



مكتب أبوظبي للاستثمار
ABU DHABI INVESTMENT OFFICE

INFRASTRUCTURE PARTNERSHIPS

Partnership Projects Guidebook

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Chapter One

INTRODUCTION



INTRODUCTION

1 Overview

1.1 Why Partnership Projects?

The Government has identified Partnership Projects as a method of accelerating infrastructure investment, accessing private finance and improving the delivery and quality of public assets and services.

Well-structured Partnership Projects have benefitted economies around the globe by creating jobs, fostering sustainable economic growth and stimulating private sector investment.

Benefits that the Government is seeking to derive from pursuing Partnership Projects include:

- Increasing private sector investment in infrastructure in Abu Dhabi – from domestic and international developers and investors.
- Building true partner relationships with private sector investors and developers.
- Enhancing accountability for Government expenditure through robust analysis and development of (and adherence to) consistent and transparent processes.
- Increasing access for the Government to private sector innovation, entrepreneurship and efficiencies.
- Spreading the cost of procuring public assets and services through long-term contracting.
- Increasing accountability for the delivery and long-term management of public assets and services through performance-linked payment mechanics.

1.2 The Government's approach to Partnership Projects

Notwithstanding that the structure of each Partnership Project will be considered on its own merits, the Government intends that Partnership Projects in Abu Dhabi will broadly conform to the following characteristics:

- Requiring the private sector partner to, as appropriate, design, finance, construct, maintain and operate public assets based on output-based specifications rather than input-driven specifications.
- Requiring the private sector partner to operate the assets and deliver services on a long-term basis.
- Providing payments in accordance with the terms of the partnership agreement, generally only once the assets are operational.
- Providing that payments shall be made over the term of the Partnership Agreement based on services delivered against the achievement of key performance indicators and output specifications.
- Providing for the assets to be returned to the Procuring Entity at the end of the term in accordance with specified contractual hand back requirements.

1.3 Legislative background

In order to promote the development and procurement of Partnership Projects, the Government has issued:

- Law No. (1) of 2019 concerning the establishment of ADIO (the **ADIO Establishment Law**).
- Law No. (2) of 2019 concerning the regulation of Public Private Partnerships (the **PPP Law**).

To facilitate and clarify the implementation of the PPP Law, the Department of Economic Development has subsequently issued an administrative resolution pursuant to the PPP Law (the **Regulations**).

Pursuant to the powers granted to ADIO in the ADIO Establishment Law, PPP Law and Regulations, ADIO is issuing this Guidebook.

1.4 Structure of this Guidebook

This Partnership Projects Guidebook (the **Guidebook**) sets out the processes and procedures that are required to be followed in connection with the development, procurement and management of Partnership Projects in Abu Dhabi.

This Guidebook comprises the following four chapters:

- **Chapter 1 – Introduction:**

Introduces the structure and purpose of this Guidebook and describes the broader legislative framework, briefly outlines the roles of ADIO, other Government stakeholders and Project Teams and sets out the core principles to be followed by parties involved in the development, procurement and management of Partnership Projects.

- **Chapter 2 – Structuring and Due Diligence:**

Describes the origination, structuring and due diligence phases of a Candidate Project, in particular the development of the Concept Report and Business Case, up to the point that an investment decision is made.

- **Chapter 3 – Tender Management:**

Describes the processes and methodologies to be followed during the tendering, negotiation and contract award of a Partnership Project.

- **Chapter 4 – Contract Management:**

Sets out the transaction management principles and processes to be followed when administering the Partnership Agreement and related Partnership Project matters after Commercial Close and over the life of the Partnership Agreement.

The Table of Acronyms and the Glossary of Terms in Chapter 5 apply to all chapters of this Guidebook.

1.5 Purpose of this Guidebook

This Guidebook is intended to be used by the private sector, Procuring Entities and their respective advisors and is designed to provide a framework for the development, procurement and management of Partnership Projects in Abu Dhabi in a manner that is consistent with the PPP Law and the Regulations. It seeks to encourage:

- Public and private sector parties to promote and actively engage in Partnership Projects in Abu Dhabi.
- Rigorous analysis of potential Partnership Projects with a view to maximising value for the Government.
- Efficient, transparent and consistent procurement of Partnership Projects.

1.6 Project Stages and Approvals

This Section 1.6 summarises the stages that a proposed Partnership Project passes through and the approvals that are expected to be required at each stage.

	STAGE 1	STAGE 2		STAGE 3		STAGE 4
	ORIGINATION	STRUCTURING AND DUE DILIGENCE		TENDER MANAGEMENT		CONTRACT MANAGEMENT
		CONCEPT REPORT	BUSINESS CASE	TENDER LAUNCH-PREFERRED BIDDER	PREFERRED BIDDER-COMMERCIAL CLOSE	CONTRACT ADMINISTRATION & MONITORING
OBJECTIVES	To identify a project as suitable to be taken forward as a Candidate Project	To demonstrate that the fundamental technical and financial assumptions underpinning the Candidate Project merit development into a Business Case	To build on the analysis contained in the Concept Report to demonstrate the economic viability and suitability of the Candidate Project to be tendered as a Partnership Project	To run a procurement process for the Partnership Project, evaluate bids and select a Preferred Bidder	To finalise the terms of the Partnership Agreement and related matters, prepare the Final Business Case and sign the Partnership Agreement	To implement effective contract management
DELIVERABLES	Project Proposal	Concept Report	Business Case	Tender documentation SoQ evaluation report Tender Evaluation Report BAFO Tender Report (if applicable) Issue Letter of Award to the Preferred Bidder	Final Business Case Executed Partnership Agreement	Contract Management Plan Relevant reports and notices

ELEMENTS	Requirements for the Project Proposal are set out in Chapter 2, Section 2.4 of this Guidebook	Requirements for the Concept Report are set out in Chapter 2, Section 3.2 of this Guidebook	Requirements for the Business Case are set out in Section 3.3 of this Guidebook	Requirements for the Tender Process are set out in Chapter 3 of this Guidebook		Requirements for the Contract Management phase are set out in Chapter 4 of this Guidebook
APPROVALS	Approve project as Candidate Project	Approve Concept Report	Approve Business Case Approve Tender launch	Approve selection of Preferred Bidder	Approve Final Business Case Approve entry into Partnership Agreement	Approve contract administration and related matters
RELEVANT APPROVING AUTHORITY	Procuring Entity and ADIO	Procuring Entity and ADIO	Procuring Entity, ADIO, and DoF	Procuring Entity, ADIO and EC	Procuring Entity and ADIO	General Matters: Procuring Entity and ADIO Material Matters: Procuring Entity and ADIO

1.7 Status of this Guidebook

This Guidebook:

- Should be read in conjunction with the PPP Law, the Regulations and any other guidance that may be issued by ADIO from time to time (including updates to this Guidebook); and should be followed by parties involved in the analysis and development of Candidate Projects and the procurement and management of Partnership Projects.
- Any inconsistency or conflict between this Guidebook, the PPP Law, the Regulations and any other guidance issued by ADIO shall be resolved in the following order of priority:
 - PPP Law
 - Regulations
 - This Guidebook
 - Other guidance issued by ADIO

Governance architecture

Origination	Structuring and Due Diligence	Tender Management	Contract Management
PPP Law			
Regulations			
This Guidebook			
Other guidance materials to be issued by ADIO from time to time			

2 Role of ADIO and other key Government stakeholders

2.1 Role of ADIO

ADIO was established in 2019, pursuant to the ADIO Establishment Law to create opportunities for domestic and foreign investors in Abu Dhabi. A core pillar of its mandate and strategy is to encourage private sector involvement in major projects and the delivery of public services through Partnership Projects.

In this respect (and as is more particularly described in this Guidebook), ADIO's role includes:

- Developing supportive and transparent policies for Partnership Projects by:
 - Developing and providing advice on policies, procedures, regulations and programmes related to infrastructure development.
 - Promoting uniformity and consistency of the implementation of policy standards and quality control.
 - Promoting prudent financial management.
- Supporting the identification, procurement and implementation of Partnership Projects in a manner that is consistent with the PPP Law, the Regulations, this Guidebook and international best practice by:
 - Assisting with the early analysis and screening of capital projects and identification and structuring of Candidate Projects.
 - Supporting the procurement, evaluation and approval process of Partnership Projects.
 - Supporting the marketing and promotion of Partnership Projects.
 - Providing a single point of contact for private sector parties in relation to Partnership Projects in Abu Dhabi.
 - Supporting Procuring Entities in the ongoing management and monitoring of Partnership Projects.

2.2 Role of other key Government stakeholders

Other key Government stakeholders involved in Partnership Projects in Abu Dhabi include:

Stakeholders	Role Description
Procuring Entity	<ul style="list-style-type: none"> • Identify and assess public infrastructure and service needs, and propose Candidate Projects to address those needs. • Develop Candidate Projects. • Support ADIO in the evaluation of Candidate Projects – the technical evaluation in particular. • Actively engage as part of the Project Team throughout the Tender Process and at all times act in a manner that promotes the efficient implementation of all aspects of the Partnership

	<p>Projects process set out in this Guidebook, including, but not limited to, providing approvals without delay.</p> <ul style="list-style-type: none"> • Provide approvals in accordance with Section 1.6 and lead the implementation of the Partnership Project as the Procuring Entity under the Partnership Agreement.
Other Relevant Approving Authority	<ul style="list-style-type: none"> • Provide approvals in accordance with Section 1.6, including approvals regarding the Business Case and entry into the Partnership Agreement.
Department of Finance	<ul style="list-style-type: none"> • Review the VfM framework for Partnership Projects. • Confirm the approved budget for the life of the Partnership Project and in certain circumstances provide other financial support to Partnership Projects including any agreed annual commitments. • Provide approvals in accordance with Section 1.6.

2.3 Project Teams

Article 4 of the ADIO Establishment Law confers upon ADIO the power to supervise Partnership Projects. ADIO considers that the best way to implement this is to form a Project Team in respect of each Candidate/Partnership Project. The Project Team will be formed prior to commencing the Concept Report stage, and will comprise representatives from ADIO, the Procuring Entity and external advisors — if applicable.

The Project Team will have primary responsibility for the assessment, development, procurement and management of the Candidate/Partnership Project and will make all decisions required to assist the Candidate/Partnership Project with progressing through the procurement stages and obtaining the relevant approvals as outlined in this Guidebook, specifically in Section 1.6.

The Project Team will be led by an ADIO representative who will have ultimate decision-making authority on all matters to be decided by the Project Team and will maintain oversight of the Project Team.

The ADIO representative(s) will work collaboratively with the Procuring Entity representative(s) appointed to the Project Team.

The ADIO Project Team representative(s) will have primary responsibility for progressing in a timely manner all commercial, financial, legal, communications and marketing aspects of the Candidate/Partnership Project. ADIO shall appoint external advisors to form part of the Project Team as it considers necessary in accordance with Article 11 of the Regulations.

The Procuring Entity Project Team representative(s) will have primary responsibility for making available specific and relevant technical project information, progressing in a timely manner all technical aspects of the Candidate/Partnership Project and for providing sector-specific expert advice and information, all in a timely manner.

ADIO and the Procuring Entity shall ensure that the representatives that they appoint to the Project Team are appropriately qualified and authorised to perform their assigned roles efficiently and professionally. All Project Team representatives will conduct themselves in accordance with the Code of Business Ethics, set out in Appendix 3 of this Guidebook.

2.4 Core principles

All entities and individuals involved in the development and analysis of Candidate Projects and the procurement and management of Partnership Projects shall at all times use best endeavours to adhere to the following integrated core principles.

Core Principles	
Ability	Develop ADIO's and the Procuring Entities' organisations with the right capacity, capabilities and knowledge to efficiently and effectively promote, procure and manage Partnership Projects.
Accountability	Support accountability through the establishment and enhancement of authorisation processes and ensure internal and external control mechanisms are coordinated and integrated into the Tender Process.
Confidentiality	Maintain confidentiality in a manner consistent with promoting transparency while protecting sensitive information of the Government and the private sector.
Digital	Promote digital technologies and facilitate their adoption and development by enabling access to innovations and emerging digital solutions.

Effectiveness	Drive cost-effectiveness and improvement in the performance of the Tender Process through leveraging existing expertise, specialisation and continuous assessment.
Emiratization	Create employment opportunities for UAE nationals by including Emiratization requirements in each RfP.
Excellence	Deliver excellence through efficiency and achieve greater VfM and a high level of control through the development of streamlined processes and tools.
Fairness	Facilitate access to procurement opportunities for interested parties through a fair regulatory framework and Tender Process.
Improvement	Reflect on lessons learnt during the Partnership Project procurement process and assist to develop and improve the Partnership Project procurement process and implementation.
Innovation	Encourage the use of innovation in the development and implementation of new processes or services with the aim of improving efficiency, effectiveness and competitive advantage.
Integration	Support integration of the Tender Process with the relevant organisational functions within the Procuring Entities, ensuring services delivered are comprehensive and operational performance is maintained.
Integrity	Preserve high standards of integrity and neutrality in the Tender Process through the implementation of the Code of Business Ethics, internal controls and robust procedures to avoid conflicts of interest.
Sustainability	Ensure the sustainability of the delivery of the assets or services under procurement, through adopting appropriate risk management practices and contractual controls.

Transparency

Promote transparency through facilitating access to procurement information, compliance with applicable legislation and fair treatment of all parties.

2.5 Managing conflicts of interest

Any actual, potential or perceived conflict of interest must be promptly reported to the Project Team, Procuring Entity and ADIO. ADIO, working together with the Procuring Entity, will determine:

- Whether a conflict of interest exists.
- Whether the interests of the Government, the relevant private sector parties or the Tender Process could be compromised.
- Whether further risk assessment or remedial action is required.

With regards to individuals, this will involve considering the following questions:

- Might the individual's other duties result in them compromising their primary role in the Partnership Project process (e.g. conflict of duty)?
- Does the individual have the ability to compromise their responsibilities in respect of the Partnership Project process by accessing information that may benefit themselves or other parties?
- Could the individual compromise the integrity of the Partnership Project process by potentially influencing or altering the outcome of the Partnership Project process in a material way that will benefit themselves or other parties?

ADIO shall have primary responsibility for taking action in respect of conflicts of interest in a manner that best protects the integrity of the Partnership Project process.

2.6 ADIO Code of Conduct

Throughout each stage of the procurement process outlined in this Guidebook, ADIO, the Procuring Entity and any external advisors to the Candidate/Partnership Project must abide by the ADIO Code of Conduct.

Each Partnership Agreement entered into in accordance with this Guidebook shall imply the provisions of the ADIO Code of Conduct into such Partnership Agreement.

