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**Meeting APEC's Post-Crisis Infrastructure
Challenge: Towards Commonality in PPP
Infrastructure Markets**

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Asia-Pacific
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Meeting APEC's post-crisis infrastructure challenge: Towards commonality in PPP infrastructure markets



A report presented to the
16th APEC Finance Ministers' Meeting

12 November 2009

Abstract

The purpose of this report is to recommend tools to enhance effective delivery of infrastructure projects in APEC member economies by identifying areas of commonality, where further and more detailed harmonisation of approaches may be appropriate.

Current practices of procurement in a range of member economies have been reviewed to determine key areas of commonality and 'best practice' that already exist within individual economies, as well as areas where further consistency of approach would be beneficial.

Whilst, in economies with more developed PPP markets, the approach to procurement is broadly similar, other economies with newly developing markets can clearly benefit from the experiences of those with more developed markets. APEC could play a role in framing a set of 'best practice' principles around the key elements of the procurement process. These principles would undoubtedly provide both governments and the private sector with greater confidence in the process, and deliver benefits through increased competition.

Meeting APEC's post-crisis infrastructure challenge: Towards commonality in PPP infrastructure markets

A report presented to the 16th APEC Finance Ministers'
Meeting

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Executive summary

Purpose of the report

The purpose of this report is to recommend some tools that could enhance effective delivery of infrastructure projects in APEC member economies. Currently, there is some commonality in markets across APEC in the implementation of PPP procurement. However, there is also scope for further and more detailed harmonisation of approach.

Greater commonality in PPP bidding procedures and concession agreements will lead to the delivery of more beneficial outcomes from the implementation of PPP projects. A broadly common approach can assist in decreasing bidding costs for contracts, reducing government transaction costs, increasing competition, and assisting in fast-tracking projects to a bankable stage.

Approach

A review of four APEC member economies has been undertaken to highlight examples of 'best practice' and recent trends. These economies are Australia, Indonesia, Korea, and Viet Nam. Relevant experiences and lessons from other economies have also been drawn on, as appropriate.

This report is sequenced as a suggested 'roadmap' for PPP procurement. It has been structured in this way so as to demonstrate the actions required to ensure effective implementation of PPPs. The 'roadmap' to successful PPP procurement has four key stages: (1) building the foundations for procurement; (2) designing and developing projects; (3) procuring projects; and (4) effective contract management and implementation.

Recommendations

The recommendations identified in this report have been developed with the aim of broadly contributing to greater commonality in the approaches of APEC member economies to bidding procedures and concession agreements in infrastructure projects.

The three recommendations identified below are viewed as action items that could be addressed in the first wave of harmonisation across member economies, as the action items themselves provide a framework for the delivery of other recommendations.

Recommendation 1: APEC economies consider adopting a harmonised 'road map' for the PPP procurement process.

Recommendation 2: APEC economies consider adopting a common approach to project development, and work towards approving projects, in the form of an 'Outline Business Case.'

Recommendation 3: APEC economies consider setting out a common approach to each stage of the procurement process, which includes the use of a pre-qualification phase, an approach to short-listing potential bidders, management of detailed proposals, and the evaluation of submissions at each stage of the process.

Furthermore, it is recommended that a series of APEC-sponsored forums be held on a pathfinder basis across a selection of member economies in order to continue to develop a harmonised procurement process. The focus of these forums could include the development of detailed approaches to be adopted under each of the three recommendations.

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1 Introduction

1.1 Enabling growth and social development

The APEC region's economic growth and competitiveness depend to a large extent on efficient, fast, and reliable infrastructure connections.

Investment in infrastructure has substantial and far-reaching benefits that go beyond the upside of putting in place a larger capital stock. These benefits include significant, positive spill-over effects through channels such as competition in markets, facilitating trade and more inclusive growth, a more efficient allocation of resources across regions and economies, and the diffusion of technology.

This is particularly relevant in the current global economic climate where infrastructure-based stimulus packages are being implemented by governments all over the world.

The Asian Development Bank's (ADB) long-term strategic framework¹ identifies an infrastructure deficit as one of nine leading challenges facing the region. Furthermore, the framework identifies several causes of the infrastructure deficit, including:

- low levels of public sector revenue mobilisation;
- comparatively weak institutions;
- regulatory failures; and
- under-developed financial systems, which result in barriers to the flow of long-term private capital.²

According to the ADB's *Infrastructure for a Seamless Asia* report, total infrastructure needs for the Asia region from 2010 to 2020 are expected to be in the order of US\$750 billion a year³.

The global financial crisis has vastly complicated the challenges in meeting the infrastructure needs of economies in the APEC region. On the one hand, governments do not have the capacity to meet all of the infrastructure needs on their own, as their fiscal positions have deteriorated markedly. On the other hand, lower risk appetite and dislocation in capital markets have reduced the scope for traditional Public-Private Partnership (PPP) projects. Furthermore, the impact of overly optimistic demand forecasts and the loss or write-off of equity on numerous recent PPP projects is not only making it harder to raise equity for new projects, but also has made debt providers more reluctant to support these projects.

In order to sustain private infrastructure markets in the current financial climate, and cushion economies from the worst impacts of the global crisis, governments are embracing a greater underwriting role and taking on more risk. However, in doing this, there is the danger of governments taking on excessive contingent liabilities. This increased strain on public balance sheets highlights the need to optimise the ability of private investors and providers to contribute to infrastructure delivery.

Connecting economies in order to facilitate trade, attract foreign investment, and provide supporting gateways through ports, airports, roads and rail will continue to play an instrumental role in regional integration. Coupled with demand for 'economic infrastructure' such as roads, rail and airports is the growing need for more 'social infrastructure' such as schools and hospitals.

1 ADB. 2008. *Strategy 2020: The Long-Term Strategy of the Asian Development Bank, 2008 – 2020*. Manila.

2 ADB. 2008. *Strategy 2020: The Long-Term Strategy of the Asian Development Bank, 2008 – 2020*. Manila.

3 ADB. 2009. *Infrastructure for a seamless Asia Book Launch: opening remarks*. Indonesia.

Several APEC member economies have already successfully adopted PPP models of infrastructure procurement:

- Chile was at the forefront of PPP projects in infrastructure, and the first internationally tendered Build-Operate-Transfer (BOT) contracts were put in place in the early 1990s;
- Australia has been developing PPP policies for infrastructure delivery for many years and has successfully closed projects in all Australian States and Territories;
- Canada has concluded PPP transactions in various sectors, including roads, bridges, airports, ports, energy, hospitals, waste water, social housing and schools;
- The Republic of Korea (Korea) established a policy framework to facilitate and support private participation in infrastructure provision, and by July 2008 had delivered 153 Build-Transfer-Operate (BTO) and 290 Build-Transfer-Lease (BTL) projects⁴; and
- The People's Republic of China (China), Japan, Peru, the Philippines, Indonesia, the Socialist Republic of Viet Nam (Viet Nam) and the Republic of Singapore (Singapore) have also undertaken PPP projects.

APEC member economies that have been slower to adopt PPPs, or are facing other challenges and barriers, can benefit from the experience of these more established PPP markets, and possibly adopt 'best practice' approaches that address each economy's needs.

1.2 Procuring PPPs post-crisis

The challenges of the global financial crisis mean that governments need to address issues such as the availability and cost of credit, the impact of a lower growth trajectory, and unforeseen exchange rate movements. As such, there is scope for PPPs to be managed effectively as follows:⁵

- adequately distribute risks between the government and the private sector by ensuring the right PPP structure is adopted;
- establish a pipeline of projects, ensuring they are those which are most suited to PPPs;
- ensure a sound legal framework in the economy to provide assurance to the private sector that contracts will be honoured — the more transparent the framework, the lower the risk premium charged by private investors;
- ensure effective procurement procedures, including regulations that limit aggregate government exposure, as well as transparency on PPP finances; and
- adequately involve all agencies involved in PPPs — with the Ministry of Finance empowered with the authority to veto unaffordable or wasteful projects.

1.3 Report objectives

APEC's common principles for formulating guidelines to develop well-functioning PPP markets were adopted during the 15th APEC Finance Minister's Meeting (FMM) on 6 November 2008⁶.

This report is intended to assist in enhancing the delivery of infrastructure projects in the Asia-Pacific region by identifying areas of potential commonality, and where further and more detailed harmonisation of approaches may be appropriate.

4 APEC. 2008. *Korea's Experience with PPP and Future Challenges*. 4th Senior Officials Meeting. Cuzco, Peru.

5 Burger, P, Tyson, J, Karpowicz, I and Delgado Coelo, M. July 2009. *The Effects of the Financial Crisis on Public-Private Partnerships*. IMF Working Paper WP/09/144.

6 APEC. November 2008. *15th APEC Finance Ministers' Meeting Joint Ministerial Statement*. Trujillo, Peru. http://www.apec.org/apec/ministerial_statements/sectoral_ministerial/finance/2008_finance.html

Greater commonality in PPP bidding procedures and concession agreements will benefit the implementation of PPP projects, as commonality assists in:

- decreasing bidding costs for contracts;
- reducing government transaction costs;
- increasing competition; and
- fast-tracking projects to a 'bankable' stage.

These efforts to develop greater commonality can make a significant contribution to meeting the APEC region's infrastructure challenge by lifting standards across the board, creating deeper and more competitive markets, and facilitating greater flows of finance across borders in order to fund infrastructure assets.

A review of four APEC member economies is undertaken to highlight examples of 'best practice' and recent trends. These economies are Australia, Indonesia, Korea, and Viet Nam. The review of these economies aims to demonstrate how 'best practice' approaches can be developed at different stages of the PPP market. That is, from early development through to established delivery of PPPs.

Relevant experiences and lessons from other economies are also drawn on, as appropriate.

1.4 Report summary

This report is sequenced as a 'roadmap' for PPP procurement. It has been structured in this way so as to demonstrate the actions required to ensure effective implementation of PPPs.

The 'roadmap' to successful PPP procurement has four key stages:

1. build the foundations for procurement,
 - for example, through developing 'Centres of Excellence';
2. design and develop the project,
 - for example, through developing an 'Outline Business Case';
3. procure the project,
 - for example, through establishing common bidding procedures; and
4. contract management and implementation,
 - for example, through establishing common commercial principles for concession agreements.

Figure 1 below sets out these key stages and identifies the areas where harmonisation may be appropriate.

Figure 1 — Overview of the procurement process



2 Recommendations for commonality

The recommendations identified in this report have been developed with the aim of contributing to greater commonality in the approaches of APEC member economies to bidding procedures and concession agreements for infrastructure projects. The recommendations should be considered while taking into account existing multilateral frameworks.

The three recommendations identified below are viewed as the action items that could be addressed in the first wave of harmonisation across member economies, as the action items themselves provide a framework for the delivery of other recommendations.

Ancillary advice is provided to add greater detail and to frame the next stage of harmonisation that could be implemented as the PPP procurement model develops further throughout the APEC region.

Further explanation of the recommendations is set out in Sections 3 to 5 of this report.

Harmonisation of the foundations of PPP projects

Recommendation: that APEC economies consider adopting a harmonised 'road map' for the PPP procurement process

Benefits: The use of a consistent approach to procurement across different economies allows the private sector to enter a new market with a fuller understanding of the time and resources required. It also provides greater confidence in the ability of the process to deliver the required outcome. Thus, investors will be more willing and able to commit the required resources to the process.

From a government perspective, the use of a consistent process will lead to greater understanding, which will then allow more certain delivery of desired outcomes, and more efficient management of procurement costs.

