



INFRASTRUCTURE AUSTRALIA

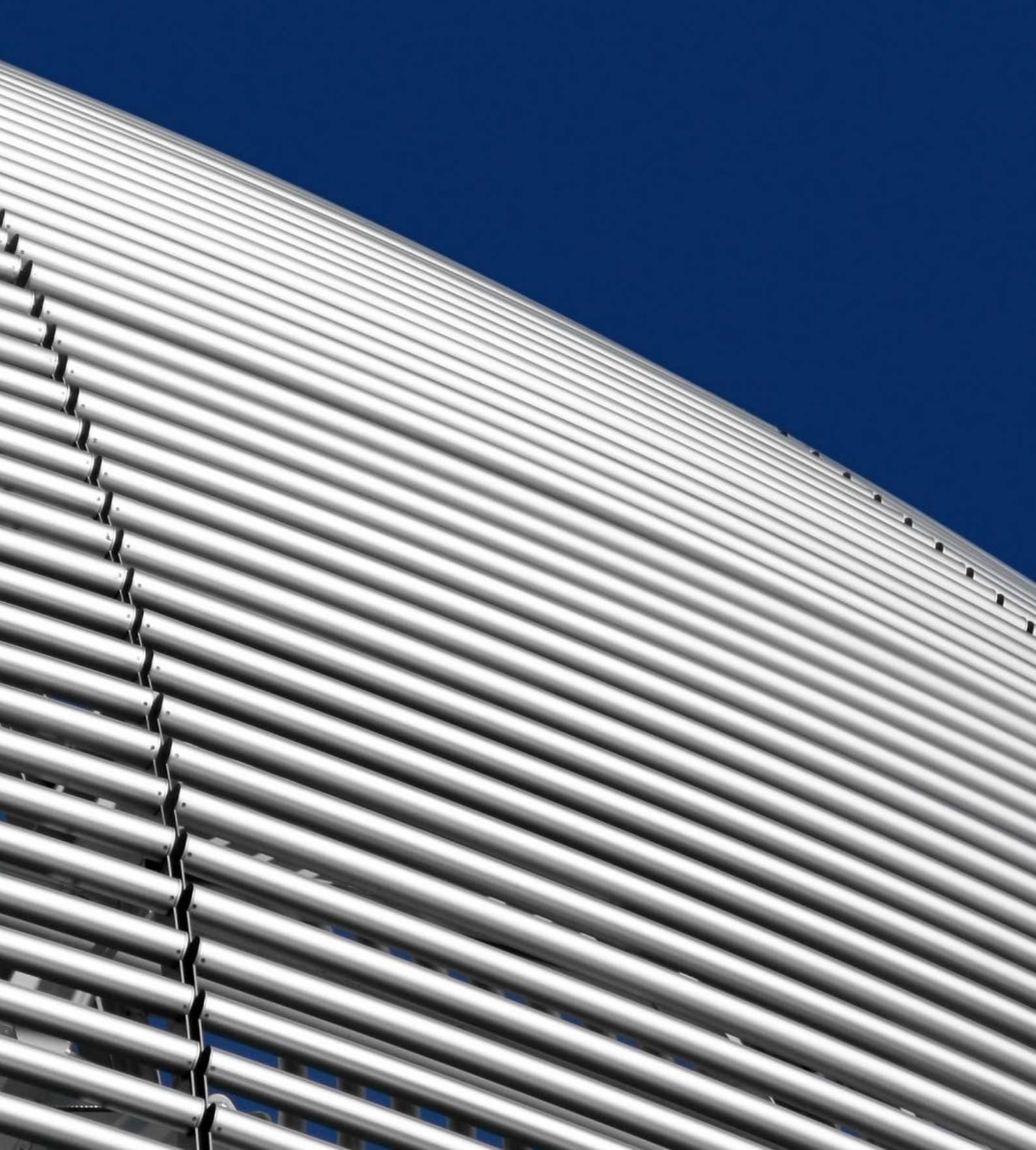
Efficiencies in Major Project Procurement

VOLUME 1

Benchmarks for Efficient Procurement of Major Infrastructure
June 2012



Australian Government
Infrastructure Australia



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1 Introduction

In December 2011, Infrastructure Australia initiated a consultative study to identify those measures which contribute to efficiency in procurement of major infrastructure projects. Infrastructure Australia engaged Everything Infrastructure to develop, facilitate and document the study. The terms of reference of the study were to:

- ▶ engage key Australian stakeholders to contribute to the study;
- ▶ review the contributions against international experience;
- ▶ direct the study at the Public Private Partnership (PPP), Design and Construct (D&C) and Alliance contract delivery models;
- ▶ not specifically address business case, needs analysis, contract packaging and/or contract model selection, on the basis that these activities are undertaken separately to the procurement processes (which are the subject of this study); and
- ▶ identify benchmarks for best practice in major infrastructure procurement.

This Volume of the Report identifies the efficiency benchmarks for best practice procurement derived from the consultation and analysis. Volume Two of the Report, *Efficiencies in Procurement of Major Infrastructure – Consultation Outcomes Report*, documents the outcomes of the consultative process, the subsequent analysis and the review of contributions.

There is some variability (between the various Australian jurisdictions) in the use of terminology in respect of major infrastructure procurement across the various Australian jurisdictions. Particular terminology used for the purposes of this study is included in [Attachment 1](#).

The terms of reference for the study identified three contract models:

- ▶ Public Private Partnership (PPP);
- ▶ Design and Construct (D&C); and
- ▶ Alliance.

The contract models are more particularly described in [Attachment 2](#).

A fundamental characteristic of major infrastructure is the significant costs, effort and business impact to potential proponents and proponents to participate in the procurement process. The key objective of the benchmarking in this paper is to consider those costs and impacts in the context of delivery of the procurement objectives.

2 Procurement Objectives

In simple terms, the overall objective of major infrastructure project procurement is to execute a contract with a proponent which satisfies the project requirements and is most likely to deliver best value, while utilising processes which comply with relevant policy. Efficiency in procurement seeks to optimise the balance between the various inputs and the certainty of delivery of project outcomes. The proponents' effort and incurred costs thus are balanced against the benefits to the sponsor (for example, the relevant Government Agency).

To deliver efficiency in procurement, further particular objectives have been identified. The particular efficiency objectives are that the procurement process:

- ▶ enables potential proponents to effectively engage and participate in the procurement process;
- ▶ reasonably minimises the effort required of potential proponents to participate in the procurement process;
- ▶ optimises the effort of the sponsor agency and other agencies to support the procurement process;
- ▶ optimises the potential for proponents to develop and submit proposals which are most likely to deliver best value; and
- ▶ captures the value of the selected proposal in the contract with the successful proponent.

3 Benchmarks

In respect of the above efficient procurement process objectives, benchmarks have been identified (in consultation with infrastructure industry stakeholders) which represent ‘best practice’. The benchmarks consist of:

- ▶ time benchmarks;
- ▶ quantitative benchmarks; and
- ▶ qualitative benchmarks.

The *time benchmarks* identified in this paper represent prescribed durations which provide the appropriate opportunity stakeholders to undertake particular functions while not causing unnecessary delay (and extra costs) to other stakeholders, particularly to proponents or potential proponents. *Time benchmarks* are readily identified and readily measured. The *time benchmarks* are detailed in [Section 4](#) of this paper.

The consultative process relating to *quantitative benchmarks* involved the identification of numerical targets, generally involving event frequencies, event precedents and proponent costs. Event frequency and precedent *quantitative benchmarks* are detailed in [Section 5](#) of this paper.

In the case of proponent costs, the uncertainty of cost data, variations in method of measurement and the differences in project circumstances significantly limit the efficacy of numerous proponent cost comparisons and benchmarking in the context of this study. Consequently, proponent costs are expressed in qualitative terms and are consequently included in the collection of *qualitative benchmarks*. The *qualitative benchmarks* in this paper are somewhat more subjective in measurement than the *time benchmarks* and *quantitative benchmarks*. The *qualitative benchmarks* generally consist of outcome statements, frequently relating to the character of an activity (such as the ‘sufficiency of communication’, ‘the sensible minimisation of costs and effort’ or ‘the completeness of planning’). In the absence of absolute comparable measurements in respect of the *qualitative benchmarks*, various key process inputs, in the form of enabling actions, have been developed to assist assessment and improvement of these *qualitative aspects* of the procurement process. The *qualitative benchmarks* are detailed in [Section 6](#) of this paper and the Schedules of Enabling Actions are included in [Attachment 3](#).

4 Time Benchmarks

The *time benchmarks* are expressed as a range in response to the differences between more complex and less complex major infrastructure projects. For the purpose of the *time benchmarks*:

- ▶ **more complex** means a project value in excess of \$1000M for D&C or over \$2000M for PPP, generally requiring multiple participants and frequently incorporating specialist skills and/or involving international participants; and
- ▶ **less complex** means a project value in the order of \$200M for D&C or Alliance or \$1000M for PPP, with the necessary skills and capability generally within single entity capability for Alliance and D&C and/or not particularly requiring international specialist participation.

It was recognised that PPP projects valued at \$2000M to \$5000M are unique and require the development of particular market engagement and procurement processes in response to the specific Project circumstances.

The *time benchmarks* are listed in [Table 1](#) overleaf.

