;

there is no conflict with public sector numbers or HR policy or any other general policy;

**the scope / specifications are clear and agreed, and conform with sectoral norms;**

**the capital cost of the project (both PPP and non-PPP elements) over the construction phase can be accommodated within the relevant Capital Envelope amount(s); and**

**a PSB (for the PPP element) will be set before going out to tender;**

**the Sponsoring Agency may be authorised to proceed with procuring the project as a PPP.**

In accordance with best practice, when approving a PPP project the Sanctioning Authority should convey its approval subject to an overall project budget, to include both PPP and non-PPP elements of the project, based on the estimated costs for the project itself and for project planning, etc., which will have been produced at Detailed Appraisal stage and on which the proposal to the Sanctioning Authority will have been based. (This is consistent with the approach required for traditional procurement in the *Capital Appraisal Guidelines – see page 21, section 2.4, third paragraph*.) Approval should also be subject to ongoing compliance with the other conditions set out above. The Sanctioning Authority may also impose additional conditions relevant to individual projects or sectors, if it considers this appropriate.

Approval to proceed will carry with it the approval to appoint non-financial client advisors – see section 1.8 above.

In PPP procurement, at this point the Sponsoring Agency has full authority to proceed to procurement (or to prepare the project for handover to the Centre of Expertise to procure it on its behalf, as appropriate), including the award of the PPP contract, subject to compliance with the conditions attached to the approval. If any of these conditions are breached, the Sponsoring Agency / Centre of Expertise, as appropriate, will have to revert to the Sanctioning Authority for revised approval (see section 2.7.7 below).

### 2.5 Establishing Project Management Structure

Once approval to proceed has been received for a particular project, the Sponsoring Agency should, in accordance with Stage 2: Planning Stage of the *Capital Appraisal*

*Guidelines*, decide on the appropriate management structure for overseeing the project. This will normally involve the appointment of a Project Board to manage the procurement of the project. Where the project is to be procured by the Centre of Expertise, on behalf of the Sponsoring Agency, the Project Board will be chaired by the Centre of Expertise following the handover of the project to the Centre of Expertise for procurement.

As part of these arrangements, a Project Manager should be appointed within the Sponsoring Department or Agency. The person to be appointed to the role should be a senior official, including at MAC level in Departments or at management level in Agencies, where appropriate. The Project Manager should be assigned personal responsibility for monitoring progress on the project and for reporting progress and issues arising to the Project Board.

Regular reports should be submitted to the Project Board on how projects are progressing. If adverse developments occur, the progress report should include recommendations to address the situation, including, where warranted, project termination.

Where a project is being procured by the Centre of Expertise, the Project Manager should agree liaison procedures with the Project Board for the procurement phase of the project.

**Note:** At this point in the procurement process these PPP-specific guidelines depart from the procedures for traditional / Design Build (DB) procurement set out in the *Capital Appraisal Guidelines* (as illustrated in Figure 1 on page 5). Sections 2.6 to 2.10 set out procedures to address the specific nature of PPP procurement.

### 2.6 Appointment of Process Auditor

When approval to proceed with a project has been secured by the Sponsoring Agency, a Process Auditor should be appointed for the project – see section 1.10 above.

### 2.7 Compiling Output Specifications and the Public Sector Benchmark (PSB)

#### *2.7.1 Output Specification*

At this stage, the Sponsoring Agency should proceed to draw up detailed Output Specifications for the project, similar to the “Project Brief” envisaged for traditionally procured projects in the *Capital Appraisal Guidelines*, but focusing on outputs rather than inputs.

#### *2.7.2 Public Sector Benchmark*

The Public Sector Benchmark (PSB) must be compiled at this point and is derived from the detailed Output Specifications. The PSB should be a comprehensive estimate of the cost (including risk valuations) of procuring those elements of the project that the private sector is to be invited to tender for in the PPP contract. It should be based on the whole life cost to the Sponsoring Agency of procuring (those elements of) the project using traditional procurement, and should include risks. This will build on the costing used in the Detailed Appraisal carried out under the *Capital Appraisal Guidelines* (section 2.3 above). As stated earlier, the PSB does not include any costs (or risks) which will be borne directly by the Sponsoring Agency irrespective of the procurement method used, and which are therefore not part of the PPP contract. In this way, the PSB will serve as a direct, like-with-like comparator for the private sector bids and, at evaluation stage, will form the basis for the value for money assessment of the highest ranking bid (see section 2.9.2 below).

The PSB should include VAT where this would be payable by the Sponsoring Agency in any event were the project procured traditionally. This is necessary for budgetary purposes - to establish the full cost of the project to the Sponsoring Agency, in the context of the overall budget limit approved for the project. However, since the evaluation of the highest ranking bid against the PSB will be done on a VAT-exclusive basis, the VAT costs should be identified separately in the calculation of the PSB, to facilitate comparison with the tenders on a VAT-exclusive basis.

In the case of projects that are to be procured by the Centre of Expertise on behalf of the Sponsoring Agency, the PSB remains the responsibility of the Sponsoring Agency. It will be compiled by the Centre of Expertise, with input from the Sponsoring Agency and agreed by the Sponsoring Agency before going to the market.

### *2.7.3 Iterative Process*

Finalising the Output Specifications and the associated PSB will usually involve an iterative process, as the costing associated with the first draft of the output specifications may prove to be higher than the Sponsoring Agency had originally budgeted for. This may require a re-assessment of requirements (output specifications) and a consequential reduction in the estimated PSB.

