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BETTER INFRASTRUCTURE PROCUREMENT FOR PUBLIC PRIVATE PARTNERSHIPS: AN AUSTRALIAN PERSPECTIVE

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Abstract: Public private partnerships (PPPs) are a method for the delivery of social and economic infrastructure services in over 80 countries worldwide. PPPs are a contractual arrangement between public and private entities through which the skills, assets and/or financial resources of both sectors are allocated in such a manner that provides optimal service delivery and good value to society. Central to the operation of public private partnerships is the systematic evaluation of the procurement options available to government, an output specification to encourage private design, risk transfer, construction and operational innovation, the detailed analysis of projects over their operational lifecycle, a rigorous and competitive bid process, and the selection of proposals that deliver value for money. Unlike traditional procurement, which is predominantly based on lowest cost to government, value for money (VFM) is a measure that takes into account both the quantitative and qualitative outcomes over the term of a contract. This paper is based on a larger study for the Asia Development Bank (ADB) which contained an international survey prepared by the authors. The ADB report reviewed PPP policy and using six case studies as a basis for comparison. Each study considered experience of policy and institutional frameworks, value for money evaluations and infrastructure projects delivered. The Australian case study is included in this paper as an example of good procurement practice.

1 INTRODUCTION

First introduced as part of the Private Finance Initiative (PFI) in the United Kingdom in the 1990s, public private partnerships (PPPs) have come into wider use around the world as an important method for government procurement of economic and social infrastructure services. In contemporary practice, the PPP is a specialised form of procurement that changes the role of government from owner and manager of infrastructure assets to a buyer of infrastructure services.

PPPs are a method of public procurement that employs a combination of private sector capital and management to deliver infrastructure services to, or on behalf of, government (Regan, 2010). To determine which procurement method is best for government, a comparison of the procurement options is undertaken in the early stages of the procurement process. The criteria used to select the optimal procurement method is known as value for money (VFM) although the criteria used to ascertain which method or which bid offers the best deal for government is determined under PPP policy and this varies significantly between nations. VFM was introduced to infrastructure procurement in the 1980s and has

long served as a measure of the impact of international aid and assistance programs, and spending programs of government agencies for audit purposes (Australian National Audit Office, 2012). In OECD countries, VFM generally includes the formal cost benchmarking of the PPP option against a traditional procurement option on a life cycle cost basis over the term proposed for the PPP contract (the public sector comparator or PSC). This occurs in the bidder selection or investment stage of the project. Further VFM analysis may be conducted following a competitive auction process (the procurement stage of the project) after bids have been received. Policy may also require a qualitative comparison of the best bid and the PSC to identify the best VFM for government.

VFM enables government to measure two key dimensions of infrastructure procurement. First, it requires government to undertake a detailed *ex ante* quantitative evaluation of a project over its life cycle in order to compare and select the best procurement option. Second, with adjustment for risk and competitive neutrality, it provides a means of comparing the most efficient procurement mechanism available to government with proposals received from contractors in a competitive bid process.

1.1 What is Infrastructure?

Infrastructure refers to the hard assets, networks and human capital that facilitate the functioning of both the economy and civil society. Economic infrastructure refers specifically to the services produced by airports, roads, ports, railway systems, electricity generation plants, water supplies, telecommunications, and waste management and recycling. Social infrastructure refers to services provided to develop human capital in areas such as primary, secondary and tertiary education, facilities for police services, court facilities and corrective services, the health sector, and public buildings. The cost of providing social infrastructure is mostly met from the government's budget and services possess the characteristics of a public or merit good. However, economic infrastructure may also be fully or partly financed from user-charges, which enables services to be outsourced to private providers on a stand-alone basis.

Infrastructure is an important national asset class contributing to an economy's output capacity, productivity, and its economic and social development. Infrastructure investment is also linked to employment (short and long-term), reduced private sector costs, productivity and growth (Weber and Alfen, 2010; Regan, 2004).

As an asset class, infrastructure assets and services possesses a number of distinguishing features:

- Investment is long-term, involves high sunk costs and is capital intensive
- Output quality standards and prices are generally regulated
- Long service intervals favour life cycle costing
- Assets generally form part of complex networks
- Output pricing of utilities such as electricity, gas and water have important impacts on the input cost structures of most sectors of the economy
- Assets are generally site and use specific
- Services are generally essential public goods
- Investment is subject to limited competition and economies of scale.