Adopting this recommendation would require:

- a establishing PPP 'Centres of Excellence' as a platform for developing, delivering and managing PPP projects in the APEC region;
- b seconding officials to developing economies in order to enhance capacity building;
- c keeping international and local markets fully informed of governments' approaches to infrastructure procurement in each economy, and specifically, intentions in relation to the use of PPPs;
- d establishing a common approach to identifying a pipeline of infrastructure projects across APEC member economies — this could include:
 - a common set of criteria for identifying suitable projects;
 - a common platform for listing the pipeline of projects; and
 - a common approach to the scope and nature of the information made available on projects;
- e formulating procedures to independently monitor the procurement process;
- f providing for a single procurement process for both technical and funding solutions on all occasions;
- g effectively managing PPPs in the current economic environment;
- h providing advice on the issue of currency risk;

- i determining government support (if any) in the context of the level of PPP development in each economy; and
- j drawing up a common approach to shifting the balance of procurement from unsolicited bids to competitive selection.

Harmonisation of project development

Recommendation: that APEC economies consider adopting a common approach to project development, and work towards approving projects, in the form of an 'Outline Business Case'.

Benefits: All governments are subject to varying degrees of budget constraint and therefore have a limited pool of funding available for infrastructure development. Hence, it is important that only the most viable and most necessary projects are taken to procurement by governments. Furthermore, it is vital that those projects are scoped appropriately, and that risks and costs are identified to test the net benefit of the proposal.

This is a particularly vital stage of the process in developing-economy markets, where the time and resources of governments are more limited, and where the future appetite of the private sector will be defined by the outcomes of the first few projects that reach the procurement stage.

Adopting this recommendation would require:

- a providing guidance on the appointment and use of external project advisors and a project director with relevant expertise in developing-economy markets;
- b harmonising the key commercial principles and approach to risk transfer between the public and private sector;
- c making available bidding process documentation templates;
- d providing guidance on detailed legal drafting issues, including example wording; and
- e marketing to industry, once projects are selected to proceed, in order to maximise interest from potential bidders.

Harmonisation of the procurement process

Recommendation: Set out a common approach to each stage of the procurement process, including:

- the use of a pre-qualification phase;
- the approach to short-listing potential bidders;
- management of detailed proposals; and
- the evaluation of submissions at each stage of the process.

Benefits: The use of a consistent procurement process across different economies allows the private sector to respond to a government tender in a new market with a fuller understanding of both the time and resources required and the expectations of government in relation to the skills and experience of potential infrastructure providers.

This will lead to increased competition, as a broader range of international investors will be willing and able to commit to the process. It will also ensure that those parties who submit proposals have the right skills and enough experience to deliver the government's desired outcome.

Adopting this recommendation would require:

- a providing guidance on an appropriate timetable for procurement;
- b providing guidance on the scope, nature and timing of information to be provided at each stage of procurement;
- c developing a common set of criteria for optimising the size of each short-list within APEC member economies; and
- d requiring short-listed bidders to post bid bonds.

3 Harmonisation of the foundations of PPP procurement

3.1 Recommendation

Develop a harmonised 'best practice' procurement process across APEC member economies

Many member economies have already defined the key elements of their own procurement processes. However, it is recommended that as a key priority, wherever possible, these could be harmonised across the APEC region, and most importantly, used consistently where no current framework exists.

This is important, as inefficient, and thereby costly procurement processes, are a significant barrier to entry into new markets for potential private sector bidders. Where there is consistency of process across different economies, the private sector can enter a new market with a fuller understanding of the time and resources required, and they will also have greater confidence in the ability of the process to deliver the required outcome (given that the same process will be followed in other markets). For these reasons, investors are more readily able to commit the required resources to the process, and greater competition and a more efficient outcome would ensue.

Similarly, the benefits of a consistent 'best practice' approach to government are that the process is understood, parties can be more certain it will deliver the desired outcomes, and the cost of procurement can be managed more efficiently.

APEC could consider implementing a three stage (or four stage) selection process as follows.

- **Pre-qualification**

Introduction of a pre-qualification stage would help to screen potential bidders against technical and financial requirements in order to arrive at a list of viable bidders for the short-listing stage. This is further detailed in Section 5.1.1.

- **Short-listing**

The short-listing process would aim to assess bidders in relation to their capabilities to carry out the project and deliver the government's desired objectives, and arrive at a list of three to four bidders suitable for the detailed proposal stage. This is further outlined in Section 5.1.2.

- **Detailed proposals**

The bidders selected through short-listing would be issued with detailed information on the project requirements, including all legal documentation that is proposed between the government and the ultimate infrastructure provider. Short-listed responses would then include a fully developed, and documented, solution capable of acceptance. This is further detailed in Section 5.1.3.

- **Preferred bidder**

The preferred bidder would be selected based on the detailed proposals provided. Once the government has selected its preferred solution, it can negotiate any outstanding matters with that bidder, prior to signing contracts. This is further detailed in Section 5.1.4.

The requirement for a prequalification stage would depend on the degree and quality of market interest in a specific project (as determined during the project development stage).

This approach is broadly consistent with those already employed within APEC member economies. It is likely to be well understood by the private sector, and experience suggests it also provides the most efficient means of achieving the requirements of governments.

Section 5 sets out in more detail, specific areas within each stage of the process that could be considered for further harmonisation.

The following case studies highlight member economies that have already implemented or begun to implement harmonised approaches to PPP procurement.

Case Study 3.1a — Australia

Australia's procurement approaches are guided by Infrastructure Australia at the Federal level, and governed by State Government procurement approaches at other levels. Partnerships Victoria governs PPP procurement in Victoria and brings consistency to the procedures for managing and implementing PPP projects. The processes are designed specifically for budget sector enterprises. Given the diversity of projects, Partnerships Victoria processes are tailored to suit the project. The policy is centred around achieving value for money through whole-of-life costing, managing risk and protecting the public interest.⁷

The major stages in the Partnerships Victoria procurement process are demonstrated at Annex B.

Case Study 3.1b — Canada

The four main provinces involved in PPPs in Canada are Quebec, British Columbia, Alberta and Ontario. In several jurisdictions, a multi-staged submission approach is employed. Initially the detailed proposal process focuses on reviewing interim submissions that will satisfy the project's technical requirements. Proponents are also encouraged to develop innovative technical design solutions at an early stage. Following initial review of the preliminary technical plans and drawings (package 1), proponents submit for evaluation their detailed technical plans and designs, as well as an indicative financial model and financing plan for evaluation (package 2). Only those proponents satisfying the technical objectives are requested to submit a fully priced bid (for example, final financial model and financing plan) under package 3.

Firm funding commitments are not mandatory and the jurisdiction does not share in any refinancing gains. Instead, and in order to ensure that the proponents have the necessary incentives to commit to the project, proponents are required to provide letters of commitment at different stages of the procurement process, thereby providing the jurisdiction with increased certainty that the proponent is committed to the project and will be able to deliver what it is proposing.

Case Study 3.1c — Korea

Korea introduced PPPs with the enactment of the Act on Promotion of Private Capital into Social Overhead Capital Investment⁸. Current procurement processes, including the PPP Act and regulations, have increased the number of PPP projects delivered in Korea.

BTO and BTL are the most sought-after implementation methods for PPPs in Korea. The implementation procedure for both methods is clearly articulated by the Government, from selection of the PPP project through the bidding stage, to the concession agreement and commencement of construction and operation.

7 Partnerships Victoria. 2006. *Guidance Material – Overview*. Victoria, Australia.

8 Ministry of Strategy and Finance / Public and Private Infrastructure Investment Management Centre. 2008. *Building a Better Future through Public-Private Partnerships in Infrastructure in Korea*. Korea.

Case Study 3.1d — Viet Nam

In Viet Nam, the process for the identification, preparation, bidding negotiation and implementation of BOT, Build-Transfer (BT) and BTO PPP projects is set out under Decree 78⁹. Decree 78 ensures Line Ministries and Provincial Councils (CSA) approve and then communicate (publish) PPP projects. Following publication of PPP projects, an investor is selected for certificate, and then project implementation commences. Throughout this process, the CSA holds the key responsibility for selecting investors (and issuing an Investment Certificate) and leading negotiations. Final project approval is sought through the Ministry of Planning and Investment.

3.2 Ancillary advice

Whilst implementation of the following recommendations will undoubtedly strengthen the foundations of PPP procurement within APEC member economies and add value to the procurement process, their implementation is not considered a first order priority.

It is proposed that these more detailed issues be used to frame the debate on the next stage of harmonisation that will follow as the PPP procurement model develops further throughout the APEC region.

3.2.1 Centres of excellence

Consider PPP 'Centres of Excellence' as a platform for developing, delivering and managing PPP projects in the APEC region

Regional 'Centres of Excellence' could be established as hubs for sharing information and experience on PPP procurement policy and implementation. These hubs are important as they encourage financiers and contractors to work across many economies: they save time and cost through the utilisation of existing resources; and they also provide certainty of PPP delivery where similar approaches are adopted, while providing the flexibility to focus on particular project issues.

Such centres are designed to support governments by providing unbiased policy advice, build the capacity of government officials responsible for developing and executing the government's PPP program, channel global PPP expertise to the economies where there is demand for such expertise, identify useful models and share knowledge, and create a platform for public and private sector players to connect and showcase potential PPP projects.

The World Bank is working to establish hubs in countries such as Mexico, through the project 'Building Technical Capacity to Develop the PPP Program in the State of Jalisco'¹⁰, and through assisting Viet Nam with the 'Establishment of the Government of Viet Nam (GOV) PPP Program Development Office.'¹¹

APEC could also consider framing a set of common operating policies. This may include such tasks or objectives which ensure that the 'Centre of Excellence':

- **is part of a coordinated government function** — if not, the 'Centre of Excellence' will have no co-operation or authority to make recommendations and institute change;

9 The World Bank. 2008. *Infrastructure Financing in Viet Nam: The evolving role of banks, capital markets, infrastructure funds, and PPPs*.

10 The World Bank. 2008. *Building Technical Capacity to Develop the PPP Program in the State of Jalisco*. <http://web.worldbank.org/external/projects/main?pagePK=64283627&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P112082>

11 The World Bank. 2008. *Establishment of the GOV PPP Program Development Office*. <http://web.worldbank.org/external/projects/main?pagePK=64283627&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P115474>

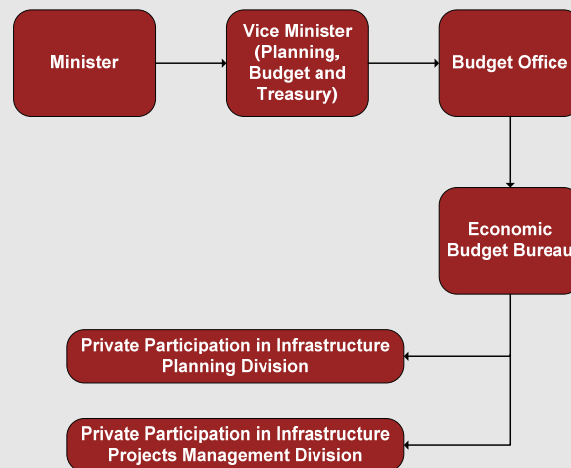
- **formulates PPP Policy and a pipeline** for sectors that are identified as priorities for PPP procurement (discussed further in Section 3.3);
- **provides a clear strategy** for market management in terms of assessing market capacity for projects;
- **provides guidance and advice for project preparation**, including technical assistance on procuring advisors and project directors;
- **identifies potential projects** through solicited and unsolicited proposals, depending on the legislative framework around unsolicited proposals;
- **standardises** tender documents and criteria against which documents are assessed;
- **provides guidance and advice** for procurement and for project implementation.
- **disseminates PPP information** such as 'best practice' strategies, undertakes capacity building programs and monitoring and evaluating projects to make sure the departments know what PPPs are, their benefits, when they should be used, and, most importantly, that they are not privatisation; and
- **manages contracts** and keeps a central record of all activity in order to provide useful and accurate statistics and 'base of precedent' documentation.