Chapter Two

STRUCTURING AND DUE DILIGENCE



STRUCTURING AND DUE DILIGENCE

1 Overview

Section 2 of Chapter 2 sets out the processes that should be followed in respect of the origination and identification of a project as a Candidate Project and the structuring, due diligence and analysis phase that determines whether a Candidate Project should be procured as a Partnership Project, which includes the development of a Concept Report, Business Case and Procurement Plan.

2 Origination

2.1 Introduction

In accordance with Article 7 of the PPP Law, potential Partnership Projects may be proposed as Candidate Projects:

- By a Government entity (i.e. a Procuring Entity or ADIO) based on identified need(s) or requirement(s).
- By a private sector entity in the form of an unsolicited proposal (**USP**).

Once a project is proposed, the purpose of this origination stage is to identify which projects are suitable to be taken forward as Candidate Projects. As part of this origination stage, ADIO will conduct (or will procure) a high level analysis of the regulatory environment within which the Candidate Project would be procured with a view to identifying at this early stage any potential regulatory barriers that exist that could prevent the proposed project being procured as a Partnership Project (in the form proposed).

2.2 Origination by a Government Entity

ADIO or a Procuring Entity (or any other Government entity) may propose a project to become a Candidate Project on the basis of an identified need or requirement for a particular infrastructure project or public service (the **Project Proposal**).

Pursuant to Articles 8 and 9 of the PPP Law and Article 3(4) of the Regulations, all Procuring Entities have an obligation to give due consideration as to whether any project that they intend to undertake is suitable for structuring and procurement as a Partnership Project. Where Government entities are unsure as to whether a project

could be suitable for structuring and procurement as Partnership Project, that Procuring Entity should seek advice from ADIO.

In doing so, it should:

- Have consideration of the Government's strategic aims for the development of Partnership Projects as set out in Chapter 1 of this Guidebook.
- Seek to work together with other Government stakeholders to develop a Project Proposal in accordance with Section 2.4 of Chapter 2.
- Have consideration for the historic and future pipeline of similar projects that could be procured on a similar basis.

2.3 Origination by a Private Sector entity

In accordance with Article 7(1) of the PPP Law, a private sector entity may propose that a project become a Candidate Project (by way of a USP) provided that it can demonstrate that the project substantially meets the following threshold requirements unless otherwise waived by ADIO:

- That it would fulfil the Government's strategic aims for the development of Partnership Projects as set out in Chapter 1 of this Guidebook.
- That it would provide a unique benefit to the Government.
- That it is innovative.
- That it would provide a community benefit to Abu Dhabi.
- That it meets any other requirements as set out in the guidance issued by ADIO relating to USPs from time to time.

It is important for the private sector to note that commercial viability alone is unlikely to be sufficient to gain the Government's support for a USP. Private sector entities considering submitting a USP are encouraged to first request a preliminary meeting with ADIO and the relevant Procuring Entity to clarify their expectations with regard to the content of the USP and the assessment process.

In submitting a USP, the Proponent shall act in accordance with the USP guidelines set out in Appendix 7 (the **USP Guidelines**), which will include preparing a Project Proposal in accordance with Section 2.4 of Chapter 2.

A Proponent is expected to include as part of its submission sufficient detail to allow ADIO and the Procuring Entity to make an informed decision regarding the financial feasibility of the USP (including preliminary VfM and Transaction Structure).

Proponents are encouraged to provide as much detail as possible regarding the viability of the proposed project in submitting a USP.

If a USP does not comply with the requirements of the USP Guidelines set out in Appendix 7 and/or the Project Proposal that is submitted does not contain all of the detail required in Section 2.4 of Chapter 2, then, if the USP is considered by the Procuring Entity or ADIO as attractive, the Procuring Entity or ADIO may still elect to engage with the Proponent to further develop the USP.

If a project that is proposed by way of a USP is approved as a Candidate Project (and ultimately a Partnership Project), then, other than as set out in the USP Guidelines in Appendix 7, it shall be procured in the same way as any other Candidate Project/Partnership Project, pursuant to this Guidebook.

2.4 Project Proposal criteria

The Project Proposal should provide evidence and a clear rationale for why the project is suitable to be a Candidate Project and ultimately a Partnership Project. It is expected that in the case of origination by a private sector entity (i.e. USPs) the Project Proposal may be based primarily on qualitative analysis; however, if quantitative data is available, then this should also be included. However, in the case of origination by a Government entity, both qualitative and quantitative data should be provided in the Project Proposal.

Notwithstanding the overriding requirement in Article 6(2) of the PPP Law that all Project Proposals must include sufficient information to enable ADIO and the Relevant Approving Authorities to make an informed decision about the appropriateness of the project, factors to consider and include in the Project Proposal are likely to include:

- Examples of regional global precedents of similar projects procured using a partnership project model.
- Examples of other models of procurement being unsuccessful for similar projects and why the partnership project model is likely to be successful.
- The expected basis for VfM, such as project size, risk transfer to the private sector and lower total cost of ownership through private sector efficiencies.
- Potential for revenue generation.
- Potential for a long-term contract and measurable service outputs.
- Strong market appetite for the project.
- A need for innovation in the sector and/or opportunity for bundling of services.

- All technical and financial data available at the time of preparing the project proposal that is likely to be relevant to the later stages of structuring, in particular the Needs Assessment, costs and revenue benchmarking analysis and the preliminary risk assessment.

2.5 Approval required

For a project to become a Candidate Project, it must be approved by ADIO, the Procuring Entity and any other Relevant Approving Authority (in accordance with Article 5(1)(a) of the Regulations and as set out in Section 1.6).

3 Structuring and Due Diligence

3.1 Introduction

The purpose of the structuring and due diligence phase is to determine if a Candidate Project should be procured as a Partnership Project.

This Section 3 of Chapter 2 sets out the processes that should be followed in developing a Concept Report and a Business Case for a Candidate Project. The purpose is to demonstrate whether:

- There is a clear service/asset need.
- The Partnership Project model offers VfM in respect of the Candidate Project compared to other procurement methods.

3.1.1 Formation of the Project Team

ADIO will form a Project Team for each Candidate Project. In accordance with Section 2.3 of Chapter 2, the Project Team has primary responsibility for the Structuring and Due Diligence and, if the Candidate Project is tendered as a Partnership Project, the Tender Management. ADIO will issue guidance for each Project Team in accordance with Article 10 of the Regulations, to include rules and procedures for meetings, engagement with stakeholders, protocols for communications with the private sector and such other matters as ADIO considers appropriate.

The first task for the Project Team is to develop an initial transaction management plan (in accordance with the requirements set out in Appendix 5) for the activities required in the structuring and due diligence stage (including identifying critical path items and areas that have the potential to cause delay). This will enable the Project Team to establish an overview of the process ahead and help inform the development of the Procurement Plan.

3.1.2 Expedited Business Case

While this Section 3 of Chapter 2 envisages the preparation of a Concept Report followed by a Business Case, there may be circumstances where ADIO, working together with the Procuring Entity, determines that it would be more appropriate to carry out the analysis of the Candidate Project on an accelerated basis. In these circumstances, the Project Team may prepare a single report (rather than a separate Concept Report and Business Case) which comprises of the key elements of the Concept Report and Business Case (the **Expedited Business Case**). This Expedited Business Case should be submitted for approval in the same way as the Business Case in accordance with Section 3.3.7 of Chapter 2.

3.2 Concept Report

The Project Team shall prepare a Concept Report to demonstrate that the fundamental technical and financial assumptions (such as cost and/or revenue assumptions) underpinning the Candidate Project are sound and sufficiently developed.

The Concept Report should, subject to the information included in the Project Proposal and reasonably available to the Project Team while preparing the Concept Report, include the below elements, together with the other elements raised in Appendix 4.

Concept Report	
Project Scope	<ul style="list-style-type: none">A description of the project and a summary of the project's technical requirements.
Needs Assessment	<ul style="list-style-type: none">A preliminary demand and capacity study – subject to the level of information available, which may include a pre-developed Needs Assessment, preliminary or otherwise.
Benchmarking	<ul style="list-style-type: none">A global and regional benchmark analysis for similar projects.A cost and revenue benchmark analysis including CAPEX, OPEX, LCSF and revenue assumptions.
Project Programme	<ul style="list-style-type: none">A preliminary project programme including the estimated transaction timeline, construction programme and operational period.

Risk Assessment	<ul style="list-style-type: none"> • A preliminary project risk assessment and allocation.
Contracting Options Analysis	<ul style="list-style-type: none"> • A preliminary contracting options analysis, with regard to possible Contracting Models, to determine the suitability of the project as a Partnership Project, which is best aligned with the Government's core objectives. • A full options analysis in accordance with Section 3.3.1 of Chapter 2 if the Project Team determines that it is more appropriate to conduct this analysis as part of the Concept Report rather than the Business Case. • The preliminary or full options analysis should seek to establish the preferred and optimum Contracting Model for the Candidate Project – taking into account the Project Proposal and the criteria in Section 2.4 of Chapter 2.
Value for Money	<ul style="list-style-type: none"> • A preliminary VfM analysis, including a qualitative and quantitative analysis, to the extent that the relevant information is available to establish an early indication of whether there is evidence of VfM.
Bidders	<ul style="list-style-type: none"> • A likely pool of eligible Bidders.

The Concept Report should take into account, and where possible seek to address, the questions set out in Appendix 4.

The Concept Report should also form part of the more detailed Business Case as described in Section 3.3 of Chapter 2 and Appendix 6.

3.2.1 Existing technical and other information

In preparing the Concept Report, the Project Team should assess the level of technical and other details submitted as part of the Project Proposal at the origination stage and decide how best to incorporate and develop such information to meet the requirements of the Concept Report.

A Candidate Project may have reached a level of technical design maturity at the origination stage, for example, but it is essential that the design economics are assessed and developed in accordance with the requirements of the Concept Report.

For example, the Procuring Entity may have already developed a concept technical feasibility study or concept design or already have a fully developed detailed design and tender package in place, such as employer's requirements, specifications and fully coordinated detailed design in anticipation of traditional procurement. While this may present advantages to the Project Team in terms of providing detail for costing and planning purposes, the design may not be economically viable, and the approach may be more prescriptive than appropriate for the Partnership Projects model.

The extent of work involved is a factor of the level of detail available at the time, but the expectation is to assess and validate the technical and financial information provided as part of the Project Proposal and prepare to the level of detail and format as required to enable:

- A robust information set necessary to commence a detailed Business Case.
- A preliminary investment decision to be made prior to moving the Business Case stage.

3.2.2 Needs Assessment

A Needs Assessment assesses the social and economic need for the Candidate Project by reference to an agreed set of objectives (**Needs Assessment**). Unless a current Government-commissioned relevant Needs Assessment exists, the Project Team should use reliable available data to assess all relevant factors below.

Needs Assessment	
Capacity	Capacity of existing infrastructure to cope with growing demand for the infrastructure and services and future growth projections and development plans (e.g. a congested road network and insufficient availability of healthcare services evidenced by long waiting lists, etc.).
Obsolescence	Obsolescence of existing infrastructure such as technology, equipment and whether assets are considered to be fit for purpose.
Compliance	Compliance of existing infrastructure with regulatory and/or environmental standards (e.g. emissions from coal-fired power plants or inadequate solid waste management practices).
Condition	Condition of existing infrastructure (e.g. a need to replace damaged or dilapidated infrastructure).

Service Levels	Extent of current service levels (e.g. any clear gaps and operational inefficiencies).
Other	In addition to the above, the Project Team should consider the social and environmental advantages and disadvantages of the Candidate Projects.

The Needs Assessment does not depend on, or influence, the choice of Contracting Model.

3.2.3 Global and regional benchmark analysis for similar projects

This analysis identifies global and regional examples of projects similar to the Candidate Project. This is to identify successfully implemented Partnership Project precedents for deriving key learnings for technologies, costs, revenue streams, tariff structures, project structuring, identifying potential bidder universe, procurement process, contract arrangements and other critical success factors.

3.2.4 Costs and revenue benchmark analysis

This analysis identifies the costs and revenue likely to be generated by the Candidate Project in order to assess its relative benefits and should include substantiated empirical benchmark cost data derived from databases, which include projects of a similar size, complexity and scope (and where necessary, adjusted for any variation in specification, location and base date of the data). This information is typically provided by the Procuring Entity and any technical that have been appointed. Those should include:

Cost and Revenue Benchmarking	
CAPEX	In the relevant industry standard format (e.g. for infrastructure projects that include social infrastructure and transport, a BCIS standard form of cost analysis should be used as well as cash flow analysis), which should be a construction S-curve corresponding to the construction programme.
OPEX	To include all Soft FM and Hard FM costs including reactive and planned maintenance in BCIS or similar format.
LCSF	Expressed as a cost per the relevant functional unit in real terms or as a percentage of CAPEX spend typically, but not necessarily, in intervals of five years across a minimum horizon of 25 years. The Project Team

	will be expected to develop a detailed LCSF model at the Business Case stage (in BCIS format).
Revenue	Including assumptions covering third-party revenue, user fees and any revenue generation or capital receipts expected to be raised through Asset Monetisation.

3.2.5 Project programme

The Project Team shall develop the project programme covering the overall transaction timeline, construction and operation programme. This may be at a preliminary level in the Concept Report and further elaborated and updated in the Business Case.

Project Programme	
Transaction Timeline	<p>Identify key steps to complete the Structuring and Due Diligence and the Tender Management stage up to Financial Close.</p> <p>This should include the expected time for receiving approvals from the Relevant Approval Authorities.</p>
Construction Programme	Depending on the level of detail used for the cost and revenue benchmark analysis, the Project Team should set out the expected construction programme with timelines.
Operational Programme	The Project Team should set out the expected operational programme for the project. This may be at a very preliminary level in the Concept Report.

3.2.6 Preliminary risk assessment and allocation

The Project Team shall carry out a preliminary risk assessment, to the extent that the information is available, covering major project risks, allocation of risk to responsible parties, risk mitigation and management strategies.

3.2.7 Preliminary contracting options analysis

Based on the objectives and scope identified for the Candidate Project, the Project Team shall identify contracting options including learnings from the global and regional benchmarking and select the preliminary alternatives for the Contracting Model. The objective is to identify the preferred Contracting Model that is finalised in the Business Case.

3.2.8 Preliminary VfM analysis

The Project Team shall carry out a VfM analysis, focusing on qualitative VfM (further detail regarding VfM can be found in Appendix 8).

3.2.9 Progressing to the Business Case

On completion of the Concept Report, the Project Team shall submit the Concept Report to ADIO and the Procuring Entity and consult with ADIO to determine if the Candidate Project should be progressed to a Business Case analysis. If ADIO and the Procuring Entity grant approval, the Project Team may proceed to develop the Business Case as described in Section 3.3 of Chapter 2.