### *2.7.4 Net Present Value in the PSB*

In order to take full account of costs which occur at different points in time, the final PSB cost should be expressed in Net Present Value (NPV) terms, thereby reflecting the “time value of money”. (The *Capital Appraisal Guidelines* identify the discounting of future costs to present value as being a critical element of project assessment in traditional procurement also). The NDFA will provide financial, risk and insurance advice to the Sponsoring Agency in calculating the PSB and will assist in the NPV calculations, including advising on the appropriate discount rate to be used for each project. They are to be the only advisors to the State Authority in regard to these matters. The Central PPP Unit issued guidelines in February 2006 on "*Discount Rate Principles in Public Private Partnership Capital Investment Projects*"[22].

### *2.7.5 Hypothetical Public Sector Cost*

In circumstances where there is an absence of suitable data on traditional procurement costs, a hypothetical Public Sector Cost may be used to assist in the determination of the PSB. While it may not be possible to estimate all costs to a high degree of certainty, it is essential that a best estimate is made in order to ensure that the PSB associated with the final Output Specifications is consistent with the overall budget approved by the Sanctioning Authority for the project.

### *2.7.6 Finalisation of the Output Specification / PSB*

As a general rule, the Output Specifications and associated PSB should be finalised and should be up to date before any tender invitations are issued. This is important in order to ensure that, when costed, the final output specifications being issued with the tender invitations are considered to be capable of being delivered within the available budget for the project, and also because failure to do so could result in tenderers supplying bids that are based on inaccurate or out of date Output Specifications. Also, making significant changes after tenderers have commenced preparing their bids can result in additional costs for all tenderers and may infringe EU procurement procedures. However, in the case of an approved programme of similar projects, involving similar output specifications, it may be agreed with the Sanctioning Authority and/or the Department of Finance that the Sponsoring Agency may commence the early stages of the procurement process in parallel[23] with the compilation of the PSB in the second and subsequent projects in the programme – in the light of the experience gained in compiling the original PSB for the initial project.

Once the PSB has been finalised, the second formal Value for Money test (as indicated in section 1.14 above) should be carried out to determine whether, in the light of the quantifications in the PSB, the conclusion reached in the PPP Procurement Assessment continues to be valid.

Notwithstanding the above, there may be exceptional situations where some information critical to the finalisation of the PSB may not be available up to the time of issue of the tender invitations, with the result that it would not be possible to produce a final, robust PSB at this stage, in accordance with normal practice. In these exceptional circumstances, subject to the Accountable Officer being satisfied that there are sufficient grounds to depart from the general rule and delay finalisation of the PSB, this may be permitted **provided that the PSB is actually finalised, and**

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[22] Available at the following link: www.ppp.gov.ie/keydocs/guidance/central/Final%20Discount%20Rate%20Guidelines.doc

[23] Paralleling is only permitted **after** the tender responses for the initial project have been received, **and** where these tenders indicate that both the public and the private sector costings derived from the output specifications are broadly similar, thus facilitating a parallel approach in the second and subsequent projects.

**supplied to the Sanctioning Authority, prior to receipt of the tenders.** This is imperative as the key test of value for money in PPP procurement is the comparison of the highest ranking bid with the PSB. The agreement of the Accountable Officer to depart from the general rule in this regard, and the rationale for so doing, must be recorded in writing and maintained on file.

The finalisation of the Output Specifications, and associated PSB, for each project will be a matter for the Sponsoring Agency, within the approval / delegated sanction granted to them by the Sanctioning Authority. Provided that the terms of that approval / delegated sanction are not breached, it will not be necessary to seek further specific approval from the Sanctioning Authority for the detailed Output Specifications or PSB for individual projects. However, the PSB should be supplied to the Sanctioning Authority when finalised, for information.

### *2.7.7 Breach of Conditions of Approval / Sanction for a Project*

If at any stage it appears to the Sponsoring Agency that any conditions attached to the Sanctioning Authority's approval are likely to be breached, the Sanctioning Authority must be notified and advised of the reasons for the potential breach. On receipt of the notification the Sanctioning Authority must, following receipt of the views of the Sponsoring Agency, either:

- decide that the PPP procurement continues to offer value for money (subject to the capital cost continuing to be consistent with the Capital Envelope of the Sponsoring Agency); or
- decide to terminate the whole procurement process and abandon the project; or
- require the Sponsoring Agency to revert to a non-PPP option; or
- refer the matter to the relevant Minister or to the Government, for decision.

If at any stage it appears to the Sponsoring Agency (whether directly or as advised by Centre of Expertise) that the **capital cost** of the project over the construction phase may cause the Sponsoring Agency's Capital Envelope amount/target for any given year to be exceeded, this must be reported to the Sanctioning Authority who must immediately inform the Department of Finance.

### *2.7.8 Revisions to the Output Specifications / PSB*

As a general rule, no changes should be made to the Output Specifications / PSB once they have been finalised. However, having been finalised, it may emerge that some changes need to be made to some of the costings underpinning the PSB in the light of new information available. Where factors external to the Sponsoring Agency (e.g., An Bord Pleanála) cause, or direct to be caused, changes to the project specifications which have a material impact on that project, a change to the PSB may be permitted, where this is considered to be necessary. However, if any such changes are contemplated, the cost implications and effects on the timing of the project would have to be fully appraised before changes are made. Material changes to the PSB may also require a review of both the original cost-benefit analysis and the approval to proceed with the project, as changes in the original specifications may affect the project's viability. It will also be necessary to consult with the Sanctioning Authority if the changes would alter the approval obtained on the basis of the original proposal or result in a breach of any of the conditions of approval.

If, in the exceptional circumstances outlined above, changes to the finalised Output Specifications / PSB are unavoidable after the tender invitations have issued, a detailed audit trail of any such changes must be maintained by the Sponsoring Agency / Centre of Expertise, as appropriate, together with a clear rationale for each change required. This should be available to the Sanctioning Authority. If any such changes are made, the modifications in the Output Specifications must be communicated to the participating tenderers without delay.