The following case studies highlight member economies that have already benefited from the introduction of a centre to manage their approach to PPP procurement.

Case Study 3.2.1a — Korea

In Korea, the Ministry of Strategy and Finance (MOSF) is tasked with the development of PPP policies, establishing comprehensive investment plans, administering the PPP Act, Enforcement Decree and Basic Plan.

MOSF is the central agency with responsibility for managing national PPP programs. It also chairs the PPP review committee which makes key decisions regarding implementation of large-scale PPP projects in Korea. The policy unit within the MOSF is set out below.¹² Since the policy unit was established, Korea has seen an increase in PPP projects. The unit allows policy change to reflect the market, such as mandatory rebidding in case there is a single bidder, compensation for second preferred bidders, introduction of a value for money test for unsolicited bids, and incentives for equity investment.¹³



Major executing agencies are then responsible for establishing and coordinating each of the sector-specific PPP investment plans and policies, and implementing and monitoring PPP projects.¹⁴ Professional support for implementing projects is also offered through the Public and Private Infrastructure Investment Management Centre (PIMAC) which was established through the PPP Act.

Case Study 3.2.1b — Indonesia

In Indonesia, the Committee for the Acceleration of Infrastructure Provision (KKPPI) was formed with the aim of coordinating the acceleration of infrastructure provision in Indonesia. The KKPPI acts as the policy maker, coordinator and procurement regulator. A Presidential regulation stipulates the functions of the KKPPI. Its remit currently includes:

- formulation of strategies to coordinate the implementation of infrastructure provision acceleration;
- coordination and monitoring of the implementation of policies to accelerate infrastructure provision by related Ministers and local government; and
- formulation of policies on the implementation of public service obligations for the purpose of accelerating infrastructure provision; and efforts to solve problems related to the acceleration of infrastructure provision.¹⁵

12 Ministry of Strategy and Finance / Public and Private Infrastructure Investment Management Centre. 2008. *Building a Better Future through Public-Private Partnerships in Infrastructure in Korea*. Korea.

13 World Bank Institute. Korean PPP Experience. http://siteresources.worldbank.org/ECAEXT/Resources/Day3Session13_3.pdf.

14 Ministry of Strategy and Finance / Public and Private Infrastructure Investment Management Centre. 2008. *Building a Better Future through Public-Private Partnerships in Infrastructure in Korea*. Korea.

15 Komite Kebijakan Percepatan Penyediaan Infrastruktur (KKPPI). 2008. http://www.kkppi.go.id/baru/info.php?mode=baca&catinfo_id=1&info_id=1&lang=id&t=Tentang%20Kami. Indonesia.

3.2.2 Capacity building

Seconding officials to developing economies to enhance capacity building

Experts can be sourced from the centres discussed above and seconded to either individual projects or government departments to provide guidance and practical assistance in the delivery and procurement of projects. It must be emphasised that advisory services are best procured by the private sector. Over time, this knowledge transfer will build delivery capacity within governments and ensure that valuable experience is not lost, and future projects benefit from the experience and lessons of previous ones. It is important to note that for developing markets, there is a need to develop capacity prior to putting in place a framework for PPPs.

Furthermore, as the knowledge base expands amongst experienced personnel in PPP projects, greater market confidence in the process will follow. APEC could seek to provide guidance to member economies on the development of these centres. Areas of focus for this guidance may include the following:

- **developing a secondment model** whereby public servants or development bank officials with experience in complex PPP procurements could be retained and deployed on projects across the public sector¹⁶ — one possibility could be that agencies in APEC member countries consider providing funding secondments to PPP projects;
- **providing experienced PPP practitioners**, the value of which cannot be underestimated — experience can be obtained through secondments, international advertisements and multilateral and bilateral institutions;
- **allocating an experienced practitioner in PPPs to each project**, with the role of this person possibly including attending key steering committee meetings, consulting with relevant government stakeholders, and providing both technical support and guidance on the regulatory issues underpinning the procurement process — this person would provide reassurance to the private sector, add to the capacity and capability of the project team, and potentially control the budgets and release of funds; and
- **facilitating communication of PPP capacity and a greater understanding of the role of PPPs across developing PPP economies**, which could include liaising with departments to identify opportunities to make implementation efficient and effective — executive education programs could be rolled out in developing economies either through online training or classroom based training (programs could be tailored to each economy's unique characteristics).

The following case study highlights the effectiveness of capacity building in the Institute of Water Policy at the Lee Kuan Yew School of Public Policy in Singapore.

16 HM Treasury. 2006. *PFI: strengthening long-term partnerships*. London, England.

Case Study 3.2.2a — Singapore

The 'Leadership in Water Governance' Executive Program has been established by the Institute of Water Policy in the Lee Kuan Yew School of Public Policy to enhance capacity building by developing future policy leaders in water management. The program is conducted in partnership with the ADB and Public Utilities Board (PUB) Singapore, a statutory board under the Singapore Ministry of the Environment and Water Resources.

The program includes empirical studies, site visits and presentations by prominent experts from the region.¹⁷ For example, representatives from private water sector institutions in Singapore were included in the program to facilitate discussions with participants on PPPs. As a component of this, case study discussions were held to role-play a negotiated solution on a factual water-supply project. The case study discussions illustrated important lessons in the structuring of water supply projects through PPP procurement.

3.2.3 Developing market awareness**Keep international and local markets fully informed of governments' approaches to infrastructure procurement in each economy, and specifically, intentions in relation to the use of PPPs**

One of the fundamental issues in ensuring efficient use of the PPP procurement model is the development of a broad and competitive list of potential private sector providers (including international companies) that are active, or looking to be active, within the local economy. The key to achieving this is market awareness.

APEC could seek to promote market awareness by developing a set of principles for the publication of information in relation to the PPP policies of individual members and for the region as a whole. Market awareness is critical for a number of reasons: it enables a project to compete effectively for resources and capital in the market; and it ensures the project is taking a long-term approach to investment, rather than a short-term opportunistic approach.

Market awareness is crucial in facilitating PPPs. For example, Chile, Peru and Mexico are three countries that have been able to facilitate PPPs. This is because of the efforts to increase market awareness by promoting private participation in infrastructure projects and making the country conducive to private investment.¹⁸ For example, APEC could promote the use of such tools as:

- **publishing projects on the APEC tenders and detailed proposals website**
<http://www.apec.org/apec/opportunities/tenders.html>;
- **publishing projects on the OECD DAC Untied Aid website for all projects financed by Official Development Assistance** at
<http://webdomino1.oecd.org/comnet/dcd/untiedpubliccws.nsf>; and
- **publishing a 'market awareness brochure' for projects**, as was provided on the Sports and Infrastructure PPP Project — Singapore Sports Hub at Kallang¹⁹. This brochure can be viewed at <http://app.mof.gov.sg/data/cmsresource/PPP/Market%20Awareness%20Brochure.pdf>.

APEC could also consider framing principles on the scope and nature of the information provided, as this will add credibility to the promotion of individual member economies and increase the market understanding of the broader opportunities in the APEC region.

17 Lee Kuan Yew School of Public Policy. November 2008. *Executive Programme on Leadership in Water Governance 2008*. Singapore.

18 Lewis, K.M. 2008. *The State of PPP Markets in the Asia-Pacific Region*. Adelaide, Australia.

19 Singapore Sports Council. 2005. *Sports and Infrastructure PPP Project – Singapore Sports Hub at Kallang*. <http://app.mof.gov.sg/data/cmsresource/PPP/Market%20Awareness%20Brochure.pdf>.

3.2.4 Identification of appropriate projects

Establish a common approach to identifying a pipeline of infrastructure projects, which could include:

- a. a common set of criteria for identifying suitable projects;
- b. a common platform for listing the pipeline of projects; and
- c. a common approach to the scope and nature of the information made available on projects.

Establishing a pipeline of projects is a key utility for the successful implementation of PPPs, as it leads to greater interest from the private sector in a particular economy and creates the potential for economies of scale. A project pipeline also creates a useful costing 'data set' which assists with benchmarking PPP value-for-money decisions.

Establishing and publicly declaring a pipeline of projects raises awareness and facilitates interest in the bidding community. Being aware of projects that are in the pipeline for development enables the private sector to undertake preliminary work, thereby raising investors' appetite to invest in bidding costs. Removing this potential barrier to entry can provide private sector players, especially those without a national presence, with the opportunity to establish a local presence, which would inject direct foreign investment into the economy.

It is also important that member economies understand what type of infrastructure projects are suitable to be procured as PPPs (and thus included in the project pipeline). Flexibility should be provided for individual agencies and ministries to utilise existing criteria for identifying projects suitable for PPP procurement.

One of the key considerations in determining whether a project is suitable for PPP procurement is the scope of the service requirement. PPPs could incorporate both the capital asset and an ongoing provision of services, such that the project can be seen to have a long-term service output.

An economy with a strong pipeline of PPP projects also allows the private sector and the government to plan resources, hire people, diversify its risk and spread bid-costs across projects. Projects can be grouped to both create efficiency in procurement and deliver projects earlier.

The process by which a pipeline is established also ensures that PPP benchmarks and precedents are created, further adding to the credibility of the process.

Pipelines could, at a minimum, be identified and declared by APEC member economies for the coming financial year.

Wherever possible, member economies could also seek to provide forecasts of future procurement activity (up to the next 10 years, if the information is available).

To date, many APEC economies, including Australia, Indonesia, Korea and Viet Nam, have established pipelines. For example, Infrastructure Australia has produced a list of priority infrastructure projects and made this information publicly available to help guide the long-term investment decisions of both the public and private sectors. Infrastructure Australia has also identified and published a range of pipeline projects for further development and analysis. APEC could consider providing a common set of criteria for helping to identify projects suitable for procurement as a PPP. Such criteria may include:

- demonstrated market appetite and capability (can be assessed through market soundings);
- projects be greater than US\$100m;
- service provision be long-term in nature;
- the timeframe for delivery is not too restrictive;

- projects not be subject to fluid regulatory policy or law changes, and instead be characterised by a stable environment where stable outputs can be defined;
- whether precedent projects have occurred in similar economies;
- risks are capable of being identified and understood upfront; and
- scope for innovation.

Not all of these may be relevant to each potential project or economy, and therefore, flexibility is required.

Such criteria would be carefully examined when developing PPP pipelines. For example, Chile successfully awarded 21 road concessions worth US\$5 billion between 1993 and 2001²⁰. Much of this success is due to the build-up of precedent projects and a greater knowledge of the understanding of risks in this process. Further, bidding began with smaller projects to test the market and reduce the risk to the private sector.

In addition, there may be a number of criteria that specifically preclude use of the PPP model²¹. These may include:

- pre-conditions of equity and accountability in public sector delivery cannot be met — for example, many forms of frontline service delivery;
- authorities require short-term flexibility due to fast changing service requirements — for example, new IT software; and
- investment is small, and benefits do not justify the costs.

As previously discussed, creating market awareness of potential opportunities is paramount. PPP pipelines could be published so as to facilitate interest in private investment. Information that could be made available includes:

- a summary of pipeline by department — for example, through a multi-year procurement plan;
- the expected timelines for procurement;
- the scope and nature of expected projects; and
- the expected value of potential projects.

To keep confidence in the document, it would need to be kept up to date at all times.

An example of project pipeline publication is Australia's AusTender website at <http://www.tenders.gov.au>, which publishes all Federal Government procurement plans in one central location.