3.3 Business Case

The purpose of the Business Case is to build on the analysis contained in the Concept Report to demonstrate the financial and economic viability of the Candidate Project if it was to be procured as a Partnership Project as an alternative to the traditional procurement model.

The Business Case should include the elements below, together with the other elements set out in Appendix 6.

Business Case	
Contracting Options Analysis	Detailed contracting options analysis to establish the preferred Contracting Model that is best aligned with the Government’s core objectives – taking into account whether the full options analysis has been carried out as part of the Concept Report stage.
Technical Study	Detailed technical study, which includes a summary of the project scope and technical considerations and any supporting technical information necessary to outline and describe the proposed project scope which should include all technical-related components covering planning, design, construction, testing commissioning, operations and, if relevant to the preferred Contracting Model, hand back requirements.

Financial and Economic Analysis	Financial and economic analysis, which includes the development of the Shadow Bid Model and the Public Sector Comparator, VfM assessment (including risk quantification, etc.) and fiscal risk assessment.
Transaction Structure	Proposed transaction structure including the legal and regulatory assessment and recommendations.
Market Sounding	Feedback and conclusions from the market sounding exercise.
Procurement Plan	A detailed Procurement Plan.
Partnership Agreement	<p>Heads of terms of proposed Partnership Agreement should include:</p> <ul style="list-style-type: none"> • Concession term • Scope of obligations • Payment arrangements • Termination arrangements • Relief mechanisms • Government side equity contribution • Other key provisions as required by Article 12 of the PPP Law

The extent of work involved will be influenced by the information available in the Concept Report (if prepared by ADIO). However, the expectation is that the Business Case should have the required level of information and analysis to support a decision to move forward to the Tender Management stage.

3.3.1 Contracting options analysis

Contracting Options Analysis	
Purpose	To select a preferred Contracting Model that is best aligned with the Government's core objectives through a transparent and well-documented selection process, which identifies, assesses and

	<p>compares all viable forms of available Contracting Models and variants of the same.</p> <p>Where applicable, to further develop and improve an established Contracting Model by challenging it in a selection process involving innovative Contracting Models and a focus on maximising VfM for the Government.</p>
Process	<p>The options analysis should generally be performed in four consecutive steps:</p> <ul style="list-style-type: none"> • Step 1: Agree scope, objectives and assessment criteria. • Step 2: Identify and assess Contract Model options. • Step 3: Carry out soft market sounding. • Step 4: Select Contracting Model.
Outcome	<p>At the end of the options analysis, the Project Team should prepare a summary report detailing the process undertaken during the options analysis, including the outcomes and a summary of any soft market sounding undertaken.</p> <p>If the options analysis identifies a preferred Contracting Model for the Candidate Project, the Project Team should progress to the financial and economic analysis stage. If not, the Project Team should discuss alternative procurement models with ADIO and the Procuring Entity.</p>

3.3.2 Detailed technical study

If a detailed technical study has not been done as part of the Concept Report, the Project Team shall ensure that a detailed technical study is carried out including the following:

- The project scope, technical considerations and any supporting information necessary to outline and describe the proposed project scope, which should include all technical-related components to the planning, design, construction, commissioning, operating and, if relevant to the preferred Contracting Model, hand back requirements.
- A technical summary of the preferred technical solution.

- Summary design, construction and operating technical requirements and output specifications.
- Identification, quantitation and summary of any technical risks including delivery risk and termination events.
- Summary of the technical components to the proposed payment mechanism including KPIs and availability.
- Summary of the tests on completion including a summary of the role and scope of the independent certifier.
- Project programme and phasing assumptions including any planning and utilities approvals.
- Preparation of the detailed cost data book and revenue models with periodic updates as may be required.
- Detailed cost and revenue benchmark analysis.

3.3.3 Financial and economic analysis

The purpose of the financial and economic analysis is to assess the financial viability of the project from both the Procuring Entity's and the Project Company's perspective, taking into account the long-term nature of the Candidate Project, the proposed risk allocation, the likely funding sources to be used by the Project Company and the fiscal commitments of the Government.

The financial and economic analysis should focus on the following key components:

Financial and Economic Analysis	
Risk Allocation	<p>The Project Team should develop a comprehensive risk analysis which includes:</p> <ul style="list-style-type: none"> • Identifying the relevant material financial risks. • Understanding the value and relative costs of such risks. • Determining which party should be responsible for the risk. • Examining how each risk and its impact can be reduced or mitigated. • Establishing how risks are monitored and managed over the duration of the Partnership Project.

Fiscal Commitments

The Project Team needs to assess the long-term fiscal commitments arising if the Candidate Project is procured as a Partnership Project to ensure that these can be met and managed by the Procuring Entity and the Government.

In the assessment, the Project Team should include explicit fiscal commitments (i.e. regular availability payments), implicit financial commitments (i.e. cost of providing associated services) as well as contingent liabilities created through retained risks, such as guarantees, compensation payments and termination payments.

The Project Team should take measures to minimise the long-term fiscal commitments as part of this analysis.

The Project Team should also keep in mind that, in order to approve the Business Case for a Candidate Project, DoF is likely to need to understand:

- The impacts of any fiscal commitment required per annum.
- The total impact of the fiscal commitment over the life of the Candidate Project.

The Project Team should therefore include this analysis in this section of the Business Case.

VfM

VfM analysis is a key driver in the decision of whether to procure a project by way of Partnership Project.

VfM analysis compares the risk-adjusted cost of traditional procurement of a project against a comparable Partnership Project and considers the life-cycle costs, benefits and the expected risk transfer of the project.

A combination of quantitative and qualitative VfM analysis should be undertaken throughout the procurement process.

Please refer to Appendix 8 for further guidance on the approach to assessing VfM.

The financial and economic analysis should comprise the following data outputs:

Financial and Economic Analysis Outputs	
Cost and Revenue Benchmarking	To show substantiated empirical benchmark cost data derived from databases that include projects of a similar size, complexity and scope and, where relevant, market analysis with respect to any revenue-based assumptions.
Financial Model	To show the outputs of the model – including expected returns from the project illustrated by the NPV and IRR – and summary financial information. This includes ratio analysis providing a quantitative assessment of the financial viability of the Partnership Project to assist the Project Team to assess the Partnership Project, as well as valuation of risks and sensitivity to particular inputs affecting the project.
Cost Databook	To show the CAPEX, OPEX and, where relevant, LCSF inputs including the associated cashflows/time horizons and key underlying assumptions – all of which should be in BCIS format.

3.3.4 Transaction Structure

The Project Team shall develop a detailed transaction structure based on the preferred Contracting Model (the **Transaction Structure**).

Development of the Transaction Structure is an iterative process and it is accepted that modifications and updates may be required from time to time prior to concluding the Business Case as a result of inputs generated from the financial and economic analysis, market sounding or in preparing the draft Partnership Agreement heads of terms.

The Transaction Structure analysis should include:

Transaction Structure	
Commercial and Technical	An overview of the key commercial and technical aspects, presented as an executive summary.
Contracting Model	<p>An explanation of the preferred Contracting Model including the commercial and contractual analysis:</p> <ul style="list-style-type: none">• A definition of “key performance indicators” and “availability criteria”.• A list of all public and private sector participants involved.• The proposed ownership model for the project or parts of the project.• The proposed commercial and contractual structure governing the relationship between the participants, including their respective roles and responsibilities.• The proposed payment mechanism.• Details of the risk allocation and analysis.• The proposed heads of terms for the Partnership Agreement.
Regulatory Framework	A summary of the regulatory framework, including an explanation of the relevant laws and regulations, any exemptions that might be required and what regulatory approvals will be required.

Financing	Details of the proposed financing considerations: proposed financing plan (describing the instruments and providers of private financing) and anticipated terms of such financing.
Timeline	A proposed timeline for procurement and construction.

3.3.5 Market sounding

It is recommended that the Project Team undertakes a market sounding exercise in a form to be decided by the Project Team and includes the findings as part of the Business Case.

A market sounding exercise provides an opportunity for the Project Team to understand the views, concerns and suggestions of different market participants in relation to the Candidate Project and the Transaction Structure (including its scope, scale and allocation of responsibilities) before the actual launch of the Tender Process. It also enables interested parties to initiate consortium discussions.

The key aims of a market sounding exercise should be to:

- Test market appetite for the Candidate Project.
- Seek market validation of the key technical, legal and commercial assumptions, which underpin the Transaction Structure.

ADIO may require, and in any case the Project Teams should ensure, that appropriate non-disclosure agreements are in place and signed by private sector participants before disclosing any sensitive information in relation to the Candidate Project.

Certain Candidate Projects might not require a market sounding. For example, if Partnership Projects of the same type have already launched in accordance with the Tender Process and/or closed and/or where a market exists with respect to precedent projects, the Project Team may elect not to conduct a market sounding exercise. In such cases, the Project Team should clearly state in the Business Case that a market sounding has not been conducted and the reason therefor.

3.3.6 Procurement Plan

The Project Team should develop a Procurement Plan detailing the process that will be followed to manage and conclude the Tender Process.

The Procurement Plan should include:

- A proposed procurement schedule, outlining the timeline for each stage of the Tender Process.
- The estimated procurement budget.
- A summary of the tender documents.
- A stakeholder engagement plan.

The Procurement Plan shall include detailed timelines regarding each of the required approvals and the steps to obtain them.

The Procurement Plan that is included in the Business Case is expected to be high level. However, a detailed Procurement Plan should be developed prior to the launch of the Tender Process.

During the Tender Process, the Project Team should update the Procurement Plan, as required, to reflect changes in the timeline or other material changes.

3.3.7 Approvals required

ADIO and the Procuring Entity will approve submission of the Business Case to the Relevant Approving Authorities for approval to enable the Candidate Project to progress being procured as a Partnership Project in accordance with Section 1.6.

The Project Team, in coordination with ADIO and the Procuring Entity, will manage the process of obtaining approval from the Relevant Approving Authorities.

3.3.8 Fast-tracking the pre-qualification process

Upon receiving approval for the Business Case from the Procuring Entity Chairman and the ADIO Director General and subsequently submitting the Business Case for approval from DoF (as may be required in accordance with Section 1.6), the Project Team may on an exceptional basis request approval from ADIO to launch a limited tender process while waiting for the approval of the Business Case from the remaining Relevant Approving Authorities.

This limited tender process may include:

- Preparation of the Tender Management Procedures.
- A marketing campaign.
- Issuing a request for EoI.
- Issuing an RfQ.

Chapter Three

TENDER PROCESS



TENDER PROCESS

1 Overview

Pursuant to Article 9 of the PPP Law and Article 7 of the Regulations, this Chapter 3 sets out the processes and procedures that should be followed in the tendering, negotiation and contract award of a Partnership Project.

2 Stages of the Tender Process

The Procurement Plan will set out the stages of the Tender Process and the proposed execution timetable.

The Project Team should prepare the corresponding tender documents, management procedures and other related documents in accordance with this Guidebook.

These documents should comprise of (as applicable):

Tender Process Documentation	
1	Eol (if applicable)
2	RfQ (unless part of the RfP)
3	<p>RfP, structured as follows:</p> <ul style="list-style-type: none">• Volume 1 – Instructions to Bidders• Volume 2 – Form sheets• Volume 3 – Partnership Agreement• Volume 4 – Procuring Entity's technical requirements
4	BAFO – if applicable

Tender Management Procedures including:

- The tender opening procedures for the SoQ and RfQ responses and, if selected at RfP stage, the BAFO.
- The evaluation criteria and evaluation methodology for SoQ and RfQ responses and, if selected at RfP stage, the BAFO.

3 Optional Tender Procedures

3.1 Summary of optional procedures

The marketing campaign, pre-bid conference and EoI stages of the Tender Process are optional procedures, which are available to the Project Team.

Adoption of these optional procedures should be identified in the Procurement Plan prior to the tender launch. These optional procedures are recommended unless there is a good reason for not including them as part of the Tender Process (i.e. there is a known, limited pool of Bidders or a limited time period available for the Tender Process).

3.2 Marketing campaign

If included as part of the Procurement Plan, once all Relevant Approving Authorities have approved the Business Case and the launch of the Tender Process, the Project Team should plan and implement a targeted marketing campaign. This may include roadshows, market testing sessions with potential Applicants (and other relevant parties) and appropriate advertisement (in the national, regional and international trade press and on websites, etc.).

Marketing campaigns should target:

- Prospective investors, lenders and contractors across the Emirate of Abu Dhabi and globally.
- Interested stakeholders of the Government.
- The general public to build awareness of the project.

3.3 Pre-bid conference

The Project Team may schedule a pre-bid conference prior to issuing the RfQ (and/or, if appropriate, the EoI), open to all interested parties to attend, to:

- Explain the key features of the Partnership Project.
- Outline the Tender Process.
- Provide an opportunity for interested parties to ask questions of the Project Team on the above.

The purpose of a pre-bid conference should be to ensure that potential Applicants are fully aware of the key features of the Partnership Project and Tender Process to enable them to quantify and secure their bid resource requirements (including the extent of consortium formation required) so that they can respond to the RfQ (or, as applicable, the EoI) in a timely manner and with a compliant SoQ (or EoI response).

3.4 Expression of Interest

If included as part of the Procurement Plan, the EoI should provide a “high-level” description of the key features of the Partnership Project and the Tender Process. It should also identify the Government stakeholders and the EoI timetable, together with any other relevant details necessary for interested parties to ascertain if the project is of interest.

The EoI should request responses by a specified date and be issued to a comprehensive list of potential Applicants and formally advertised in the following media (as selected by ADIO):

- Procuring Entity website and circulars.
- ADIO website and social media.
- Local press.
- Local, regional and international industry trade press and relevant periodicals.

4 Mandatory Tender Procedures

4.1 Overview

The RfQ and RfP stages are compulsory procedures and shall be issued sequentially. However, in exceptional circumstances, the Project Team may seek ADIO’s approval to run the RfQ stage as part of the RfP stage if the characteristics

of the Partnership Project are such that it would be appropriate to accelerate the Tender Process and a pool of bidders is known to the Project Team (e.g. for a repeated project).

There should be no engagement or communication between the Project Team and the private sector during the RfQ, RfP and evaluation stages except as set out in this Section 4 of Chapter 3.

4.2 Request for Qualification

The Project Team will conduct the RfQ stage (whether as part of the RfP process, if approved by ADIO, or as a separate process prior to the RfP process) to evaluate Applicants in order to obtain a shortlist of potential Bidders. If the RfQ forms part of the RfP, the process outlined in this Section 4.2 of Chapter 3 should be adapted and incorporated as appropriate by the Project Team in consultation with ADIO and the Procuring Entity.

