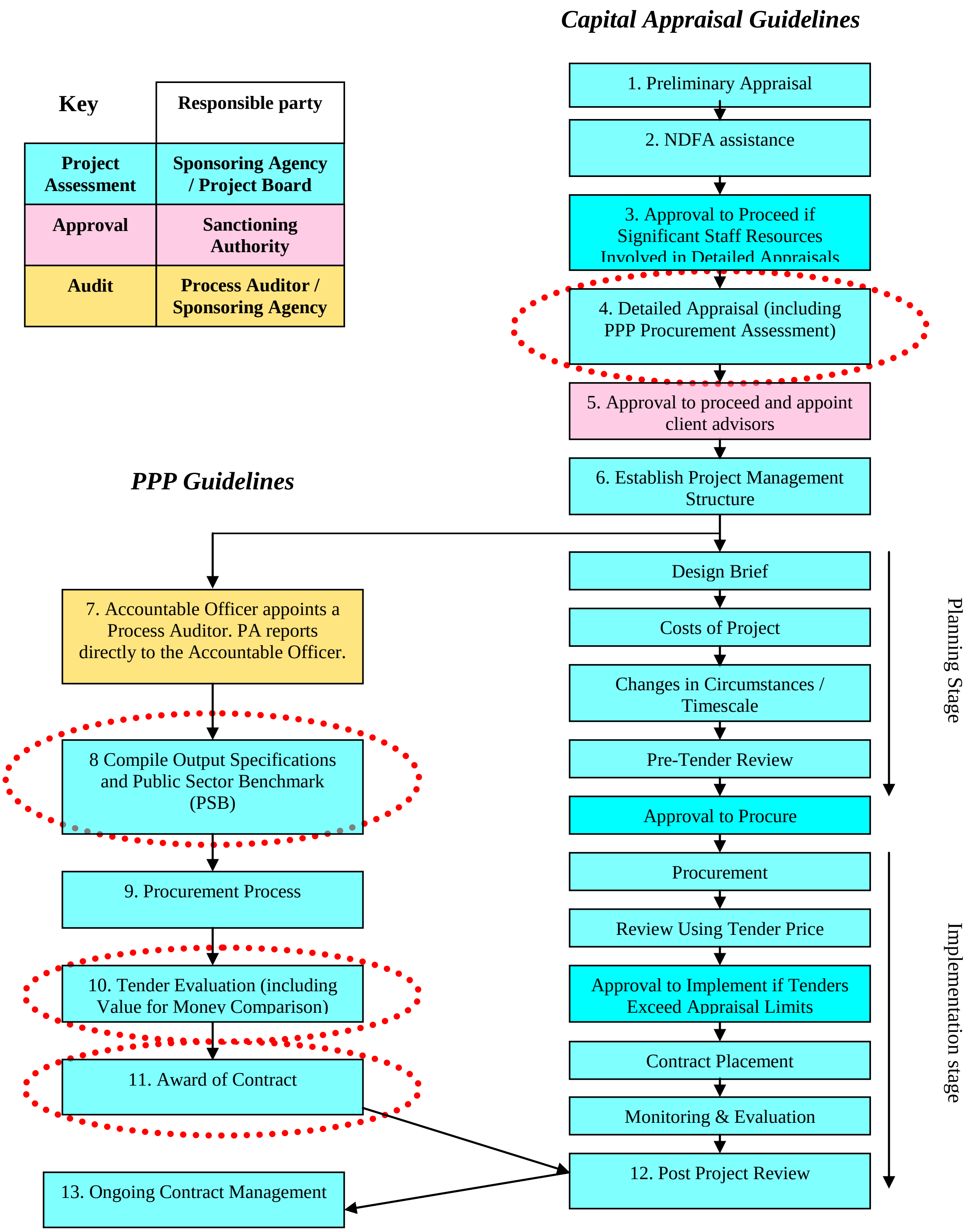
Public Private Partnership
Comhpháirtíocht Phoiblí Phríomháideach

Value for Money and the Public Private Partnership Procurement Process

October 2007

The Formal PPP Value for Money Tests and the PPP Procurement Steps within the Capital Appraisal Guidelines framework



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SECTION I: POLICY OVERVIEW

1.1 Introduction

The achievement of a value for money outcome in the use of public funds is an overarching consideration in the procurement and delivery of each public investment project. Value for money is a consideration for the Sponsoring Agency throughout the procurement process and its achievement should be continuously to the forefront in all aspects of the project. In the procurement of a Public Private Partnership (PPP) project, there are key stages at which value for money is formally tested. These guidelines outline how and when to carry out these formal tests.

It is important to note that each of the formal value for money tests is assessing the potential for a project to secure value for money at a particular point in time and in light of the available information. The overall value for money of a project can only be fully determined at the end of the PPP contract term.

The main source of public funds is the Exchequer however there are other sources, such as local authority "own resources". For ease of reference these guidelines refer to the Exchequer only. If the source of public funds for a particular project is not the Exchequer or is a mixture of Exchequer and other funds, the same principles apply. References to "Exchequer" in these guidelines should be read in this context.

1.2 Structure of these Guidelines

Section 1 gives a general overview of the policy relating to the assessment of value for money in PPPs and outlines each of the four formal value for money tests carried out during the PPP procurement process. **Each of the formal value for money tests is equally important in the context of evaluating the PPP project.** Section 2 addresses the third formal value for money test in more detail as it is the most technical.