Many member economies have publicly identified a pipeline for sectors that are considered priorities for PPP procurement. These include:

- **Australia** — most types of economic and social infrastructure;
- **Indonesia** — economic infrastructure, including power plants, toll roads, water and telecommunication projects;
- **Korea** — economic infrastructure, including road, rail, water, sewerage, airport, parking facilities, tourism, ports, traffic management, and social infrastructure; and
- **Viet Nam** — economic infrastructure, including energy, transport, telecommunications, and water utilities.²²

20 The World Bank. 2009. *PPP in Roads and the Current Economic Crisis: Advantages and Issues of PPP*. http://www.tsi.lv/Research/Conference/PPP-2009/Overview_of_PPP.pdf

21 HM Treasury. 2006. *PFI: strengthening long-term partnerships*. London, England.

In some member economies, priority projects are more concentrated. For example, in Mexico, road concessions were highlighted as infrastructure priorities for 2007-2012, including 16 public freeways and construction of 24 new toll roads, while Peru's PPPs have included mostly toll road projects.²³

The following case study highlights a member economy that has already developed a pipeline of potential projects.

Case Study 3.2.4a — Indonesia

To facilitate private participation in infrastructure projects in Indonesia, the National Development Planning Agency (BAPPENAS) publishes a PPP book of projects for PPP development in that financial year. The PPP book includes the project details, to the extent available.

The PPP projects are categorised under three stages:

- **potential project** — for those projects at the preliminary study stage;
- **priority project** — for those projects where the PPP model has been identified; or
- **project ready for offer** — for those projects where bidding documents have been completed and government support has been approved.

3.2.5 Probity

Establish procedures to independently monitor the procurement process

A key focus of concern for potential private sector participants considering bidding in new PPP markets is the integrity of the procurement process (that is, they will need to be confident that they can participate on a level playing field). Wherever possible, member economies must seek to demonstrate clearly that this is the case. Procedures for monitoring the procurement process should be flexible to the political and legal framework of each APEC member economy.

To assist both governments and bidders, member economies could consider framing principles that set out a 'best practice' approach to the monitoring of project procurement processes by an individual or entity that is external to the process.

For example, in Australia, Partnerships Victoria sets out guidelines for managing probity through a probity plan that spells out proper processes, results in records demonstrating the equity of the process, and assists in the achievement of project objectives²⁴. Guidelines which must be observed on all Partnerships Victoria projects include:

- establishing confidentiality and disclosure processes, including confidentiality on both bid and bid evaluation documents;
- ensuring that members of a procurement team, or an advisor to a procurement team, have no conflict of interest;
- establishing processes for communications during the bidding process; and

22 The World Bank. 2008. *Infrastructure Financing in Viet Nam: The evolving role of banks, capital markets, infrastructure funds, and PPPs*.

23 Lewis, K.M. 2008. *The State of PPP Markets in the Asia-Pacific Region*. Adelaide, Australia.

24 Partnerships Victoria. 2001. *Practitioners' Guide*. Victoria, Australia.

- where appropriate, especially in projects of considerable size and complexity, appointing an independent probity auditor.

3.2.6 Demand risk

While often a project specific issue, the transfer of demand risk is clearly more appropriate in some sectors than others. For example, transferring demand risk can create a premium on bid prices. Hence, this risk should be carefully examined before it is transferred. Guidance can be given on which sectors are known to benefit from the transfer of demand risk and how it has been achieved.

The transfer of demand risk also comes with its own additional risks. There is often a tendency to overestimate future demand in order to demonstrate project viability and value. Projects delivered on the basis of this private sector 'Optimism Bias' may bring short-term benefits to bidders, but are unlikely to be viable over the long-term, as key risks relating to forecast demand levels may not be allocated to the party best able to manage or absorb them. Guidance could also be given on how to avoid the inclusion of these overly aggressive demand assumptions in bids. Options for this may include:

- providing bidders with demand assumptions to be used within proposals — these could be developed by appropriate technical advisors, because such technical advisors typically provide conservative, independent and objective advice; and
- limiting the degree to which aggressive demand assumptions can be used to present additional value from an evaluation perspective — that is, capping the benefit to both the project and the government of increasing demand forecasts.

3.2.7 Financing

Providing for a single procurement approach for both technical and funding solutions on all occasions

Private sector finance is one of the cornerstones of the PPP procurement approach. Placing a significant element of funding risk with the bidders drives efficiency, innovation and value-for-money outcomes. This process drives whole-of-project-life solutions that provide better-lasting quality and service delivery. For this reason, financing would not be separated from the tender process, but where there is uncertainty in the design requirements, there is merit to agree on the technical designs upfront, and then ask bidders to develop fully financed bids thereafter.

3.2.8 Financing in a post-crisis environment

Effectively manage PPPs in the current economic environment

The challenges of the global financial crisis mean that we need to address issues such as the availability and cost of credit, the impact of a lower growth trajectory, and unforeseen exchange rate movements. As such, PPPs could be managed effectively as follows:²⁵

- adequately distribute risks between the government and the private sector by ensuring that the right PPP structure is adopted;
- establish a pipeline of projects, ensuring that they are those which are most suited to PPPs;
- ensure a sound legal framework in the economy to provide assurance to the private sector that contracts will be honoured — the more transparent the framework, the lower the risk premium charged by private investors;

25 Burger, P, Tyson, J, Karpowicz, I and Delgado Coelo, M. July 2009. *The Effects of the Financial Crisis on Public-Private Partnerships*. IMF Working Paper WP/09/144.

- ensure effective procurement procedures, including regulations limiting aggregate government exposure, and transparency on PPP finances; and
- adequately involve all agencies involved in PPPs — with the Ministry of Finance empowered with the authority to veto unaffordable or wasteful projects.

It must also be emphasised that there is an opportunity cost of capital investment in infrastructure. That is, if governments want private investment to flow into infrastructure development, they will need to find ways to shift the balance in favour of investment in growth-oriented infrastructure, rather than consumer-oriented investments which, in many cases, offer more attractive returns.

3.2.9 *Currency risk*

Provide advice on the issue of currency risk

In facilitating cross-border funding of international lending markets, governments must address the risk associated with movement in local currency exchange rates (currency risk). Currency risk is predominantly an issue where funding is raised in the international market and revenue is earned in the local currency.

In developing economies, governments tend to limit their exposure to foreign currency risk by preferring local sources of capital, where possible.

International financiers favour the deep and liquid local capital markets that exist in more developed economies, as financiers generally cannot withstand exchange rate depreciations that are more likely to arise where such liquidity does not generally exist. Such currency depreciations can range from 40 per cent to 50 per cent, though they can also be as high as 100 per cent. This poses an enormous risk in projects with foreign financing and can limit the scope for private sector involvement in infrastructure provision.

In Indonesia, the ADB has been active in brokering major PPPs in water and energy sectors. Projects are facilitated by the ADB through financing loans, equity and grants, and by providing guarantees and other financing-risk management instruments.

To address currency risk, a number of approaches can be taken. These include:

- making payments to the private sector (user pays or service charge) in either US dollars or euros, depending on the currency of the loan — that is, the procuring government takes the risk that there are movements in the exchange rate between local currency and the payment currency;
- providing subsidies or long-term loans where currency losses arise from loans in foreign currency — in the case of Korea, the government assumes currency risk where revenue is earned in the local currency and loans are in foreign currency;
- allowing primary investors to reinvest their proceeds into PPPs or into other parts of the economy;
- involvement of multilateral lending agencies and export credit agencies can assist with mitigating long-term currency risk for project sponsors;
- providing various types of support such as guarantees, loans or equity — funding can be raised from development banks such as the ADB and the World Bank, loans can be granted based on projects meeting the development bank's objectives, and support can be provided by credit enhancing loans or straight capital injection (loans) into the project; and
- applying PPP procurement methods to commodity-based projects, as these income streams are in foreign currency and thereby provide natural protection against movements in exchange rates.

3.2.10 Funding support

Consider government support of funding (if any) in the context of the level of PPP development in each economy

In developing economies, the availability of private sector funds for PPPs may be restricted by the capacity of the local funding market and the appetite of international lenders to lend in the region, in the same way that the degree to which risk can be transferred to the private sector should increase as the market becomes more developed. This is especially acute in the context of the post-crisis economic environment.

There are various types of support that government organisations can provide, such as guarantees, loans or equity, in order to fill funding shortages:

Funding can be raised from development banks such as the ADB and the World Bank, and may be granted based on projects meeting the specific development bank's objectives and lending criteria. Support from development banks can take the form of guarantees or straight capital-injection (loans) into the project. Support can also be provided by state and federal governments interested in promoting PPPs in other countries.

For example, in Indonesia, the ADB has been active in brokering major PPPs in water and energy sectors. Projects are facilitated by the ADB through financing loans, equity and grants, and by providing guarantees and other financing-risk management instruments.

In Viet Nam, the World Bank is helping the GOV establish a Viability Gap Financing Mechanism (VGFM) that will provide a market-based, transparent structure for the provision of GOV financial support to well-developed PPP projects. The VGFM models being considered include:

- **Construction Cost Contribution** — public sector capital contribution over the construction period;
- **Operations Cost Contribution** — government support towards operational expenditure;
- **Minimum Revenue Guarantee** — where the sponsoring government shares demand risk with the private sector; and
- **Service Payments Mechanism** — a government contribution to the construction and operation of the asset while the private developer executes the project and delivers the service.²⁶

The roll-out of these instruments would be specific to the member economy and its level of PPP experience.

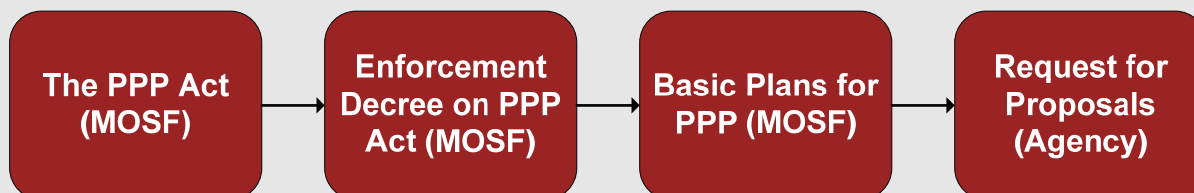
The study concluded that the construction cost contribution should be rolled out in the short-term, the operations cost contribution and service payments in the medium-term, and the minimum-revenue guarantee in the long-term.

Ensuring a clear PPP process, such as the example highlighted below, can also contribute to facilitating private sector investment in PPP projects.

²⁶ CRISIL Risk & Infrastructure Solutions Limited. May 2009. *Options Analysis and Legal Due Diligence for Viability Gap Financing*. Viet Nam.

Case Study 3.2.10a — Korea

In January 2005, the Korean PPP Act and its Enforcement Decree were established to remove impediments to private investment in infrastructure sectors and better regulate PPP projects in Korea. They also serve as a mechanism to provide direction to government policy through the Basic Plan for PPPs. The regulatory framework is managed by the MOSF until the Request for Proposals stage where it is managed by the specific Agency.



This structure has allowed for increased consistency and transparency since its introduction. Since January 2005, PPPs have increased over the period, and at June 2008, 475 projects have been carried out.

Korea went one step further to attract private sector involvement in the procurement of PPPs by providing various tax incentives for PPP projects including a nil tax rate to VAT for construction services — a separate tax rate of 14% is applied to income generated from the interest on infrastructure bonds with maturity of 15 years or longer.

3.2.11 Unsolicited bids

Adopt programs to shift the balance of procurement from unsolicited bids to competitive selection

An economy's decision whether to allow unsolicited proposals is likely to depend on its circumstances and overall policies. However, unsolicited bids pose significant risks to the credibility of the PPP procurement process if they are not managed appropriately. Over time, it would be optimal to shift the balance in favour of competitive selection.