4.2.1 RfQ process steps

The RfQ shall be prepared in accordance with the following steps:

RfQ Process Steps	
1	Defining the qualification criteria.
2	Developing the evaluation methodology to be used for assessing Applicants and for Bidder shortlisting and the tender opening procedures.
3	Preparing RfQ documentation to be sent to potential Applicants.
4	Reviewing and evaluating the received responses (SoQs).
5	Developing a shortlist of qualified Applicants.

4.2.2 RfQ requirements

The RfQ that is issued should include the following:

RfQ Requirements	
1	Be issued in English and require that submitted SoQs also be in English.
2	Describe the Partnership Project(s) opportunity, the Procuring Entity's expectations, the location of the project(s) and other pertinent project characteristics.
3	Provide the RfQ timetable and the preliminary RfP timetable (both of which shall allow a reasonable period of time for Applicants/Bidders to prepare and submit a compliant SoQ and/or a bid, as determined from feedback during any market sounding process and pre-bid conference and with the aim of avoiding requests from Applicants/Bidders to extend the SoQ or the bid timetable, respectively).
4	Provide instructions on the required format and an electronic/physical address for the submission of the SoQ and supporting materials.
5	Provide a single point of contact for Applicant enquiries and clarifications.
6	Describe the pre-SoQ submission clarification process, including protocols for receiving and responding to clarifications and the clarification submittal and response timetable.
7	Establish the qualifying process, evaluation criteria and evaluation methodology, and describe the Project Team's methodology when evaluating each accepted SoQ.
8	State the Contracting Model and any other commercial or contractual details deemed pertinent to the RfQ.
9	State that the costs incurred by Applicants in preparing and submitting the SoQs will not be borne by the public sector unless expressly stated otherwise in the RfQ.

10	Include rules on consortia, restrictions on Applicants' eligibility and statements on conflict of interest.
11	State that the Project Team may amend, modify or terminate the RfQ and the Tender Process in its entirety at any time, for any reason, and shall not be liable for any Applicant's costs unless expressly stated otherwise in the RfQ.

The Project Team should open the SoQs in accordance with the applicable tender opening procedures and review them according to the applicable evaluation methodology, as specified in the RfQ.

The Project Team shall finalise and submit the SoQ evaluation report (which includes the final recommended shortlist of Bidders) to ADIO for review.

ADIO shall review the SoQ evaluation report and provide its recommendation to:

- Approve the SoQ evaluation report.
- Announce the list of pre-qualified Bidders.
- Issue the RfP.

A minimum of three Bidders are required to launch an RfP. If less than three potential Bidders are pre-qualified, the Project Team can choose from the following two options:

Option 1: Revise and reissue the RfQ requirements to secure the minimum number of Bidders to launch an RfP.

Option 2: Prepare a report explaining the results of the RfQ process, including a recommendation to proceed with issuing the RfP to less than three Bidders, setting out:

- A clear justification and rationale.
- The steps the Project Team will take to maintain VfM.

Subject to approval from the ADIO Director General and the Procuring Entity Chairman, the Project Team may proceed to issue an RfP to less than three Bidders.

4.3 Request for Proposal

The Project Team will conduct the RfP stage in accordance with these Tender Process guidelines with the ultimate aim of selecting a Preferred Bidder.

4.3.1 RfP process steps

The RfP shall be prepared in accordance with the following steps:

RfP Process Steps	
1	Developing the RfP documentation for issuance to shortlisted Bidders.
2	Developing the tender opening procedures and the evaluation methodology to be used for assessing bids.
3	Holding Bidder conferences and arranging site visits.
4	Reviewing and evaluating RfP responses.
5	Preparing the Tender Evaluation Report for presentation to the Tender Evaluation Committee.

4.3.2 RfP requirements

The RfP that is issued should contain the appropriate level of detail specific to the type of Partnership Project and has the following requirements:

RfP Requirements	
1	Be issued in English and require that submitted bids also be in English.
2	Describe ADIO's role in the competitive process and detail how bids will be evaluated.
3	Provide the RfP timetable.

4	Provide an overview of the project due diligence process, and availability of data or reference materials, including access to a data room or other resources.
5	Describe the pre-bid submission clarification process, including protocols for receiving and responding to clarifications, the number of clarification rounds, the clarification submittal, response timetable and circulation of clarifications following Bidder conferences.
6	Reference the applicable legal authority for the transaction, including any decrees, orders, laws, rules and/or regulations.
7	Provide instructions on the format and an electronic/physical address for the submission of bids and any supporting material.
8	Provide a single point of contact within the Project Team.
9	Require a single point of contact within the Bidder.
10	State that the costs incurred by Bidders in preparing and submitting the RfPs will not be borne by the public sector.
11	State that the Project Team may amend, modify or terminate the RfP and procurement at any time, for any reason, and shall not be liable for any Bidder costs.
12	Other than with approval by the Project Team, prohibit communication between (i) Bidders, (ii) Bidders and officials of the Government and/or (iii) Bidders and key stakeholders in the Tender Process, clarify permissible communications during the Tender Process and provide a confidentiality agreement to be signed by each Bidder.
13	Prohibit collusive procuring, conflicts of interest, bribery or other corrupt behaviour, and state that Bidders shall be required to confirm their compliance with the same, and noting applicable sanctions or restrictions for violations.
14	State how Bidder materials and intellectual property received by ADIO will be handled.

15	Describe evaluation criteria and evaluation methodology for bids, detailing financial and technical requirements together with the entire evaluation process.
16	Prohibit and disqualify Bidders for misrepresentations and fraudulent behaviour in the Tender Process and the Bidder's bid.
17	Identify any requirement for a bid bond or other forms of Bidder security.
18	Specify whether or not the Government will be a co-investor in the project SPV.
19	Describe the Partnership Project(s) opportunity, the Procuring Entity's expectations, the location of the project(s) and other pertinent project characteristics.
20	State the Contracting Model and any other commercial or contractual details deemed pertinent to the RfQ.
21	Include form sheets to provide for bidders' responses in a prescribed format.
22	Include the tender opening procedures.

4.3.3 Form of Partnership Agreement

A form of Partnership Agreement for the Partnership Project will also be attached to the RfP. Pursuant to Article 9 of the PPP Law, the Partnership Agreement will be prepared by ADIO and will define, among other things:

- The concession term.
- The proposed payment mechanism.
- The key performance indicator and deduction regime.
- The termination arrangements.
- Performance security requirements.
- Refinancing arrangements.

- Relief mechanisms.
- Transfer restrictions.
- Output specifications.
- Emiratisation requirements.
- The construction and operations phase obligations.
- Construction completion arrangements including provisions dealing with the consequences of delay.
- All other provisions required under Article 12 of the PPP Law.

4.4 Bidder conferences

4.4.1 Overview

The Project Team may schedule one or more Bidder conferences (depending on the complexity of the Partnership Project).

Where the Project Team considers appropriate, it may host a Bidder conference prior to launching the RfP, open to Bidders that have been shortlisted at the RfQ stage, to provide shortlisted Bidders with an overview of the key characteristics of the Partnership Project and details of what can be expected in the RfP.

It is recommended that for all Partnership Projects the Project Team should host a Bidder conference soon after the launch of the RfP to provide shortlisted Bidders with:

- An overview of the Partnership Project.
- An overview of the RfP documentation and key tender requirements including timing.
- An explanation of any complex aspects of the Partnership Project.
- Guidance on the disclosed data.
- Clarification in respect of any queries or questions Bidders may have at that time.

The purpose of all Bidder conferences is to ensure that Bidders understand the objectives of the bid, the tender requirements, the tender documents and the procurement timeline, such that the quality of their bid is enhanced.

4.4.2 Bidder conference protocols

Attendance at Bidder conferences should be restricted to shortlisted Bidders and their respective consortium members including their professional.

The content discussed at Bidder conferences should be limited to commercial, technical and legal information which is:

- Included in the tender documentation.
- The subject of clarifications or addenda issued pursuant to the RfP.

Under no circumstances should any additional financial information relating to the Partnership Project be disclosed in any material shared with the Bidders at conferences.

Following the Bidder conference, the Project Team should circulate to potential Bidders a record of the questions and answers raised and responded to at the conference.

4.5 Site visits

If land or facilities owned by the Government are included as part of the Candidate Project, then (if required) the Project Team may arrange and coordinate site visits prior to the bid submission date. Bidders shall be given the opportunity to visit all or part of the sites to investigate and acquaint themselves with the relevant conditions and circumstances.

Potential Bidders may request subsequent and additional access to the sites for the purposes of conducting their own studies and investigations. Such requests should be made to the Project Team, who will accommodate such requests and schedule visits accordingly and to the extent reasonable.

Site visits shall take place in accordance with the timetable and procedure specified by the Project Team.

4.6 Clarifications and addenda

The Project Team will endeavour to respond promptly and in sufficient detail to all clarifications raised by potential Bidders that are submitted in accordance with the terms of the RfP.

If, after the launch of the RfP, the Project Team, or ADIO in accordance with Article 10 of the PPP Law, determines (as a result of the clarification process or

otherwise) that the structure or terms of the Partnership Project should be amended, the Project Team shall:

- Where such amendment is limited to the clarification or correction of an error or an update to a non-material aspect of the Partnership Project (that does not affect the conclusions set out in the Business Case), proceed to issue an addendum to Bidders setting out such amendment.
- Where the amendment could be considered to have a material impact on the Partnership Project (that affects any of the conclusions set out in the Business Case), actively engage with all Relevant Approving Authorities to obtain approval for such amendment (and, only on receipt of such approval, proceed to issue an addendum to Bidders setting out such amendment).

Clarifications and responses shall be published to all bidders to ensure transparency.

5 Tender Evaluation

5.1 Overview

Received bids shall be opened in accordance with the applicable tender opening procedures as outlined in the RfP and evaluated by:

- The Project Team (in the first instance).
- The Tender Evaluation Committee.

The Tender Evaluation Committee should be made up of representatives from ADIO and the Procuring Entity. The Tender Evaluation Committee will be led by an ADIO representative who will have ultimate decision-making authority on all matters to be decided by the Tender Evaluation Committee and will maintain oversight of the Tender Evaluation Committee.

The Project Team and the Tender Evaluation Committee shall apply the evaluation criteria and evaluation methodology including any scoring procedure as stated in the RfP.

The entire tender evaluation process shall be documented, and the Project Team and the Tender Evaluation Committee will adopt transparent and compliant evaluation procedures.

The Project Team shall be primarily responsible for the evaluation of all bids in accordance with this Section 5.1 of Chapter 3. The Project Team shall not take any

step to pass or fail any Bidder without first seeking the agreement of the Tender Evaluation Committee.

5.2 Process summary

Unless otherwise determined by ADIO, the bid submittal and evaluation process will follow a two-envelope and a two-step evaluation process such that the technical proposal and financial proposal of each bid are submitted in two separate sealed envelopes and opened and evaluated sequentially.

Notwithstanding that the two-envelope system is expected to be the prevalent approach, ADIO may elect from time to time to employ different bid submittal and evaluation processes as it determines is most appropriate for a particular Partnership Project, including, without limitation, a single-envelope system with the technical and financial proposals evaluated in parallel. The bid submittal and evaluation process for each Partnership Project will be prescribed in the RfP.

Unless stated otherwise in the RfP or otherwise permitted by ADIO, received bids will be subject to a two-step evaluation process as follows:

Tender Evaluation Process	
Technical Evaluation	<ul style="list-style-type: none">• Technical proposals will be opened first, screened and assessed for compliance and then evaluated and ranked by the Project Team in accordance with the agreed evaluation criteria and evaluation methodology (as set out in the RfP).• If the technical proposal is compliant and passes the technical evaluation, the bid qualifies to move on to Step 2 of the evaluation process.• The Project Team may engage with Bidders for the purposes of clarifying any aspects of a technical proposal that are unclear.• If a bid does not pass the technical evaluation, then, subject to the approval of the Tender Evaluation Committee, the technical proposal along with the unopened envelope containing the Bidder’s financial proposal will be returned to the relevant Bidder.• As part of the evaluation process, the Project Team may elect to conduct an interview with a Bidder so as to provide clarity on any aspects of the submitted technical proposals.• During the technical interview, the Bidders may be required to give a formal presentation. The presentation shall be in English using Microsoft PowerPoint (or such other means as is specified by the

	<p>Project Team) and may be followed by a question and answer session in which the Bidders will be required to answer any questions in relation to their technical proposal.</p> <ul style="list-style-type: none"> ADIO will have the right to reject any bid submission in which a Bidder's technical proposal does not conform and comply with the Relevant Approving Authority's requirements.
Financial Evaluation	<ul style="list-style-type: none"> Upon passing the technical evaluation, a Bidder's financial proposal will be opened and evaluated and ranked in accordance with the agreed evaluation criteria and evaluation methodology set out in the RfP. The evaluation will include benchmarking each proposal against the PSC and testing the VfM and the financial and economic assumptions which were developed and approved as part of the Business Case. ADIO will have the right to reject any bid submission in which a Bidder's financial proposal does not conform and comply with the Relevant Approving Authority's requirements including any of the financial <i>pro formas</i>, which are expected to be duly completed by the Bidders and submitted as part of their financial proposals.

5.3 Tender Evaluation Report

Following the receipt of bids, the Project Team should prepare a Tender Evaluation Report which includes:

- The separate results of the technical and financial evaluation (and the resulting overall ranking of the bids).
- The recommendation to notify and award the highest ranked Bidder of its Preferred Bidder status or to use the BAFO procedure.
- The recommendation to notify the second highest ranked Bidder of its reserve Bidder status (the **Reserve Bidder**).

The Project Team shall submit its Tender Evaluation Report to the Tender Evaluation Committee, which shall review the Tender Evaluation Report and respond in writing stating that it:

- Agrees with the findings in the Tender Evaluation Report.

- Does not agree with the findings in the Tender Evaluation Report, in which case it will provide comments and reasons therefor and ask the Project Team to revise the Tender Evaluation Report accordingly.

Once the Tender Evaluation Report is finalised, the Tender Evaluation Committee shall authorise the Project Team to take one of the following actions:

- If the highest ranked Bidder's financial proposal improves on the financial parameters set out in the PSC model and there is no qualitative reason not to recommend awarding the Partnership Project to the Bidder with the highest ranked proposal, submit the Tender Evaluation Report to the Relevant Approving Authority (in accordance with Section 1.6), together with a recommendation to issue a letter of award to the Preferred Bidder (and notification to the Reserve Bidder and Unsuccessful Bidders).
- If the highest ranked Bidder's financial proposal does not improve on the financial parameters set out in the PSC model, analyse the bid in the context of the qualitative factors relevant to the Partnership Project, and submit the Tender Evaluation Report to ADIO, together with a recommendation to either:
 - Issue a letter of award of Preferred Bidder (and notification to the Reserve Bidder and Unsuccessful Bidders).
 - Subject to Section 5.4 of Chapter 3, use the BAFO procedure.
 - Cancel the Tender Process.