Table 1: Time Benchmarks

Procurement Phase	Benchmark Event	Measure	Time Benchmarks (<i>weeks or months</i>)					
			D&C		PPP		Alliance	
			More Complex	Less Complex	More Complex	Less Complex	More Complex	Less Complex
Procurement Phase	Initial advance notice of project and market engagement.	Months before issue of EOI	12	6	24	9	12	6
	Commence the market interaction with specific notice of likely scope, value, roles, contract models and packaging.	Months before issue of EOI	6	2	12	6	6	2
	Formal discussions, specific project details advised in terms of scope, contract models, risk, value, turnover, roles, timing, Agency objectives.	Months before issue of EOI	2	2	3	3	2	2
EOI Phase	EOI preparation	Weeks from release of EOI document to submission of EOI responses.	6*	4*	8*	6*	4*	3*
	Evaluation of EOI responses	Weeks duration	3	3	4	3	3	3
	Alignment sessions and evaluation workshops	Weeks duration	N/A	N/A	N/A	N/A	4	3
	Approval of evaluation outcomes	Weeks from completion of evaluation to announcement of selected respondents.	1	1	2	2	1	1
	Issue of Request for Price (RFP) documents.	Weeks after announcement of EOI evaluation outcomes.	4	2	4	2	4	2

Note: * assumes effective engagement during Pre-Procurement Phase.

** maximum 34 weeks for unique complex PPP and subject to specific market feedback at the Pre-Procurement Phase.

Procurement Phase	Benchmark Event	Measure	Time Benchmarks (<i>weeks or months</i>)					
			D&C		PPP		Alliance	
			More Complex	Less Complex	More Complex	Less Complex	More Complex	Less Complex
RFP Phase	Duration RFP period	Weeks from issue of RFP documents to submission of proposals.	12 to 16	8 to 12	24**	18**	12	8
	Duration of interactive process.	Weeks from issue of RFP.	8	4	20	10	6	4
	Latest time for material changes (time, cost, risk) issued in addenda.	Weeks before RFP close.	6	6	12	12	4	4
	Latest time for minor changes (clarification without material impacts) issued in addenda.	Weeks before RFP close.	4	4	9	8	2	2
	Latest issue of marked up project documents to proponents following specific early proponent submissions (i.e. Deed) during the RFP preparation.	Weeks before RFP close.	6	6	12	12	2	2
Evaluation / Finalisation Phase	Earliest technical submissions	Weeks before RFP close.	4	2	8	4	3	1
	Duration of evaluation	Weeks from submission close to selection.	6	4	12	8	4	2
	Duration of finalisation	Weeks (selection to final documentation) assuming all material issues are resolved.	3	3	4	4	3	3
	Approval duration	Weeks duration	2	2	2	2	2	2
	Approval to financial close	Weeks duration	N/A	N/A	10	6	N/A	N/A

5 Quantitative Benchmarks

The *quantitative benchmarks* are expressed as a target frequency (or quantity) of the occurrence of particular events or as precedent events. The *quantitative benchmarks* are listed on [Table 2](#) below.

Table 2: Quantitative Benchmarks

Benchmark Event	Benchmark Precedent	Benchmark Frequency/Quantity
Divergences of planned procurement program from the <i>time benchmarks</i> in Table 1		Nil, except as specifically changed in response to market feedback.
Completion of full procurement plan (see section 6 for more details of 'full procurement plan')	Prior to announcing EOI invitations.	
Divergences of actual procurement program from planned procurement program		Nil, except as specifically changed in response to market feedback or from market issues outside the Agency's control.
EOI response requirements for information relating to the project solution		Nil, except as specifically required in relation to 'off the shelf' items or specific interface issues.
Divergences from the information provided (during pre-procurement, EOI or RFP Phases) to potential proponents or proponents		Nil, except as specifically changed in response to market feedback or from market issues outside the Agency's control.
Planned addenda for changes or for the issue of missing information during RFP Phase		Nil
Material changes to contract terms or scope during the RFP Phase		Nil
Number of proponents selected from the EOI process to participate in the RFP process		2 for Alliance. Preferably 2 for PPP. No more than 3 for PPP or D&C.

Benchmark Event	Benchmark Precedent	Benchmark Frequency/Quantity
RFP evaluation methodology complete	Prior to RFP document issue.	
RFP evaluation plan complete	Prior to Proposal submission.	
Number of proponents required to fully document their proposals during the Evaluation/Finalisation Phase		Preferably 1, but no more than 2.
Physical, contractual and agency interfaces resolved	Prior to RFP document issue.	
Commitment of proponents to RFP rules, including confidentiality, probity and reliance on information	Prior to issue of RFP documents to proponent.	
RFP requirements for project plans in excess of that which is specifically required to address material Agency risks		Nil
RFP requirements for design in excess of that which represents material risk to the Agency		Nil

6 Qualitative Benchmarks

The *qualitative benchmarks* with supporting descriptions are listed on [Table 3](#) below. Enabling actions which contribute to achievement of the *qualitative benchmarks* are detailed in [Attachment 3](#). Timing requirements in respect of the delivery of the *qualitative benchmarks* are included in the time benchmarks in [Section 4](#) of this paper.

Table 3: Qualitative Benchmarks

Procurement Phase	Qualitative Benchmark	Benchmark Description
Pre-Procurement Phase	Communication of accurate and sufficient Project Information.	The communication fully informs potential Participants' decisions and undertake planning in the Pre-Procurement Phase.
	Comprehensive procurement planning is undertaken.	Procurement planning fully addresses: <ul style="list-style-type: none"> ▶ the project scope and commercial arrangements; ▶ the procurement process; ▶ procurement resources; ▶ procurement risks and opportunities; ▶ stakeholder interfaces; and ▶ alignment with market capability and capacity.
EOI Phase	Clear and complete EOI documentation.	The EOI documents fully address: <ul style="list-style-type: none"> ▶ Project requirements; ▶ Response requirements; ▶ Procurement process; ▶ issues affecting Responses; and ▶ Response evaluation.
	EOI requirements reasonably minimise respondents' effort and cost.	The EOI response requirements focus on: <ul style="list-style-type: none"> ▶ existing prequalification material ▶ predetermined minimum standards of experience and expertise; ▶ Proponents internal standard documentation; and ▶ only key differentiating information.
	EOI process is undertaken in accordance with information issued.	The EOI process has nil divergences from issued information, except as specifically changed in response to market feedback or from market issues outside the Agency's control (as identified in <i>quantitative benchmarks</i>).

Procurement Phase	Qualitative Benchmark	Benchmark Description
RFP Phase	Clear and complete RFP documentation.	<p>The RFP documents require proponents to submit:</p> <ul style="list-style-type: none"> ▶ only essential design elements which represent material risks to the Agency; ▶ only essential statements of systems or methods (project plans) which represent material risks to the Agency; ▶ Responses structured to facilitate incorporation of proposal features into a Contract; and ▶ documentation only of essential Contract elements.
	Commercial Terms represent value for money.	<p>The design of the Commercial Terms incorporate to:</p> <ul style="list-style-type: none"> ▶ precedent jurisdictional Contracts structure and terms; ▶ the contemporary evolution of Contract terms; ▶ precise mechanisms to deal with known uncertainties; ▶ precise and direct connection between performance and payment; and ▶ resolution of physical and contractual interfaces.
	RFP process is undertaken in accordance with information issued to proponents.	<p>RFP process has nil divergences, (as identified in <i>quantitative benchmarks</i>).</p>
Evaluation / Finalisation Phase	Effective and efficient evaluation of proposals.	<p>The evaluation fully addresses:</p> <ul style="list-style-type: none"> ▶ assessment of the relative value of each proposal; ▶ resolution of material uncertainties in respect of proposals; and ▶ in the case of the selected proposal, inclusion of the relative value and the resolution of uncertainty in the Contract.
	The evaluation / finalisation process reasonably minimises Proponents effort and costs.	<p>The evaluation / finalisation processes address:</p> <ul style="list-style-type: none"> ▶ minimisation of response times; ▶ minimisation of legal effort for (ultimately) non-successful proponents; ▶ legal effort; and ▶ the early release or suspension of unsuccessful proponents.
	Evaluation / finalisation is undertaken in accordance with information issued.	<p>The evaluation / finalisation has nil divergences, (as identified in <i>Quantitative Benchmarks</i>).</p>

7 Recommendations

The benchmarks documented in this paper identify those aspects of Procurement processes where improvements in performance are expected to provide improvements in efficiency. In terms of the priorities, it is recommended that Agencies:

- ▶ adhere to the time benchmarks in planning and execution of procurement;
- ▶ adhere to the precedents and target the specified 'frequency/quantities' in the quantitative benchmarks;
- ▶ implement guidelines relating to delivery of the qualitative benchmarks; and
- ▶ audit compliance of procurement planning and delivery with the benchmarks.

In terms of future improvements to the benchmarks, it is recommended that:

- ▶ target limits of the extent of RFP design requirements be further analysed;
- ▶ details of standards relating to underwriting of PPP projects be further developed; and
- ▶ meaningful and reliable participant cost benchmarks be considered, incorporating predetermined definitions of costs and sensible identification of the key project parameters which affect those costs.