1.3 Scope of these Guidelines

These guidelines apply to **all** PPP projects, regardless of whether they are to be funded by direct Exchequer funding, by deferred annual payments from the Exchequer (in respect of projects funded by the private sector and/or the National Development Finance Agency (NDFA)), by user charges, by local authority own resources, or by any other means.

1.4 Perspectives on Value for Money

As stated in section 1.14 of the *Main PPP Guidelines*[1], there may be costs associated with a project that are not covered by the PPP process itself (e.g., the cost of land), but that will nevertheless contribute to the overall cost of the project. As a result, there are two different levels at which value for money (or VfM) needs to be considered in PPP procurement:

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

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

The Sponsoring Agency should monitor both the PPP and non-PPP costs associated with each PPP project in accordance with the *Capital Appraisal Guidelines*[2] and the value for money measures, and should be satisfied that, in the wider value for money consideration of the project (taking both PPP and non-PPP elements into account), the project as a whole continues to represent value for money.

These Guidelines are PPP-specific and so address the formal value for money tests that are specific to the PPP component of the overall project.

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[1] "*Guidelines for the Provision of Infrastructure and Capital Investments through Public Private Partnerships: Procedures for the Assessment, Approval, Audit and Procurement of Projects*", Department of Finance, July 2006 – referred to throughout these guidelines as the "Main PPP Guidelines".

[2] "*Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector*", Department of Finance, February 2005 – referred to throughout these guidelines as the "Capital Appraisal Guidelines".

1.5 Responsibility for carrying out the formal PPP Value for Money Tests

In general, responsibility for carrying out the formal PPP Value for Money tests rests with the Sponsoring Agency and, where appropriate, its Project Board[3]. The Sponsoring Agency must be satisfied with the outcome of each value for money test before a decision is made to proceed to the next stage of the PPP procurement process.

The National Development Finance Agency (NDFA) will "advise any State authority of what, in the opinion of the Agency, are the optimal means of financing the cost of public investment projects in order to achieve value for money"[4]. The NDFA will also assist with other aspects of the assessment of value for money in PPP projects, particularly with the Value for Money Comparison[5].

When the Centre of Expertise in the NDFA is procuring a project on behalf of the Sponsoring Agency it will have sole responsibility for the third (Value for Money Comparison) and fourth (Contract / Financial Close) formal tests, with input from the Sponsoring Agency, as required.

1.6 Value for Money and Affordability

The assessment of whether a PPP project represents value for money is a separate consideration from whether or not the project is affordable. Affordability is considered from the point of view of the budget and other financial criteria relating to the Sponsoring Agency: can it meet the cost of the PPP project within the resources available to it? But value for money in the context of a PPP project involves, *inter alia*, consideration of the overall impact that the project could have on the Exchequer or other source of public funds. PPP projects that provide value for money solutions may not be affordable and vice versa. The Sponsoring Agency should ensure that all PPP projects fulfil <u>both</u> of these criteria.

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[3] The first value for money test, the PPP Procurement Assessment, will generally have been carried out before the Project Board has been established.

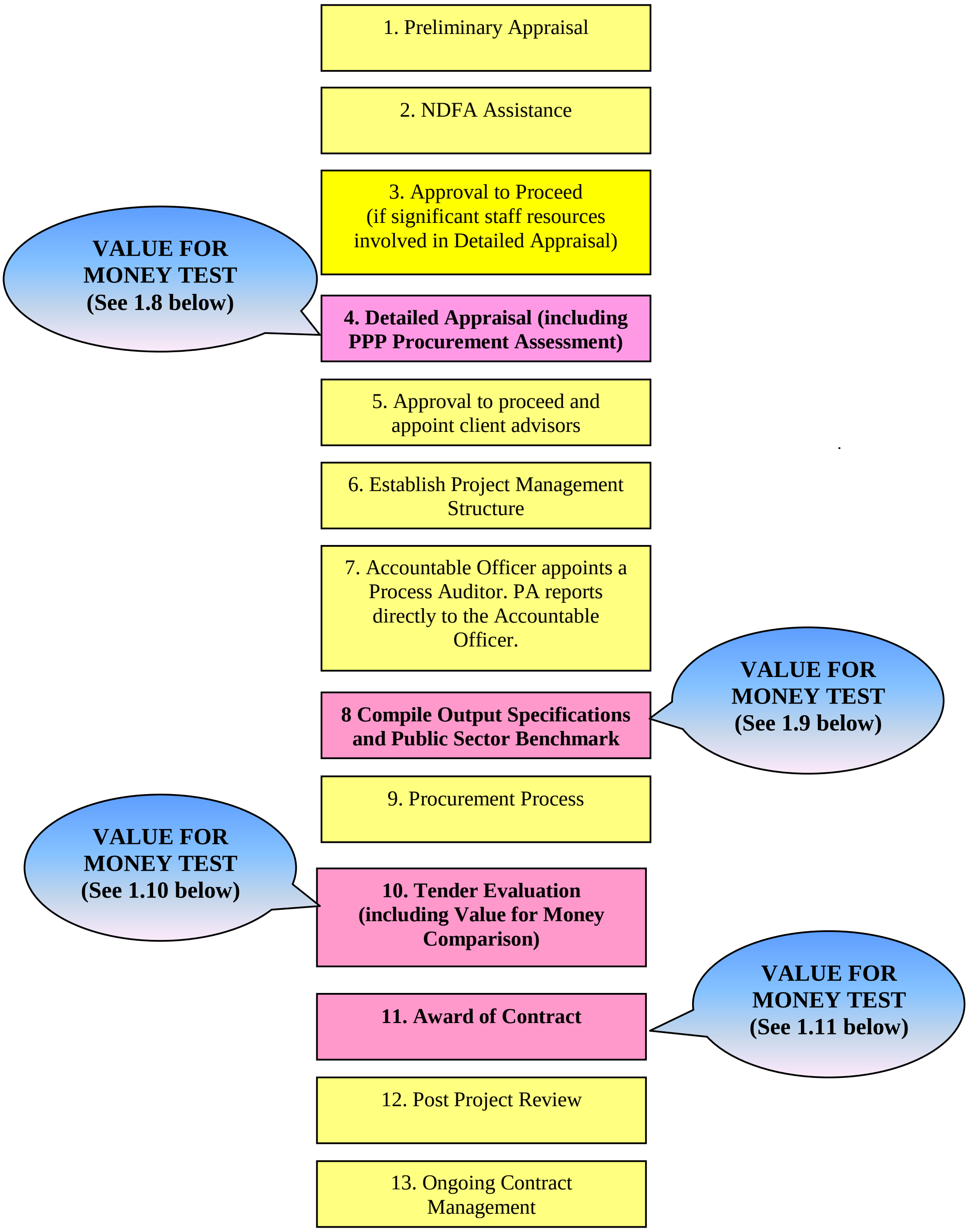
[4] Section 3(1)(a) of the National Development Finance Agency Act 2002