The investment economics of infrastructure assets are well matched to the PPP method of procurement and analysis based on VFM principles.

1.2 What are the Infrastructure Procurement Options?

There are several procurement options available to government, which can be grouped into three distinct categories. The first is traditional procurement, which accounts for the majority of infrastructure provision throughout the world today. Traditional contracts have a number of distinguishing characteristics that generally include:

- The contract is based on an input specification
- Contractor selection methods is mainly determined on price

- An adversarial contractual framework in which the objectives and incentives adopted by the client, the contractor and other parties to the contract are non-aligned and therefore contributing to agency problems
- Mostly used with short-term complete contracts for construction-only services
- There is limited risk transfer beyond the typical time and cost provisions that apply under fixed price contracts.

The second group of contracts covers a variety of arrangements that adopt a less adversarial contractual framework and make greater use of the benefits of long-term contracts that incorporate both asset provision and service delivery, privately sourced capital and a greater sharing of project risks. The most common procurement forms include the build operate transfer (BOT) family of contracts, PPPs and outsourcing, franchises and concessions. These alternative procurement methods generally possess some or all of the following characteristics:

- An output specification
- A long-term incomplete contractual framework with a much greater alignment of the objectives and incentives of the parties compared with traditional contracts
- Transfer of decision-making to the contractor designed to encourage greater innovation in the construction and service delivery process
- Private finance
- The contractor carries a greater level of project risks than other procurement methods which may include construction time and cost, life cycle costs and operational risks
- Embedded regulatory arrangements including alternative dispute resolution mechanisms and a performance-based remuneration arrangement.

The third group of contracts are relationship-based arrangements for short-term or staged projects. These are an alternative to traditional and PPP procurement methods and are widely used for complex projects in which the specification may be incomplete or the contract price difficult to ascertain prior to commencement of works. The characteristics of relationship contracting include:

- Contractor selected on qualitative criteria including track record, expertise, previous experience with collaborative contracts and cultural match with client values
- A collaborative contractual framework with cost overruns and cost savings shared between the client and the contractor
- A contractual relationship based on high levels of trust and cooperation supported by a joint project management group, “open book” project accounting and an agreed contractor margin
- Agreed project scope and specification.

Procurement methods should be selected on a case-by-case basis and no single method is suitable for all projects. PPPs are a specialised form of procurement that may entail longer preparation times, complex documentation and higher transaction costs than other forms of procurement. Nevertheless, these disadvantages may be outweighed by better VFM outcomes for government determined on a risk-weighted comparative basis. PPP's are not an appropriate procurement vehicle for delivery of all infrastructure projects or services. VFM is best achieved with projects or services involving complexity, economies of scale, where there is scope for significant risk transfer from government to private contractors, and when opportunities exist for innovation in design, construction and operations.

1.3 What is a Public Private Partnership?

A Public Private Partnership refers to a contractual arrangement between public (national, state, provincial or local) and private entities through which the skills, assets, and/or financial resources of each of the public and private sectors are allocated in a complementary manner, thereby sharing the risks and rewards, to seek to provide optimal service delivery and good value to society (Asia Development Bank, 2012). In contemporary practice, the term PPP has no precise

meaning and is used to describe a number of procurement forms including operations and maintenance contracts, management or service contracts (outsourcing contracts), the BOT family of contracts, franchises, concessions and partnering arrangements (World Bank 2007: 2; Hodge and Greve, 2005: 5-8). PPP is a generic description for long-term contracts between government and a private firm for the provision of economic and social services to, or on behalf of government. In a number of jurisdictions, PPPs are also called the PFI or Private Finance Initiative (United Kingdom and several Commonwealth member countries), PFP or Privately Financed Projects (New South Wales), PPI or Private Participation in Infrastructure (World Bank), BOT, concessions and franchises.