Attachment 1 Terminology



Term	Description
Agency	Means the sponsor agency charged with responsibility for project procurement and is the counterparty to the Contractor under the Contract.
Alliance	Means the contract model of that name, more particularly described in Attachment 2.
Contract	Means the arrangement between the Agency and the Contractor for the Contractor to provide works and/or services.
Contract Models	Means Alliance, Public Private Partnership (PPP) and Design and Construct (D&C).
D&C	Means the contract model titled Design and Construct, more particularly described in Attachment 2.
EOI	Means the formal invitation issued to potential Contractors which advises information related to the expression of interest (EOI) Phase and information required in the EOI response.
EOI Phase	<p>Means the expression of interest phase, which generally:</p> <ul style="list-style-type: none"> ▶ commences with formal notification to invite potential Contractor's to respond to the Agency in respect of a proposed Contract for works and for services; ▶ involves the submission of responses from potential Contractor's which seek to be selected to submit a proposal in respect of the proposed Contract; ▶ culminates in a number of proponents being selected to submit proposals in respect of the proposed Contract; and ▶ is finalised when notification and de-briefings are completed for proponents and for the non-selected potential Contractors.
EOI response	Means the response submitted by a potential Contractor pursuant to the EOI.
Evaluation/Finalisation Phase	<p>Means:</p> <ul style="list-style-type: none"> ▶ in the case of Alliance, the evaluation and finalisation phase which: <ul style="list-style-type: none"> - commences with receipt of Proposals by the Agency; - involves evaluation of Proposals and selection of one or two more proponents to submit a Target Outturn Cost; - involves resolution of commercial terms and selection of a Contractor; - culminates in the execution of the Contract and debriefing proponents; ▶ in the case of D&C and PPP, the evaluation and finalisation phase which: <ul style="list-style-type: none"> - commences with receipt of proposals by the Agency; - involves evaluation of proposals and selection of one or more proponents to progress to full Contract documentation; - culminates in the execution of the Contract and debriefing proponents; and - is finalised when conditions precedent (if any) are satisfied (including, in the case of a PPP Contract, achievement of financial close).

Term	Description
PPP	Means the contract model titled Public Private Partnership, more particularly described in Attachment 2.
Pre-Procurement Phase	Means the period prior to the EOI Phase.
Procurement	Means the process of engaging a Contractor under a Contract to perform works and/or services.
Procurement Phases	Means the: <ul style="list-style-type: none"> ▶ Pre-Procurement Phase; ▶ EOI Phase; ▶ RFP Phase; and ▶ Evaluation and Finalisation Phase.
Project	Means the entire project which, under the Contract, is required to deliver the required works and/or services and/or functions, and which may involve a number of separate Contracts.
Proponent	Means the participant or participants which submit a Proposal in response to the RFT.
Proposal	Means the proposal submitted by a proponent pursuant to the Request for Proposal (RFP).
Respondent	Means the participant or participants which submit an EOI response.
RFP	Means the formal request issued to proponents which advises information related to the RFP and Evaluation/Finalisation Phases and which advises the information required in the proposals.
RFP Phase	means the Request for Proposal phase which: <ul style="list-style-type: none"> ▶ commences with notification to the Proponents of their selection; ▶ involves preparation of Proposals by each Proponent; and ▶ is completed when Proposals are submitted to the Agency.

A photograph showing a stack of large, circular concrete pipes. The pipes are arranged in a staggered pattern, with some pipes in the foreground being more brightly lit than others in the background. The text 'Attachment 2 Contract Models' is overlaid in white on the upper left portion of the image.

Attachment 2 Contract Models

Public Private Partnership (PPP)

A Public Private Partnership (PPP) contract is fundamentally different from the models described below. Instead of contracting for the provision of a facility which the Agency will own, the Agency contracts for a service. The facility is used to provide the service. Therefore, the Agency's focus is less on the technical aspects of the facility, and more on the quality of the output that the facility provides.

The Agency specifies its high level requirements for the output. The Agency then appoints the Contractor to provide the output to meet the specification. The Contractor designs, constructs, commissions and operates a facility that will provide an output to meet the specifications. Often the Contractor will engage its own separate Design and Construct (D&C) and Operation and Maintenance (O&M) subcontractors to deliver the facility. The facility is transferred to the Agency after a specified period of time for an agreed price.

The provision of the service is paramount. If there are changes which affect the provision of the service (which are not Force Majeure or changes made by the Agency), the Contractor is responsible for managing those changes at its cost. If there are improvements in technology or efficiencies, the Contractor is incentivised to implement changes at its own cost, to improve its performance or reduce its cost and, therefore, increase its profit margin.

The PPP structure usually involves finance provided by a third party financier. The financier finances construction of the facility. As the Agency is buying a service from the Contractor, the Agency usually does not make any payments to the Contractor until the Contractor provides that service to the Agency (usually after commissioning). The funding arrangements are set at the start of construction, which gives a known fee as at the date of commissioning. That fee can vary in accordance with an agreed mechanism – i.e. to take account changes in the Consumer Price Index (CPI) – but otherwise does not vary unless the Agency agrees.

For the provision of an asset, the Agency often pays the Contractor on a take and/or pay or available capacity basis. In this way, the Contractor is guaranteed a monthly payment during operation of the facility, which it uses to finance repayment of its debt and to pay its ongoing operating costs, and provide a return to equity investors.

The transfer component of this structure can occur shortly after commissioning (e.g. 5 years) or towards the middle or end of the life of the facility (10 or 20 years). The timing for transfer will affect the payment regime, either increasing the payment to the Contractor to ensure that the debt is repaid by the time the facility is transferred, or by requiring a lump sum payment on transfer to cover the debt and equity contributions that have been made to fund the facility. Usually, there is a mixture of both of these elements in the payment regime. If the Agency does not require ownership of the facility at any stage, it is not necessary to include a transfer component, and the debt repayment is structured over the whole of the operating period.

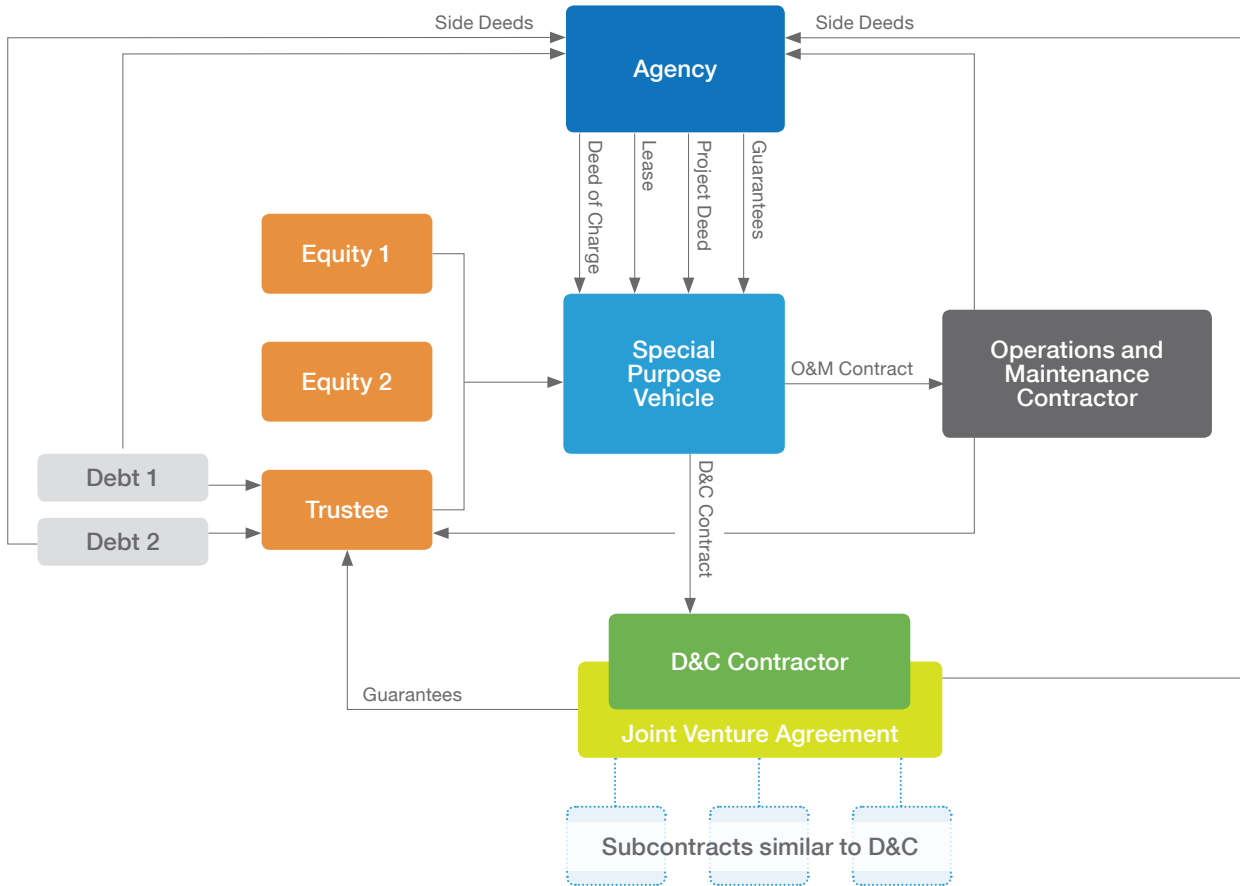
A performance management component is included in the payment regime. The Contractor's performance measured in key result areas can reduce or increase the fee that the Contractor is paid.

The structure requires the Agency to enter into a tripartite agreement with the financiers – and potentially direct agreement with key contractors and suppliers of the Contractor.

Both the financiers and the shareholders monitor the Contractor's performance to ensure that it is entitled to receive full payment and is not breaching the contract. Similarly, financiers will undertake a comprehensive technical and financial due diligence on the project prior to advancing funds to the Contractor necessary for the construction of the facility. Typically, a financier will appoint an independent engineer to monitor performance. A reduction in payment can affect repayment of debt and equity. A breach of contract which leads to termination exposes the financiers and equity providers to the risk of not recovering their investment. The Agency can use these third party pressures on the Contractor to its advantage to manage the Contractor.

A PPP is often used for a facility which is able to be separated from the Agency's core operations, allowing the Agency to focus on its core operations and the quality of the output that it receives from the facility. A PPP is also used to provide a service that the Agency does not have expertise in providing. The PPP structure allows the Agency to focus on whether its requirements for the provision of a service are being met. This differs from the structures above where the Agency owns the facility and so monitors

Figure 1: Typical PPP Structure



how a facility is being operated. The PPP structure is commonly used by government to take advantage of private sector innovation and efficiencies and to bring forward the provision of a service that might otherwise be delayed due to the unavailability of government resources.