While in some economies, such as Korea (which uses a bonus system) and Chile [which uses a Best-And-Final-Offer (BAFO) system], unsolicited bids have been managed in order to introduce competition and innovation, more generally they may be associated with a lack of transparency, which can lead to accusations of unfair treatment or corruption. This, in turn, will make investors more reluctant to pursue official procurement channels.

While these processes can undoubtedly lead to value outcomes for the government, the choice of which projects to pursue — that is, the project pipeline — could be led by the government (in communication with market participants) and developed to meet the overall objectives of the economy. The introduction of additional projects, outside of those identified in a project pipeline, is likely to be an unnecessary distraction for both the government and the private sector.

4 Harmonisation of project development

4.1 Recommendation

APEC economies consider adopting a common approach to project development, and work towards approving projects, in the form of an 'Outline Business Case'

Many economies already require that a case for development (a Business Case) is produced in order to obtain funding support for a project.

This is important as it ensures that only viable projects are funded by governments, projects taken forward are scoped appropriately, and that risks and costs are identified to determine the net benefit of the proposal. This is a vital stage in the process in developing economies, where both time and resources of governments are limited, and where the future risk appetite of the private sector will be defined by the outcomes of the first few projects that come to procurement.

It is recommended that APEC provide a framework for an 'Outline Business Case', which can be used by those member economies that do not currently have a process of their own. It is intended that this be a relatively streamlined business case which confirms that the key criteria for taking a project to procurement have been passed. A framework may contain some (or all) of the following headings:

- **the service need and project objective** detailing the issues that need to be addressed, the outputs to be delivered, and the project structure;
- **government commitment and key stakeholders** detailing the extent of necessary commitment for the project to be successful, and the stakeholder relationships that need to be managed — for example, government departments, third parties and the public;
- **market capability and appetite** including whether private parties have the capacity to deliver the project and whether they have the motivation to do so — the government could involve the private sector in projects as early as possible to determine the commercial viability of the project;
- **risk analysis and management** to uncover project risk, including sovereign, interest rate and currency risk — for example, management techniques could be explored through utilisation of ADB, World Bank and export credit agencies;
- **financial analysis** including project costs (the net present value of capital, maintenance, operations and residual value) — the analysis would aim to demonstrate that the proposed approach offers value for money in comparison with other options (including not proceeding with the project); and
- **project timetable and resourcing** including a detailed project timetable and the confirmation of the availability of resources required to deliver the project.

The following case study highlights a member economy that has already developed a detailed approach to the development of project business cases.

Case Study 4.1a — Australia

In 2007, the Port of Melbourne Corporation delivered a business case for the Channel Deepening Project, with the objective of expanding the port's trade capability, as well as providing innovative high quality facilities and services in a way which minimised environmental and safety risks in order to ensure that the project would be delivered on time and on budget.

The business case proposed to deepen sections of the existing channels to allow access by vessels with draughts of up to 14m, and in turn, cope with increased international trade volumes.

In parallel with the deepening of shipping channels, a program of structural upgrades to the berths was planned, as well as the upgrading, replacement, and in some locations, installation of new navigation aids. In addition, several utility services required protection from dredging activity.

Particular areas of focus were the risk and financial analysis considerations, along with the procurement approach and funding options. The business case also assessed the economic effects of this project. A detailed cost benefit analysis was conducted to determine the net increase in benefits the project would bring to Victoria, and Australia more generally. The business case was successfully approved by the Victorian Department of Treasury and Finance and the Victorian Department of Transport.

The following case study highlights a project harmonisation model to reduce the costs of procurement.

Case Study 4.1b — Singapore

Responding to the region's changing needs, ADB and the Singapore Government, led by the Singapore Cooperation Enterprise (SCE), launched a new PPP initiative for developing economies — Asia Infrastructure Project Development Private Limited (AIPD). AIPD's key objective is to address key constraints to private sector participation by providing the necessary resources and expertise to assist governments in developing sustainable and bankable PPP infrastructure projects.

AIPD will provide advisory services, including feasibility studies, planning, design, financial structuring, and other tender preparation activities that result in the successful awarding of a tender. For each project, AIPD will enter into a project development agreement with the respective local government or municipality, which will define issues such as exclusivity, working scope, and payment terms.

ADB and Singapore believe that AIPD's model is replicable across sectors and countries. ADB has already received requests from development partners and governments to replicate the AIPD model in the energy and transport sectors.

4.2 Ancillary advice

As with the ancillary advice identified previously, the implementation of the following recommendations is not considered a first-order priority. However, they will undoubtedly add value to the outcomes of individual projects.

Again, it is proposed that these more detailed issues be used to frame the debate on the next stage of harmonisation that will follow as the PPP procurement model develops further throughout the APEC region.

4.2.1 Advisors

Provide guidance on the appointment and use of both external project advisors and a project director with relevant expertise in developing-economy markets

In both developed and undeveloped PPP markets, it is normal for the government to appoint external advisors to provide advice on the key technical, financial, commercial and legal aspects of the project. Whilst fees are payable to advisors, it is generally accepted that the specific expertise they are able to provide is not available within the public sector and that this expertise is essential to the delivery of successful outcomes. For economies that lack a PPP scheme, advisors' expertise should be relevant to the economy.

The expected roles of different advisors are set out in the table below.

Technical Advisor	Technical advisors can advise on technical aspects of the project, including scoping the construction and operating requirements, assessing likely costs, and evaluating the suitability of the bidders' proposed technical solutions.
Legal Advisor	The legal advisor can advise on legal aspects of the procurement, including drafting of the contract documents and providing advice in relation to any related legal matters, especially in relation to approvals.
Financial / Commercial Advisor	Commercial and financial advisors can advise on all commercial and financial aspects of the project, including developing the commercial principles and framework for risk transfer, developing the payment structure, evaluating the viability of funding solutions, and assessing value for money delivered.

APEC could provide guidance on the appropriate appointment and use of external advisors. These principles would include:

- details of the scope of work that is expected from different advisors;
- a register of known advisors, including details of specialisations, accreditations, and previous experience;
- the process for appointing advisors, including advertising, selection criteria, interviews, verification of independence and signing contract terms; and
- advice regarding potential or actual conflicts of interest.

Example 4.2.1a — Viet Nam

Under Decree 78, advisors are appointed by the Line Ministries and PCs (CSA) to prepare proposals and bidding dossiers (funded by the State Government). The CSA appraises and approves these documents prior to organising competitive bidding.

4.2.2 Commercial principles and risk transfer

Harmonise the key commercial principles and approach to risk transfer between the public and private sector

Risk transfer between the public and private sector is one of four major drivers in determining whether a PPP is value for money (the remaining are whole-of-project-life costing, innovation and asset utilisation).

Commercial principles are essential in ensuring a documented reference point to demonstrate how principal risks can be shared, or mitigated, between the private and public sector.

Not all principles are suitable for harmonisation, and the detailed application is by no means definite, given that each economy is unique. Furthermore, commercial principles should be consistent with agreed laws applicable to each member economy. The decision often depends on the core competencies of the procuring economy and the desire to retain control over certain functions. However, harmonisation of some broad approaches have shown to be useful for PPP practitioners investing in other economies.

Over time, harmonisation will lead to both familiarity in the government and amongst private sector participants, which will result in improved efficiency, reduced cost, and lead to better value outcomes.

Examples of key principles or areas of risk transfer that may be suitable for harmonisation at a high level include demand risk (discussed in Section 3.2.6), project term and handover risk.

- **Project term**

Concession agreements are generally recommended as 25 to 30 years. The concession agreement could be determined prior to commencing the full procurement process, and reflect such constraints as the term required for the private sector to achieve its target Internal Rate of Return (IRR) for the given project, the life of assets, or the availability of term finance.

Commonly, the concession term covers both the construction and operations period so that the private sector has revenue at risk, in the event that construction completion is delayed.

- **Handover risk**

At the end of the concession period, most project assets revert (at no cost) to the government. There usually are tests to determine the quality of the asset prior to handover, in order to ensure the asset is returned according to an appropriate standard — that is, it will remain operational for the required amount of time following hand-back — and a process to ensure any rectification work is carried out to meet the standards required.

The following case studies highlight member economies that have already developed a framework of commercial principles and a standard approach to risk transfer.

Case Study 4.2.2a — Canada

In Canada, draft concession agreements include similar terms and conditions for commercial principles¹. For example, design, construction, maintenance and operational risks are traditionally transferred to the private sector. However, flexibility is still allowed for unique project characteristics. For many projects, jurisdictions across Canada request comments on draft concession agreements, as well as other procurement documents. This ensures the concession agreement, while having terms and conditions similar to most Canadian PPPs, has the flexibility to adapt to the unique characteristics of the project.

4.2.3 Tender documents

Make bidding process documentation templates available to all APEC member economies

As previously discussed, it is recommended that member economies adopt a common approach to the procurement process. As part of this approach, it is also recommended that the framework incorporates guidance on the scope and nature of information that is provided or requested at each stage of the procurement process, and where appropriate, that documentation templates be provided to set out the minimum requirements at each stage. Consistency of how information is requested will be welcomed by the private sector, as it will allow them to convert information easily from one project to another.

The following case studies highlight member economies that have already developed a harmonised approach to tender documents. Section 5 sets out further detail on what template documents may be appropriate at various stages of procurement.

Case Study 4.2.3a — Australia

In Australia, Partnerships Victoria provides example templates, as an Annex to its Practitioners' Guide²⁷. Such templates are provided as a guide to minimum information requirements, and information is included specific to projects. The example templates are provided to assist with:

- preparing bid documents, including the Expression of Interest and Project Brief;
- observing probity, including through a probity plan template, confidentiality deed and declaration of interest;
- conducting a public interest test;
- analysis, mitigation and allocation of risk through developing a risk matrix; and
- planning a project timeline.

Case Study 4.2.3b — Viet Nam

In Viet Nam, steps are being taken towards a harmonised approach via the proposed guidelines for a project pre-feasibility study, outlined in the World Bank *Infrastructure Financing in Viet Nam: The Evolving Role of Banks, Capital Markets, Infrastructure Funds and PPPs*. These guidelines can be utilised to develop a minimum standard template for feasibility studies.

4.2.4 Contract documents

Provide guidance on detailed legal drafting issues, including example wording

While a large amount of the legal documentation used in a PPP transaction will need to be developed specifically for individual projects, there are likely to be many areas where the wording and structure can be determined in advance.

This can be focused on areas that have already been negotiated over both a number of years and multiple PPP transactions, and that are now broadly accepted by both the public and private sector, as well as the wider international capital and debt markets.

This approach is likely to provide potential bidders with greater confidence in the robustness and 'bankability' of individual procurement processes, as well as reduce the time and cost burden of the negotiation process on the procuring authority.

Further work is required to identify a complete list of areas and to develop an in-depth understanding of these areas, before we can determine how suitable they are to be accepted as areas applicable for a

²⁷ Partnerships Victoria. 2001. *Practitioners' Guide*. Victoria, Australia.

harmonised approach, and whether agreement of those approaches is possible. However, this is likely to cover areas (and associated definitions) such as:

- Force Majeure;
- change in law;
- dispute resolution;
- refinancing;
- processes for project termination and calculation of compensation payments payable by the government upon termination;
- requirements for, and management, of project insurance; and
- requirements for and management of anti-collusion, transparency and anti-corruption processes.

The following case study highlights parallels that can be drawn on anti-corruption processes.