[5] Circular letter S430/10/03 provides that where a Department, State Authority or Agency employed financial/risk/insurance advisors to provide advice for an individual project or a programme of projects prior to 14 February 2003, these arrangements will be honoured. References to the role of the NDFA throughout these guidelines should be read in this context.

1.7 When to carry out each formal Value for Money Test

Figure 1 below indicates the stages at which the four formal value for money tests are carried out in the PPP Procurement Process:

Figure 1: Formal Value for Money Tests in the PPP Procurement Process



1.8 First Formal PPP Value for Money Test: PPP Procurement Assessment

<u>Purpose:</u> to assess whether, and in what form[6], a PPP arrangement has the potential to offer a value for money solution for procuring the project.

This first formal PPP Value for Money Test is a mainly <u>qualitative</u> one and is carried out as an integral part of the PPP Procurement Assessment. (More detailed guidelines on carrying out the PPP Procurement Assessment[7] have been issued by the Central PPP Unit and are available on www.ppp.gov.ie). These guidelines set out project characteristics that are likely to provide value for money, such as:

- Sufficiently large scale;
- Potential for risk transfer to the private sector;
- Potential to be output based;
- Potential for revenue generation.

The PPP Procurement Assessment will examine, *inter alia*, whether the project is suitable for procurement using a PPP arrangement, whether a PPP arrangement has the potential to deliver a value for money outcome and if so, what type of PPP arrangement is most likely to satisfy the value for money objective. The *Capital Appraisal Guidelines* require that "the option of procuring [a] project by PPP for projects costing over €20 million should be considered by the sponsoring agency as part of the project appraisal."[8] The NDFA will provide financial, insurance and risk analysis advice to State authorities to assist in determining the most appropriate procurement mechanism.

The outcome of this first formal Value for Money test should be recorded in the PPP Procurement Assessment documentation. The Sponsoring Agency should identify and rank the value for money considerations that influenced its decision to seek or not seek approval to proceed with the project as a PPP arrangement and should specifically outline its reasoning as to why the procurement option selected is

[6] For example, Design Build and Maintain (DBM), Design Build Operation Maintain and Finance (DBOMF), Concession, etc

[7] "*Assessment of Projects for Procurement as a Public Private Partnership*", Department of Finance, November 2006.

[8] *Capital Appraisal Guidelines*, page 9

considered to have the potential to deliver a value for money outcome in the context of the particular project's characteristics.

If this test indicates that a particular type of PPP arrangement has the potential to secure value for money, the Sponsoring Agency can seek approval in principle from the Sanctioning Authority to proceed with the project on that basis.

1.9 Second Formal PPP Value for Money Test: On Completion of the Project-Specific PSB

<u>Purpose:</u> to determine whether, in light of the quantifications in the PSB, the conclusion reached in the PPP Procurement Assessment still holds.

The second formal VfM test is carried out when the Public Sector Benchmark (PSB) for the project has been compiled. Some of the issues that were considered <u>qualitatively</u> in the PPP Procurement Assessment will be <u>quantified</u> in the PSB. For example, the PSB should provide a basis for assessing whether the level of risk transfer achievable using a PPP arrangement is likely to be sufficient to justify the additional cost of private finance, or whether the initial assessment of the level of third party income that could be generated was under/overestimated. In light of the quantifications in the PSB, the Sponsoring Agency should review the considerations that influenced the decision to procure the project using a PPP arrangement and satisfy itself that this approach is still considered to have the potential to deliver a value for money solution. The Sponsoring Agency should record the issues considered as part of this test and the conclusion reached, and include them in the PSB documentation.