However, the PSB/Output Specifications **must be finalised before tenders are received and no changes made thereafter.**

In a competition where dialogue or negotiation is permitted under EU procurement law, the bidders or potential bidders may indicate that they wish to take more or less risk than anticipated in the PSB. In this case an adjustment may be made to the risk allocations in the PSB to take account of the risk transfer actually proposed. Any such changes must also be documented.

#### *2.7.9 Non-Disclosure of PSB*

Current policy is that the final PSB, or any elements thereof, is **not made public** on the basis that revealing the amount that the State is willing to pay for a service may give tenderers an opportunity to increase their asking price above what they might otherwise seek. For this reason, where the public sector is likely to want to procure a similar project in the same or other sectors in the foreseeable future, such information should not be released even after the completion of the procurement process.

In the case of a once-off project, where there is not likely to be any similar procurement in the future, the release of the PSB after the contract has been signed could be considered. However, the individual risk valuations included in the calculation of the PSB in such cases must never be disclosed.

#### *2.7.10 Detailed Technical Note on Compilation of the PSB*

The Central PPP Unit will issue a more detailed technical note on the structure and variables for the PSB (see www.ppp.gov.ie for updates).

### 2.8 Procurement Process

### *2.8.1 Going to market*

[This paragraph was inadvertently retained from earlier drafts. The wording has since been superseded. Therefore, in the interests of clarity, paragraph 2.8.1 has now been deleted from these guidelines.]

### *2.8.2 Communication with market and EU Procurement Procedures*

Under EU procurement law, the nature and level of communication permissible with bidders / potential bidders will be determined by the procurement procedure chosen. The choice of procedure should be made on advice from the Sponsoring Agency's / Centre of Expertise's legal advisors, as appropriate.

The PSB should be finalised before any tender-related communications with the private sector are commenced. Earlier communication with the market to determine their interest in delivering a project may only occur in circumstances as outlined in section 3.3 below – dealing with optional market consultation. Where the use of a negotiated procedure[24] is permitted, the client should use the tender liaison meetings as a forum to discuss the tenderers' interpretation of the output specifications. As indicated previously, current policy is that the final PSB, or any elements thereof, should **not be made public** in any communication with the market.

## 2.9 Tender Evaluation

In any procurement competition, all of the tenders received are first examined to determine whether they are "suitable" bids. The basis on which "suitability" will be determined should be clear and transparent and signalled in the tender documentation.

### *2.9.1 Detailed Evaluation of Tenders which have been deemed "suitable in principle"*

If a tender meets the considerations for "suitability", including any relevant budgetary considerations, it should then be considered "suitable in principle". Such a bid will then be evaluated, scored and ranked according to the published Evaluation Criteria.

The Sponsoring Agency or the Centre of Expertise (according to where responsibility for the procurement of the project lies in a particular instance), will have identified the most appropriate evaluation criteria for the project and these will have been made available to interested parties in line with the requirements within the Directives. These criteria must be used to evaluate the "suitable" tenders, with a view to scoring and ranking them. In scoring and ranking the competing tenders, the preponderance of the marks to be awarded for **price/cost** under the evaluation criteria should relate to the price/cost <u>to the Sponsoring Agency, exclusive of VAT</u>.

[24] This procedure allows communication / negotiation between the client and the tenderers before and after the submission of the tenders. During these meetings the tenderers supply an outline of how they interpret the client requirements identified in the output specification.

The highest ranking bid following this evaluation stage should be evaluated against the PSB in the Value for Money Comparison.

### *2.9.2 Value for Money Comparison (VfMC) exercise*

Having identified the highest ranking bid received, the next step is to examine the "value for money" of that bid. "Value for money" will be determined by reference to the overall impact of the highest ranking bid on the Exchequer as compared to the impact on the Exchequer of the PSB. This is done in the Value for Money Comparison (VfMC) exercise.

It is important that, in carrying out this exercise, there is a like-with-like comparison of the highest ranking bid against the PSB. This will require more than a simple comparison of the "bottom line" figure for this bid against a similar figure for the PSB. Any necessary adjustments should be made to ensure that the same base date, discount rate, inflation assumptions, etc., are used in the comparison. The information required for the completion of this exercise should be readily available in the PSB and in the financial model provided by tenderer who submitted the highest ranking bid.

### *2.9.3 Treatment of VAT and Corporation Tax in the VfMC*

As referred to in section 1.17 above, to analyse the impact of the cost of the highest ranking bid on the Exchequer, the value of VAT and Corporation Tax receipts associated with that bid should be subtracted from the overall cost of the bid in the VfMC, i.e. the cost included should reflect the cost net of VAT and Corporation Tax. Similarly, the value of VAT included in the PSB should be deducted from the overall cost of the PSB.

### *2.9.4 Treatment of Material Tax Reliefs in the VfMC*

As stated in section 1.17 above, bidders should be asked to declare and clearly identify, in a tab in their financial model, the impact of material tax reliefs applicable to their bids (based on self-declaration). As tax expenditures can impact significantly from a public sector cost perspective on the overall value for money offered by bids, the value of the reliefs must be taken into account as part of the analysis of cost to the Exchequer of the highest ranking bid in the Value for Money Comparison exercise. In general, in order to analyse the Exchequer impact of the highest ranking bid, the value of the material tax reliefs declared should be added to the cost of that bid in the VfMC.