PPP policy may take the form of a special PPP law, the amendment of existing procurement laws and regulations, or a policy and guidance framework issued by a central agency of government such as Treasury and Finance. The characteristics of a typical PPP include the following:

1. An output specification that specifies the service to be delivered and not how it will be delivered (effectively transferring control rights and creating performance incentives for the contractor)
2. Scope for the exercise of private expertise, innovation and incentivised management
3. The transfer of significant service delivery and life cycle cost risk to the contractor
4. Contractor selection relies on qualitative and quantitative criteria (VFM) and not simply lowest price
5. Contracts are incomplete, long-term and generally self-regulating
6. The delivery process may be more complex than alternatives
7. Payment for performance: the government pays only for services that conform to specification.

In OECD member countries, a PPP is generally understood to mean a long-term contractual arrangement under which a private contractor is selected through a competitive bid process to finance and deliver goods or services to, or on behalf of the state (Burger and Hawkesworth 2011: 3; Hodge and Greve 2005, p. 4; Delmon 2009: 93-121; Regan et al., 2011: 364). Contractor selection is on the basis of best VFM, determined using quantitative and qualitative criteria and/or the application of a comprehensive and rigorous PPP policy framework (Regan et al., 2011).

Central to PPP procurement is the criteria used to select both the procurement method and the best proposal received from the contractors bidding for the project. Unlike traditional procurement that compares lowest-cost bids by contractors with an input specification, VFM is a life-cycle costed measure of the qualitative and quantitative aspects of a proposal. It describes the aggregate benefits from a particular procurement solution and measures the net positive gain or welfare benefits that a procurement strategy brings to government. VFM is a technique for selecting the best possible outcome for the money spent by government on a particular activity, program or undertaking (NAO 2009; HM Treasury, 2006: 7; Audit Commission 2010; Australian National Audit Office, 2012: 5, 8). It is widely used in project procurement and particularly for PPPs to determine whether a particular bid or proposal offers a lower cost and better service solution than an alternative procurement route (European Investment Bank, 2011). VFM is an objective that allows procuring agencies to ascertain whether service delivery is designed to appropriately meet the service specification while achieving a reasonable return on investment (Infrastructure Australia 2008a).

In contemporary PPP practice, VFM has assumed greater importance for measuring procurement solutions for infrastructure applications. In some jurisdictions, VFM is the critical determinant for determining whether the PPP is the optimal procurement method. This is done with a comparison of detailed models of a PPP with a traditional procurement alternative. In some jurisdictions, VFM is implied by creating a rigorous project implementation process and a competitive bid market (Delmon, 2009: 13-15). In other countries PPP policy requires the use of the PSC for both the procurement and contractor selection processes.

Value for money (VFM) in public-private partnership (PPP) projects is gained through the engagement of private sector efficiency, effectiveness, and economy and through the appropriate allocation of risks in the

project. The assessment of the potential to secure VFM is a key element of the PPP assessment process. The conclusions on VFM potential will inform governments in developing member countries (DMCs) on whether to proceed with a PPP procurement, and, if so, the form of PPP that could be used. (ADB 2012, Public–Private Partnership Operational Plan 2012–2020). Value for money allows procuring agencies to establish whether service delivery has been structured to appropriately meet the service output while continuing to ensure reasonable stewardship of financial resources. The assessment of value for money should encompass all aspects of the proposal including both quantitative and qualitative elements (Infrastructure Australia 2008). Value for money is the best deal that satisfies the government's service objectives (National Audit Office 2009).

2 VFM ASSESSMENT IN PROCUREMENT

In some countries, PPP policy may endorse VFM principles without providing specific criteria to determine how VFM will be calculated. The reasons for this may be that government needs to fast-track projects or the government's fiscal position limits public investment options. The informal assessment of VFM uses systematic approaches to the procurement process that embeds VFM principles in project evaluation and procurement methodologies.

In jurisdictions where a formal VFM process is not required, a comprehensive procurement process that embeds VFM principles may achieve a similar outcome. The elements of a VFM procurement process include a detailed feasibility or procurement options analysis, a pre-qualification procedure, competitive dialogue, technical and administrative requirements that incorporate quantitative and qualitative performance benchmarks, and adoption of a gateway system that prescribes the stages through which a project must pass before it is finally approved. Delmon (2009: 13) describes this approach as "... a holistic assessment of the project delivery and the marginal benefits provided by private investment and the competitive procurement process used".