Because this second value for money test is generally carried out <u>before</u> the Sponsoring Agency issues invitations to the private sector to tender for the project, it reduces the risk: (a) that time and money could be expended, by both the public and the private sector, in the pursuit of a procurement option that is not viable; and / or (b) that an unnecessary level of sunk costs might limit the decision-making scope of the Sponsoring Agency at a later date.

If, having compiled the PSB, the procurement method demonstrates the potential to deliver value for money the Sponsoring Agency can proceed with the PPP procurement process (assuming all other conditions of sanction / approval are adhered to). Alternatively, if not, the Sponsoring Agency should review the procurement option chosen and decide, in consultation with the Sanctioning Authority, how best to proceed. This may involve a decision that a different procurement method should be pursued (e.g. a different form of PPP procurement or a more traditional form of procurement); or that the project should be abandoned.

1.10 Third Formal Value for Money Test: Tender Evaluation stage

Purpose: to compare the highest ranking bid with the PSB, allowing for the differing impact of taxes, etc., in order to quantitatively assess whether the highest ranking bid offers a potential value for money solution.

This is a more technical value for money test and is dealt with in detail in Section 2.

1.11 Fourth Formal Value for Money Test: Just Prior to Contract / Financial Close

Purpose: in privately-financed PPPs / PPPs procured using Negotiated Procedure, a final test is carried out (a) to examine the effect of any negotiated changes in the contract terms when the project has been procured using the Negotiated Procedure, and (b) to assess the impact of any changes in the interest rate(s) and/or discount rate.

This purely quantitative test has two purposes:

1.11.1 To test the impact of any negotiated changes in the contract terms

This test may be necessary if the project is being procured using the Negotiated Procedure. This procurement procedure allows further negotiations to be held with the Preferred Bidder. Such negotiations can give rise to changes in the contract terms on which the Value for Money Comparison was based[9]. For example, a risk that was

[9] There are general constraints and limitations on using the negotiated procedure because of lack of transparency and potential for abuse. Where the conditions to justify its use exist, negotiation must be carried out in a fair and non-abusive manner. Legal advice should be sought on the most appropriate procurement mechanism for each project or any aspects of procurement where there is doubt.

envisaged as being retained in the Value for Money Comparison may be transferred to the Preferred Bidder in the course of negotiations.

Each change in the contract terms must be reflected as an individual item in a revised Value for Money Comparison and the overall impact of all changes should be calculated and recorded as a single monetary figure.

This test is carried out before the contract for the PPP deal is signed giving the Sponsoring Agency an opportunity to re-examine the deal before signing the PPP contract. It also presents an opportunity to confirm that the final deal offered is still within the terms of the Sponsoring Agency's approval / delegated sanction.

1.11.2 To test the impact of any changes in Interest Rates and/or Discount Rates

Changes in the interest rates and/or the discount rate[10] can make the highest ranking bid either more or less costly. In order to analyse the effect of such changes in monetary terms, the new rates must be applied to both the highest ranking bidder's financial model and the financial model underpinning the PSB. The impact of a change in these rates should be calculated and recorded as a single monetary figure.

It is important to ensure that favourable changes in the interest rates and/or the discount rate are not used to mask increases in costs that may arise during negotiations (see section 1.11.1 above). A new rate should not be entered into the financial model for the project or applied to the PSB until analysis is carried out on the impact of any negotiated changes.

This issue can arise in the event that the original timetable set out in the tender documents has slippage. Where these circumstances arise, the NDFA will advise what adjustments, if any, should be applied.

[10] Based on the Government Cost of Funds as advised by the NDFA in accordance with "*Discount Rate Principles for Public Private Partnership Capital Investment Projects*", available on www.ppp.gov.ie

1.12 Post Project Review

The *Capital Appraisal Guidelines* require the Sponsoring Agency to carry out a post project review[11]. The achievement or otherwise of a value for money outcome in procuring a project using a PPP arrangement will be assessed as part of the post project review of PPP projects. This issue is not addressed in detail in this paper as it is an issue that applies to capital projects generally and not just to PPPs.

[11] See section 4, page 29 of the Capital Appraisal Guidelines

SECTION 2: THE "VALUE FOR MONEY COMPARISON" TEST

2.1 Introduction

This test is carried out **after** all of the bids received have been scored and ranked and **before** announcement of the preferred bidder/winning bid. In this value for money test the highest ranking bid is compared to the PSB to help assess, <u>from a purely quantitative perspective</u>, whether it has the potential to deliver value for money. This test, referred to as the "Value for Money Comparison", is a quantitative analysis, in financial terms, of the expected overall impact on the Exchequer (and / or other source of public funds) of procuring the project using a PPP arrangement - as represented by the highest ranking bid. This impact is then compared to that of the PSB. If the highest ranking bid equals or beats the PSB in terms of this "impact" it is deemed to offer value for money.

In the context of a PPP project, there may be additional costs associated with the overall project that are <u>not</u> covered by the PPP process itself (e.g. the cost of land for the project). The PSB will only capture those elements of the project that the private sector is being asked to tender for <u>under the PPP arrangement</u>. The Value for Money Comparison should, in turn, only address those aspects of the project that are being procured under the PPP arrangement.