In addition, under a PPP structure the facility can, depending on accounting treatment, be off-balance sheet for project owners.

The PPP structure requires the finance arrangements, the term and scope of the project to be agreed and documented upfront. Whilst some flexibility can be built in, this needs to be raised and priced in the procurement process and appropriate

provision made in the project documentation. It should also be noted that the existence of non-recourse debt financing also creates significant unwind costs as other circumstances of contractor default break costs will, as a minimum, need to cover outstanding debt.

The PPP project delivery structure involves significant procurement costs given the level of documentation required and a longer tendering process than the other procurement methods described in this Attachment.

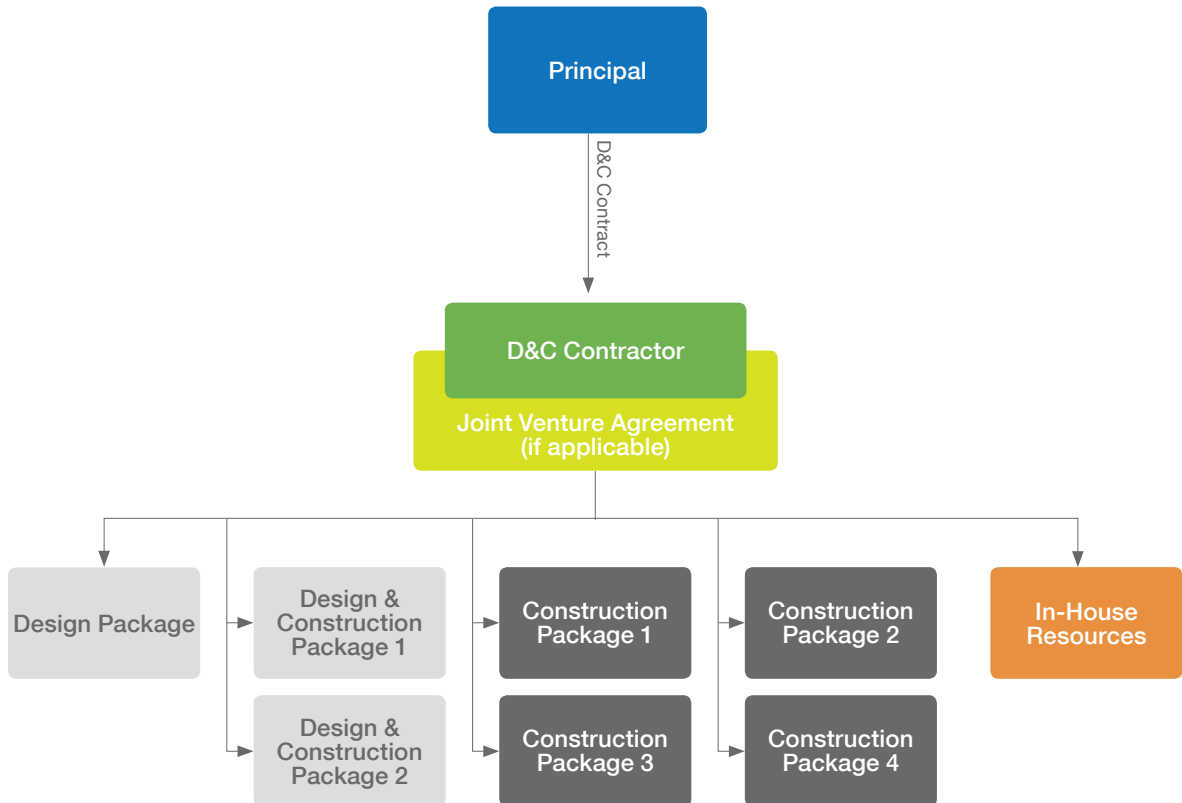
A simplified typical PPP structure is illustrated in the diagram above.

Design and Construct (D&C)

The Design and Construct (D&C) model involves the engagement of a Contractor to design and construct the project, generally for a lump sum price.

A typical D&C structure is illustrated in the diagram below.

Figure 2: Typical D&C Structure



The inherent advantage of a D&C model is that it results in a significant transfer of the price and delivery risk to a third party contractor. This in turn provides a significant incentive for that contractor to deliver on time and on budget.

The inherent disadvantage of the D&C model is that it does not offer the flexibility of the Alliance model for continued design refinement by the Agency during development of the project.

In summary, the inherent advantages of a D&C model are that:

- ▶ it provides comprehensive risk transfer and price certainty (subject, in the case of risk transfer, to caps on contractor liability);
- ▶ it drives performance outcomes to the extent that such outcomes are defined;
- ▶ it drives whole of life outcomes only to the extent that particular standards are prescribed and measurable;
- ▶ it requires some management effort during delivery to ensure whole of life outcomes are delivered;
- ▶ it provides single point accountability for all site activities; and
- ▶ it requires limited management burden during delivery and commissioning.

The disadvantages of the D&C model are that:

- ▶ the project requirements (including interfaces) must be well defined (and better defined than under an Alliance delivery model) to enable contractors to effectively price the works;
- ▶ there must be comprehensive data to allow design and construction risks to be priced and managed;
- ▶ changes introduced during construction can create performance risk transfer back to the client and may be costly to implement;
- ▶ it does not directly drive whole of life outcomes because it relies on specified standards to provide such outcomes;
- ▶ the D&C model is widely used on civil projects, including PPPs;
- ▶ it does not have the same flexibility as the Alliance model to enable design development to continue following engagement of the contractor;
- ▶ the “front end” procurement process generally requires significant tenderer design effort;
- ▶ there must be capability and appetite in the market to undertake a project of the size and complexity; and
- ▶ it may involve the parent of the owner (Agency) providing a parent company guarantee where the Agency is not regarded as sufficiently credit-worthy on a stand alone basis in respect of its contractual obligations under the D&C contract. This scope of potential liability under this guarantee may be significant (i.e. up to the construction cost under the D&C contract).

Alliance

An alliance is a relationship between the Agencies and the Contractor (or Contractors) that is intended to jointly share the risks of project delivery between the Participants. Customarily, however, the Agency carries full direct cost risk together with performance incentive payment obligations. The Participants cost risks are limited to an apportionment of margins and unachieved delivery incentives.

Normally, alliancing is used to deliver larger, more complex and high-risk infrastructure projects. Projects suitable for delivery as alliances are generally characterised by one or more of the following factors, which have been identified by the Victorian Department of Treasury and Finance (2009):

1. the project has risks that cannot be adequately defined or measured in the business case or prior to tendering;
2. the cost of transferring risks is prohibitive;
3. the project needs to start as early as possible before the risks can be fully identified and/or project scope can be finalised, and the owner is prepared to take the commercial risk of a sub-optimal price outcome;
4. the owner has superior knowledge, skills, preference and capacity to influence or participate in the development and delivery of the project, including for example, in the development of the design solution and construction method; and
5. a collective approach to assessing and managing risk will produce a better outcome, for example where the preservation of safety to the public / project is best served through the collaborative process of an alliance.

The alliance is governed by an Alliance Board, comprising senior members of each participant, and an Alliance Management Team, comprising members of all participants selected on a best for project basis. The Alliance Board is responsible for strategic decisions, which must be made unanimously, giving each participant a right of veto over any decision. The Alliance Management Team is responsible for the day to day management of the project. The structure means that the Agency has a ‘hands on’ involvement in the running of the project, through its representatives on the Alliance Board and the Alliance Management Team. In effect, the Agency has two distinct roles – one as owner of the project

and the other as a participant in project delivery. A failure by the Agency to recognise this and perform accordingly can lead to substandard outcomes.

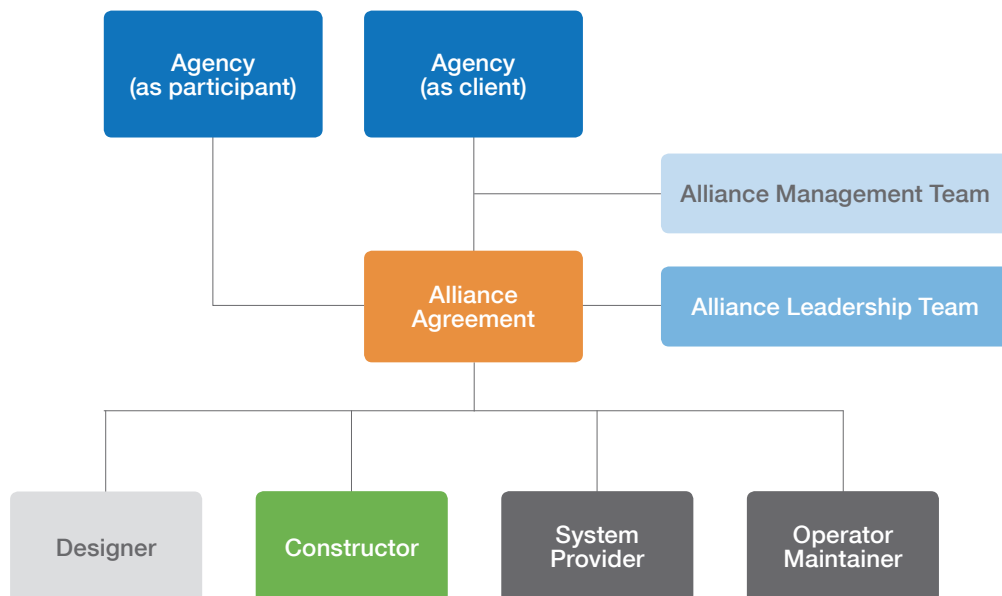
Under an Alliance, there is a 'no-blame' culture which means that risks are not assigned to any participant, but are the responsibility of all. If an issue arises, it must be resolved by all participants and the cost consequences are essentially carried by the Agency, with limited financial incentives on the other participants to perform. This is regardless of the nature of the risk. The payment regime is used to crystallise risks, losses and gains and distribute them amongst all of the members of the Alliance.