The Project Team shall have the flexibility to notify the Bidders of the outcomes of the Tender Evaluation simultaneously or in a staggered manner.

5.4 Best and Final Offer

The BAFO procedure may be used in exceptional circumstances as recommended by the Tender Evaluation Committee and where one or more of the following criteria are met:

BAFO Requirements	
1	The proposals submitted by two or more Bidders are materially the same and the Tender Evaluation Committee believe that a BAFO process will enable the bids to be differentiated.
2	There are aspects of some or all of the Bidders' financial proposals that appear to be financially unsustainable or do not deliver VfM.
3	There are commercial or legal aspects of the RfP that have been raised as issues/deviations in the submitted bids that require clarification in order to ensure the financial proposals are accurate and optimised.

If used, the BAFO procedure will require Bidders to resubmit financial and/or commercial aspects of their proposals for review. The Project Team may elect to share the PSC model relating to the Partnership Project with Bidders if it considers that this will assist Bidders in submitting a BAFO proposal that is closer to the Project team's commercial and/or financial expectations.

For the avoidance of doubt, a Bidder deemed to be technically and financially compliant is not obligated to participate in the BAFO process. However, its current proposal at the time of launching the BAFO process will be considered valid and included in the BAFO Tender Report.

The Project Team will prepare a BAFO tender report (with an update to the Tender Evaluation Report) to show the results of the BAFO evaluation and the recommendations relating to the award and notification to the Bidders (the **BAFO Tender Report**).

The Project Team shall submit its BAFO Tender Report to the Tender Evaluation Committee which shall authorise the Project Team to either:

- Issue a letter of award to the Preferred Bidder (and notification to the Reserve Bidder and Unsuccessful Bidders).
- Cancel the Tender Process.

6 Award of Preferred Bidder

6.1 Overview

On receipt of approval of the Tender Evaluation Report (or, as applicable, BAFO Tender Report) and its recommendations from the Relevant Approving Authorities (as set out in Section 1.6), the Project Team can proceed to notify Bidders and take action as described in this Section 6 of Chapter 3.

6.2 Bidder notification

Unless directed otherwise by ADIO, the Project Team will take the following action:

Bidder Notification Process	
Preferred Bidder	<ul style="list-style-type: none">• The Project Team will issue a letter of award to the Preferred Bidder to formally appoint the first ranked Bidder as the Preferred Bidder.• The Preferred Bidder shall be announced on the Procuring Entity's and ADIO's respective websites.• The Project Team will seek to promptly finalise the terms of the Partnership Project with the Preferred Bidder to execute the Partnership Agreement and any other required agreements with the Preferred Bidder.• Where a clear opportunity exists to improve the terms and conditions of the Preferred Bidder's proposal and/or improve VfM, the Project Team may engage in final negotiations with the Preferred Bidder.
Reserve Bidder	<ul style="list-style-type: none">• The Project Team will issue a letter to the Reserve Bidder to formally appoint the second ranked Bidder as the Reserve Bidder.• If the Project Team is not able to finalise the terms of the Partnership Project with the Preferred Bidder then the Project Team will be entitled to, where a clear opportunity to improve the terms and conditions of the Reserve Bidder's proposal exists, engage in final negotiations with the Reserve Bidder, and once satisfied finalise the terms of the Partnership Project and execute the Partnership Agreement with the Reserve Bidder.

	<ul style="list-style-type: none"> • If the Project Team is not able to finalise the terms of the Partnership Project with the Reserve Bidder, the Project Team will issue a letter to the Reserve Bidder to formally notify them that they have become an Unsuccessful Bidder (see below).
Unsuccessful Bidders	<ul style="list-style-type: none"> • The Project Team will issue a letter to all other Bidders (other than the Preferred Bidder and Reserve Bidder) to formally notify them that their bid has been unsuccessful (the Unsuccessful Bidders). • In such notification, Unsuccessful Bidders should be requested to promptly release their supporting financing parties from any obligations in respect of the Partnership Project and to notify the Project Team of the same. Following receipt, the Project Team will return to each Unsuccessful Bidder its respective bid bond. • The Project Team may elect to invite Unsuccessful Bidders to meet with the Project Team to discuss the reasons their bids were not successful.

6.3 Final Business Case

Upon conclusion of all negotiations, the Project Team shall promptly update the Business Case to reflect the actual technical and commercial outcomes arising from the conclusion of the negotiation phase.

The Final Business Case shall:

- Update all project-specific information (needs, benefits and risk allocation, etc.), financial information (including cost inputs, revenues and financial models, etc.), economic factors (inflation rate, currency exchange and energy cost, etc.) and technical information (project output and quality, etc.), and state that all information is complete and up to date, to the best of the Project Team's knowledge, at the time of the Final Business Case submittal to the Relevant Approving Authority in accordance with Section 1.6.
- Update the VfM analysis.
- Update the description of the Partnership Agreement to reflect any changes to the contract structure and payment mechanism from that projected in the RfP stage.
- Attach the agreed form of the Partnership Agreement and related documentation including any direct agreements.

ADIO shall authorise the Project Team to submit the Final Business Case for approval by the Relevant Approving Authority. Subject to approval of the Final Business Case submission in accordance with Section 1.6, the Procuring Entity shall be authorised to enter into the Partnership Agreement as the counterparty.

If, following the commencement of the preparation of the Final Business Case, any further negotiations take place with the Preferred Bidder (or the Reserve Bidder, as the case may be), then the Project Team will be required to obtain a further acknowledgement that negotiations have concluded and to update the Final Business Case accordingly.

6.4 Commercial Close

The Procuring Entity may proceed with the execution of the Partnership Agreement provided the following minimum conditions are met:

- All approvals required before signing a Partnership Agreement have been granted by the Relevant Approval Authorities.
- All Partnership Project documents have been updated and are aligned with the Final Business Case.
- Any additional conditions included in the letter of award or otherwise imposed by ADIO have been satisfied.

Bid bonds of the Preferred Bidder and Reserve Bidder may be released only upon closure and signing of the Partnership Agreement; and in the case of the Preferred Bidder, if the Partnership Agreement so requires, issuance of any bonds required pursuant to the Partnership Agreement.

6.5 Financial Close

Upon meeting and signing of all project and financing agreements (whether simultaneous with or subsequent to the signature of the Partnership Agreement), Financial Close may be reached. This stage will effectively enable the implementation of the Partnership Project as funding resources will become available. For Financial Close to be achieved the following conditions should be met:

- The lenders (if any) and shareholders shall confirm that all financing prerequisites have been complied with or waived.
- The financial model is updated for the permitted adjustments.

- The partnership agreement (only insofar as it needs to be amended to reflect the permitted adjustments in the financial model) and related documentation are updated, and the amendments have been signed by the procuring entity and the project company.
- The lenders and shareholders shall confirm that all financing prerequisites have been complied with or waived.
- The funds become available to the project company.

6.6 Transition from the Project Team to the Contract Management Team

ADIO and the Project Team shall support the Procuring Entity in transferring the knowledge of the Partnership Project gained during the Structuring and Due Diligence Stage and Tender Process to the Contract Management Team (appointed in accordance with Section 4 of Chapter 4).

The Contract Management Team should support the Project Team in achieving Commercial Close and, if applicable, Financial Close. Upon reaching Financial Close, the role of the Project Team is concluded, and the Project Team can be dissolved.

Chapter Four

CONTRACT MANAGEMENT



CONTRACT MANAGEMENT

1 Overview

This Chapter 4 (read in conjunction with Appendix 9) sets out the transaction management principles and processes that Procuring Entities should implement to manage a Partnership Agreement and administer a Partnership Project post Commercial Close and, if applicable, Financial Close.

2 Roles and responsibilities

The Procuring Entity will have primary responsibility for managing the Partnership Agreement following Commercial Close, and, if applicable, Financial Close. In doing so, the Procuring Entity will coordinate its actions and activities with ADIO as set out in this Chapter 4.

Given ADIO's overall responsibility for overseeing Partnership Projects, the Procuring Entity shall inform and consult with ADIO and, where applicable, obtain ADIO's written approval prior to taking action or exercising a right under the Partnership Agreement (or related contracts) in respect of the aspects set out in the table below.

The Contract Management Team should ensure that the relevant matters are submitted for approval in a timeframe that enables the Procuring Entity to comply with its obligations under the Partnership Agreement (or related contracts).

Action		Inform	Consult	Approval
1	Completion of construction/commencement of operations	Yes	No	No
2	Receipt/agreement of delay claim (less than 30 days) by Project Company	Yes	No	No
3	Receipt/agreement of delay claim (more than 30 days) by Project Company	Yes	Yes	Yes

4	Receipt/agreement of financial claim (less than AED 50,000) by Project Company	Yes	No	No
5	Receipt/agreement of financial claim (more than AED 50,000) by Project Company	Yes	Yes	Yes
6	Approving refinancing of Project Company debt	Yes	Yes	Yes
7	Awareness of insolvency of Project Company	Yes	Yes	N/A
8	Awareness of occurrence of default by Project Company	Yes	Yes	No
9	Awareness of occurrence of default by Procuring Entity	Yes	Yes	No
10	Receipt of notice of default from Project Company	Yes	Yes	No
11	Occurrence of a dispute	Yes	Yes	No
12	Referral to formal dispute resolution (e.g. courts and arbitration, etc.)	Yes	Yes	Yes
13	Settlement of formal dispute proceedings	Yes	Yes	Yes
14	Sending notice of default to Project Company	Yes	Yes	Yes
15	Accepting hand back of asset	Yes	Yes	Yes
16	Renegotiation/amendment of Partnership Agreement/other key contract(s)	Yes	Yes	Yes

17	Signing of additional material contracts relating to Partnership Agreement	Yes	Yes	Yes
18	Material amendments to project specifications	Yes	Yes	Yes
19	Approval of change in ownership of Project Company/key party	Yes	Yes	Yes
20	Approval of assignment or novation of Partnership Agreement/key contract	Yes	Yes	Yes
21	Receipt of key notice from project lenders	Yes	Yes	N/A
22	Receipt of Partnership Agreement termination notice by Project Company	Yes	Yes	N/A
23	Service of termination notice of Partnership Agreement by Procuring Entity	Yes	Yes	Yes

3 Additional reporting requirements

During the Contract Management stage, the Procuring Entity shall provide ADIO with the following reports:

Reporting Requirements	
Quarterly Reports	Within 30 calendar days of the end of every contract quarter, a quarterly report setting out key developments and issues that have arisen in that quarter.
Annual Reports	<p>Within 30 calendar days of the end of every contract year, an annual report setting out the following:</p> <ul style="list-style-type: none"> • Key developments and issues that have arisen in that year.

	<ul style="list-style-type: none"> • An updated version of the final business case financial model in which formerly forecasted or calculated figures for the reporting period have been replaced with actual figures. <p>Within 30 calendar days of the end of every contract year, a list comparing:</p> <ul style="list-style-type: none"> • All committed liabilities actually paid during the reporting period as well as the current exposure levels for any contingent liabilities. • The originally forecasted amounts of committed liabilities and expected levels of contingent liabilities.
Ad-hoc	<p>Promptly, following receipt or preparation, copies of any periodical project status reports received from the Project Company or prepared by the Procuring Entity.</p>

4 Contract Management Team

As soon as practicable after the announcement of the Preferred Bidder, and in any event at least 30 calendar days in advance of Commercial Close of the project, the Procuring Entity shall appoint a contract management team (the **Contract Management Team**) to oversee the implementation and operation of the Partnership Project and coordinate with the Project Company, the Project Team and various stakeholders. The Contract Management Team will act in accordance with the Contract Management principles set out in Appendix 9.

The size and structure of the Contract Management Team will depend on various aspects including the level of obligations and risks taken on by the Procuring Entity and the overall complexity of the relevant Partnership Project.

With these considerations in mind, the Procuring Entity will need to determine what skills and experience are required within the Contract Management Team, and what expertise needs to be mobilised by using external advisors or other Government entities. In doing so, the Procuring Entity should take the following into account:

- Consider the scope of the Procuring Entity's role in the management of the specific Partnership Agreement.

- Base the size of the Contract Management Team on the nature of the project and the availability of external resources.
- Ensure the Contract Management Team has an appropriate governance structure, and the skillset and competencies required for the project.
- Plan the set-up of the Contract Management Team before Commercial Close.
- Use external consultants where appropriate and ensure transitions between consultants are managed effectively.
- Evaluate the structure and resourcing of the Contract Management Team on an ongoing basis and make adjustments as necessary.
- Plan for staff turnover and ensure adequate procedures are in place to manage continuity of knowledge.

5 Training of Contract Management Team

The Procuring Entity should plan for both initial and ongoing training of the Contract Management Team and ensure that relevant personnel have appropriate expertise and understanding of their role within the team.

The Contract Management Team may need to be trained in the following areas in respect of Partnership Projects generally and in relation to the Partnership Agreement specifically:

- Mobilisation, transitions and hand back of the asset at the end of the contract term.
- Performance monitoring.
- Payment mechanisms and their application.
- Financial models and project financing.
- Stakeholder management and helpdesk.
- Claims management.
- Contractual scope, change or variation management.
- Dispute resolution mechanisms and management.

- Partnership Agreements and all relevant time periods.
- Risk allocation and implications of the selected procurement model for the project.
- All other aspects related to the application of the contract (such as relevant notice periods).

Members of the Contract Management Team may also require general training in contract management, such as:

- Project management.
- Risk management.
- Commercial skills.
- Issue resolution and negotiation skills.
- Health and safety, and environmental management.
- Data collection and information management.
- Effective communications planning.
- Promoting successful partnerships between different parties.

6 Contract Management Manual

The Contract Management Team, with input from the Project Team and external advisors (as required), should prepare a manual to be used as a reference guide for administering and monitoring the contract, including monitoring and evaluating contract performance and day-to-day project management (the **Contract Management Manual**). The Contract Management Manual shall include as a minimum:

- An overview of the Partnership Agreement including the key terms and conditions.
- A stakeholder management and communications plan.
- Contract process flowcharts and governance procedures.
- Specific audit and reporting procedures and requirements.

- A schedule of all project documents.

The Contract Management Manual should be reviewed by the Procuring Entity on an ongoing basis. In addition, the following specific events should be considered:

- Divergence between each party's expectations and actual project outcomes.
- Changes in the project itself through change events, contingency events, or as result of the project moving from one stage to the next in its life cycle.
- Changes in the operating environment.