The information required to complete this exercise is generally found in the "financial models" underpinning the PSB and the highest ranking bid. A financial model, in the context of PPPs, is a series of inter-related spreadsheets that allows the user to input values for the various costs, income and risks associated with the project, apply underlying assumptions to these figures (see section 2.2 below) and calculate an overall estimated cost for the PPP project that covers the whole proposed contract term.

2.2 'Like with like' comparison: consistency of assumptions

The first step is to ensure that the figures used in the financial models underpinning both the PSB and the highest ranking bid are comparable. The following assumptions must be consistently applied to both: (a) that the same base date and discount rate have been applied to both models to calculate the Net Present Value (NPV); (b) that the same inflation rate(s) and assumptions about inflation have been made in both cases; and, (c) that the same assumptions have been made about the timing of cash flows for the purposes of calculating the NPV.

2.2.1 Base Date

To calculate the NPV of a project, all project costs / income / risks are discounted back to one common date, referred to as the "base date". The base date used in the PSB is the estimated date of financial / contract close for the project. The bidders for the PPP contract should be advised in the tender documentation that this base date will be used in the Value for Money Comparison. If different base dates are used, the cash flows in the PSB and the highest ranking bid will not be comparable.

Before carrying out the Value for Money Comparison, the Sponsoring Agency should confirm that the correct base date has been applied to the highest ranking bid by checking the date used in its financial model. (This should already have been checked when all bids received were evaluated against the Evaluation Criteria, to ensure that bids were being evaluated on a comparable basis).

2.2.2 Discount Rate

The highest ranking bid and the PSB must be discounted using the same discount rate in order to ensure comparability. The source of the appropriate discount rate will be identified by the NDFA as per Central Guidance Note No. 7 *Discount Rate Principles for Public Private Partnership Capital Investment Projects*[12]. Bidders for the PPP contract should be advised of the discount rate that will be used in evaluating tenders. Before undertaking the Value for Money Comparison, the Sponsoring Agency should confirm that the same discount rate has been applied to the highest ranking bid by checking the rate used in the bidder's financial model. Again, this is an issue that should already have been addressed in the Tender Evaluation process to ensure that bids were being evaluated on a comparable basis.

[12] Available on www.ppp.gov.ie

2.2.3 Inflation Assumptions

The inflation assumptions envisaged in this context are: (a) the rate(s) of inflation and (b) the timing of the application of this rate to the cash flows – see section 2.2.4 below.

Cash flows should be presented in nominal terms (i.e. adjusted for future inflation) in both the PSB and the highest ranking bid. Short term construction price inflation may vary from general price inflation and appropriate rates should be used at the time of compiling the PSB. The NDFA, having consulted with the Department of Finance, will advise on the appropriate rate(s) to use. Information on the inflation rate(s) that will be used in the Value for Money Comparison should be provided to bidders in the tender documentation.

The appropriate rate(s) of inflation will have been applied to the cash flows in the PSB at regular intervals, generally yearly, and on the same day, e.g., at the start of the year, mid-year, or end-year. The same timing assumption must be applied in the highest ranking bid if it is to be compared consistently to the PSB. (Again, this check should already have been carried out when all bids received were being evaluated.)

2.2.4 Assumption regarding the timing of cash flows within the year

When calculating net present values, the convention is to assume that all cash flows arising during the year occur at the end of the year. An alternative assumption is that all cash flows occur at the mid-point of the year. Either assumption is acceptable provided that it is applied consistently to both the PSB and the highest ranking bid. Before the Value for Money Comparison is carried out, the Sponsoring Agency should confirm that a consistent timing assumption has been made with regard to cash flows in both the PSB and the highest ranking bid.

2.3 Format of the Value for Money Comparison

The Value for Money Comparison should be carried out in two main steps:

- Step 1 - compare the overall impact on the Exchequer or other source of public funds of the PSB to that of the highest ranking bid to quantitatively assess whether that bid has the potential to offer a value for money outcome (i.e. whether it equals or beats the PSB.)

➢ Step 2 - identify the drivers of the value for money (or otherwise) outcome of Step 1.

2.4 Step 1: Comparison of the overall impact on the Exchequer of the PSB to that of the highest ranking bid

Table 1 (below) sets out a template for comparing the overall impact of both the PSB and the highest ranking bid. This table addresses some of the main value for money considerations that have arisen to date in PPPs. It is not an exhaustive list of all possible considerations and the Sponsoring Agency / Centre of Expertise should consider, on a case-by-case basis, whether there are other project-specific issues that should be included in this exercise. Such issues can be identified by considering the underlying principle that the PSB and the highest ranking bid should be compared on a "like-with-like" basis; anything <u>material</u> that distorts this comparison should be identified and addressed in the VfMC. Each of the headings used in Table 1 is explained in further detail below:

Table 1: Value for Money Comparison Template – Step 1

	PSB Cash Flows (PV basis)	**PPP Bid Cash Flows (PV basis)**
<u>(I) Exchequer Outflows (incl. VAT):</u>		
(a) PV of Public Sector Benchmark (excl. Third Party Income)	X1	-
(b) PV of all payments to the Private Sector Partner	-	Y1
Total Exchequer Outflows	***X***	***Y***
<u>(II) Exchequer Inflows:</u>		
(c) Gross VAT	(X2)	(Y2)
(d) Corporation Tax	-	(Y3)
(e) Rates and Levies	(X3)	(Y4)
Table continued on page 14 →		