An alliance has a 'no litigation' requirement. This means that the participants are not entitled to sue each other for breach of contract or breach of other obligations owed to each other. The theory behind the 'no litigation' requirement is that if the participants do not have an entitlement to sue each other, they will focus on resolving an issue on a best for project basis. There are certain exceptions to the 'no litigation' requirement, being wilful default, fraud and criminal activities.

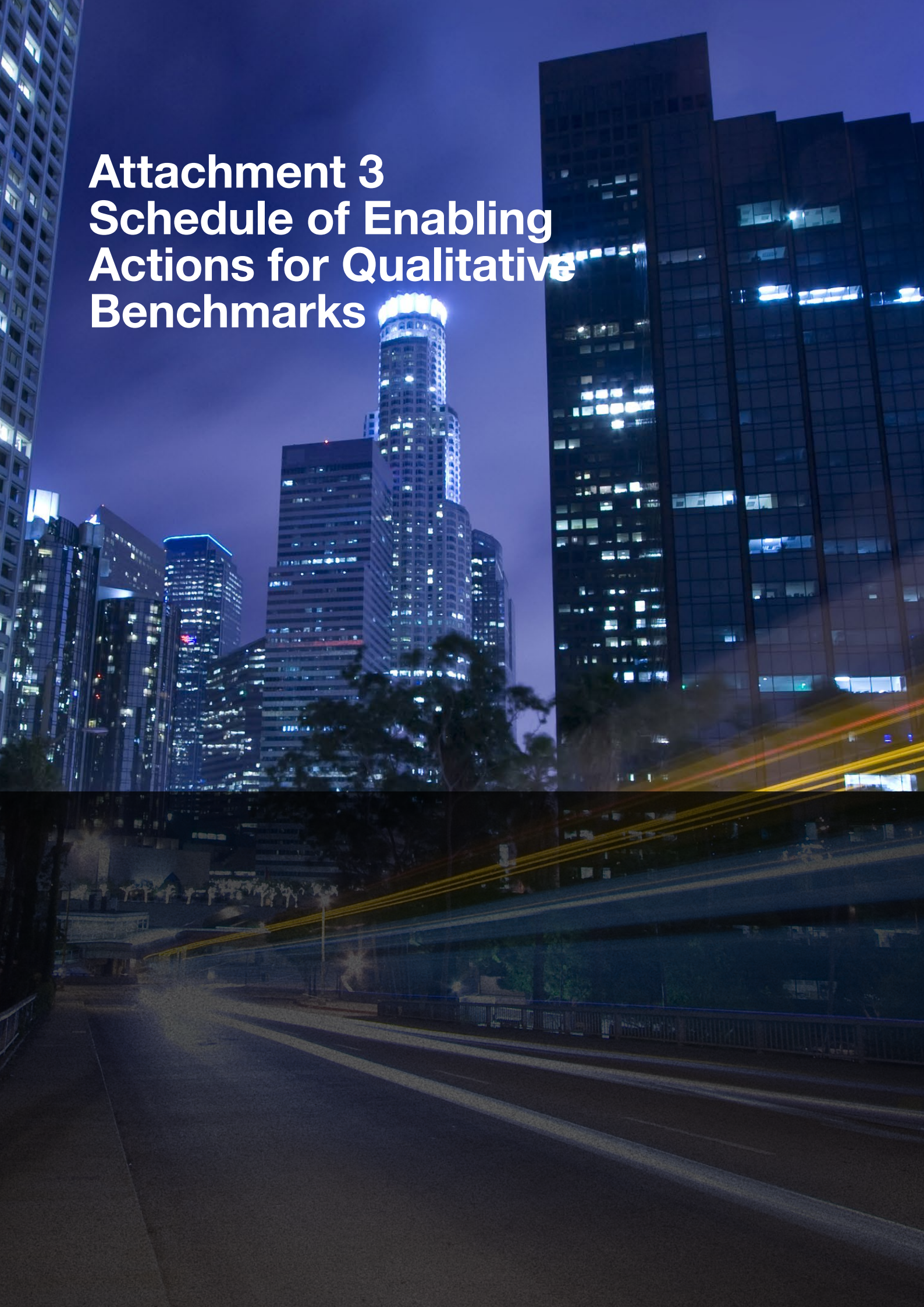
Payment is usually on a direct cost plus margin (overhead and profit) basis, with a pre-determined budget used to control costs and determine participant's share of overruns or savings under the agreement's risk/reward regime. Payment is on a cost incurred and not an earned value basis. The Contractor participant's performance against budget and other key performance indicators is measured, and alters the Contractor participant's fee. For example, a cost overrun will be shared equally between the participants, thereby reducing the Contractor participant's fee. The Contractor will usually require a limit on the extent of the reduction to its fee. That limit usually equates to the Contractor's profit margin and, sometimes, its overhead margin. The limit means that the Contractor may only recover its costs of performance. However, beyond the limit, cost increases are the responsibility of the Agency.

A typical alliance structure is illustrated in the diagram below.

Figure 3: Typical Alliance Structure



Attachment 3 Schedule of Enabling Actions for Qualitative Benchmarks



Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
Pre-Procurement Phase	Communication of accurate and sufficient project information.	Available to potential proponents to make informed decisions and undertake planning in the Pre-Procurement Phase.	<ul style="list-style-type: none"> ▶ Identify the specific market sectors / entities which have the capability, capacity and appetite to be a participant in the project. ▶ Ensure that the relevant information is available to potential participants, either as part of an Agency communications program or on a project specific basis. ▶ Communicate information that is relevant to the potential participants, giving consideration to communicating information relating to: <ul style="list-style-type: none"> - Project objectives and key Agency issues and values; - Project scope and value, the contract model risk allocation, the payment regime and project programme including term, if relevant; - the procurement process and procurement programme; - intergovernment issues and Agency retained responsibilities; - approach to related entities; - Agency governance and approvals processes; - interfaces definition and obligations; - planning approvals status and strategy; - approach to contribution to bid costs; - consistency of processes, risks and terms within a jurisdiction and similar 'model' projects; - expected prequalification levels or 'minimum' capability/capacity hurdles. ▶ Ensure properly considered planning underpins all undertakings. ▶ Develop, implement, review and improve the communications strategy. ▶ Ensure the accuracy and reliability of information issued. ▶ Ensure relevant Agency and intergovernment approvals are in place in relation to the content of information provided. ▶ Consider the importance and relevance of information in the context of each Procurement Phase. ▶ Ensure that the communicated strategy is delivered. ▶ Prepare, resource, manage and fund the planning and communication processes. ▶ Ensure Government agencies are aligned in respect of the project issues. ▶ Obtain all necessary Government approvals and endorsements to the Procurement process. ▶ Ensure that any changes to program and process are communicated as early as practicable and as accurately as possible.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
Pre-Procurement Phase	Comprehensive procurement planning is undertaken.	<p>Planning fully addresses:</p> <ul style="list-style-type: none"> ▶ the project scope and commercial arrangements; ▶ the procurement process; ▶ procurement resources; ▶ procurement risks and opportunities; ▶ stakeholder interfaces; and ▶ alignment with market capability and capacity. 	<ul style="list-style-type: none"> ▶ Identify requirements for Agency and Ministerial approvals and incorporate in procurement planning. ▶ In defining the project requirements, consider and evaluate the consequences of project complexity including consideration of: <ul style="list-style-type: none"> - the number of separate participants; - the diversity of participants; - the relationship between the participants and the structure of the proponent; and - the role of participants in the performance of the Contract services over the life of the Contract. ▶ Ensure that the procurement process is appropriately understood, endorsed and approved within the Agency and within wider Government (as required). ▶ Understand the market issues affecting procurement, including diversity in Proponent teams, and align the procurement strategy with market capacity, capability and appetite. ▶ Consider the costs of bidding, including considering bid cost contribution where it is warranted. ▶ Implement processes to capture lessons learned from similar projects and from the Procurement Phases, and to implement continuous improvement. ▶ Implement processes to capture Government and market/industry knowledge. ▶ Incorporate management of State retained obligations and State interfaces, including implementation of a strategy to resolve intergovernmental issues and provide for Agency relationship management. ▶ Ensure access to (and commitment from) appropriate Government resources throughout the Procurement processes. ▶ Provide particular planning for the level of Agency resources necessary for Alliance procurement and delivery. ▶ Provide a consistency of approach within the jurisdiction and incorporate jurisdiction procedures, including 'gateway' processes. ▶ Develop comprehensive planning for each Procurement Phase and ensure planning for each subsequent phase is complete prior to commencement of that phase. ▶ Incorporate sound analysis of the project needs and business case. ▶ Identify appropriate resources and necessary capability of the procurement team with clear responsibilities within each Procurement Phase. ▶ Develop robust procurement baseline budgets and programmes. ▶ Address contract packaging and contract models in the procurement planning. ▶ Incorporate overall risk and opportunity management throughout all Procurement Phases. ▶ Seeking and respond to feedback from within the sponsor Agency, from potential Proponents and from stakeholders (including central Agencies);