### *2.9.5 When the highest ranking bid does not equal or beat the PSB*

It is possible that, having carried out the VfMC exercise, the PPP approach may be found to be more costly than using traditional procurement methods, i.e. when the highest ranking bid does not equal or beat the PSB. In such circumstances, the general principle is that this should be referred to the Sanctioning Authority and the appropriate Minister / the Government by the Sponsoring Agency. It may be considered that there are factors that would justify continuing with the PPP procurement despite the outcome of the VfMC exercise. The VfMC exercise has a particular quantitative focus; the relevant Minister / the Government may be of the opinion that there are other relevant considerations that justify awarding the contract to the highest ranking bidder. In such an event, if there are general implications for the use of PPP for the type of project, the use of the PPP approach in future similar projects should be carefully reviewed by Sponsoring Agencies and subject to the approval of the Sanctioning Authority and, if necessary, referred to the relevant Minister – see section 2.11.3 below.

Should this situation arise in a project being procured by the Centre of Expertise (i.e. the highest ranking bid does not equal or beat the PSB), the Board of the NDFA should examine why this is so and, in addition to advising the Sponsoring Agency, the NDFA should report the situation to the Minister for Finance. The Sponsoring Minister will refer the matter to Government for decision, unless the Minister for Finance agrees that this is not necessary or appropriate. The Minister for Finance would, in due course, convey the decision reached by the relevant Minister or Government, as appropriate, to the Board of the NDFA.

### *2.9.6 Where the highest ranking bid equals or beats the PSB*

If the highest ranking bid equals or beats the PSB and the terms of the Sponsoring Agency's delegated sanction are adhered to and the capital cost of the project is consistent with the available Capital Envelope allocation of the Sponsoring Agency[25], the Sponsoring Agency / Centre of Expertise may then move to award the contract to the tenderer who submitted the highest ranking bid.

## 2.10 Contract and Financial Close / Award of Contract

When all issues are agreed, the signing of the contract marks the point where the public sector outturn costs[26] are set and sealed for the duration of the contract, and may also mark the commencement of the construction process. Before signing the contract, the fourth (and final) formal Value for Money test should be carried out - a final test to (a) assess the impact of any changes in the interest rate(s) and/or discount rate(s) and (b) where the project has been procured using the Negotiated Procedure, to examine the effect of any proposed changes in the contract terms. Subject to the contract continuing to offer value for money, the contract should be signed.

Hard and electronic copies of the documentation should be provided to the Sponsoring Department, Sanctioning Authority, the Process Auditor, and the Centre

[25] See section 2.7.7 *Breach of Conditions of Approval / Sanction for a Project* above.

[26] The public sector outturn costs here relate to the cost of the services to be provided by the private sector under the contract. Other project-related costs, such as the costs associated with compulsory purchase orders and planning risks, are retained by the public sector and not included within this figure.

of Expertise (when it is procuring a project on behalf of a Sponsoring Department). Similarly, if requested, the documentation should be made available to the Department of Finance.

## 2.11 Post Project Review

The *Capital Appraisal Guidelines* require[27] that a post project review be carried out for all major projects, once sufficient time has elapsed to allow the project to be properly evaluated with sufficient evidence of the flow of benefits / cost from it. There should be two separate focuses of this review: (i) project outturn, and (ii) appraisal and management procedures, which may be undertaken at the same time or at different times, but they should be done as soon as is practicable. This *Capital Appraisal Guidelines* requirement also applies to PPP projects.

In the case of PPP projects, once contract close is reached the cost of the project to the Sponsoring Agency is set and sealed for the duration of the contract. Therefore, since the maximum cost of the project is effectively known at this point, it is appropriate that an element of the post project review be undertaken at that stage. A comparison of the actual outturn costs of the project (as provided for in the contract) with the initial estimated costs (as set out in the PSB) should be undertaken and recorded. This should be done for each material budget heading.

A post project review aims to draw lessons for the future and, therefore, as required under the *Capital Appraisal Guidelines*, any significant lessons learned from the review should be translated into changes in the Sponsoring Agency's project practices and communicated for future reference to the Sanctioning Authority so that it can apply any general lessons to its project approval procedures. If there are any significant findings in the review, which have wider implications for other projects / sectors and/or for broad policy considerations, these should also be reported to the Central PPP Unit and the Inter-Departmental Group on PPPs for dissemination to those undertaking PPPs in other sectors.

The post project review should be carried out by a party in a position to write an objective assessment and should be presented to the Accountable Officer in the Sponsoring Agency and to the Sanctioning Authority.

### *2.11.1 Updating Cost Database*

Each Sponsoring Agency should maintain a cost database which should be used when benchmarking costs for future projects and in the compilation of future Public Sector Benchmarks. The post project review exercise should be used to inform and update this database with the latest available information.

If further information on <u>actual</u> outturn costings becomes available during the life of a contract, then the Sponsoring Agency's cost database should be updated to reflect

[27] Capital Appraisal Guidelines, page 29.

such actual costings, provided that they are verifiable and realistic. This approach should ensure that the cost database for each Sponsoring Agency will continually reflect current market conditions.

### *2.11.2 Risk Database*

In addition, each sector should maintain a sector-specific **risk** database. A central risk database will also be maintained by the NDFA. The post project review exercise should be used to inform and update the sectoral risk database (and, if applicable, the NDFA database) with the latest available information.

### *2.11.3 Future Strategy based on Experience of Projects*

In the event of a decision being taken to proceed with a project as a PPP, despite the cost being higher than the PSB after completion of the Value for Money Comparison, the Sponsoring Agency should also evaluate whether it is appropriate to proceed with any similar planned projects as PPPs in the future, or whether it would be more appropriate to revert to the traditional procurement approach for any such future projects. Any decision to proceed with the PPP approach in these circumstances should be taken by the Sanctioning Authority and may involve seeking Ministerial / Government approval, as appropriate.