(f) Third Party Income / Revenue Share to Exchequer	(X4)	(Y5)
Total Exchequer Inflows	***(X)***	***(Y)***
(III) Non-Cash flow Adjustments:		
(g) Risk Adjustment	X5	-
(h) Residual Value Adjustment	-	Y6
(i) Material Tax Reliefs Adjustment	-	Y7
OVERALL IMPACT ON THE EXCHEQUER i.e. I + II +/- III	**X**	**Y**

2.4.1 PV of the Public Sector Benchmark (excluding Third Party Income): (a)

The PSB for each project is presented as a single monetary amount that represents the full estimated cost, taking income and risks into account, to the Sponsoring Agency of delivering the project using "traditional" public sector procurement[13]. It is expressed in NPV terms. The value of some PSBs may reflect a figure for projected third party income[14]. In the Value for Money Comparison, third party income is treated as an "*Exchequer Inflow*" (see section 2.4.6 below). Therefore, the value of the PSB included as an "*Exchequer Outflow*" at (a) in this table is the present value of the PSB before third party income is reflected in it.

2.4.2 PV of payments to the Private Sector Partner: (b)

The figure included for "*PV of payments to the Private Sector Partner*" should reflect all payments that the Sponsoring Agency will make to the private sector partner under the terms set out in the highest ranking bid. This will often mean the present value of the unitary payments to be made by the Sponsoring Agency to the highest ranking bidder. This figure should be presented on a VAT-inclusive basis as VAT is dealt with as a separate item in the Value for Money Comparison – see section 2.4.3 below

[13] "Traditional" public sector procurement is a realistic public sector alternative to procuring a project using a PPP arrangement, employing the normal procurement method used in the relevant sector.
[14] Third Party Income is income that can be generated by charging third parties for the use of the asset / service procured, for example, income receivable from tolls, utilisation payments or other user charges. A revenue stream from third party income would reduce the overall cost to the Exchequer of funding the project, i.e. it would reduce the value of the PSB.

In some projects, particularly roads projects, the private sector may be invited to tender on the basis of the inclusion of a Capital and/or Operating contribution (subvention) from the Sponsoring Agency. If this is the case, the *"PV of payments to the Private Sector Partner"* should include the present value of any Capital and/or Operating contribution proposed.

2.4.3 VAT in the Value for Money Comparison: (c)

Most taxes, such as employer taxes, will be paid at the same rate regardless of the procurement option used and will be included in the costings in the PSB and in the highest ranking bid, e.g., employer taxes will have been included in the staff costings, etc. Other taxes, such as VAT and Corporation Tax (see section 2.4.4 below), may be levied at different rates or may accrue in materially different amounts depending on the type of procurement method chosen. These taxes distort the "like-with-like" comparison of the PSB against the highest ranking bid. Thus, they are explicitly considered in the Value for Money Comparison.

VAT is addressed in the Value for Money Comparison by including the gross VAT amount in the PSB and in the highest ranking bid as an "*Exchequer Inflow"* as shown at (c) in Table 1 - in effect, it is deducted from the overall cost of both the PSB and the highest ranking bid. It is important to specify in tender documentation that the private sector is required to show both the VAT-inclusive and -exclusive position. The VAT amount relating to each figure is to be detailed alongside each figure so that it can be easily extracted for the purposes of the Value for Money Comparison.

The Sponsoring Agency should be aware that, in a number of PPP accommodation projects, the VAT liability arising on the construction of the PPP asset has been paid in total up front by Sponsoring Agencies when unitary payments commence, i.e. this cost is not included in the unitary payments going forward. This approach avoids spreading any upfront construction VAT liability over the whole contract term which would result in additional financing costs for the project. When this approach is taken in a given project, the present value of the lump sum VAT payment should be addressed in the Value for Money Comparison in the same manner as the other VAT payments in the project. Construction VAT will have been included in the PSB and to leave it out of the Value for Money Comparison would distort the "like with like" comparison.

2.4.4 Corporation Tax in the Value for Money Comparison: (d)

Corporation tax is a tax that is levied on the private sector but is not directly levied on the public sector. Corporation tax payable on the profits of the Special Purpose Company (SPC) formed by private sector consortium is addressed in the Value for Money Comparison because it arises as a direct result of procuring the project using a PPP arrangement and it distorts the like with like comparison between the PSB and the highest ranking bid. In order to address this distortion, corporation tax on the profits of the SPC is deducted from the overall cost of the highest ranking bid as an "*Exchequer Inflow*" – as shown at (d) in Table 1. There is no corresponding adjustment to the value of the PSB as corporation tax is not directly payable by the public sector and will therefore not be included in the PSB.

If an SPC is not set up to deliver the PPP project, **no corporation tax adjustment is made in the Value for Money Comparison**.

Where bidders advise that they will not be within the charge to Irish Corporation Tax and / or that they will be paying Corporation Tax in another jurisdiction, the Sponsoring Agency / the Centre of Expertise, as appropriate, should advise the Irish Revenue Commissioners accordingly.