A PPP policy that adopts one or more of these principles has a greater likelihood of achieving VFM outcomes for government than a PPP policy that does not. However, informal VFM methods do not provide government with sufficient data with which to improve the procurement process, document lessons learnt, raise the skill levels in line agencies and optimise risk transfer with future projects. These outcomes can only be achieved with adoption of a formal approach to VFM assessment.

A number of countries use a competitive bid market to enhance VFM outcomes. The competitive bid market approach is based on the assumption that private infrastructure procurement delivers projects at lower cost and in shorter periods of time than traditional public procurement methods and represent a better VFM option for government. Competition between private contractors in a well-managed bid market is considered the one of the drivers of VFM with PPPs (Ismail et al., 2011). VFM is more likely to be produced by a competitive procurement process over one that is not. However, competitive bidding alone does not ensure VFM outcomes.

When this option is chosen, the government will generally prepare an output specification, consult widely with the market ahead of the bid, make an allocation of project risks and proceed with a competitive bidding process. This is the practice adopted with many concessions and BOT contracts and it relies on a competitive bid market to deliver a better outcome for government than could be achieved with traditional procurement, which is widely accepted as the benchmark for measuring procurement performance. Unlike a PPP, a traditional contract based on an input specification is an adversarial contract and contractor selection employs criteria heavily weighted toward lowest cost. Policies that use competitive bid markets rely on bidder depth, transaction flow, risk transfer, and rigorous management of the bid process. Procurement method is also important and policies may require a minimum number of bidders, pre-qualification, open or closed bids, and competitive dialogue during negotiations. In some jurisdictions, a best and final offer may be requested from short-listed bidders although this may contribute to hold-up delays and rapid escalation of bid costs if not carefully managed. Experience in a number of OECD countries suggests that VFM outcomes are determined by the efficiency with which government manages the competitive bid process, an appropriate risk allocation strategy, and post-selection negotiations to

ensure achievement of the best VFM outcome (Delmon 2009, pp. 13-15). Most international PPP policy frameworks now require competitive bidding for PPP projects.

3 AUSTRALIAN CASE STUDY

3.1 Partnerships Victoria, State Government of Victoria, Australia

The PPP program of the State of Victoria was implemented in 2001 and is managed by Partnerships Victoria, a unit of the Commercial Division, Department of Treasury and Finance. All PPP projects in Victoria are implemented under the Partnerships Victoria policy that operates under the uniform national PPP policy implemented by the Australian Government in 2008. While national policy applies throughout the country, states and territories may modify the national guidelines to achieve a better interface with local institutions, practices and market conditions.

Victoria has a long tradition of outsourcing, concessions and BOT contracts although major projects initiated prior to 2001 are not technically PPP projects, they meet the general policy principles contained in Partnerships Victoria policy. The policy is contained in a comprehensive set of guidance materials without an enabling legislative framework. Victoria has commissioned 22 PPP projects and has two additional projects in the bidding stage. The project list spans a large number of different applications including corrective services, bioscience and medical research facilities, hospitals, waste water reclamation and processing services, court buildings, a convention centre, a rail and road transport interchange complex, toll roads, schools, desalination plants, telecommunications and data services. The Partnerships Victoria project list may be viewed at Partnerships Victoria web site (www.partnerships.vic.gov.au).

Projects that conform to Partnerships Victoria Policy are referred to as PPPs and projects delivered before the commencement of Partnerships Victoria or which involve alternative implementation procedures are described as BOT contracts, franchises or concessions. Victoria has undertaken a large number of non-conforming projects in the past 20 years including the franchising of operations and management for the Melbourne metropolitan public transport system and the construction and operation of the extensive Citylink toll road network. BOT projects are also undertaken by statutory authorities and institutions but no PPPs have been commissioned by local government.

3.2 Institutional Framework

The effectiveness of a government's PPP policy and delivery schedule is influenced by the effectiveness of its institutions, both formal and informal. International indicators (The World Economic Forum 2013; Transparency International 2010; World Bank 2011) provide comparable data about the efficacy of institutions for most nations but not subnational governments. Victoria holds a similar credit rating to Australia and the national institutional survey data serves as an appropriate proxy for Victoria's institutions.