## 2.12 Ongoing Contract Management

In many instances, a PPP contract will include clauses that link payment to performance of specific obligations under the contract. In order to ensure that the full benefit is derived from these clauses, it is essential that the performance of the private sector partner is constantly monitored over the contract term and that these clauses are invoked, as appropriate. It is recommended that responsibility for this ongoing monitoring of the contract be assigned to a nominated party.

Where the contract has been negotiated by the Centre of Expertise, on behalf of the Sponsoring Agency, the Sponsoring Agency will be responsible for the management of the project after hand back but should make appropriate arrangements with Centre of Expertise to ensure a smooth transition and to ensure that the Department has sufficient familiarity with the obligations under the contract to put in place adequate long-term monitoring procedures.

It may be necessary, as a result of a change mechanism in a contract or other contractual requirements (such as pre-payments or refinancing), to renegotiate certain elements of a contract during its life, and to determine the resulting Exchequer / Sponsoring Agency implications. The NDFA must be consulted should this arise, and will advise the Sponsoring Agency in relation to any financial, risk or insurance implications of modifications to the contract terms.

## 2.13 Refinancing

The issue of restructuring the financing for a project may arise after the construction phase, when many of the project/construction risks will either have not materialised or will have been managed out of the project, and/or the project may have been constructed below the anticipated cost. All PPP contracts / project agreements must include a clause requiring the private sector to obtain the consent of their public sector partner prior to initiating any such restructuring / refinancing of the funding (or part thereof) within the project. In the event that the public sector partner approves any such proposed restructuring / refinancing, the following conditions must be adhered to:

- The approval of the Sanctioning Authority must be sought and received.
- The sharing of any gains arising from a restructuring / refinancing of all forms of debt should be negotiated on a project by project basis (prior to contract close), with the proviso that the share allocated to the Exchequer / Sponsoring Agency must not be less than 50% of the gains arising.
- The NDFA must be consulted on all aspects of any proposed restructuring / refinancing, in order to ensure that the integrity of the project is maintained (i.e. that cover ratios, tails, etc., will not be adversely affected by the refinancing exercise).
- The outcome of any restructuring or refinancing arrangement **must not** increase the liabilities or contingent liabilities of the Sponsoring Agency and/or the Exchequer. The NDFA, as financial advisor, will independently verify and certify that the recalculation of the financial model does not breach this policy.
- The NDFA will determine the refinancing discount rate to be used in each exercise.

# 3. GENERAL PROCUREMENT ISSUES

**NOTE:** This is not a statement of National or EU Procurement Law but a general information note. In summary form, Contracting Authorities must satisfy themselves in each project that the procedures are in accordance with National and EU procurement requirements.

## 3.1 EU Procurement Rules

***The full terms of the EU procurement Directives will apply to the vast majority of PPP contracts. The use of competitive tendering is a basic principle of all Government procurement procedures and should always be used even where the provisions of the Directives do not currently apply, for example in the case of service concessions, unless there are acceptable and clearly justifiable circumstances. The public procurement procedures adopted in such cases must also respect the principles of the EU Treaties on which the public procurement Directives are based, i.e. equality of opportunity, non-discrimination, transparency, mutual recognition, proportionality, right of establishment and freedom to provide a service, and this implies appropriate advertising and the award of contracts on an open and transparent basis.***

The EU procurement Directives were reviewed recently and revised Directives were published in April 2004. The revised Directives introduce a new procedure described as "competitive dialogue", which aims to provide a flexible and transparent mechanism for awarding more complex contracts, including more complex PPPs.

However, Sponsoring Agencies / Project Boards or the Centre of Expertise, as appropriate, should seek legal advice on the most appropriate procurement mechanism for each project or any aspects of procurement where there is doubt.

## 3.2 Right to Terminate

The Sponsoring Agency or the Centre of Expertise, as appropriate, should retain the right, in the Tender Invitation documentation, to terminate the procurement process at any point prior to contract close (e.g., in the event that the bids do not meet requirements) while observing EU rules in relation to such action at all times. Bidders must be informed of and given reasons for the termination of the tendering process. This position is consistent with traditional procurement.

## 3.3 Optional Market Consultation

The EU procurement Directives do not preclude market consultation in order to establish whether the market has an interest in, and the capacity to deliver, the proposed PPP project but such consultation must be carried out in a non-discriminatory and transparent fashion. Market consultation must not commence until the Project or Programme Budget is approved by the Sanctioning Authority. In exceptional circumstances, the Sanctioning Authority may approve early consultation with the market in the case of a proposed project which is complex and innovative. Market consultation does not commit the State Authority to the procurement of the project. Market consultation may be needed to:

identify or clarify suitable options or solutions;

determine the bankability of, and the market interest in, the proposed project;

evaluate the risks that will be transferred; and

assess the private sector's willingness to accept the required degree of risk transfer.

Other than in the context of a Competitive Dialogue Procedure or Negotiated Procedure, market consultation must end when a call to competition is published after which time no market consultation may be undertaken. As noted earlier the project advisors will provide specific advice on this.

### 3.4 Statutory Approval

Many projects require statutory approvals, e.g., Environmental Impact Statements, Oral Hearings, and Ministerial Approval. These are obtained at various stages in the procurement process. Undertaking statutory approval procedures must be preceded by the determination of the overall Project Budget by the Sponsoring Agency and receipt of approval from the Sanctioning Authority to proceed with the procurement of the project. Where the Government has already approved a programme of projects, the statutory approvals process required for that project may commence before, or in parallel with, its procurement.