Case Study 4.2.4a — Harmonising anti-corruption processes

Regimes can be influenced by existing APEC guidance, for example, anti-collusion could make reference to APEC's Anti-Corruption and Transparency Experts' Taskforce (ACT) 2007 Deliverables¹. APEC could require that PPPs adhere to the ACT's covering guidelines for business and public officials in fighting corruption and enhanced international legal cooperation, including the *Code of Conduct for Business*, *Conduct Principles for Public Officials*, and *Complementary Anti-corruption Principles for the Public and Private Sectors* to ensure consistency across member economies.

The domestic operating environment may also be a consideration in legal drafting issues. For example, in Japan, the PPP model is more trust-based than contractual, so as to suit domestic operators.

4.2.5 Project specific marketing

Once selected to proceed, projects are marketed to industry in order to maximise interest from potential bidders

Marketing specific projects to the industry will increase competition. Such marketing can be achieved by contacting potential bidders identified during the business case development stage to ensure they are aware of the forthcoming opportunity.

Member economies could be encouraged to market their broader strategy, and APEC could also seek to promote market awareness of individual projects as they come to the market by developing a set of principles for the publication of information and tender request documentation. APEC could promote the use of tools such as those detailed in Section 3.2.3.

The following case studies highlight member economies that have effectively marketed projects to increase private sector appetite.

Case Study 4.2.5a — Indonesia

Indonesia has developed an Integrated Citarum Water Resources Management Investment Program, funded under an ADB multi-tranche financing facility, with access to over US\$500 million over a 10-year-period. The program's eight projects will work towards decreasing poverty, and increasing health, environmental quality and living standards.

This approach is recommended to ensure heightened market awareness of projects. The size of a project may be large in the local context, but once converted to US dollars, it can often end up being small and not fundable in the international market. Packaging projects such as these ensures that the minimum project size is in the realm of project financing.

Case Study 4.2.5b — Viet Nam

Viet Nam, with the assistance of Garuda Asea Co of Spain is conducting a feasibility study into the expansion of the Hanoi-Hai Duong Airport, to be implemented on a BOT basis for 30 years.²⁸

The airport will be equipped with advanced technology, facilities, security and information and management systems and is expected to generate 5,800 jobs on an ongoing basis. There are also plans for a hotel and apartments for up to 1,500 people.

The following information on the expansion has been released on the Project Finance International website at <http://www.pfie.com>

- The expansion will include a world-standard aviation and duty-free trade centre; and will be implemented in three phases:
 - the construction phase targeted to start this year, at a cost of about US\$4 billion and to run until 2013;
 - the second phase will cost US\$1.5 billion and be implemented from 2013 to 2018; and
 - the third phase will cost US\$2.5 billion and be implemented in 2035.

Providing this level of detail engages the market, thereby increasing potential private sector interest in the project.

28 Project Finance International. May 2009. *Hanoi Airport Expansion Mulled*. <http://www.pfie.com/story.asp?sectioncode=&storycode=296559>

5 Harmonisation of the procurement process

5.1 Recommendation

Set out a common approach to each stage of the procurement process, including:

- a. the use of a pre-qualification phase;
- b. the approach to short-listing potential bidders;
- c. management of detailed proposals; and
- d. the evaluation of submissions at each stage of the process.

The recommendations in relation to each stage of the process are set out below.

5.1.1 *Pre-qualification*

Develop a template Pre-qualification Questionnaire (PQQ) for use as required by member economies

The need to engage in a pre-qualification stage will depend on the level of interest in a particular project. It is typically used where a large number of parties are expected to bid, and where there is expected to be significant variation in key capabilities. In more developed economies, there may be no need for the PQQ and it could be appropriate to go straight to the short-listing stage.

Member economies could consider developing a common approach to the pre-qualification stage of procurement, including implementation of a template PQQ. Details of the approach would include consideration of a number of factors such as:

- key parameters for confirming the need for pre-qualification;
- details on the use of a market-sounding exercise to indicate the level of market interest;
- implement a recommendation for a minimum response period for the PQQ — for example, 15 business days;
- guidance on using the PQQ, in order to reduce the list of potential bidders to a subset considered as financially and technically-viable bidders;
- details of the project information to be provided to potential bidders, including objectives and timelines, and instructions for completion;
- details of information to be requested, including in relation to areas such as:
 - organisational makeup;
 - technical capability and accreditation;
 - financial performance and standing;
 - insurance details; and
 - dispute details; and
- details of how to present information, which would then be returned by interested parties, including a template response form.

The example below illustrates Indonesia's pre-qualification process for the Batu Ampar Container Port.

Case Study 5.1.1a — Indonesia

In 2004, the Indonesian Government, through the Batam Industrial Development Authority (BIDA) invited interested parties for a pre-qualification for the BOT tender to develop the US\$383 million Batu Ampar Container Port.²⁹

Interested parties were allowed one month for submission of pre-qualification documents, prior to the Government announcing successful bidders for the tender process.

At this stage of the PQQ, officials had received approximately 35 letters of intent, which demonstrates a high level of private sector interest in the project.

5.1.2 Short-listing

Select a short-list of bidders to proceed to the development of detailed proposals for each project

Following pre-qualification (if required), a further submission could be requested from interested parties in order to select a final short-list of parties to provide fully-developed proposals. At this stage, further information could also be released to provide more detail on the project.

Member economies could consider developing a common approach to the short-listing process. The approach may include consideration of a number of factors.

- Key information to be released — this would be expected to include details of:
 - cost components of the bid;
 - any financial support or guarantee;
 - communication during the evaluation period;
 - format of bid submissions;
 - negotiations; and
 - terms and conditions of tendering, including confidentiality.
- Details on the nature and scope of information to be requested from potential bidders. This could include:
 - details of their commercial and financial management capability;
 - their views on risk allocation and payment mechanism;
 - their project management processes;
 - their technical delivery capability (in relation to both construction and operating periods);
 - relationship management capability; and
 - compliance with the terms and conditions of bidding.

It is important that the information requested at this stage provides bidders with the best opportunity to differentiate themselves so that the most appropriate short-list can be identified.

²⁹ Project Finance International. March 2004. *Indonesia – Port Bidders Invited*.
<http://www.pfie.com/story.asp?sectioncode=&storycode=115716>

5.1.3 Detailed proposals

Harmonise the format of the detailed proposals process

Following short-listing, more detailed submissions could be requested from short-listed bidders in order to select a preferred bidder. At this stage, all relevant information could be released in order to provide the maximum level of detail on the project.

APEC could also develop principles on the detailed proposal process, including:

- release of key information — this would be expected to include details on:
 - technical, commercial and financial requirements; and
 - a full suite of contract documents;
- the nature and scope of information that should be requested from bidders, including:
 - marked-up contract documents;
 - full design-solution for the capital element;
 - details of proposed operating regime;
 - a detailed financial model setting out all forecast project-cashflows over the life of the contract; and
 - full funding commitment (including funder commitment letters).

5.1.4 Proposal evaluation

Develop a common approach to the evaluation of each stage of procurement

Consistency across member economies will lead to greater understanding of the evaluation methodology amongst private sector participants, improving the credibility of procurement processes and encouraging competition across the region.

Section 5.1.1 has already addressed the development of a template PQQ. This selection process could be based on the capabilities and accreditation of potential bidders, and wherever possible, the PQQ scorecard would assess each potential bidder on a pass or fail basis.

At the short-listing stage, evaluation is more specific to the potential bidders' capability to implement the project. However, a common approach can still be applied that highlights the key areas of evaluation, including:

- financial, commercial and technical capabilities;
- historical performance and experience;
- financial strength; and
- potential for innovation.

A harmonised approach to rating submissions could also be developed. An example ratings approach is included in Annex A.

At the detailed proposal stage, evaluation would be by solution, rather than capability, and as such, scoring would be specifically tailored to the project. Again, APEC guidance could seek to highlight the key areas to be considered by the evaluation, including:

- robustness and suitability of technical solution;

- strength and certainty of funding solution;
- ability to deliver required commercial solution;
- organisational capability; and
- presenting a harmonised approach to rating submissions (consistent with that used at the short-listing stage).

5.2 Ancillary advice

As with the ancillary advice identified previously, the implementation of the following recommendations is not considered a first order priority. They will, however, undoubtedly improve the efficiency and competitiveness of the procurement process.

Again, it is proposed that these more detailed issues be used to frame the debate on the next stage of harmonisation that will follow as the PPP procurement model develops.

5.2.1 *Timetable*

Provide guidance on an appropriate timetable for procurement

The amount of time required for an individual procurement will vary depending on the specific complexities of the project. However, it should be noted that sufficient time must be allowed to all parties to deliver the best outcomes. Therefore, it is recommended that member economies agree on a minimum appropriate timetable for procurement. This would cover both time allowed for bidder responses, and reasonable evaluation periods for the government.

Providing timetables allows the market to understand the key steps of the project, thereby allowing potential bidders to efficiently manage their time and resources, and then maximise the number of potential bidders for a project.

The following recommendations may form the basis of principles around minimum timeframes:

- **PQQ** — minimum response time of 15 business days;
- **short-listing** — minimum response time of 15 business days;
- **release of detailed project information** — within 20 business days of short-listing decision; and
- **detailed proposal** — minimum response time of two months (this can be as long as six months for complex projects).

The following case study highlights the timetable for procurement for the Peninsula Link project in Victoria, Australia.

Case Study 5.2.1a — Australia

On 31 March 2009, the Victorian Government released an invitation for Expression of Interest (EOI) for the Peninsula Link PPP project. The following timetable for tendering was provided, ensuring all potential bidders understood response times at key stages.

- Release of Invitation for EOI – 31 March 2009;
- Closing date for submission of EOIs – 5 May 2009;
- EOI Bidder Short-Listing – May 2009;
- Release of Request for Proposal – June 2009;
- Closing date for responses to Request for Proposal – October 2009;
- Successful Bidder(s) selected – November / December 2009;
- Contractual close (with subsequent financial close) – November / December 2009; and
- Project development commences – December 2009 / January 2010.

5.2.2 Information for bidders

Provide guidance as to the scope, nature and timing of information to be provided at each stage of procurement

The competitiveness of an individual bid often depends on the amount of uncertainty that exists around the ultimate outcome. Uncertainty is increased when there is a lack of information or a lack of time to analyse and price that information properly.

Providing clear guidance on the scope of the project also allows potential bidders to focus on specific requirements and encourages effective consortia development (that is, consortia members are chosen such that the consortia as a whole is clearly able to meet all the requirements of the government).

To minimise the chances of uncertainty having an impact on the efficiency of the process, member economies could seek to develop a common approach to the release of information, covering both timing and the nature of that release, as well as the content. This approach would consider the following:

- regular 'face to face' industry briefings (at both an individual bidder and collective level) be held throughout the procurement process;
- issuing procurement and contract documentation in English, as well as in the official language of the country;
- the government clarifying elements of the detail, as required, throughout the process, and in a timely fashion; and
- the government seeking feedback on the development of solutions prior to final submission in order to ensure effort is not wasted on undesirable solutions, and there has not been a misinterpretation of the project requirements.

5.2.3 Defining a suitably-sized short-list

Develop a common set of criteria for optimising the size of each short-list

The decision on how many parties to select is subject to a number of different parameters, and is rarely straightforward. Too few bidders, and important elements of competitive tension and innovation in the

final stages will be lost; too many bidders, and the time and resources required by all sides will become unacceptably high (and the private sector may see the diminished probability of winning the bid as a reason to withdraw).

In order to make the process as efficient as possible, member economies could identify a common set of principles which define the criteria for selecting the most appropriate short-list size. This will generally be between two and four bidders. Such criteria may include:

- the size of the project (in US dollars);
- the complexity of the project;
- the number of parties that have pre-qualified;
- the time and resources available to the government; and
- the degree of differentiation between bidders.

