

Negotiation and Completion Phase

Negotiation

Generally it will not be possible for government to immediately sign a contract with the highest ranked bidder following the evaluation process. This is because the bids inevitably include some departures from the Project Brief, and there will be other issues on which a decision is required within government or some degree of negotiation with a bidder is required.

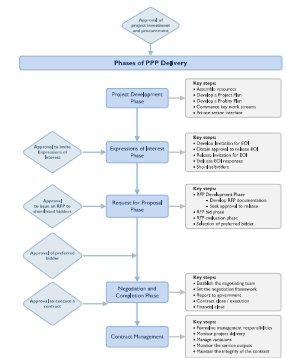
A number of options are available to government at this point:

1. If there are relatively few outstanding issues in relation to the highest ranked bid, government may appoint that bidder as a preferred proponent and enter into negotiations with them with a view to signing a contract.
2. If there are two strong bids, each of which potentially offers value for money, but each with different issues, there may be merit in conducting dual negotiations with those two bidders in an attempt to resolve the outstanding issues in a competitive environment. The objective may be either to sign a contract with the first bidder with whom all of the issues can be satisfactorily resolved, or to satisfactorily resolve issues with both bidders and then reassess which offers the best value for money outcome.
3. If the issues raised by the bids are matters that would be best resolved by further development of the bids by the bidders, rather than negotiation, government may request Best and Final Offers (BAFOs) from two or more bidders. This is, in effect, a further formal bidding process, after which there is a further evaluation of the bids.
4. If there is no reasonable prospect of any bidder offering a value for money PPP outcome, government might revert to traditional delivery or cancel the project.

Completion

It is important that there is an appropriate approval process undertaken once negotiations have been concluded and prior to execution of the project contract. This includes documenting and confirming the outcome, confirming compliance with policy, consistency with decisions made at earlier stages of the procurement process, due diligence that has been undertaken of the preferred proponent, and the value for money outcome.

The project team reports to the Treasurer and responsible Minister on the outcome of the tender process. Contract execution then occurs, followed by financial close, which is the point at which financiers make available the financing required for construction.



Phases of PPP Delivery in Australia.
(Click to enlarge.) Source:
*Infrastructure Australia, National
PPP Guidelines: Volume 2 -
Practitioners Guide*