## 4. IMPLEMENTATION OF THESE GUIDELINES – ISSUES AND IMPLICATIONS

### 4.1 Timescale and Implementation

These guidelines have immediate effect and, where possible, should apply to existing PPP projects as well as to any new projects.

### 4.2 Delegated Sanction

Arrangements are now in place to facilitate a structured approach to planning Departmental capital investment programmes on a five-year rolling basis. The Minister for Finance will continue to evaluate the mix of Exchequer and PPP/NDFA funding for these programmes and will approve an investment envelope on this basis. (In the case of Agencies this will be evaluated by the relevant Department.) It is a matter for each Department to check the status of a PPP project in this respect with the appropriate Vote section of the Department of Finance.

### 4.3 General Government Balance

In February 2004, Eurostat published new guidelines regarding the accounting treatment of PPP projects for the purposes of calculating the General Government Balance (GGB).

In general, the position in this regard is that the assets of privately financed PPP projects will be **off balance sheet in the National Accounts**[28], and therefore the construction costs will *not* affect the GGB **upfront over the construction period**, **provided that the private sector partner carries the Construction risk and carries either the Demand or the Availability risk**. Instead, **the unitary payments under the PPP will count as GGB expenditure in the years in which they are incurred** over the life of the contract. The same treatment applies to projects where the contract is similar to an operating lease.

Projects that are fully funded by user charges[29] do not worsen the GGB (there may be a positive GGB impact where a profit-sharing arrangement forms part of the contract between the public and private sector partner).

In other cases, the capital cost will impact on the GGB upfront over the construction period.

It should be noted that the “off balance sheet” status of a project is not a driver for pursuing PPP. The main driver for PPPs is value for money for the Exchequer. It

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[28] This accounting treatment relates to Ireland’s National Accounts for Maastricht purposes, rather than to Departmental Appropriation Accounts.

[29] User charges may be generally defined as direct charges paid to the private sector partner by third parties who are not the Government, e.g., hard tolls paid by motorists.

should also be noted that the balance sheet status, in terms of the National Accounts, is a separate issue to the impact on the Capital Envelopes.

### 4.4 Impact of PPPs on the Capital Investment Framework / Capital Envelopes

The five year rolling multi-annual capital envelopes contain annual targets in respect of the capital construction costs of PPPs funded by unitary payments. In the case of PPP projects funded by unitary payments from the Exchequer, the full capital cost[30] is charged against the Capital Envelopes over the construction phase regardless of whether the project impacts on the GGB over the construction period or not. PPP projects which are fully funded by user charges are additional to the Envelope[31]. Local government projects which are funded from local government own resources are currently also outside the Envelope. It is not possible to cover every situation as regards Capital Envelopes in this document, and Departments should refer to the Department of Finance circular letter of 14 February 2003 to Secretaries General (as amended) (ref. S430/10/03) and any future amendments for further information on the treatment of projects for the purposes of the Capital Envelopes.

### 4.5 Further Guidance

Further, more detailed technical notes may be provided on each additional stage in the PPP procurement process. These technical notes will be issued by the Central PPP Unit and submitted to the Inter-Departmental Group and the Informal Advisory Group on PPPs (which includes the relevant Social Partners) for consultation, as appropriate.

[30] The full capital cost comprises all of the costs (including VAT) associated with the construction or acquisition of physical assets to the point of becoming available for use.

[31] For projects that are part-funded by user charges and part-funded by the Exchequer, there will be a pro rata allocation of the capital cost to the Envelope: the proportion of the capital cost funded by direct user charges will be additional to the Envelope and the proportion funded by the Exchequer (either by direct upfront Exchequer funding or repaid over time by means of unitary payments) will be a charge on the Envelope during the construction period.

## Appendix 1

## Glossary of Terms

### Accountable Officer

The Accountable Officer is the person within an organisation to whom the authority to sanction expenditure has been delegated. In this document, the term “Accountable Officer” refers both to “Accounting Officers” in Government Departments and other “Accountable Officers” who are not Department officers – such as CEOs of semi-state bodies/agencies. The term “Accounting Officer” has a specific reference in regard to the officer personally charged with signing the Appropriation Account for a Department and who is accountable to the Public Accounts Committee therefore.

### Central PPP Unit

The role of the Central PPP Unit in the Department of Finance is to contribute to the development of national policy on PPPs and to support Ireland’s PPP process through the development of best practice guidelines and streamlining processes.

### Centre of Expertise for the Procurement of PPP Projects

See “National Development Finance Agency”.

### Informal Advisory Group

The Informal Advisory Group is chaired by the Department of Finance with membership from IBEC, ICTU, the CIF[32] and relevant State Authorities. This forum facilitates discussion on PPP-related issues and feeds into the development of PPP policy in Ireland.

### Inter- Departmental Group on PPPs

The Inter-Departmental Group on PPPs will identify relevant PPP procurement issues and the lessons that have been learned in procuring PPP projects that can be passed on to the various interests, including Sponsoring Agencies and Sanctioning Authorities. These lessons will also feed into the PPP policy-making process.

### National Development Finance Agency (NDFA)

The National Development Finance Agency (NDFA) was established on a statutory basis[33] on 1st January 2003, and its functions include advising public bodies on the optimum means of financing the cost of public investment projects to achieve value for money, and providing advice in relation to all aspects of financing, refinancing and

[32] IBEC – Irish Business Employers Confederation; ICTU – Irish Congress of Trade Unions; and CIF – Construction Industry Federation.
[33] National Development Finance Agency Act, 2002. Number 29 of 2002.

insurance, including risk analysis, of public investment projects. The Agency assists State Authorities:

in evaluating financial risks and costs of infrastructure projects and facilitating them in availing of the best financing package for each project;

in assessing optimal financing as between a private/PPP financing package, Exchequer or NDFA funding for infrastructure projects;

by raising finance for projects (including certain PPPs), where this would be more cost-effective than private funding and, in respect of conventionally procured capital projects, where there are clear benefits offsetting any increased cost of Agency funding over Exchequer funding; and

by creating special purpose companies that can raise project finance with guarantees, securitise revenues from projects with user-charging and receive land or other property assigned or transferred from State authorities for use in financing infrastructure projects.