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
Pre-Procurement Phase	Comprehensive procurement planning is undertaken.	<p>Planning fully addresses:</p> <ul style="list-style-type: none"> ▶ the project scope and commercial arrangements; ▶ the procurement process; ▶ procurement resources; ▶ procurement risks and opportunities; ▶ stakeholder interfaces; and ▶ alignment with market capability and capacity. 	<ul style="list-style-type: none"> ▶ Provide detailed programming at each Procurement Phase recognising that Proponents: <ul style="list-style-type: none"> - often consist of separate participants, each with review / approval protocols; - require reasonable time to resolve inter-participant issues; - require sufficient time (and information) to plan and commit resources; and - incur costs for holding and delays. ▶ Provide a strategy to resolve planning approvals, including addressing responsibilities, allocation, commercial consequences and management plans. ▶ Provide a strategy to resolve land access. ▶ Identify and resolve a statutory approvals strategy. ▶ Provide a strategy to resolve Project third-party interfaces. ▶ Understand the cost impact and consequences of risk allocation and provide a strategy to resolve risk allocation. ▶ Incorporate a clear and focused communications strategy with all relevant stakeholders; ▶ Ensure that the overall procurement strategy is sufficiently developed to ensure consistency throughout all subsequent Procurement Phases. ▶ Develop a comprehensive understanding of the skills required throughout procurement (including throughout each phase). ▶ Ensure team leadership is experienced in the planned contract models. ▶ Ensure team leadership is experienced in the particular services and/or infrastructure types contemplated in the project and, if required, supplement the leadership with expert mentors. ▶ Ensure experienced leadership support (steering committee). ▶ Ensure appropriate talent and capability for appropriate activities and consider independent experts for particular project issues and tasks. ▶ Ensure effective relationship and process management within Government. ▶ Ensure process experience and capability in the procurement team. ▶ Ensure issue resolution capability in the procurement team. ▶ Ensure timely operator participation in the procurement processes. ▶ Ensure appropriate budgets are identified and approved for the procurement processes. ▶ Facilitate whole of Government alignment and support. ▶ Provide expertise to optimise effectiveness of bidder interaction. ▶ Ensure strong project/program management capability in the procurement team. ▶ Ensure clear responsibilities and accountabilities within the procurement team.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
Pre-Procurement Phase	Comprehensive procurement planning is undertaken.	<p>Planning fully addresses:</p> <ul style="list-style-type: none"> ▶ the project scope and commercial arrangements; ▶ the procurement process; ▶ procurement resources; ▶ procurement risks and opportunities; ▶ stakeholder interfaces; and ▶ alignment with market capability and capacity. 	<ul style="list-style-type: none"> ▶ Ensure that the Procurement team understands the appetite, capability and capacity of the potential participants to deliver each part of the project scope, including considering: <ul style="list-style-type: none"> - a structured early market engagement and sounding; - communications between agencies and jurisdictions to obtain benefits of experience and lessons learned; and - advice to the procurement team from potential proponents; ▶ Ensure that the procurement team understands (and the procurement planning responds to) the full scope of the project and the specific project and procurement risks and opportunities. ▶ Ensure that the procurement is designed to best align the project requirements with the market characteristics, given consideration to: <ul style="list-style-type: none"> - capacity, capability and appetite of potential proponents; - the impact of project complexity, bundling on competition and value; - the impact of project size (value) on competition; - the reduced efficiency of joint ventures relative to a single suitable participant; - the value/benefits/cost of project risk allocation; - the cost of bidding and the effect of the number of bidders on Proponents appetite; - uniformity in approach within jurisdictions; - the diversity and tensions within bid teams; and - reasonable procurement programming, including responding to other concurrent projects, international participation and the like. ▶ Establish a Procurement risk and opportunity management process. ▶ Ensure early resolution of project physical and contractual interfaces. ▶ Ensure early resolution of interagency issues. ▶ Ensure ongoing alignment of Government agencies in respect of issues. ▶ Ensure commitment of Government resources. ▶ Finalise procurement approval processes. ▶ Implement effective interagency communications. ▶ Clarify and agree interagency protocols. ▶ Establish transparent milestones and monitor progress to program for Procurement activities. ▶ Engage early intervention and/or implement remedial action to mitigate the impact of events or circumstances which affect procurement. ▶ Ensure clear understanding within Government of the project risks, including those related to Agency and Government retained obligations. ▶ Ensure early recognition and response to probity issues.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
EOI Phase	Clear and complete EOI documentation.	<p>The EOI document fully addresses:</p> <ul style="list-style-type: none"> ▶ Project requirements; ▶ Response requirements; ▶ Procurement process; ▶ issues affecting responses; and ▶ Response evaluation. 	<ul style="list-style-type: none"> ▶ Ensure that the EOI documents describe: <ul style="list-style-type: none"> - the EOI processes; - the issues which have the potential to materially affect the EOI process or the Procurement process; - details of the EOI process and its context within the Procurement process; - the EOI Stage program and the procurement program; - the EOI evaluation methodology, criteria and any weightings which may apply; - the constraints, procedures and protocols for proponents to comply with throughout the procurement process, including probity obligations; - approach to related entities; - Agency governance and approvals processes; - approach to contribution to bid costs; and - expected prequalification levels or 'minimum' capability/capacity hurdles. ▶ Ensure that the EOI response requirements include identification and commitment of the proponent (and participants) to the RFP rules including commitment to submit a proposal, probity confidentiality, conflict of interest and related company procedures. ▶ Ensure that the EOI documents include details which enable participants to understand the project with consideration being given to: <ul style="list-style-type: none"> - Project objectives and key Agency issues and values; - all issues which have potential to affect the project; - Project scope and value, the contract model risk allocation, the payment regime and Project programme including term, if relevant; - intergovernment issues and Agency retained responsibilities; - interfaces definition and obligations; - planning approvals status and strategy; - consistency of risks and terms within a jurisdiction and similar 'model' projects; and - any limits on innovation. ▶ Ensure that the evaluation criteria align with the project objectives. ▶ Ensure that the information required aligns with the evaluation criteria. ▶ Ensure that the evaluation methodology measures the extent to which the EOI response information satisfies the relevant evaluation criteria. ▶ Ensure that the EOI responses are evaluated in accordance with the advised evaluation criteria and methodology.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
EOI Phase	EOI requirements reasonably minimise Respondents' effort and cost.	<p>The EOI Response requirements for larger:</p> <ul style="list-style-type: none"> ▶ existing prequalification material ▶ minimum levels of experience and expertise; ▶ Proponents internal standard documentation; and ▶ only key differentiating information. 	<ul style="list-style-type: none"> ▶ Develop the EOI process program to allow reasonable time for the activities while avoiding unnecessary holding/standing costs for participants. ▶ Utilise the Pre-Procurement Phase feedback from potential participants to inform the development of the EOI program. ▶ As far as practicable, reduce EOI response effort giving consideration to: <ul style="list-style-type: none"> - the use of existing relevant prequalification arrangements for relevant participants, (including the application of corporate management and corporate capability and performance) recognising that this may not be appropriate for particular services or where new participants are contemplated; - the utilisation of minimum experience, capability and capacity measures to mandate standards for relevant participation because this will guide the acceptable potential participants while discouraging unacceptable parties from seeking to participate; - requesting only differentiating information and clearly defining the information requirements; - allocating specific criteria to specific returnable schedules; - requiring detailed participant business sustainability information (such as financial reports) to be in the form in which it was originally produced; - focussing the EOI response requirements on the character / capability / commitment / interrelationships of participants to the Respondent; and - avoiding the inclusion of works or service solution, unless product issues affect evaluation. ▶ As far as practicable, simplify the EOI requirements and minimise documentation including considering: <ul style="list-style-type: none"> - maximising application of electronic submissions; - incorporating page limits on EOI Response specific documents; and - sensibly requiring schedules and point form summaries rather than text.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
EOI Phase	EOI process is undertaken in accordance with information issued.	The EOI process has no divergences as identified in Quantitative Benchmarks.	<ul style="list-style-type: none"> ▶ Ensure the early undertaking of actions to resolve issues which have the potential to delay or alter the EOI process. ▶ Ensure that the Agency resources manages, coordinates and delivers the EOI process as planned, as previously advised and as contemplated in the EOI documents. ▶ To the extent that changes to the EOI program or to the EOI process become unavoidable, advise the potential participants as soon as possible. ▶ Ensure the accuracy and completeness of advice to potential participants during the EOI Phase. ▶ Ensure that the Agency resources, manages coordinates, undertakes and concludes the EOI evaluation in the minimum reasonable time. ▶ In the case of Alliances, ensure that the procurement team has the expertise, support and availability to undertake the alignment/selection workshops. ▶ Evaluate the EOI's within the time advised in the prior information, the EOI Phase program and the EOI documents. ▶ Ensure the approval processes and announcement protocols are confirmed, planned and followed. ▶ Ensure that the procurement team recognises the waiting/holding costs for participants after EOI response submission.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
RFP Phase	Clear and complete RFP documentation	<p>The RFP documents fully addresses:</p> <ul style="list-style-type: none"> ▶ Project requirements; ▶ Proposal requirements; ▶ Procurement process; ▶ issues affecting proposals; and ▶ Proposal evaluation. 	<ul style="list-style-type: none"> ▶ Ensure that the RFP documents clearly address all material aspects of the Project including: <ul style="list-style-type: none"> - the commercial terms, including the precise allocation of risk, payment terms, parties rights and remedies; - the structure and character of the Contract; - works and service requirements, including mechanisms for measurement of compliance; - details of issues affecting the performance of works and services (including land access, works approvals and interfaces); and - clear definition of any limitations on flexibility and/or innovation. - Ensure that RFP documents clearly define what is required to be submitted in the Proposal including: <ul style="list-style-type: none"> - clarity in the extent of detail, certainty and commitment of the various aspects of the Proposal; and - clear identification of mandatory requirements. ▶ For complex, major and/or unique Projects, engage in a planned and controlled interactive process between the Agency and Proponents during Proposal preparation to enable: <ul style="list-style-type: none"> - clarity and delivery certainty in relation to government retained obligations; - Proponents to test opportunities for innovation (or limits to innovation) and to optimise proposal team effort; - Proponents to raise issues without committing to formal clarification; and/or - the Agency to define limits and consider clarifications in an informed context. ▶ Where interactive RFP processes are employed, Agencies should consider: <ul style="list-style-type: none"> - establishing subject matter streams for interactive sessions to ensure appropriate Agency representation and to enable efficient targeted interaction; - establishing protocols which enable the interactive process to be effective within sensible probity constraints; - process management to provide equal opportunity to proponents and to preserve the Proponents intellectual property; - the engagement of skilled experienced representatives to manage the Agency roles; and - appropriately skilled Agency / Government representatives participation in the relevant subject matter meetings.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
RFP Phase	Clear and complete RFP documentation	<p>The RFP documents fully addresses:</p> <ul style="list-style-type: none"> ▶ Project requirements; ▶ Proposal requirements; ▶ Procurement process; ▶ issues affecting proposals; and ▶ Proposal evaluation. 	<ul style="list-style-type: none"> ▶ Include details of the evaluation methodology in the RFP document including (where applicable): <ul style="list-style-type: none"> - clarity of mandatory requirements; - clarity in respect of the assessment of value for money; - identification of issues relating to price point, affordability and/or the relevance of the PSC; - the circumstances which would justify adjustments to the PSC value (for PPP's); - the mechanism and application of comparative quantitative risk assessment; - the mechanism and value of relative economic benefits; - clear evaluation benchmarks (including discount rates, economic benefit costs/benefits and whole of life costs); - mechanisms to deal with options, alternatives and innovation (including ranked preferred options up to a value (PV) cap, if nominated); - clear and unambiguous evaluation criteria; - application of (and relationship between) relative value, non-price, economic and/or outturn cost analyses; and - weightings of non-price assessments if used.
RFP Phase	RFP requirements reasonably minimise Proponents effort and costs.	<p>The RFP requires:</p> <ul style="list-style-type: none"> ▶ only essential design elements which represent material risks to the agency; ▶ only essential statements of intent (project plans) which represent material risks; ▶ Responses structured to facilitate incorporation of Proposal features into a Contract; and ▶ documentation only of essential Contract elements. 	<ul style="list-style-type: none"> ▶ Proposal requirements should be focussed on that which has a material impact on the certainty of delivery of the project objectives, including information which: <ul style="list-style-type: none"> - is characteristic of the proponent (and will be inevitably captured by the engagement of that proponent in a Contract); or - represents relative value; or - represents value to the Agency and therefore should be captured in a Contract with that proponent (if successful). ▶ Proposal technical requirements should be minimised where practicable, including considering: <ul style="list-style-type: none"> - elimination of documentation relating to Contractors' corporate systems (i.e. management, safety and environment), which most likely have been directly or indirectly dealt with in the EOI Phase; - limitation of project specific method statements (project plans) to those which are genuinely material to delivery of the project objectives; and - limitation of design documents to those which capture the relative value of the Proposal including those which are necessary for assurance of functional certainty and aesthetics. ▶ When considering proposal design, delivery and service documentation requirements, Agencies should recognise that: <ul style="list-style-type: none"> - documentation should be limited to that which provides certainty of outcomes; and - to the extent that elements of the successful proponent represent greater relative value or outcome certainty, then those elements should be incorporated in the Contract. ▶ The Procurement team should sensibly limit option pricing.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