Chapter Five

APPENDICES



APPENDICES

1 Table of Acronyms

Acronyms	
ADIO	Abu Dhabi Investment Office
BAFO	Best and Final Offer
BCIS	Building Cost Information Service
CAPEX	Capital Expenditure
DoF	Department of Finance
EC	The Executive Council of the Emirate of Abu Dhabi
EoI	Expression of Interest
IRR	Internal Rate of Return
LCSF	Life Cycle Sinking Funds
NPV	Net Present Value
OPEX	Operating Expenditure
PPP	Public Private Partnership
PSC	Public Sector Comparator

RfP	Request for Proposal
RfQ	Request for Qualification
SBM	Shadow Bid Model
SoQ	Statement of Qualification
USP	Unsolicited Proposal
VfM	Value for Money

2 Glossary of Terms

Glossary of Terms	
ADIO Code of Conduct	The code of conduct published by ADIO on the ADIO website from time to time.
Applicant	An individual company or a consortium of companies which responds to an RfQ.
Asset Monetisation	<p>A variation of a Contracting Model which is structured specifically to allow for the divestment of existing assets by the public sector to the private sector (which amounts to an outright sale of the asset to the private sector or a specific right being conferred on the private sector for a duration no longer than the concession itself).</p> <p>Irrespective of whether the public sector retains legal ownership of the asset or not, this Contracting Model is characterised by the public sector entering into a long-term contract with the private sector which governs, among other things, the allocation of risks and responsibilities between the two parties.</p>
Best and Final Offer	Bids submitted which indicate that no further negotiation on the amount or terms is possible.
Bidder	An Applicant who has fulfilled the eligibility requirements set out in the RfQ (where issued) and/or been pre-qualified by ADIO to receive the RfP and bid for the project.
Business Case	A complete business case prepared for submission to the Relevant Approving Authority so as to seek approval for taking a Candidate Project forward as a Partnership Project.
Candidate Project	Any project which meets the criteria of a Partnership Project as described in the Partnership Projects Guidebook and that has been identified by the Office as a potential Partnership Project.

Code of Business Ethics	The code of business ethics set out in Appendix 3.
Commercial Close	The date when the Partnership Agreement has been executed (or entered into through a letter of award) and, to the extent that effectiveness of the Partnership Agreement is conditional upon the receipt of approvals from the Relevant Approving Authority, such approvals have been issued and any conditions to such approvals satisfied.
Concept Report	As defined in Section 3.2 of Chapter 2 in this Guidebook.
Contracting Model	A form of contract structure developed for the Partnership Project during the transaction structuring phase as set out in Section 3.3.4 of Chapter 2 of this Guidebook and which falls within the scope and coverage of the Procurement Framework.
Expression of Interest	A document issued by ADIO to ascertain market interest in a Partnership Project and which includes high-level descriptions of the Partnership Project with a clear description of the chosen Contracting Model along with the EoI timetable (as a minimum) and any other relevant details.
Final Business Case	An update to the Business Case upon conclusion of all negotiations with the Preferred Bidder (or, as applicable, Reserve Bidder) as described in Section 6.3 of Chapter 3 of this Guidebook.
Financial Close	The date on which financing agreements required to fund the whole, or a substantial part, of the capital cost of the Partnership Project have been signed and are in full force and effect, and the requisite funds are committed thereunder.
Fiscal Commitments	Any form of financial commitment by the Government, the Procuring Entity and any other Government entity, whether contingent or unconditional (made or to be made in relation to a Partnership Project and whether under the Partnership Agreement or associated documentation entered into in connection with the Partnership Project).

General Matters	Mean, following Commercial Close, any (i) proposed changes to the Partnership Agreement that fall within the delegation of authority of the Procuring Entity Chairman and the ADIO Director General or (ii) changes that are of a non-monetary nature.
Government	The Government of Abu Dhabi.
Guidebook	This guidebook.
Hard Facilities Management (Hard FM)	Services such as planned and preventive maintenance and reactive maintenance and buildings and assets life cycle management, which includes the administration and management of all future cyclical replacement of the built assets, building components and equipment.
Life Cycle Sinking Fund Costs (LCSF)	The total cost of all future cyclical replacement of the built assets, building components and equipment that reach the end of their economic life expectancy during the course of the Partnership Agreement being separate from the cost of day-to-day facilities management and operations and maintenance or OPEX, including Soft FM, such as cleaning and security, and Hard FM, such as planned and preventive maintenance and reactive and utilities management, which together with LCSF can be described as whole-life costs. The private sector is required under the Partnership Agreement and the finance agreements to maintain a life cycle sinking fund to reserve against projected LCSF spend.
Material Matters	Mean, following Commercial Close, any proposed changes to the Partnership Agreement that fall outside of the delegation of authority of the Procuring Entity Chairman and the ADIO Director General.
Partnership Agreement	An agreement between the Procuring Entity and the Project Company which governs the relationship between the parties in respect of a Partnership Project.

Partnership Project	Any capital expenditure project, Asset Monetisation or initiative identified as a Candidate Project that has been approved by the Relevant Approving Authority in accordance with Chapter 1 of this Guidebook.
PPP Law	Has the meaning given to it in Section 1.3 of Chapter 1 of this Guidebook.
Preferred Bidder	A Bidder awarded such status in accordance with the process outlined under Section 6 of Chapter 3 of the Guidebook.
Procurement Framework	The PPP Law, the Regulations, this Guidebook and all other guidance notes, tools or templates issued by ADIO from time to time for the purpose of regulating the procurement of Partnership Projects in Abu Dhabi.
Procurement Plan	The procurement plan developed exclusively for a Candidate Project as part of the Business Case.
Procuring Entity	The Government entity developing, procuring and/or monitoring the Project/Candidate and Project/Partnership as the case may be.
Project Company	A special purpose vehicle established by the successful Bidder to implement the Partnership Project, if applicable.
Project Team	A team appointed to procure the Partnership Project as described in Section 2.3 of Chapter 1.
Proponent	A private sector entity submitting an Unsolicited Proposal.
Public Sector Comparator	A fully costed and priced financial model which is an estimate of the hypothetical risk-adjusted whole-of-life costs of a Candidate Project if it was developed and delivered by the Procuring Entity directly in accordance with the required output specifications.

Regulations	The meaning given to it is in Section 1.3 of Chapter 1 in this Guidebook.
Relevant Approving Authority	The Government entity authorised to provide the relevant approval as set out in Section 1.6 .
Request for Proposal	A tender document soliciting proposals from private sector respondents for a Partnership Project.
Request for Qualification	A tender document requiring certain information from private sector respondents to assess whether they meet certain predetermined qualification criteria in respect of a Partnership Project.
Shadow Bid Model	A fully costed and priced financial model, which first, includes the forecast private sector cost and funding requirements for a Partnership Project combined with detailed financial projections and analyses with clear output specifications to be implemented over a fixed time period including as a minimum the construction and the operations period, and secondly, is used for the purposes of evaluating bid submissions.
Soft Facilities Management (Soft FM)	Services such as cleaning, pest control, waste management, security, energy and utilities management, grounds maintenance management service and health and safety management service.
Tender Evaluation Committee	As defined in Section 5.1 of Chapter 3 in this Guidebook.
Tender Evaluation Report	As defined in Section 5.3 of Chapter 3 in this Guidebook.
Tender Management Procedures	The procedures set out in Section 2 of Chapter 3 of this Guidebook detailing the procedures to be used during the Tender Process of a Partnership Project.
Tender Process	The process set out in Section 2 of Chapter 3 in this Guidebook.

Unsolicited Proposal	A proposal to undertake an infrastructure project submitted by a private sector party at its own initiative, rather than in response to a request from or competitive tender by the Government.
Value for Money	The concept described in Appendix 8.

3 Code of Business Ethics

Objectives and Scope of the Code of Business Ethics

The Code of Business Ethics aims to establish principles and rules that serve as a moral constitution which regulates the work of, and shall apply to, each individual member and all entities involved in the Partnership Project process, including, but not limited to, the Project Team and Tender Evaluation Committee (each a 0128667, and together the **Parties**) in accordance with the business ethics expected in the procurement profession.

The Code of Business Ethics seeks to promote ethical behaviour and emphasise the accountability of the Parties for protecting the reputation of ADIO and the Procuring Entities. It further seeks to prevent impropriety and unfair business conduct during the Tender Process.

General principles

The Parties must conduct all activities to achieve sound commercial decisions with integrity and probity.

The Parties must be fully aware of, and act in accordance with, the Code of Business Ethics and the Procurement Framework. Violation of the Code of Business Ethics and the Procurement Framework due to lack of awareness of its contents shall not be acceptable.

The Parties must immediately report any contravention of the Code of Business Ethics or the Procurement Framework to ADIO to verify and take the necessary action.

Any member of the Project Team found in contravention of the Code of Business Ethics or the Procurement Framework shall be held accountable for their actions and will be liable for disciplinary or legal action based on the circumstances and applicable legislation.

Fiduciary responsibility

The Parties must act in the best interest of ADIO and the Procuring Entities they represent.

The Parties must carry out the duties and responsibilities assigned to them in accordance with the Procurement Framework.

Compliance with applicable legislation

The Parties must conduct all procurement activities in compliance with the local and federal legislation.

The Parties shall require that all other Parties adhere to local and federal laws, including any applicable health, safety and environment regulations when dealing with ADIO and the Procuring Entity.

The Parties shall inform the relevant Government entities of any violation of any applicable legislation by any other Party.

Professional integrity

The Parties shall conduct themselves with the highest standards of integrity and must not exhibit the intent or appearance of unethical or compromising conduct in their professional relationships, actions or communications.

The Parties shall not misuse their official positions, dispense special favours or make private promises on behalf of ADIO and the Procuring Entity of the Party they represent.

The Parties must be impartial in carrying out procurement activities to ensure that all stakeholders have confidence in the results and must demonstrate good procurement practices and accountability and report any actual or suspected violation of the Procurement Framework.

Conflicts of interest

The Parties must manage and avoid conflicts of interests proactively.

The Parties shall promptly disclose personal interests and conflicting roles or roles with potential conflicts that may affect, or might reasonably be seen by others to affect, the integrity of decisions to ADIO.

The Parties are prohibited from participating in any decisions or recommendations concerning individuals or institutions with which they have an existing or prospective material financial relationship.

The Parties must not grant special favours or treatment and must avoid personal, reciprocal agreements with Applicants, Bidders or any other Party. The Parties shall not accept gifts or anything of material or moral value from any other Party.

Confidential information

The Parties must not disclose confidential or proprietary information for their personal or professional benefit.

Sensitive information related to spend, contracts, pricing, Applicant or Bidder conferences, Applicant or Bidder performance and commercial and strategic planning must be kept confidential and disclosed only to authorised personnel, and an electronic audit trail must be maintained.

The Parties shall be responsible for safeguarding financial, proprietary and other confidential information provided by any Applicant, Bidder or any other Party to ADIO and the Procuring Entity.

Fair relationships

The Parties shall promote positive relationships with Applicants, Bidders and any other Party in order to maintain a competitive procurement environment by treating all Parties equally and fairly.

The Parties shall not exert undue or coercive influence over any other Party to supply at prices below cost or deliberately establish terms resulting in a loss or in the exclusion of any of the other Parties.

Environmental responsibility

The Parties shall consider the concept of sustainability to avoid adverse social and environmental impact being caused by the assets, services and projects procured.

The Parties shall strive to procure assets, services and projects that meet environmental regulations and shall seek to eradicate wasteful practices.

Where applicable, the Parties shall offer assistance to any of the other Parties to assist with raising their environmental awareness in accordance with applicable local and federal environmental legislation.

Professionalism

The Parties must conduct themselves professionally and apply high professional standards while performing work.

The Parties must observe the following principles:

- Not to assign a job beyond the qualifications of an assignee.

- Be familiar with the Procurement Framework.
- Be familiar with any applicable legislation to which ADIO or any Government entity is subject.
- Exercise necessary professional attention in the execution and supervision of procurement operations and the preparation of reports.
- Maintain professional competence through continuing professional development.

Code of Conduct

The Parties shall abide by and be sanctioned as necessary by the provisions of the applicable ADIO Code of Conduct as published by ADIO on its website, or otherwise as approved.

The Parties shall immediately report in writing to ADIO any action undertaken by a Party which is in contravention to the provisions of the ADIO Code of Conduct, in particular insofar as such contravention may relate to issues concerning bribery or corrupt practices.

4 Concept Report

The Concept Report should take into account the following questions:

Strategic alignment and project Needs Assessment

Addressing questions such as:

- Has the project been prepared in response to a clear service need?
- Does the project fulfil the demand for the service in part or in full?
- Does the project align with the strategic objectives of the Government?
- Is the project in the public interest?
- Has a preliminary market demand analysis been conducted?

Benchmarking of successful projects globally

Addressing questions such as:

- Have similar projects been undertaken elsewhere successfully?
- What are the envisaged components of such successful projects?
- Will similar project configurations work in Abu Dhabi?
- If not, what are the changes to be made?

Project scoping and technical feasibility

Addressing questions such as:

- What is the scope of the project?
- Is the identified technical solution the best possible one or are there better alternatives?
- Is there sufficient confidence that the technical feasibility of the project can be demonstrated?
- Have the major technical and operational risks been identified?
- Has the land required to develop the project been identified?
- Is a preliminary design available (for example, to prove feasibility)?

Legal feasibility

Addressing questions such as:

- What are the required legal and administrative approvals, and who provides them?
- Are there legal, regulatory or statutory impediments for the procurement or implementation of the project?
- Will it be necessary to amend any laws or regulations?
- Whether the Procuring Entity would have the legal capacity and authority to eventually enter into the Partnership Agreement in respect of the Candidate Project.

Financial feasibility

Addressing questions such as:

- What are the major cost and revenue components of the project?
- Has a preliminary VfM analysis been undertaken?

Socio-economic and environmental feasibility

Addressing questions such as:

- What are the expected socio-economic impacts of the project?
- Are any material environmental impacts expected?
- Can the expected negative social and environmental impacts be mitigated?

Market appetite

Addressing questions such as:

- What is market appetite for the proposed project?
- What is the likely demand/supply scenario?
- What is the market's view of the project configuration?

Approvals required

List of key approvals required for preparation, development, procurement and/or management of the project through the Contracting Model.

Stakeholder support

Political support and stakeholder consultation to ensure relevant Government entities are aware of the project and potential concerns are noted for action during development of the Business Case.