NDFA is the financial advisor to State Authorities and its advice must be sought (i) for major projects and grouped projects having a capital cost in excess of the limit set by the Department of Finance (set at €20 million initially and under review as of July 2006); and/or (ii) for projects with a capital value lower than this limit where State Authorities require financial, risk and/or insurance advice.

In the delivery of their advisory role, NDFA must be informed of, and is entitled to representation at, all finance, risk and/or insurance-related project meetings and to be supplied copies of all relevant documentation. All project-related decisions will remain the responsibility of the Sponsoring Agency and Sanctioning Authority.

*Centre of Expertise for PPP Procurement*

In addition to these functions, the Government decided[34] to expand the role of the NDFA to include the procurement by a Centre of Expertise within the Agency of all new PPP projects funded directly from Departments'/Agencies' Votes (with the exception of roads and rail) – focusing initially on the Education, Health and Justice areas – on behalf of Departments, in addition to its existing role as financial, risk and insurance advisor to Departments on PPP procurement. The Government also agreed to the immediate commencement of this new procurement function on an interim non-statutory basis, pending the introduction of the necessary enabling legislation.

The Centre of Expertise will be given a clear direction on what projects to deliver, after all policy issues have been cleared, output specifications set and the PSB agreed by the Sponsoring Department. It will then be given a mandate to proceed to procure the projects within the parameters set by the Sponsoring Department (with

[34] Government Decision of 25 July 2005.

input from the Sponsoring Departments if considered necessary by the Centre of Expertise) and hand them over to Departments after construction is complete. The NDFA advisory services will also provide the technical expertise to help Departments agree project budgets. While the PSB remains the responsibility of the Sponsoring Agency, at a practical level it will be compiled by the Centre of Expertise, with input from the Sponsoring Agency and agreed by the Sponsoring Agency before going to market. Once the Centre of Expertise has been charged with procuring the project, it is then responsible, and accountable, for all subsequent stages of the actual procurement process up to handover to the Sponsoring Department when construction is complete. Input from the Sponsoring Department will be at the request of the Centre of Expertise during this procurement phase.

**Process Auditor**

The Process Auditor supports the Accountable Officer's responsibility for the project by checking on his/her behalf that the proper procedures and processes, as agreed in the Procurement Process Checklist at the commencement of the process, have been followed. He/she is appointed by, and reports directly to, the Accountable Officer. The aim is for the Process Auditor to identify any issues of material concern for the Accountable Officer and so minimise the need for the detailed involvement of the Accountable Officer in the procurement process for each project – unless a material concern arises. Generally, the Process Auditor's responsibilities in the PPP procurement process run from the Preliminary Appraisal stage to Contract Close unless suitable alternative arrangements for process audit are in place. The Post Project Review stage and ongoing contract management are outside the remit of the Process Auditor. The Central PPP Unit's *Guidelines for the Reporting Arrangements, Role*

*and Function of a Process Auditor in a Public Private Partnership Project*[35] should be consulted in this regard.

**Project Manager**

At project level for all major capital projects, an individual project manager must be appointed who is responsible for managing and monitoring project progress and for reporting project to a Project Board. The person to be appointed to the role should be a senior official, including at MAC level in Departments or at management level in Agencies, where appropriate.

**Sanctioning Authority**

As stated in the *Capital Appraisal Guidelines*[36], the Sanctioning Authority is normally the Government Minister, Department or public body with sectoral responsibility for

[35] Available at the following link: www.ppp.gov.ie/keydocs/guidance/central/Guidelines%20for%20the%20Reporting%20Arrangements%2C%20Role%20and%20Function%20of%20a%20Process%20Auditor%20in%20a%20Public%20Private%20Partnership%20Project.doc

[36] Capital Appraisal Guidelines, page 11.

implementing Government policy and for providing public financial assistance for capital programmes and projects in the relevant sector. The Sanctioning Authority is responsible for approving in principle the capital projects (public or private) to be funded with public assistance and the conditions under which a project may proceed through the stages of development to ultimately becoming fully operational. It is also responsible for paying the public assistance to the Sponsoring Agency and for ensuring the project's delivery as approved.

The Sanctioning Authority may be the Government, the Department of Finance, a line Department, a local or regional authority or its management, or the Board of a State Agency. The level at which sanction is required for a project will depend on the scale of the proposal, the complexity of the issues, whether or not policy changes are involved and whether there are delegated sanctions in place.

In the context of the Programme approach which has now been adopted in relation to capital expenditure across Government Departments, involving agreed multi-annual capital investment envelopes (for voted expenditure and PPP/NDFA funding) and broad delegated sanction arrangements, responsibility for selecting and approving individual projects has now been largely delegated to line Departments - subject to the agreed Capital Envelope limits and compliance with the general conditions of sanction (see Appendix 3 of the *Capital Appraisal Guidelines*). As a result, the Sanctioning Authority for most new projects would, under the general delegated sanction arrangements for capital expenditure, be the relevant line Department provided that the proposed project can be funded from within the Capital Envelope available and will not add significantly to current costs. However, in the case of (a) very large projects, (b) projects that add significantly to current costs, or (c) projects that can not be accommodated within the existing Capital Envelope(s), the Sanctioning Authority would be likely to be the Government.