2.4.5 Rates and Levies: (e)

If the payment of rates and levies associated with a project would differ, depending on whether the project is procured using traditional procurement or a PPP arrangement, then an appropriate adjustment should be made in the Value for Money Comparison. The NDFA will advise on the appropriate adjustment to make in each circumstance. The underlying principle in determining the "appropriate adjustment", as stated previously, is that the PSB and the highest ranking bid should always be compared on a like-with-like basis and any material differences should be addressed in the Value for Money Comparison.

2.4.6 Third Party Income / Revenue Share to the Exchequer: (f)

Some projects allow for the collection of third party income. Projects that include third party income can be broken down into two broad categories: Concessions and Non-Concessions.

In **Concession PPP projects**, a significant portion of the private sector investment is usually remunerated through user charges. The best example of a Concession project is a toll road where the private sector is asked to Design, Build, Operate, Maintain and Finance (DBFOM) a road and is given a licence to levy charges on third parties for its use. Generally, in a Concession arrangement, the private sector partner incurs the cost of delivering the asset and accompanying service and recovers its investment through user charges, such as tolls. In cases where third party income alone might not be sufficient to cover all of the capital, operating and maintenance costs the Sponsoring Agency may pay a capital and/or operating contribution, as appropriate, to the private sector partner. The private sector may also offer the Sponsoring Agency a share of the revenues generated from user charges. When considering the figures to include in the Value for Money Comparison, the Sponsoring Agency should use figures based on the demand forecasts that underpin third party income in the PSB; the highest ranking bidder's demand forecasts should not be used. The NDFA will provide advice on how to address third party income in the Value for Money Comparison.

All other PPP arrangements are **Non-Concessions**. Where third party income could be generated in a non-Concession project, the private sector may bid on the basis of such income being either guaranteed or non-guaranteed.

2.4.6(i) Guaranteed Third Party Income

The private sector may opt to bid on the basis that it will guarantee a certain level of third party income to the Sponsoring Agency. Generally, the unitary payment from the Sponsoring Agency proposed in the highest ranking bid will be adjusted (reduced) to reflect the fact that the Sponsoring Agency is guaranteed to receive a particular amount of income. The reduced unitary payment is included in the Value for Money Comparison as an "*Exchequer Outflow"* and no other adjustment in respect of the guaranteed third party income is made. To include the amount of guaranteed income as an "*Exchequer Inflow",* while also including the reduced unitary payment, would result in the benefit of the guaranteed income being double-counted. However, if the guaranteed third party income is not netted off the unitary payment, it should be included as a separate "*Exchequer Inflow*".

If the deal includes a significant level of guaranteed third party income, the Sponsoring Agency should be careful to ensure that Demand Risk is adequately transferred, if appropriate. The Sponsoring Agency may, in such circumstances, be unintentionally retaining responsibility for some of the Demand Risk while paying the private sector for taking responsibility for it. This will be of particular relevance if the unitary payments are not adjusted (reduced) to reflect the level of guaranteed third party income proposed. The Sponsoring Agency should seek the advice of the NDFA in this matter and ask the NDFA to confirm that the Demand Risk has been adequately/appropriately transferred.

2.4.6(ii) Non-Guaranteed Third Party Income

This terminology is used to describe cases where the private sector does not guarantee the Sponsoring Agency any level of potential third party income in a non-Concession project but offers a share of such income on a non-guaranteed basis. The full value of non-guaranteed third party income should not be included as part of the Value for Money Comparison. Given the uncertainty surrounding the realisation of such income, a weighting should be applied to the full value of the non-guaranteed third party income and this weighted figure should be used in the Value for Money Comparison calculations. The NDFA will advise on the appropriate weighting to be applied.

2.4.7 Non-Cash Flow Adjustments

These are adjustments that are made in the Value for Money Comparison for aspects of the project that can be quantified but that do not relate to payments made into and out of the Exchequer, i.e. they are not "cash flows".

2.4.8 Risk Adjustment: (g)

An adjustment in respect of risk may be necessary when a project is being procured using Negotiated Procedure. Risk transfer is one of the key means through which PPPs can deliver value for money. Having identified and valued each of the risks associated with the project, the Sponsoring Agency will have categorised them into Retained, Transferable[15] and Shared risks and will include the value of all Transferable risks (including the transferable portion of the Shared risks) in the PSB (because these are the risks the Sponsoring Agency will be asking the private sector to bid for).

The risk allocation that the private sector is being asked to tender for will be specified in the Project Agreement and base bids must be compliant with this. However, where Negotiated Procedure is used to procure the PPP project, the highest ranking bid may reflect a slightly different risk allocation. Following negotiations, the Sponsoring Agency should examine the proposed risk allocation in the highest ranking bid to confirm whether there is any change in the risk allocation on which the PSB is based.

Following such negotiations three scenarios can arise: (i) the risk allocation remains unchanged; (ii) the risk allocation changes and the number of risks that the Sponsoring Agency will transfer increases; or (iii) the risk allocation changes and the number of risks that the Sponsoring Agency will transfer decreases.

Under scenario (i) – risk allocation is unchanged – no risk adjustment is necessary in the Value for Money Comparison.

Under scenario (ii) – transferable risk increases – the Sponsoring Agency's valuation of the additional risks to be transferred should be added to the cost of the PSB to allow for a like with like comparison as the private sector will have included a charge for accepting responsibility for these risks in the value of the highest ranking bid.