RFP Phase	RFP requirements reasonably minimise Proponents effort and costs.	<p>The RFP requires:</p> <ul style="list-style-type: none"> ▶ only essential design elements which represent material risks to the agency; ▶ only essential statements of intent (project plans) which represent material risks; ▶ Responses structured to facilitate incorporation of Proposal features into a Contract; and ▶ documentation only of essential Contract elements. 	<ul style="list-style-type: none"> ▶ The Procurement team should be aware that a certain level of design and delivery development by Proponents is unavoidable to establish certainty of pricing (in PPP and D&C projects) during the RFP Phase and, consequently, the requirement to incorporate that level of design and delivery documentation in the proposal frequently has limited material impact on costs. ▶ As a minimum, technical documentation should include those documents necessary to provide functional, aesthetic and whole-of-life certainty. ▶ Agencies should consider receipt of technical aspects of (D&C and PPP) Proposals prior to the closing date and time to reduce the evaluation period and reduce the standby time for proponents technical resources. ▶ To facilitate evaluation of the various aspects of proposals, proposal requirements are structured to provide alignment between: <ul style="list-style-type: none"> - the required content of a specific returnable schedule; - the specific evaluation criteria for that returnable schedule; - the particular expertise of the Agency group engaged to evaluate that returnable schedule; and - the methodology for evaluation of that returnable schedule. ▶ To facilitate early and complete resolution of issues and evaluations, the Agency should: <ul style="list-style-type: none"> - concurrently plan, program and manage concurrent evaluation; - centralise issue identification, management and resolution; and - ensure that the form of the issue resolution is able to be incorporated into the proposed Contract. ▶ To facilitate consolidated evaluation of all aspects of proposals, the RFP generally (and the evaluation plan specifically) describes how the evaluation of each proposal element (returnable schedule) contributes to the overall evaluation of the proposal. ▶ To facilitate the later Contract finalisation and to readily capture the relative value of the selected proposal, the RFP is structured so that key aspects of the selected proposal (particularly those which contribute to that proposal's relative value) are able to be incorporated into the proposed Contract. ▶ To the extent practicable, hardcopy requirements should be minimised and electronic submissions should be employed. ▶ To the extent practicable, the structure and content of proposals should be consistent with similar projects within the jurisdiction. ▶ Proposal documentation requirements should be limited to that which has material impact on the certainty of delivery of the project objectives.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
RFP Phase	RFP requirements reasonably minimise Proponents effort and costs.	<p>The RFP requires:</p> <ul style="list-style-type: none"> ▶ only essential design elements which represent material risks to the agency; ▶ only essential statements of intent (project plans) which represent material risks; ▶ Responses structured to facilitate incorporation of Proposal features into a Contract; and ▶ documentation only of essential Contract elements. 	<ul style="list-style-type: none"> ▶ Where appropriate, a contribution to bid costs should be considered in response to large and/or complex projects requiring significant unique effort. ▶ If consideration is to be made in respect of bid costs, those considerations should be: <ul style="list-style-type: none"> - only in respect of unsuccessful proponents; - limited to a fixed, predetermined amount; - subject to demonstrated third party expenses exceeding that fixed amount; and - subject to submission of a bona fide proposal. ▶ Ensure that procurement team resources are authorised, experienced and available to effectively respond to: <ul style="list-style-type: none"> - the interactive and clarification processes in PPP models and in D&C models (including early contractor involvement); and - the engagement for Alliance participation in TOC preparation. ▶ Fully documented commercial terms are necessary to provide certainty in respect of Proposal evaluation and in terms of Contract finalisation (for D&C and PPP Contracts). ▶ Fully documented commercial terms for options and alternatives are necessary to provide certainty (in respect of the known variables) for the purpose of evaluation of Proposals and for the purpose of Contract finalisation (for D&C and PPP Contracts). ▶ The Procurement team should recognise that the PPP Contracts invariably involve a suite of commercial/financial documents at Contract Close due to the necessity to identify the relationships between the various participants, the Agency and (possibly) the government. In the context of minimising the Proponents effort and costs, it is prudent to consider the character and completeness of the commercial documentation required as part of the Proposal, including considering: <ul style="list-style-type: none"> - the use of precedent documents; - the use of term sheets where sufficient certainty can be achieved, such that the resolution of outstanding issues will not result in adverse changes to the commercial terms (in the Contract documents) during finalisation; or - deferring finalisation of non-material documents with only a selected proponent while other proponents are held in reserve. ▶ The Procurement team should recognise the inherent uncertainty associated with validity periods which are less than the duration of the Evaluation/Finalisation Phase and should require adequate realistic validity periods together with refresh protocols for extending the validity.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
RFP Phase	RFP requirements reasonably minimise Proponents effort and costs.	<p>The RFP requires:</p> <ul style="list-style-type: none"> ▶ only essential design elements which represent material risks to the agency; ▶ only essential statements of intent (project plans) which represent material risks; ▶ Responses structured to facilitate incorporation of Proposal features into a Contract; and ▶ documentation only of essential Contract elements. 	<ul style="list-style-type: none"> ▶ Agencies should consider resolving commercial terms (particularly PPP) with each proponent prior to the closing date and time to reduce the evaluation period and reduce the standby time for proponent's commercial / financial resources. ▶ Ensure that the degree of proponent 'due diligence' for proposal submission is to be appropriate for the project in understanding that: <ul style="list-style-type: none"> - incomplete 'due diligence' results in uncertainty in the value of a Proposal and in terms of commercial and procurement program outcomes; - completed 'due diligence' at submission provides certainty of the Proposal, however it requires proponents to expend greater effort and cost; and - Proponents may seek to delay full 'due diligence' to be a contract condition precedent to be resolved after Contract execution, which could result in ongoing negotiation following Contract award.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
RFP Phase	Commercial Terms represent value for money.	<p>Full consideration is given to:</p> <ul style="list-style-type: none"> ▶ precedent Contracts; ▶ evaluation of terms; ▶ mechanisms to deal with uncertainties; ▶ performance and payment; and ▶ interface resolution. 	<ul style="list-style-type: none"> ▶ As far as practicable, commercial terms should be: <ul style="list-style-type: none"> - consistent within the jurisdictions; and - consistent with similar projects. ▶ Where specific commercial terms are necessary to deal with a particular issue utilise precedent documents (from precedent projects) where practicable. ▶ Ensure that the Agency team are informed in respect of the evolution of terms over time in response to Agency and participant needs. ▶ Where particular uncertainty exists, mechanisms involving predetermined commercial outcomes for particular events should be considered. ▶ The Agency's approach to commercial terms in the RFP documents should be informed by the earlier market sounding. ▶ The Agency should recognise that the primary objective of contract terms is to drive Contractor behaviour and should consider: <ul style="list-style-type: none"> - a balance between financial outcomes and contract performance; and - consistency between good performance incentives and poor performance remedies; ▶ The Agency should ensure that performance is linked to payments and that payment adjustment triggers: <ul style="list-style-type: none"> - are sensibly limited in number and actually and directly reflect the Agency's required outcomes; - are readily measurable, not subjective and readily auditable; - are not scaled or structured so that reasonable performance is penalised (a feature which will encourage Proponents to provide for such adjustments in the financial elements of their proposal). ▶ Recognise the cost / value of particular commercial positions including: <ul style="list-style-type: none"> - the added cost of retentions; - potential value for insurance strategies; - the savings associated with resolution of project interfaces and inter government agency issues; and - the pricing uncertainty in response to the transfer of risk to a proponent which cannot be managed or cannot be quantified (such as unlimited liability). ▶ Recognise that uncertainty increases both the price of a proposal and the proponent's preparation cost.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
RFP Phase	RFP Process is undertaken in accordance with information issued to Proponents.	RFP process has no divergences, as identified in Quantitative Benchmarks.	<ul style="list-style-type: none"> ▶ Ensure that the RFP documents describe: <ul style="list-style-type: none"> - issues which have the potential to materially affect the RFP process; - details of the RFP process and its context in the Procurement process; - the RFP evaluation methodology; - constraints, procedures and protocols to be observed throughout the RFP Phase; and - effective arrangements for access to information including relevant data; ▶ Ensure that delay and disruption and wasted effort is avoided/minimised including: <ul style="list-style-type: none"> - delivering the RFP process in accordance with the advice to Proponents (including in the RFP document); - ensure the accuracy and completeness of all advice to Proponents; - ensure that unavoidable changes to the RFP process are advised as early as possible including: <ul style="list-style-type: none"> ▶ requiring clarification requests to be submitted early in the RFP period; ▶ issuing any unavoidable material addenda early in the RFP period; and ▶ extending the Proposal closing date and time when material changes are not able to be effectively addressed in the remaining time. ▶ Prior to the closing date ensure that the Agency is fully prepared for the Evaluation / Finalisation Phase, including ensuring that it has: <ul style="list-style-type: none"> - developed its evaluation plan and contemplated documentation; - engaged and committed the evaluation resources; - developed and structured the evaluation team; - inducted and trained its evaluation resources; - finalised the evaluation program; - established receipt security and document control arrangements; - implemented centralised issue (identification, coordination, clarification and resolution) management; - obtained endorsement of the evaluation processes as required; and - identified and planned evaluation reporting and approval processes.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
Evaluation / Finalisation Phase	Effective and efficient evaluation of Proposals.	<p>The evaluation fully addresses:</p> <ul style="list-style-type: none"> ▶ assessment of the relative value of each proposal; ▶ resolution of material uncertainties in respect of proposals; and ▶ in the case of the selected proposal, inclusion of the relative value and the resolution of uncertainty in the Contract. 	<ul style="list-style-type: none"> ▶ Ensure effective management of material issues (affecting the value and/or uncertainty of Proposals) including: <ul style="list-style-type: none"> - coordination and centralisation of issue management (across disciplines) to recognise the interrelationships and materiality of issues; - implementation of effective cohesive issue resolution strategies; - design of clarifications requests to ensure that the responses enable evaluation with certainty; - design of clarifications requests to provide the precise Contract wording which would be employed to capture the outcomes; and - recognition of the occasional necessity to sequence clarification requests to consider responses prior to subsequent clarifications. ▶ Recognise that validity periods have the potential to affect proposal certainty and implement processes to monitor, manage and refresh validity during the Evaluation/ Finalisation Phase. ▶ Recognise that competition should be preserved until all material aspects of Proposals are resolved, to ensure: <ul style="list-style-type: none"> - minimum adverse shifts in commercial terms ('deal creep'); - minimum extended multi-party negotiations; and - minimum delays to execution of the Contract and/or to financial close. ▶ Ensure that the evaluation/finalisation plan is fully consistent with the RFP and provides clear direction to the evaluation team in respect of precise criteria, evaluation tools, comparative measures, innovation and aesthetics measures, relative risk assessment, the application of the PSC and the like. ▶ Understand that certain options and alternatives may be mutually exclusive (or result in cumulative impacts) and evaluation finalisation should include consolidation of each proponent's proposal inclusive of the selected options. ▶ The consolidated Contract document must accurately and comprehensively incorporate the particular value aspects of the proposal and the resolution of uncertainties during the Evaluation/Finalisation Phase.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
Evaluation / Finalisation Phase	The Evaluation / Finalisation process reasonably minimises Proponents effort and costs.	The Evaluation / Finalisation addresses: <ul style="list-style-type: none"> ▶ timeliness; ▶ legal costs and effort; and ▶ release or suspension of unsuccessful Proponents. 	<ul style="list-style-type: none"> ▶ Ensure the early undertaking of actions to resolve issues which have the potential to delay or alter the Evaluation/ Finalisation process. ▶ To the extent that changes to the Evaluation/Finalisation program or to the Evaluation/Finalisation process become unavoidable, advise the Proponents as soon as possible. ▶ Ensure that the Agency resources, manages coordinates, undertakes and concludes the EOI evaluation in the minimum reasonable time. ▶ Evaluate the Proposals within the time advised in the prior information, the Evaluation/Finalisation Phase program and the RFP documents. ▶ Ensure the approval processes and announcement protocols are confirmed, planned and followed. ▶ Ensure that the procurement team recognises the waiting/ holding costs for participants after proposal submission. ▶ Recognise that unresolved issues potentially compromise the evaluation and diminish the value captured in the final Contract. ▶ Recognise the ongoing costs of retaining/continuing to evaluate or finalise with three Proponents rather than two proponents or one proponent. ▶ Understand that requests for clarification (during the Evaluation/Finalisation Phase) that involve design, costing, programming and/or financing changes can cause delay to the overall Evaluation/Finalisation program, can cause significant cost to the proponent and can compromise the underwriting of PPP's. ▶ Recognise the duplication of cost and effort for multiple proponents to develop planning submission documents during the Evaluation/Finalisation Phase. ▶ Recognise the duplication of cost and effort for multiple proponents to complete full documentation. ▶ When deciding to continue to evaluate/finalise with multiple proponents (and release or suspend evaluation of particular proposals) the procurement team should consider: <ul style="list-style-type: none"> - the materiality of the remaining uncertainties in respect of all proposals; - the possibility that further clarification and evaluation could alter the relative rankings of proposals; - the necessity to retain competition; and - the cost and commitment required from participants to continue to support a Proposal.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
Evaluation / Finalisation Phase	The Evaluation / Finalisation process reasonably minimises Proponents effort and costs.	<p>The Evaluation / Finalisation addresses:</p> <ul style="list-style-type: none"> ▶ timeliness; ▶ legal costs and effort; and ▶ release or suspension of unsuccessful Proponents. 	<ul style="list-style-type: none"> ▶ Ensure that intra-Government agency evaluation/finalisation issues are effectively managed and resolved and that all endorsement and approval processes are understood and are implemented, including: <ul style="list-style-type: none"> - Federal/State funding and/or environmental issues; - agency stakeholder alignment on scope and processes; - Government understanding of issues and risks; - Gateway and approval processes; - Government stakeholder participation; - agency interfaces resolved; and - State Ministerial approvals. ▶ Ensure continued effective project governance, leadership and management throughout the Evaluation/Finalisation, including: <ul style="list-style-type: none"> - ensuring Agency is an informed client; - reporting against original plan; - maintaining clear governance, steering and mentor structures; - maintaining strong project management disciplines; - ensuring decision makers remain directly involved to close out issues; - ensure that there is no impediment to Contract execution; - ensuring there are no impediments to financial close of PPP's including predetermined rate set protocols; - ensuring that Government obligations are managed with a whole of government approach; and - developing and implementing an effective project initiation process.