**Sponsoring Agency**

As stated in the *Capital Appraisal Guidelines*[37], the Sponsoring Agency has overall responsibility for proper planning and management of projects. It must obtain the necessary approvals from the Sanctioning Authority and ensure that the project proceeds along the lines approved by the Sanctioning Authority. It may be a Government Department, local authority, or other State body or agency.

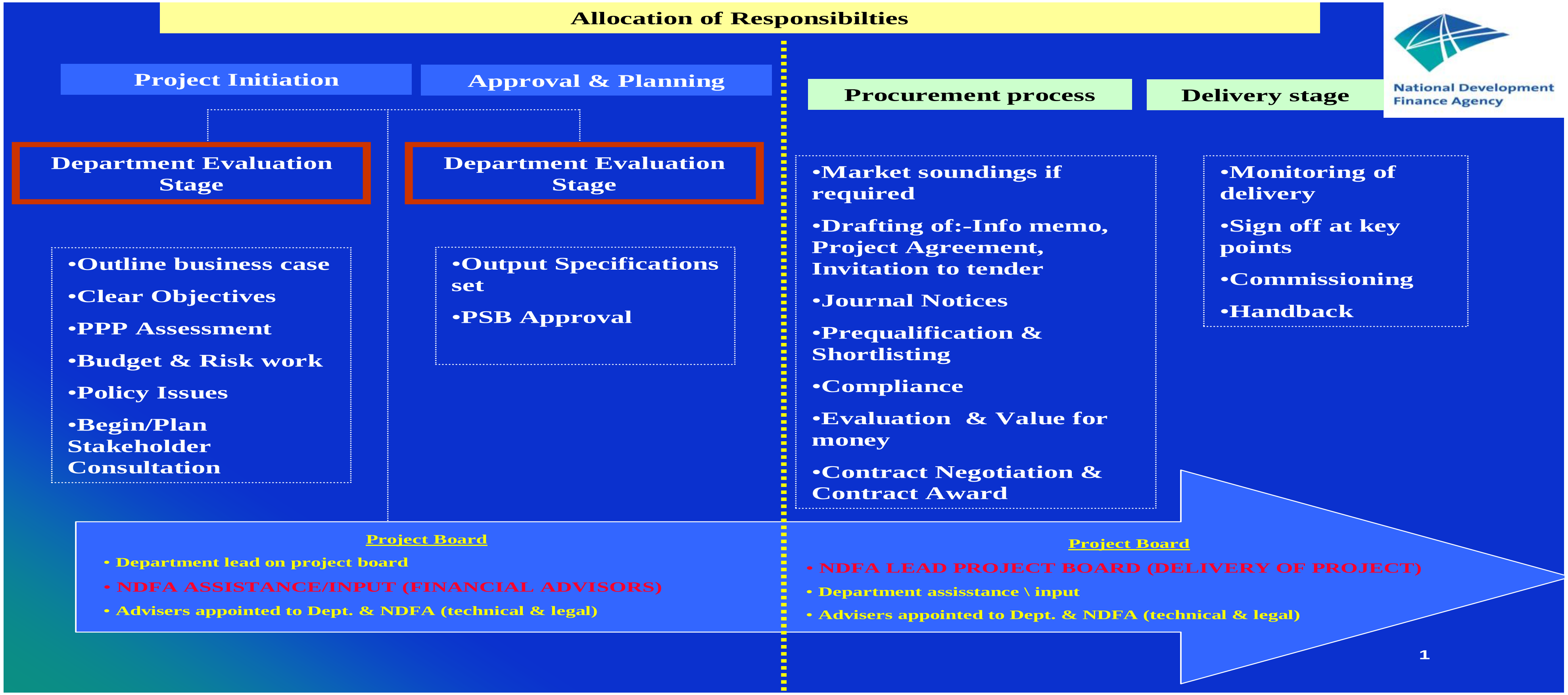
The Sponsoring Agency is responsible for all aspects of the appraisal and assessment of the project, for following national and EU procurement procedures where it is procuring the projects directly and for ongoing contract management.

[37] Capital Appraisal Guidelines, page 10.

## Appendix 2

**Example of Arrangements Adopted for the Allocation of Responsibility between the Centre of Expertise and a Sponsoring Department**

[**Note**: this chart was developed by the Centre of Expertise as a practical example of the arrangements in place as between the Centre of Expertise and a Sponsoring Department. This is a summary of the steps included for illustrative purposes – obviously more detailed steps are required as set out in these guidelines.]


Allocation of Responsibilties
Project Initiation
Approval & Planning
Procurement process
Delivery stage
National Development Finance Agency
Department Evaluation Stage
Department Evaluation Stage
•Outline business case
•Clear Objectives
•PPP Assessment
•Budget & Risk work
•Policy Issues
•Begin/Plan Stakeholder Consultation
•Output Specifications set
•PSB Approval
•Market soundings if required
•Drafting of:-Info memo, Project Agreement, Invitation to tender
•Journal Notices
•Prequalification & Shortlisting
•Compliance
•Evaluation & Value for money
•Contract Negotiation & Contract Award
•Monitoring of delivery
•Sign off at key points
•Commissioning
•Handback
Project Board
• Department lead on project board
• NDFA ASSISTANCE/INPUT (FINANCIAL ADVISORS)
• Advisers appointed to Dept. & NDFA (technical & legal)
Project Board
• NDFA LEAD PROJECT BOARD (DELIVERY OF PROJECT)
• Department assisstance \ input
• Advisers appointed to Dept. & NDFA (technical & legal)
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