5 Initial Transaction Management Plan

When developing an initial transaction management plan as set out in Section 3.1.1 of Chapter 2, the Project Team needs to consider all the key steps in the process ahead, including:

- An implementation road map with main tasks and their start and end dates.
- The data to be collected and assessments to be carried out.
- Key documents or reports to be drawn up.
- Required internal and external capacities.
- Funding and financing sources – if applicable.
- Stakeholder consultation.
- Any legal or regulatory steps to be undertaken, including permits that may need to be obtained.
- The tender process and private sector interface.
- The Government's decision-making and approval process.

6 Business Case Requirements

This Appendix 6 sets out the recommended content of the Business Case.

Business Case	
Summary	This should include the executive summary of the following sections but adding a specific concluding sub-section which sets out the commercial, technical, financial and legal matters which require stakeholder approval.
Technical	This should include the executive summary of the Concept Report with the full report included as an appendix.
Options Analysis	This should detail the process undertaken during the options analysis including a summary of any soft market sounding undertaken.
Financial and Economic Analysis	<p>This should detail the process and outcomes of this analysis including project scope and risk allocation, the PSC and the SBM, proposed Fiscal Commitments and the discount rate, VfM analysis, and the relevant outcomes of any market sounding.</p> <p>Appendices should include the financial model, the cost data book and cost and revenue benchmark analysis and, where relevant, market analysis with respect to any revenue-based assumptions from the Concept Report.</p>
Structure	This should detail the preferred Contracting Model, the project scope and technical, commercial, contractual, financial and legal matters, including relevant outcomes of any market sounding.
Procurement Plan	This should detail the Tender Process for the Partnership Project including any variation to the procurement procedures set down in Chapter 3 providing a clear justification and rationale.

7 Unsolicited Proposals

Overview

This Appendix 7 applies to any USP submitted in accordance with Chapter 2.

All USPs should be evaluated jointly by ADIO and the Procuring Entity. Any Procuring Entity receiving a USP shall forward such USP to ADIO and vice versa. ADIO and the Procuring Entity shall endeavour to evaluate USPs promptly after receipt.

If necessary, ADIO and the Procuring Entity may request clarifications and meetings with the Proponent to clarify any aspect of the USP.

Requirements for a compliant USP

To be compliant, a USP is expected to:

- Explain how the USP satisfies the threshold requirements for a USP set out in Section 2.3 of Chapter 2 and more specifically it must explain how the USP:
 - Satisfies a community need or otherwise provides clear and measurable benefits to the Emirate of Abu Dhabi.
 - Comprises an innovative proposal providing unique attributes, innovative design, proprietary/new technology or a new concept with very limited alternatives offering an innovative approach to project development and management, presenting a new and cost-effective method of service delivery.
 - Delivers VfM for Abu Dhabi.
 - Is affordable within the Government's budget, funding priorities and fiscal strategy.
 - Allocates risks between the private sector and the Government in a way that is beneficial to the Government.
 - Is technically, commercially and practically feasible.
 - Is something that the Proponent has the capacity and capability – financially, technically and legally – to deliver successfully.

- Is suitable for public investment (i.e. does not displace private sector activity, crowd out private sector investment or contravene competitive neutrality principles).
- Include a proposal that includes all aspects required pursuant to Section 2.4 of Chapter 2 and a sufficiently developed financial proposal showing the estimated cost to the Procuring Entity:
 - Specify what, if any, proprietary intellectual property would be required for the implementation of the proposed project including specifying the owner of such proprietary intellectual property.
 - Detail the costs:
 - i) Incurred by the proponent in preparing the USP.
 - ii) The proponent would expect to incur in submitting a compliant bid (in accordance with the tender process) in respect of the project proposed by the USP.
 - Satisfy the USP submission requirements set out below.

USP proposal submission requirements

A USP should be submitted in accordance with the following requirements:

- In sealed envelopes, one addressed to ADIO and the other addressed to the relevant Procuring Entity, bearing the title of the proposed USP, the Proponent's name and address, and the words "Partnership Project Unsolicited Proposal".
- Include, in each envelope, a minimum of two hard copies and two electronic copies of the USP proposal on a USB – in word and pdf format.

Treatment of USPs

Subject to the incentives set out below, each project that is proposed by a Proponent as a USP that is determined by ADIO and the Procuring Entity to be appropriate to become a Candidate Project shall be treated in accordance with this Guidebook in terms of structuring and due diligence analysis and the Tender Process. Typically, the initial engagement between the Proponent, ADIO and the Procuring Entity will involve the following steps:

- The Proponent contacts ADIO and the Procuring Entity regarding the USP.

- ADIO, the Procuring Entity and the Proponent attend a pre-Proposal meeting to determine if there is merit in the Proponent formally submitting the USP.
- The Proponent prepares and submits a preliminary confidential submission to ADIO and the Procuring Entity.
- ADIO and the Procuring Entity consider preliminary submission and notify the Proponent:
 - If ADIO or the Procuring Entity wish to receive a detailed submission from the Proponent.
 - If ADIO and the Procuring Entity wish to develop the Business Case based on the preliminary submission and therefore do not require a detailed submission from the Proponent.
 - If ADIO and the Procuring Entity do not consider the USP to be appropriate for further consideration.
- If requested by ADIO and the Procuring Entity:
 - The Proponent prepares and submits a detailed submission complying with all requirements of this Appendix 7.
 - The Proponent provides such assistance to ADIO and the Procuring Entity as may be required in the development of the Business Case.

Incentives for USP Proponents

To encourage potential Proponents to submit USPs, the following incentives shall be made available to Proponents:

- **Direct shortlisting to RfP:** The Proponent will be automatically shortlisted to receive the RfP.
- **Reimbursement of USP and bid preparation costs:** The Proponent shall be entitled to be reimbursed (by the successful bidder, in the event the Proponent is not the successful bidder) its reasonable direct costs incurred in the development of (i) the USP, and ii) its bid, depending on the level of USP development (subject to the Proponent providing evidence of the same). Such reasonable direct costs shall be communicated to all Bidders not later than two weeks prior to submission of RfP responses, having been either:
 - Agreed between the Proponent and the Project Team.

- Failing such agreement, determined by a third-party auditor (appointed jointly by ADIO and the Proponent).

The successful Bidder shall be required to reimburse such costs to the Proponent on the date of Commercial Close or, if applicable, Financial Close of the relevant Partnership Project.

- **Intellectual property licensing costs:** If there is proprietary intellectual property involved in the USP that is:
 - The property of the Proponent or its suppliers.
 - Required for the implementation of the Partnership Project.

The RfP will include details specifying the basis on which such proprietary intellectual property will be licensed to the successful Bidder, including the amount payable to the Proponent, if the Proponent is not the successful Bidder.

8 Value for Money Analysis

Overview

To carry out a VfM analysis, the Project Team should:

VfM Assessment Process	
1	Develop a Public Sector Comparator and Shadow Bid Model.
2	Apply weightings to the quantitative and qualitative (see below) factors that are relevant to a Candidate Project.
3	Carry out a quantitative VfM assessment comparing the cost of procuring the Candidate Project as calculated in the SBM against the risk-adjusted cost of procuring the Candidate Project through traditional procurement as shown in the PSC model.
4	<p>Apply the agreed discount rate to the PSC model and the SBM to convert both the estimated future costs and estimated future revenues of the proposed Candidate Project into a present value.</p> <p>The discount rate will be determined by ADIO and DoF on a project-by-project basis and as the case may be on a sector-by-sector basis.</p>

Inputs into the quantitative VfM analysis should be based on empirical data such as cost, revenue, efficiency and risk inputs, etc. extracted from historical agreements entered into by the Procuring Entity for the construction, operation and maintenance of similar assets.

In the absence of such empirical data, other sources that can be used include bottom-up cost estimation (e.g. BCIS cost analysis) as validated by market assessment and supplier input and published literature on construction costs combined with expert workshops.

Shadow Bid Model

The SBM represents the Procuring Entity's best estimate of the bids it anticipates receiving from the private sector. The SBM is developed as a financial model that incorporates the capital, operating, financing and tax

assumptions from a private sector perspective for the Contracting Model selected.

Risk-adjusted PSC

The PSC is a financial model of the costs and revenue (if applicable) associated with a Candidate Project delivered directly by the Procuring Entity. The components of the PSC model are set out below.

Components of the PSC	
Raw PSC	The baseline estimates of the whole-of-life costs to be borne by the Procuring Entity for procuring a project through traditional procurement methods. This includes the capital and operating costs associated with delivering the desired output or service over a defined period of time (i.e. calculated as capital costs plus operating costs minus revenue).
Risk Adjustments	Risks transferred to the Private Sector partner under the Contracting Model by the Procuring Entity need to be reflected in the PSC.
Retained Risk	Adjustments to the cost and revenue estimates to reflect the risks and uncertainties to be retained by the Procuring Entity during traditional procurement.
Competitive Neutrality	The advantages for a Procuring Entity which may not be available to a Private Sector partner (i.e. tax advantages, regulatory exemptions available to Government Entities and reduced permit and approval costs, etc.).

The PSC is calculated as the sum of the above components and is expressed as the net present cost of a projected cash flow discounted at the agreed discount rate.

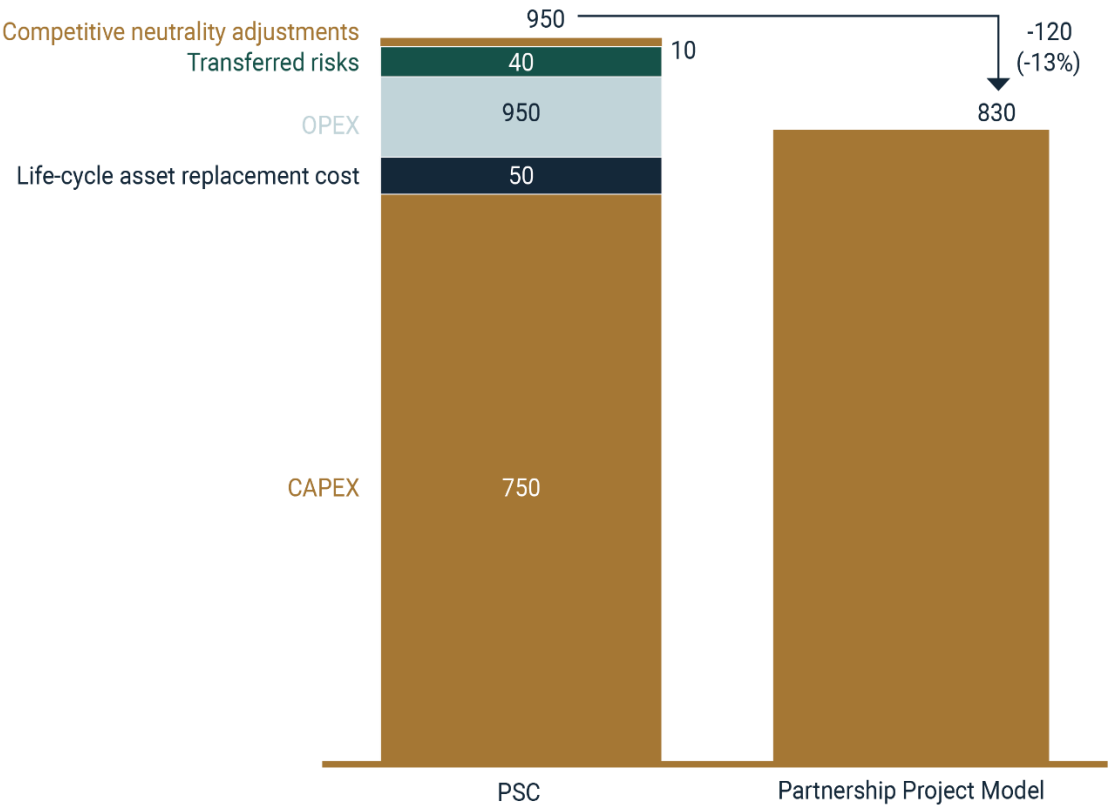
Quantitative VfM analysis

VfM is defined as the absolute difference between the total cost of project ownership net of revenue on a present value basis under the PSC model as compared against the SBM.

A positive VfM indicates that the Contracting Model provides higher VfM compared to the PSC.

In the example in Figure 2 below, the Procuring Entity makes availability payments each month to the selected Private Sector partner for a period of 20 years. VfM is calculated as the difference in cost to the Procuring Entity between the PSC and the SBM prepared for the project, which in this case is AED 120 million.

Figure 2 Illustrative example of VfM analysis



Qualitative VfM analysis

The cost estimates and risk valuation which make up a quantitative VfM analysis are based on estimates only and as such the VfM exercise is only as robust as the assumptions made. Therefore, a quantitative VfM analysis should be supported by a qualitative VfM assessment.

Qualitative VfM analysis identifies and compares the qualitative and non-financial benefits deriving from the Contracting Model against the qualitative benefits of traditional Government delivery of the project. This includes evaluating the rationale for the Contracting Model, the socio-economic impact, which may arise from the absence of the project or service and whether the supporting conditions are in place to achieve VfM.

Qualitative VfM analysis has the advantage of acknowledging factors not captured in a quantitative VfM assessment. The qualitative and quantitative VfM outputs should be examined together to holistically assess the advantages and disadvantages of the Contracting Model against traditional procurement.

To carry out qualitative VfM analysis, the Project Team should:

- Carry out a qualitative VfM assessment comparing the qualitative cost of procuring the Candidate Project as calculated in the SBM against the qualitative cost of procuring the Candidate Project through traditional procurement as shown in the PSC model.
- Carry out a qualitative VfM assessment comparing the non-financial and qualitative benefits of procuring the Candidate Project using the preferred Contracting Model. The assessment should include consideration of the project characteristics, the institutional and legal framework, service delivery and operational requirements and a range of design considerations.

VfM assessment at various stages

VfM assessment is carried out at the following stages of the Partnership Project:

VFM Assessment	
Concept Report	Preliminary qualitative VfM analysis is undertaken to confirm whether a project could be procured by way of a Partnership Project.
Business Case	<p>A detailed quantitative VfM assessment comparing the SBM and PSC model of the Contracting Model is undertaken.</p> <p>Where this assessment produces a negative VfM, the recommendation to proceed with the Contracting Model should be accompanied by a statement to the Relevant Approving Authority detailing the qualitative benefits justifying the recommendation.</p>
Tender Process	During the Tender Process bids received will be evaluated by comparing the risk-adjusted net present cost of the bid to the PSC model.
Contract Management	The VfM estimated during the bid evaluation may be tested during the actual implementation and operation of the project to confirm that estimated VfM is achieved.

The outcome of the VfM analysis should be used to support the decision-making processes so as:

- To confirm the preferred Contracting Model.
- To estimate the quantitative cost of procurement of the Candidate Project.
- To assess the qualitative socio-economic benefits of the Candidate Project.

VfM analysis undertaken throughout the procurement process may be repeated and re-examined as part of the tender evaluation and during the review of the Final Business Case.