Procurement Phase	Qualitative Benchmark	Description	Enabling Actions
Evaluation / Finalisation Phase	Evaluation / Finalisation is undertaken in accordance with information issued.	The Evaluation / Finalisation has no divergences, as identified in Quantitative Benchmarks.	<ul style="list-style-type: none"> ▶ Ensure development and implementation of effective robust evaluation planning. ▶ Ensure that the Agency resources, manages, coordinates and delivers the Evaluation/Finalisation process as planned, as previously advised and as contemplated in the RFP documents. ▶ Ensure the accuracy and completeness of advice to proponents during the Evaluation/Finalisation Phase. ▶ Ensure ongoing/committing of sufficient funding and experienced resources to lead/manage and deliver the evaluation/finalisation outcomes in accordance with the plan. ▶ Ensure the engagement and commitment of well structured evaluation teams with the requisite specialist skills. ▶ Recognise that multiple material changes to the project during the Evaluation/Finalisation Phase may result in the need for a 'best and final offer' (BAFO). ▶ While process certainty is preferred, particular events and circumstances may arise (including financial market conditions in relation to PPPs) which warrant modification to the Evaluation/Finalisation process. In this case, advise the proponents as quickly as practicable, having addressed, as appropriate: <ul style="list-style-type: none"> - market, industry and participant knowledge; - issues in other jurisdictions; - Government agency knowledge; - affected stakeholders; - option analysis and selection; and - endorsements and approvals.



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