3.3 Policy Framework

Partnerships Victoria is a policy-based framework that operates in parallel with conventional government procurement policy. The policy is issued by the Commercial Division of the Department of Treasury and Finance which operates a specialist PPP unit to assist line agencies with project selection, evaluation and implementation. Comprehensive guidance has been issued for the program and periodic updating takes place to meet changes in the operating environment and document the lessons learnt from both policy and project implementation over time. As a subnational government, Victoria's PPP policy applies only within the state of Victoria although Partnerships Victoria policy has been adopted in other states and territories and serves as a best practice benchmark in many countries.

The foundations of Partnerships Victoria policy are the following guidelines:

- 2001 Policy Overview
- 2001 Practitioners Guide

- 2001 Public Sector Comparator, Technical Note
- 2001, 2008 Risk Allocation and Contractual Issues
- 2003 Public Sector Comparator, Supplementary Technical Note
- 2003 Use of Discount Rates in Partnerships Victoria Process
- 2005 Standard Commercial Principles
- 2005 Determining the Inflation Rate Advisory Note
- 2005 Managing Interest Rate Risk Advisory Note
- 2005 Disclosure and Management of Conflict of Interest Advisory Note
- 2005 Interactive Tender Process Advisory Note
- 2007 Public Disclosure Policy
- 2008 Standard Commercial Principles

The PPP framework for Partnerships Victoria involves a number of well-defined steps in the procurement process. The procurement evaluation process is initiated by the line agency responsible for service delivery and involves identification of the service need, an appraisal of procurement options, and the construction of a PSC. The project implementation stage refers to the bidding and contractor selection process, negotiation of the contract and contract close.

3.4 Value for Money (VFM)

Prior to the introduction of the national PPP policy in 2008, Partnerships Victoria required line agencies to approve PPP projects through a “gateway” system of eight well defined steps (Table 1). National PPP policy recognises the need for policy to be adapted for local conditions. In Victoria, the PSC is developed for a reference project that is constructed from the initial scoping exercise, the benefit cost analysis, the business case and procurement options analysis. It is finalised during the project development stage and before the distribution of expression of interest documentation to the bid market. When formal bids are received at the end of the request for proposal process, a comparison is made with the PSC and an assessment made of the qualitative attributes of each bid. Bidders are asked to submit bids that meet the output specification, scope and risk allocation nominated in the RFP. In reality, bids may not fully comply with the reference project: some may refuse to accept the risks nominated and others may offer alternatives ways to meet the service requirement. The assessment of VFM will need to consider these variations in bids and their impact in quantitative as well as qualitative terms. The PSC may be modified after bids are received if the agency believes that a significant component has been mispriced or omitted, and when there has been significant change in underlying assumptions between the commencement of the PSC and the receipt of formal bids (Partnerships Victoria 2013, pp. 15-16).

3.5 Value for Money Framework

Partnerships Victoria policy is based on VFM principles and employs the PSC to undertake the quantitative analysis in both the procurement and the bidder selection stages of the project. The policy provides comprehensive guidance to assist line agencies to undertake options analysis, identify and measure risk and construct a life cycle costed and risk-weighted PSC. For a PPP project to be approved, it is necessary for the line agency to establish that the PPP option represents a better VFM proposition than government delivery using a traditional model. This decision is not based solely on a quantitative comparison of a bid with the PSC but takes into account both the quantitative and qualitative dimensions of the bid. All things being equal, strong qualitative attributes may outweigh a more costly procurement option for government. The VFM assessment conducted for recent Partnerships Victoria projects is fully disclosed on the agency’s website www.dtf.vic.gov.au/Infrastructure-Delivery/Public-private-partnerships

Table 1 - Major Stages in Developing a Partnerships Victoria Project (Gateway)

Stage	Description
1. The Service Need	Identify the service need Preliminary output specification Consider wider long-term service needs
2. Option Appraisal	Options analysis Preliminary work on risk identification, allocation and costing
3. Business Case	Begin construction of the PSC Benefit cost analysis
4. Project Development	Form the in-house project delivery team Continue work on the PSC Develop commercial principles Market consultation
5. Bidding Process	Conduct an expression of interest (EOI) Evaluate responses, develop short-list Design project brief and contract Conduct request for tender (RfT)
6. Project Finalisation	Confirm VFM Final approval to proceed
7. Contract Close	Negotiate contract with preferred bidder
8. Contract Management	Prepare brief and finalise monitoring arrangements