9 Contract Management Principles

Overview

These contract management principles relate to Partnership Projects generally. Their implementation in relation to a particular Partnership Project will be subject to the terms of the specific Partnership Agreement and related project documentation.

In many cases, the matters concerned will have been considered early on in the Partnership Project development and tender process and the Procuring Entity will have less influence over how such matters are managed by the time the contract management phase begins.

Managing transitions

All Partnership Projects experience transitions between different phases of the project (i.e. from Commercial Close to construction, from construction to operations, and from operations to hand back). Each of these transitions represents a period of substantial change, which may involve turnover of staff within the Procuring Entity and the Project Company, as well as new responsibilities and challenges.

In managing transitions, the Procuring Entity will need to engage with other relevant Government agencies to ensure potential delays are mitigated and ensure adequate resourcing is employed for necessary transitional processes.

Transitions	
Financial Close to Construction	<p>In managing the transition from Financial Close to the construction phase, the Procuring Entity should:</p> <ul style="list-style-type: none">• Recognise that the Partnership Agreement documentation is voluminous and complex and may need to be distilled into effective and accurate operational tools.• Create a clear understanding in the Contract Management Team of what the Partnership Agreement caters for and incorporate key contract terms into the Contract Management Manual.• Clearly define all roles related to preparing/updating and maintaining the Contract Management Manual.

	<ul style="list-style-type: none"> • Carry out engagement with key stakeholders (e.g. local authorities, regulators, utility providers and any other third parties) whose approvals, agreement or permits may be required to enable the commencement of construction works and collaborate with the Project Company, where appropriate, to ensure permitting issues are resolved efficiently. • Engage end-users and other affected parties throughout the process. • Address outstanding land acquisition and access issues as early as possible, ensure good resettlement practices are adopted where land acquisition affects local communities, work closely with the Project Company with respect to any delays, and be aware of the impact of delays on all parties operationally and contractually. • Maintain clear records and data management procedures in relation to resettlement actions and compensation to ensure transparency and to address subsequent disagreements. • Share relevant parts of the Contract Management Manual with the Project Company to foster coordination.
<p>Construction to Operation</p>	<p>In managing the transition from the construction phase to the operation phase, the Procuring Entity should:</p> <ul style="list-style-type: none"> • Ensure adequate resourcing is employed for testing and commissioning. • Plan for testing and commissioning early, and consider establishing a testing and commissioning panel. • Test the Project Company's performance management tools in advance of operation commencement to ensure they are functional and compliant with the Procuring Entity's systems. • Allow adequate time for the parties to become familiar with the operational key performance indicators (KPIs) and payment mechanisms.

	<ul style="list-style-type: none"> Focus on the relationship with the Project Company during the transition between construction and operation, and mitigate the risk of disputes.
Operation to Handback	<ul style="list-style-type: none"> The transition from the operation phase to hand back covers the period where the original Partnership Agreement is coming to an end. This generally involves the asset, or the operation of the asset being handed back in accordance with the terms of the Partnership Agreement to the Procuring Entity or to a new operator. The Procuring Entity should ensure that the Project Company complies with contractually stipulated hand back requirements, particularly in respect of asset condition and remediation. The Procuring Entity needs to manage this phase adequately so that it is not left with an asset which has a shorter remaining period of life than expected or in a condition which leaves the Procuring Entity unable to continue delivering the relevant service. If the required asset condition is described by technical standards which require independent verification, the Procuring Entity must plan for this to take place in accordance with the agreed contractual process.

Performance monitoring

Performance monitoring focuses on monitoring the provision of contracted services, managing related performance risks and issues and addressing broader performance management issues.

With respect to the regular provision of contracted services, the Contract Management Team must have robust arrangements for monitoring outputs and a clear strategy around key contentious matters such as paying invoices and abatement of service payments. An effective performance monitoring and reporting strategy is built upon the following elements:

- The Procuring Entity understanding the business environment and the objectives of the Government in entering into the contract. Performance measures lie at the heart of performance management and it is important that performance measures are linked to strategic objectives and desired outcomes.

- The Procuring Entity understanding the Project Company's internal operating environment, such as its cash flows. It is through this understanding that the Procuring Entity can derive an awareness of the Project Company's strengths and weaknesses, including financial performance.
- The Procuring Entity monitoring indicators of the management quality of the Project Company, looking for weaknesses or trends that may provide an early indication of risks to the project.
- The Procuring Entity regularly reviewing the quality of the service against the KPIs and output specifications. Following monitoring, the Procuring Entity acts to mitigate or control any risks that are materialising and to maximise VfM from the project.
- Effective performance monitoring in a Partnership Project involves diligent monitoring of the provision of contracted services and having access to relevant information to assess and mitigate any risks that are materialising.

In carrying out routine performance monitoring, the Procuring Entity should:

Performance Monitoring Base Practice	
1	Ensure adequate resourcing is employed for performance monitoring activities
2	Utilise interim construction milestones to stay well-informed on the progress of works
3	Be aware of and use the most efficient performance monitoring tools, including automated reporting
4	Use KPIs and payment mechanisms to ensure the Project Company is performing in accordance with the Partnership Agreement, not as punitive measures
5	Assess the operational effectiveness of KPIs before operations commence or early in the operations phase and on an ongoing basis
6	Clarify the intended application of KPIs that are perceived as being unclear or ambiguous with the Project Company

Stakeholder management

The key elements of successfully managing stakeholders are summarised below.

Stakeholder Management Best Practice	
Project Company	<ul style="list-style-type: none"> Consider the interests of the Project Company, including any changes in its circumstances. Ensure appropriately frequent meetings are held, including at the relevant strategic levels. Follow formal communication requirements where required under the Partnership Agreement. Be aware of the positive and negative aspects of appointing Project Company board members, where applicable. Consider sharing office space with the Project Company, which can benefit the relationship. Use contractual provisions to protect the rights of the Procuring Entity rather than as punitive measures. Focus on a positive relationship, even in the presence of ongoing disputes.
Other Private Partner Stakeholders	<ul style="list-style-type: none"> Consider associated private partners including the construction contractor in communications and relevant meetings, but without diluting the risk allocation position of the Project Company being the Procuring Entity's single point of responsibility under the Partnership Agreement.
End-Users, Business and Community	<ul style="list-style-type: none"> Ensure end-users, businesses and community stakeholders are engaged at all stages of infrastructure delivery to ensure viability and enhance the services.

	<ul style="list-style-type: none"> • Ensure ongoing transparent engagement with end-users, businesses and community stakeholders on all relevant issues. • Define the role of the Project Company in the management of end-users, businesses and community stakeholders. • Consider each relevant community group, as they may have different interests and desired outcomes.
Other Government Entities	<ul style="list-style-type: none"> • Consider the level of involvement required from other Government agencies. • Set up effective Governance structures to manage the relationships with other relevant Government agencies. • Collaborate with the Project Company to work with other Government agencies, where appropriate. • Plan early to manage other Government or quasi-Government agencies that the Procuring Entity does not have influence over.

Data collection and management

In implementing data aspects of the Partnership Project, the Procuring Entity should:

- Understand the scope of the data to be collected and maintained as part of the project.
- Develop an information management system that works for the procuring entity and the Project Company.
- Where possible, use similar information management systems and software across multiple projects.
- Agree the level of detail required from the project company timeously to set expectations around the form of information required.

Claims

Changes during the life cycle of a Partnership Project require proper management. Changes may be contemplated at the time of procurement and

provided for in the Partnership Agreement, or not contemplated during procurement but seen as desirable or necessary alterations to services or the Partnership Agreement.

In either case, change events are both a source of risk and a potential opportunity to extract additional benefits from the project. The Procuring Entity should ensure there is no unintentional take-back of risk allocated to the Project Company.

In managing claims, it is important for the Procuring Entity to:

- Understand the Project Company's rights to claim under the Partnership Agreement and ensure the team is adequately resourced to assess claims.
- Monitor the risk of potential claims to mitigate their occurrence and prepare early for their receipt.
- When assessing scope changes, aim to retain the risk allocation agreed at Commercial Close and ensure VfM.
- Understand the claim and scope change procedures set out in the Partnership Agreement and ensure the Procuring Entity complies with the procedures.
- Process claims and scope changes quickly to avoid them turning into disputes or having other adverse impacts on the project.
- Work with other Government agencies to mitigate the risk of claims arising and to assist in the processing of claims.
- Introduce policies to limit early and frequent scope changes.
- Be aware of the interests and requirements of the Project Company's lenders in the processing of claims.

Change of ownership

Should the Project Company approach the Procuring Entity to approve a change of ownership in accordance with the Partnership Agreement, it is important that the Procuring Entity works closely with ADIO when assessing such change to:

- Consider the interests of the Procuring Entity and broader Government considerations.

- Dedicate appropriate resources to assessing its financial, commercial, technical, legal and political impact and involve external advisors as necessary.
- Consider the interests of other relevant parties (e.g. Lenders).

Refinancing

The Project Company will have typically raised debt capital for the project and, where it has taken the risk on the debt financing, it is generally entitled to rearrange it (though often subject to certain restrictions under the Partnership Agreement).

The financial structure of the Project Company is of interest to the Procuring Entity as it can affect the financial integrity of the Project Company and the project. For example, a refinancing has the potential to raise additional debt which can overleverage the project and/or increase the Government's contingent liabilities.

Refinancing may also be of interest to the Procuring Entity if the Partnership Agreement contains a provision that financial gains resulting from a refinancing be shared with the Procuring Entity.

In assessing any refinancing-related requests, the Procuring Entity should work closely with ADIO to:

- Consider the impact of the proposed refinancing on the interests of the Procuring Entity and broader Government considerations.
- Dedicate appropriate resources to assessing a potential refinancing including appointing external as necessary.
- Be mindful of opportunities such as sharing in any refinancing gain, which may be available through a refinancing.

Reviewable services

Depending on the terms of the Partnership Agreement, there may be multiple reviewable services intervals that will provide for certain services to be subject to benchmarking (Hard FM services) or market testing (Soft FM services). Reviewable services are usually labour-based services such as cleaning, security and facilities management. Reviewing and market testing the cost of reviewable services is a way to try to keep service costs competitive over the life of the project and ensure the Government achieves VfM. If this approach is adopted in the Partnership Agreement, it will specify review points and the

Procuring Entity will need to prepare for carrying out benchmarking or market testing accordingly.

Disputes

Given the long-term nature and complexity of Partnership Projects, it is not uncommon for there to be some form of disagreement or dispute during the contract management period. The Procuring Entity should focus on avoiding disagreements turning into disputes where possible. Disputes have the potential to damage the relationship between the Project Company and the Procuring Entity and while they are being resolved, there is a risk that service levels will be affected. The Procuring Entity's aims in dispute resolution should, where possible, be to make decisions that will ensure the project moves forward in a viable and sustainable manner while maintaining VfM and to manage the dispute appropriately to reach a conclusion quickly and in a cost-effective manner while also maintaining a strong relationship with the Project Company.

In managing disputes, the Procuring Entity should work closely with ADIO and, subject to the terms of the Partnership Agreement, aim to:

- Understand the rights and obligations of the Procuring Entity and use contractual provisions to protect the rights of the Procuring Entity rather than as punitive measures.
- Monitor the performance of the Project Company to be aware of potential issues and to mitigate the risk of disputes.
- Be receptive to claims and settle them early, where it is appropriate to do so.
- Treat disagreements and disputes objectively. Not allow a poor relationship with the Project Company to affect the approach taken to a dispute, and not let the existence of a dispute affect an otherwise positive relationship.
- Clarify ambiguous and unclear contract drafting before it leads to a dispute.
- Ensure settlement agreements are prepared with appropriate legal input to ensure the dispute or disagreement is unambiguously resolved.
- Consider the full costs of escalating a dispute and the chosen dispute resolution mechanism.

- Actively seek negotiated outcomes to disagreements and disputes, as such outcomes have the potential to be significantly more efficient.
- Appropriately prepare for and assemble adequate resources before entering into negotiation.
- Consider associated private partners, including the construction contractor, in the resolution of disagreements and disputes related to them, but subject to the terms of the Partnership Agreement.
- Where available, and in accordance with the Partnership Agreement, consider expert determination for disputes that are of a technical nature and appoint the right expert for expert determination.
- Consider the full implications of taking a dispute to court or arbitration, subject to the terms of the Partnership Agreement.
- Choose the right arbitrator(s), subject to the terms of the Partnership Agreement.
- At all times, maintain contract management files and documentation (including notices, letters and emails) in a format and in sufficient detail so that information is fit for purpose – should a dispute be escalated to arbitration or the courts.
- Develop an open and honest culture where sources of potential claims are identified early so that they can be mitigated to the greatest extent possible.

Default and termination

It is important that Partnership Agreements are managed in such a way that the Procuring Entity is able to identify early indications of potential default and proactively mitigate the risk of termination, although it should be noted that it may not always be possible to prevent a default.

Ultimately the Project Company is responsible for complying with the Partnership Agreement and there may be circumstances where the Procuring Entity should give serious consideration to terminating the Partnership Agreement and taking back the asset or re-tendering the project. In managing defaults and termination scenarios, the Procuring Entity should work closely with ADIO to:

- Be aware of the rights of both parties and any agreed pre-termination procedures in the Partnership Agreement and under applicable law.

- Monitor potential Project Company defaults to manage termination risk at an early stage.
- Consider termination and the full financial and non-financial implications of termination.
- Seek legal advice before issuing a termination notice.
- When terminating a Partnership Agreement, plan early to ensure service provision is uninterrupted.
- Where a substitute Project Company is required, consider all potential effects of the substitution.
- Consider the Project Company's lenders including any potential rights they may have to step into the Project Company's position under the Partnership Agreement.
- Consider any rights of the Procuring Entity to step in to take certain action in the Project Company's place.
- Monitor and ensure compliance with the Procuring Entity's obligations under the Partnership Agreement and applicable law.
- Monitor the performance of key contractors, whose termination can present a significant risk to a project.

Impact evaluation

At some stage during the life of a Partnership Agreement, it should be assessed whether or not the Partnership Project is performing as expected and whether public resources have been used wisely. Partnership Projects may be exposed to different types of ex-post reviews at different times during their performance and the same type of ex-post reviews may be conducted more than once during the contract period and for a variety of reasons. These reviews may be carried out by the Procuring Entity itself or by another Government entity or its nominee.

The objectives of evaluating performance and impact are:

- To improve future project implementation more effectively through learning lessons.
- To ensure accountability by demonstrating the state of implementation and its effects.

The Procuring Entity should ensure that it cooperates with such reviews to the full extent possible, while ensuring that they do not adversely affect the operation of the asset or delivery of the relevant service.