The decision on short-listing needs to be made in a timely fashion so that bidders know whether or not to ramp up resources for the detailed proposal phase. It is important not to lose momentum. Therefore, the short-list would ideally be announced within six weeks of receiving the responses.

5.2.4 Bid bonds

Require short-listed bidders to post bid bonds

For projects above US\$50 million, short-listed bidders could be required to post a bond (a 'bid bond') in order to participate in the detailed proposal process. In the event that a bidder then fails to submit a full proposal, the bond is retained by the government. This gives the government greater confidence that bidders will fully pursue the process, and ensures competitive tension is maintained. This is particularly important where a short-list of only two bidders is selected.

APEC could encourage member economies to include the requirement to post a bid bond in their standard terms and conditions, and include example legal drafting in its guidance material.

The following case study illustrates an approach to setting out bid-bond conditions prior to short-listing.

Case Study 5.2.4a — Australia

In order to participate in the detailed proposal process for the Victorian Desalination Plan, bidders were required to deliver a bid bond to the government, prior to short-listing. An approved form of the bond was required, and the EO set out conditions, including that the bond³⁰:

- be issued by an issuer with the required rating;
- be payable on demand at an office of the issuer; and
- not expire earlier than 31 March 2010.

30 Victorian Government. June 2008. *Victorian Desalination Project: Invitation for Expressions of Interest*. Victoria, Australia.

6 Next Steps

6.1 Delivering on priority recommendations

Hold workshops within APEC member economies to discuss and develop priority recommendations

It is recommended that a series of APEC sponsored forums be held on a pathfinder basis across a selection of member economies in order to develop a harmonised procurement process. The focus of these forums could include the development of detailed approaches to be adopted under each of the following recommendations:

1. developing a harmonised, 'road map' for the procurement process — for example, this could begin with PPP 'Centres of Excellence' to enable a platform for developing, delivering and managing PPP projects in the APEC region;
2. consider the possibility that projects undergo a common approach to development approval, in the form of an 'Outline Business Case'; and
3. harmonising the format of the bidder submissions — for example, developing a template Pre-qualification Questionnaire (PQQ), selecting a short-list of bidders to proceed to the development of detailed proposals for each project, harmonising the format of the detailed proposals process, and developing a common approach to the evaluation of each stage of procurement.

Contingent on APEC-sponsored forums being held on a pathfinder basis across a selection of member economies to further develop a harmonised approach to PPP procurement, an approach to development of a pilot project could then be addressed (refer below).

6.2 Delivering a pilot project

Testing the APEC approach via a PPP pilot project within an APEC developing PPP market

It is recommended that, in due course, a significant project be procured within the APEC region, utilising the framework of guiding principles developed by APEC member economies.

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Annex A Evaluation ratings approach

In preparing the evaluation reports, the following five levels of ratings could be used:

A	Exceeds expectations;
B+	Marginally exceeds expectations;
B	Meets expectations;
B-	Marginally meets expectations; or
C	Does not meet expectations.

Guidance on each is shown below.

A: Exceeds expectations

- Bidder group demonstrates that they have the capability, resources, understanding, experience or expertise that exceeds the minimum level the government considers necessary to deliver the aspect of the project being evaluated;
- Bidder group provides alternatives that appear to substantially enhance value for money in delivering the project; or
- Bidder group demonstrates that they may exceed the government's objectives for the aspect of the project being evaluated.

B+: Marginally exceeds expectations

- Bidder group demonstrates that they have the capability, resources, understanding, experience or expertise that marginally exceeds the minimum level the government considers necessary to deliver the aspect of the project being evaluated;
- Bidder group provides alternatives that appear to provide some, though not substantial, enhancement to value for money in delivering the project; or
- Bidder group demonstrates that they marginally exceed the minimum requirements of the government's objectives for the aspect of the project being evaluated.

B: Meets expectations

- Bidder group demonstrates that they have the capability, resources, understanding, experience or expertise that meets the minimum level the government considers necessary to deliver the aspect of the project being evaluated;
- Bidder group provides alternatives that provide limited enhancement to the government's value for money in delivering the project;
- Bidder group demonstrates that they meet the minimum requirements of the government's objectives for the aspect of the project being evaluated; or
- Bidder group satisfies the compliance evaluation criteria.

B-: Marginally meets expectations

- Bidder group demonstrates that they have the capability, resources, understanding, experience or expertise that marginally meets the minimum level the government considers necessary to deliver the aspect of the project being evaluated;
- Bidder group provides alternatives that appear to provide inconsequential enhancement to the government's value for money in delivering the project; or
- Bidder group demonstrates that they marginally meet the minimum requirements of the government's objectives for the aspect of the project being evaluated.

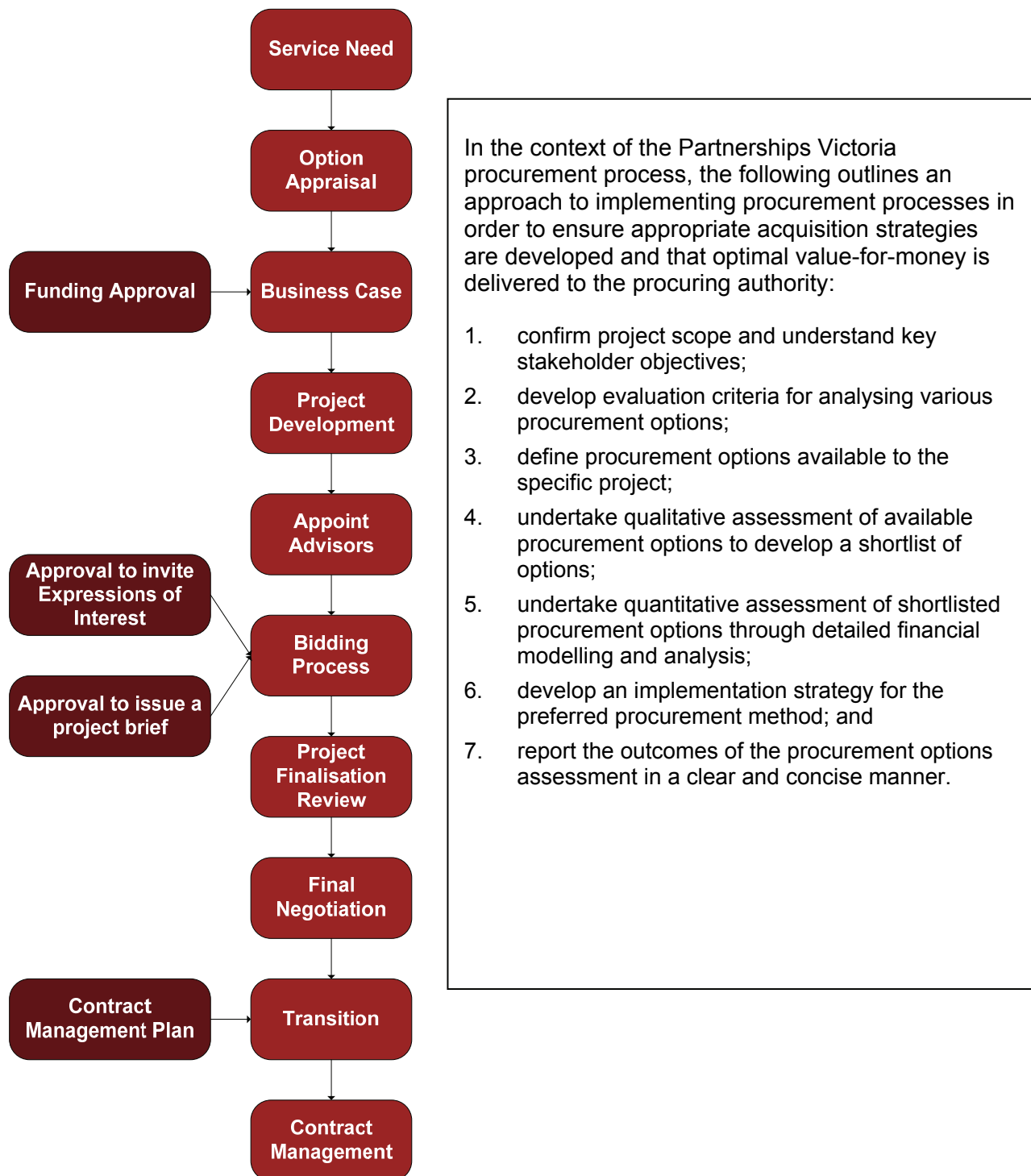
C: Does not meet expectations

- Bidder group not considered to have the capability, resources, understanding, experience or expertise to meet the minimum level the government considers necessary to deliver the aspect of the project being evaluated;
- Bidder group does not provide alternatives, or the alternatives that it provides do not appear to enhance the government's value for money in delivering the project;
- Bidder group demonstrates that they do not meet the minimum requirements of the government's objectives for the aspect of the project being evaluated; or
- Bidder group does not satisfy the compliance evaluation-criteria or is unwilling to meet the government's requirements for the project.

Annex B Procurement process

In Australia, Infrastructure Australia has helped develop the National PPP Policy Guidelines which all State and Territory Government Agencies now apply. These national guidelines aim to ensure there is a 'best practice', and consistent, national approach to delivering PPPs. In Victoria, Partnerships Victoria outlines the following process for the procurement of PPP projects.³¹

Figure 2 — Procurement process



31 Partnerships Victoria. 2006. *Guidance Material - Overview*. Victoria, Australia.

Globally, many other variations to the procedures to procure PPP projects have been adopted to reflect the broader procurement rules in those economies. One example of a refined procurement is the use of four main procedures:

- **open procedure:** interested parties are invited to tender, no short-listing of candidates is done, and contract negotiations are not allowed;
- **restrictive procedure:** the government undertakes the pre-qualification process and short-listed bidders are invited to tender — contract negotiations are not allowed;
- **competitive dialogue:** the government undertakes the pre-qualification process and then invites short-listed parties to participate in a dialogue process (during which any aspects of the project may be discussed and solutions developed), dialogue can continue until government identifies one or more solutions capable of satisfying the requirements, the dialogue is then closed and final tenders are invited (only limited discussion and clarification is permitted after dialogue has closed, which does not amount to negotiations — whilst maintaining competitive tension, this process of taking more than one bidder through the negotiation phase can lead to significant cost increase, due to the additional time and resource requirements); and
- **competitive negotiated procedure:** the government undertakes pre-qualification and then issues an invitation to negotiate — there are no detailed rules as to how negotiations should take place and when it ends (when competitive tension is no longer present, there has often been substantial negotiation following the appointment of the preferred bidder).

Annex C What is a PPP?

PPP structures

To identify a common set of tools for implementing PPPs in the Asia-Pacific region, we must first examine the purpose and ethos of the PPP model.