Under scenario (iii) – transferable risk decreases, i.e. retained risk increases – the Sponsoring Agency's valuation of the additional retained risks (risks that are no longer to be transferred) should be deducted from the cost of the PSB because these

[15] i.e. transferable to the private sector partner.

risks will be retained by the Sponsoring Agency regardless of the procurement method chosen and will not have been included in the cost of the highest ranking bid.

The Risk Adjustment must be fully recorded and explained in the Value for Money Comparison documentation.

2.4.9 Residual Value Adjustment: (h)

The Residual Value of an asset is the value of the asset at the end of the contract term, as estimated by the Sponsoring Agency. Whether or not an adjustment is made in the Value for Money Comparison for the residual value of an asset <u>is dependent on the ownership arrangements for the asset at the end of the contract term</u> - whether the Sponsoring Agency would normally retain ownership under traditional procurement. Generally, such an adjustment is unlikely to be necessary as ownership will be retained by the Sponsoring Agency in both cases.

The following table sets out the instances in which an adjustment for residual value is necessary:

Table 2: Where a Residual Value Adjustment is necessary

Ownership normally retained under traditional procurement	**Ownership retained under PPP option**	**Adjustment**
YES	YES	NONE
YES	NO	Total Exchequer cost of the <u>**PSB**</u> is reduced by the residual value of the asset
NO	YES	Total Exchequer cost of the <u>**highest ranking bid**</u> is reduced by the residual value of the asset
NO	NO	NONE

2.4.10 Material Tax Reliefs Adjustment: (i)

In accordance with section 1.17.3 of the *Main PPP Guidelines*, bidders will have been asked to declare and clearly identify, in a tab in their financial model, the material tax reliefs applicable to their bids (based on self-declaration).

From an Exchequer perspective, when material tax reliefs are availed of their monetary value is viewed as tax expenditure. Therefore, when assessing the value for money potential of the highest ranking bid, any material tax reliefs declared should be added to the overall cost of the bid.

It should be noted that, under guidance from the Revenue Commissioners, capital allowances should not arise when a consortium adopts the preferred structure of forming a Special Purpose Company (SPC) for the purposes of the PPP arrangement and is given a licence rather than a lease to occupy land for the project.

2.4.11 Overall Impact on the Exchequer

The ultimate aim of this first step in the Value for Money Comparison is to compare the overall impact that the PSB and the highest ranking bid will have on the Exchequer in order to quantitatively determine whether the highest ranking bid offers value for money. Having netted off the figures in each column of Table 1 the overall impact of each option will have been identified. If the highest ranking bid has an equal or lower net impact (i.e. has the same or a lower figure in its column) than the PSB, it has equalled or beaten the PSB and passes this quantitative value for money test.

2.5 Step 2: Analysis of the Driver(s) of the Value for Money Outcome

Having completed the overall quantitative comparison (i.e. Step 1), the Sponsoring Agency should then explore, rationalise and explain clearly those elements of the deal that are the main drivers of the value for money outcome of the Value for Money Comparison. This exercise should be carried out <u>regardless</u> of the outcome of Step 1 and should be recorded as part of the Value for Money Comparison documentation.

2.6 The outcome of the Value for Money Comparison

The outcome of both Step 1 and Step 2 of the Value for Money Comparison should be recorded in a Value for Money Report prepared by the Sponsoring Agency / Centre of Expertise, as appropriate.

As stated previously, in the Value for Money Comparison exercise the Exchequer impact of the highest ranking bid is compared to that of the PSB to assess, from a quantitative perspective, whether a value for money outcome could be achieved by awarding the tender to the highest ranking bidder. The steps to be taken when the outcome of this quantitative exercise is known are set out below:

2.6.1 On equalling or beating the PSB

If the highest ranking bid equals or beats the PSB in the Value for Money Comparison exercise and the following conditions are fulfilled:

- the terms of the Sponsoring Agency's delegated sanction are adhered to; and
- the capital cost of the project is consistent with the Capital Envelope allocation / target available to the Sponsoring Agency,

the Sponsoring Agency / Centre of Expertise, as appropriate, may then move to award the contract to the tenderer who submitted the highest ranking bid.

2.6.2 Failure to equal or beat the PSB

If the highest ranking bid fails to equal or beat the PSB, the general principle is that the matter should be referred to the Sanctioning Authority and the appropriate Minister / the Government by the Sponsoring Agency. It may be considered that there are factors that would justify continuing with the PPP procurement despite the outcome of the Value for Money Comparison exercise. The VfMC has a particular quantitative focus; the relevant Minister / the Government may be of the opinion that there are other relevant considerations that justify awarding the contract to the highest ranking bidder. In such an event, if there are general implications for the use of PPP for a type of project, the use of the PPP approach in future for similar projects should be carefully reviewed by the Sponsoring Agency and should be subject to the approval of the Sanctioning Authority, and if necessary, referred to the relevant Minister.

When these circumstances arise when the Centre of Expertise is procuring a project on behalf of the Sponsoring Agency, the Board of the NDFA should examine why the PSB has not been equalled or beaten by the highest ranking bid received. In addition to advising the Sponsoring Agency, the NDFA should report the matter to the Minister for Finance. The Sponsoring Minister will refer the matter to Government for decision, unless the Minister for Finance agrees that this is not necessary or appropriate. The Minister for Finance would, in due course, convey the decision reached by the relevant Minister or the Government, as appropriate, to the Board of the NDFA.