Source: Partnerships Victoria 2012, Practitioners' Guidance, p.14

3.6 Projects Delivered

Few international PPP programs have delivered PPPs in as many industry applications as Partnerships Victoria which has delivered 22 PPP projects with a capital value of AUD11.5 billion since 2001 with a further AUD1.1 billion presently under tender (see Table 2). The industry sectors include:

1. Toll roads and non-tolled motorways (2)
2. Biosciences research facilities
3. Water reclamation works (2)
4. Hospitals (4)
5. Medical research facilities
6. Corrective services (3)
7. Waste water and bio-solids management (2)
8. Railway station and multi-modal transport node
9. Public facilities (showgrounds)
10. Convention centre
11. Schools
12. Judicial facilities
13. Desalination project
14. Emergency and security telecommunications and data storage (3).

Case studies for these projects and details about the PSC and VFM assessment are available at Partnership Victoria:

<http://www.dtf.vic.gov.au/Infrastructure-Delivery/Public-private-partnershipspartnerships>

PPP contracts accounted for around 10% of Victoria's capital spending between 2001 and 2013. The majority of Partnerships Victoria projects are delivered within 24 months of commencement, which reduces transaction costs and has assisted the development of a competitive bid market.

3.7 Role of Agencies

Partnerships Victoria policy is managed by the Commercial Division, Department of Treasury and Finance which operates as a PPP unit providing technical and other assistance to line agencies for project evaluation and delivery. The Department also applies considerable resources to the training of contract managers, conducting market briefings, preparing data and completion reports for commissioned projects, and assisting line agencies to build their own in-house capacity to deliver PPP projects under the Department's oversight. Only one of the projects listed (Ararat Prison) has had construction problems.

Table 2 - Partnerships Victoria Projects 2001 - 2013

Project	Sector	Outcome
Biosciences Research Centre	Agriculture Research	Operational and Continuing
Ballarat North Water	Water Recycling	Operational and Continuing
Ararat Prison	Corrective Services	Operational and Continuing. Works Contractor Replaced.
Barwon Water Bio-solids	Water Recycling	Operational and Continuing
Peninsula Link	Motorway	Operational and Continuing
Campaspe Water Reclamation	Water Recycling	Operational and Continuing
Casey Community Hospital	Health Services	Operational and Continuing
Country Court of Victoria	Judicial Services	Operational and Continuing
Desalination Project	Water Supply	Operational and Continuing
Eastlink	39km Toll Road	Operational and Continuing
Emergency Alerting System	Communications	Contract Completed
Melbourne Convention Centre	Conventions	Operational and Continuing
MM Radio Network	Communications	Contract Completed
Mobile Data Network	Communications	Contract Completed
Schools Project	Education Services	Operational and Continuing
Royal Melbourne Showgrounds	Public Amenities	Operational and Continuing
Southern Cross Station Complex	Transport Interchange	Operational and Continuing
New Royal Children's Hospital	Health Services	Operational and Continuing
Royal Women's Hospital Project	Water Recycling	Operational and Continuing
Victorian Correctional Facilities	Corrective Services	Operational and Continuing
VCCC Victorian Cancer Centre	Health Services	Under Construction
Wodonga Wastewater Project	Water Recycling	Operational and Continuing
Bendigo Hospital	Health Services	Under Construction
Ravenhall Prison Project	Corrective Services	Operational and Continuing

Source: Partnerships Victoria 2013

4 CONCLUSION

There is a divergence in PPP policies between advanced countries and those at other levels of development. Advanced economies typically employ VFM principles in their policies both as an objective and as an assessment requirement, and explicitly include risk transfer, a PSC/quantitative measurement, or an output specification in their procurement decision-making. However, VFM can be achieved with a rigorous and well governed PPP process, a two-stage (pre-qualification and tender) bid process, competitive bidding and bid selection criteria that takes into account qualitative and quantitative factors. The evidence suggests explicit recognition of VFM as a PPP procurement objective and the adoption of

an output specification, risk allocation practices, and quantitative benchmarking will enable PPP policies to better harness the benefits offered by the PPP procurement method.

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