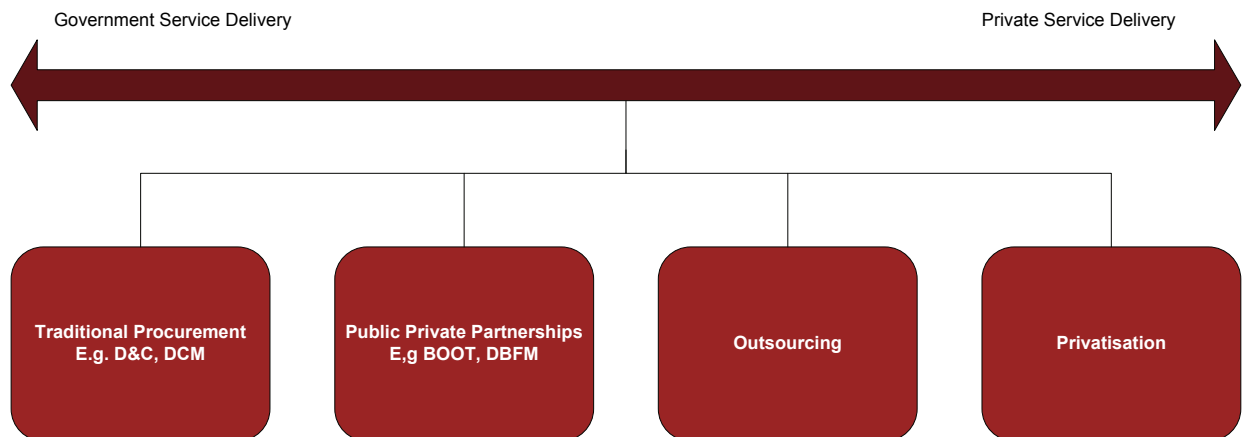
At a high level, a PPP defines a contract between a public authority and a private-sector supplier. There is no widely-agreed definition of PPPs, as the term PPP covers a range of different structures where the private sector delivers public infrastructure or services. Concession-based transport and utilities contracts have existed in many of the APEC member economies since the early 1990s, including Chile, China, Hong Kong SAR, Japan, and the Philippines.

The concept of concessions was expanded to include a broader range of public infrastructure, moving away from 'user pays' structures to 'availability payment' or 'services payment' structures. The use of PPPs has spread from 'developed PPP' economies into Indonesia, Malaysia, Mexico, Viet Nam and Thailand. Projects range from operations and maintenance contracts to full 'design', 'build', 'finance', 'operate', 'maintain' and 'transfer' contracts.

For the purposes of this report, private provision of infrastructure and non-core services does not mean privatisation, as governments will continue to deliver core services, and asset responsibility is generally transferred for only a specified period. The term PPP refers to projects where the private sector's returns are linked to service outcomes and the performance of the asset over the contract life.

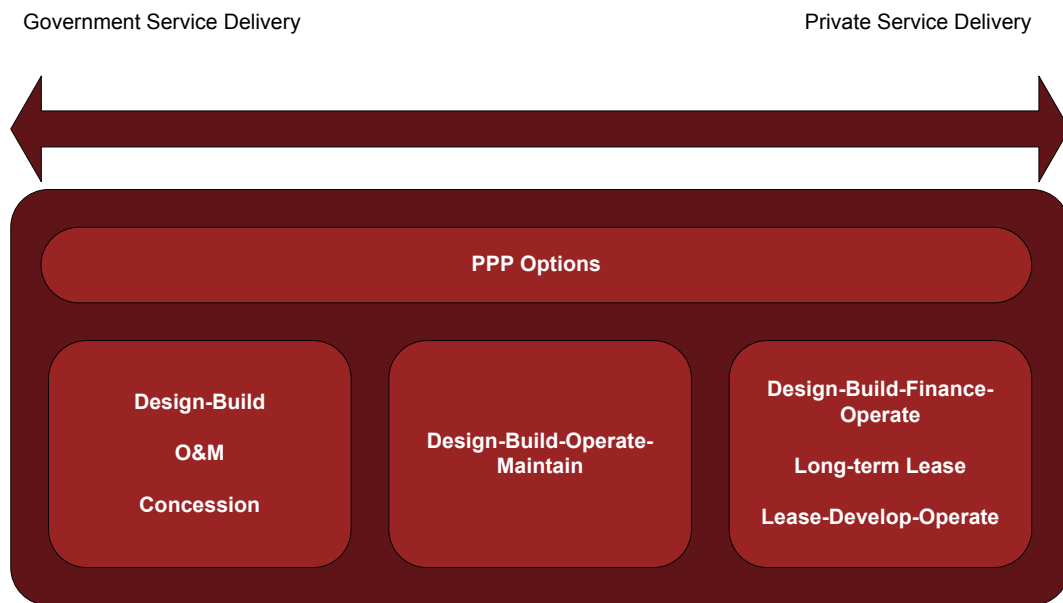
Figure 3 demonstrates where PPPs are placed within the spectrum of private-sector provision.

Figure 3 — Overview of the procurement process



The following provides examples of the range of different PPP structures and the level of private sector involvement.

Figure 4 — Different PPP structures



Key reasons for using PPP procurement

It is important that any public sector authority understands that PPP procurement is only one of several options available for procuring infrastructure. Consideration must be given as to whether a project is suited to a PPP structure, and whether there is strong political support for a PPP solution.

The principal reason for using PPPs is that, where the project is suited to a PPP structure, they can deliver better value for money than alternative approaches. All arguments for and against PPPs must be considered within the context of this overriding objective.

PPPs maximise the use of private sector skills

Under traditional procurement, the public sector is responsible for delivering an asset on time and on budget. In contrast, PPPs require the private sector to:

- deliver assets on time and on budget;
- ensure that those assets deliver the service levels required by the public sector; and
- project manage the overall delivery of the project.
- ensure that the individual assets, and other elements of the project that have been procured, work together to deliver services successfully, particularly in the rail sector where a key project risk is 'systems integration risk', which involves ensuring 'signal systems', 'rolling stock' and 'track' work seamlessly together; and
- maintain and refurbish assets on an effective basis, so that services are delivered continuously at satisfactory levels over the long-term.

Because of these additional requirements, PPPs offer significant opportunities to benefit from private sector skills.

In deciding whether to use PPPs, public sector authorities must consider their experience in project delivery to date:

- whether projects have been delivered on time and on budget;

- whether the economy is susceptible to currency risks — for example, the 100 per cent depreciation of the Philippine peso in 1997 doubled the debt service obligation for Maynilad Water³²;
- whether system integration risks have been properly managed; and
- whether effective project management skills have been introduced.

Public sector authorities often do not have the in-house skills, resources, or capability to deliver projects and manage and maintain them over lengthy periods after their acceptance from the private-sector contractor — this is largely by design, not by omission. The reason for this is that authorities often only procure projects infrequently, and lack the necessary skills and training to implement projects, which means that they often have no need to retain such capacity in-house. Therefore, more extensive use of the private sector throughout the life of a project gives best value, as private sector parties have experience and are repeatedly delivering projects internationally.

Under PPPs, the private sector takes life cycle cost risk

Under PPPs, the private sector is both designing and pricing in order to absorb life-cycle risks. Therefore, its pricing at first sight will look more expensive than traditional procurement. However, under traditional procurement, the public sector retains project management and life cycle risks, which will not be reflected in the immediate pricing received from a contractor. For instance, if the public sector were to manage a rail project with separate prices for 'rail', 'signalling' and 'rolling stock' contracts, none of those prices individually would include a price for the systems integration risk. But if those assets do not work well together, the public sector will find itself facing significant extra costs to complete the project successfully.

PPPs risks are allocated to the party best able to manage or absorb each particular risk

PPPs are designed so that risks are allocated to the party which is best able to manage them. Where the private sector bodies have the necessary long-term project skills and the public sector does not, it follows that the risks associated with project delivery are better off being transferred to the private sector. In doing so, the public sector is expected to obtain best value because those with the greatest and most relevant expertise will be better able to manage or absorb the risks, and will thereby price them more economically and minimise costs.

PPPs force the public sector to focus on outputs and benefits from the start

PPPs rely on developing a detailed output specification. Therefore, they change the fundamental nature of public sector procurement:

- the primary focus of the public sector becomes which services it wants delivered, not the means by which those services are delivered;
- PPP output specifications are fixed for lengthy periods, therefore it becomes critical that the service levels are set correctly at the outset — this leads to an even greater focus on defining service levels at the beginning of a project, relative to what has historically been the case; and
- defining service levels in detail at the outset minimises or removes the need for 'change orders' — that is, changes to the output or specification of assets during the procurement, which is a large contributor to cost overruns with traditional procurement.

32 Lewis, K.M. 2008. *The State of PPP Markets in the Asia-Pacific Region*. Adelaide, Australia.

This focus on output levels is a key reason why PPPs prove to be better value for money. They create a focus on costs and benefits, bring discipline to the budgeting of a project, and act as a catalyst for tough political decisions, which are otherwise avoided at the outset, leading to high levels of cost overrun.

The quality of service under a PPP is specified at the outset and is not expected to decline throughout the life of the PPP. This obligation contrasts starkly with traditional procurement, where asset condition, and hence, service levels, will often decline significantly as the asset becomes older.

Annex D Hong Kong SAR-Zhuhai-Macau SAR bridge

Case Study — China

Project background

The Hong Kong SAR-Zhuhai-Macau SAR Bridge will connect the three key cities in Hong Kong SAR, Zhuhai (Guangdong Province) and Macau SAR in the Pearl Delta region. The whole project consists of connecting roads and bridges within the respective cities, and the main 29.6 kilometre bridge (with a undersea tunnel of 6.8 kilometre) (the 'Main Bridge'). The connecting roads and bridges within each city will be financed by the respective governments. The total project cost for the Main Bridge is estimated to be RMB 30 to 40 billion.

Building on an idea which was conceived as early as 1980s, this project gained traction in early 2002 during the premiership of Zhu Rongji (ex-Premier) with subsequent support from the Chief Secretary of Hong Kong SAR, Donald Tsang, at the time.

In 2003, the National Development and Reform Committee of China and the Hong Kong SAR Government commissioned a joint study on the transportation connection between Hong Kong SAR and the Pearl Delta West region. The study concluded that a connecting bridge in the region would be crucial to the economic development of this region. The development of a connecting bridge was strongly supported by the three governments as a strategic project to enhance the social, political and economic integration of the three regions.

In August 2003, the Hong Kong SAR-Zhuhai-Macau SAR Bridge Advance Work Coordination Office ('Project Office') was formed to oversee the development of the bridge.

Currently, the Project Office is awaiting the final approval from the State Council to begin construction. The construction of the Main Bridge is expected to start in December 2009 and is estimated take 5.5 years.

The location and illustration of the bridge is as follows:



Financing options for the main bridge

Several financing options for the Main Bridge were considered by the three governments including private sector participation through a BOT concession model. Proposals were sought from the private sector and a feasibility study was conducted.

However, in early 2008, the three governments decided not to proceed with the BOT model as the equity returns required by the private sector could not be achieved without sacrificing affordability.

To this end, the three governments decided to act as project developers/equity sponsors to engage private finance to fund the project. A Government Project Entity (GPE) will take ownership and operation responsibility of the Main Bridge.

The equity contributions from the respective governments are as follows, and the remaining funds are to be financed through debt raising:

Sources	Zhuhai (Guangdong Province) / China	Hong Kong SAR	Macau SAR	Total
Equity	7	6.75	1.98	15.73
RMB billion				

The construction cost is estimated to be approximately RMB 30 to 40 billion, and depending on the eventual construction cost, the gearing is currently estimated to be about 58%.

In November 2008, the governments invited local and international financial institutions to submit their Expression of Interest to act as the Mandated Lead Arranger (MLA) to raise financing for the project. A total of 34 local and international banks responded.

The Request for Proposal for the MLA was released in January 2009 and 4 large local banks responded with their written proposals. The proposals from the 4 banks were evaluated against key criteria, and the Bank of China (BOC) emerged as the preferred MLA.

Key risk profile

This is a real toll-road model where the GPE will undertake full traffic volume risk. The toll charges will be adjusted periodically, and debt repayment will be covered by project cash flow.

Key financing terms provided by BOC

Banking consortium: Fully underwritten by BOC; likely to form banking consortium consisting of local and international banks

Borrower: Government Project Entity

Type: Non-recourse financing

Tenor: Matched to concession period

Commitment: Approx RMB 22 billion for long term loan

Interest rates: Based on BOC's published rates (for RMB loans)

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