



MINISTRY OF DEFENCE

**MOD Private Finance Unit
Guidance Note
Assurance of PFI/PPP Projects**

Version 1.1 (Interim Guidance)

August 2009

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DOCUMENT CHANGE RECORD

This is a controlled document. Additional copies can be obtained through the issuing authority. Amendment shall be by whole document replacement. Proposals for change are to be forwarded to the issuing authority.

Issue No	Details Of Amendments Made	Amended By	Date
A	First draft for internal review.	A S Baker	Apr 09
B	Second draft for review.	A S Baker	May 09
1	First formal issue (Interim guidance only).	A S Baker	Aug 09
1.1	Change to PFU contact details	G N Oates	Sep 09

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Constraints

1. The EC Public Procurement Regulations apply to MOD contracts unless the nature of the work qualifies for an exemption. Reference must be made to the detailed policy and guidance on the mandatory procedures to be followed – available on the Acquisition Operating Framework.
2. In addition HM Treasury mandates the use of standardised terms and conditions for PFI contracts. Therefore all PFI projects/programmes shall comply with HM Treasury's Standardisation of PFI contracts (SoPC) version 4 and the MOD Standard Project Agreement version 1 (MOD PAV1) unless specific and explicit authority to derogate from it has been obtained from HM Treasury¹ (via MOD PFU) and MOD PFU².

Authoritative Guidance Summary

3. This guidance is intended for the acquisition community requiring or involved in Through Life Investment Assurance (hereafter referred to as "assurance"³) of defence Private Finance Initiative (PFI) and Public Private Partnership⁴ (PPP) projects and programmes in support of UK military capability and operations. It should be read in conjunction with other MOD guidance on assurance⁵. This guidance note does not relate to either scrutiny or due diligence of PFI/PPP projects/programmes.
4. This guidance note is published as interim guidance only pending more coherent MOD wide policy and guidance on assurance. It will be superseded once such policy and guidance is available.
5. It has been developed to advise on the process by which the MOD PFU, acquisition teams and functional lead assurers⁶, will ascertain the maturity status of a PFI/PPP project/programme through life, and in particular in the run up to critical project/programme milestones. The process will enable MOD PFU, acquisition teams and functional lead assurers, to focus on the key areas to be addressed to ensure a successful acquisition and subsequently delivery of defence capability. For areas assessed as deficient, remedial

¹ For SoPC4 derogations.

² For MoD PAV1 derogations.

³ It should be noted that assurance is a different activity to either commercial scrutiny or due diligence which is carried out by the Commercial Assurance & Due Diligence Team (CADD) team within the Commercial Assurance & Governance unit (of which the MoD PFU is also part).

⁴ PPP as defined by HM Treasury in Infrastructure Procurement delivering long-term value dated March 2008.

⁵ E.g. DE&S Through Life Capability Assurance guidance available on the Defence Intranet as described in DE&S Standing Instruction 21.

⁶ Functional lead assurers are those single points of contact, identified by Top Level Budget holders, who have the delegated responsibility for providing assurance of projects by functional area, e.g. commercial, finance, technical.

actions will be identified by the MOD PFU Project Support officer (PSO) to help move the project/programme maturity forward.

Authoritative Guidance

6. This guidance will assist the acquisition community, by articulating what MOD PFU expects from acquisition teams and functional lead assurers and what they should expect from the MOD PFU, and will assist:

- Acquisition teams in the development of tailored assurance plans;
- Functional lead assurers in providing assurance of PFI and PPP projects/programmes;
- Senior Responsible Owners (SROs) and Single Points of Accountability (SPAs) in ensuring project/programmes meet their objectives and deliver projected benefits by providing them with a structured impartial view of project/programme maturity, and;
- MOD PFU PSOs acting as subject matter experts to the functional lead assurers.

7. The objective of assurance is to provide the Top Level Budget (TLB) holders, SROs and SPAs with confidence in the investments that TLB is responsible for delivering, and to support acquisition teams in that delivery. Its key principles are:

- It is a through-life activity based on early engagement and agreement of a tailored Assurance Plan between functional lead assurers and project staff. Tailoring plans means that assurance evidence requirements are appropriate to the risks and issues specific to that project.
- It is about evidence-based sign-off by certified & specifically appointed functional lead assurers using subject matter expert advice, cluster based where appropriate to help the business get it "right first time".
- During the operational phase post contract signature, the focus of assurance should be on future actions or investment decisions in that phase (e.g. readiness for continued capability delivery, contract management or major changes). It is not intended to replace project evaluation as required by JSP 507, which is largely backwards looking.

8. Assurance statements will form one part of the evidence pack required by the scrutiny community when projects/programmes seek investment approvals and will be provided (on behalf of the TLB) by a functional lead assessor in each of the functional assurance areas (e.g. 1 Star Commercial Heads or Financial Controllers). These functional lead assurers may be based in a cluster or a central team, calling on subject matter experts for support as appropriate. The functional lead assessor will initially manage the

interfaces rather than handing the acquisition team on to a series of other experts.

9. In the case of PFI/PPP, the MOD PFU provides a central corporate focus for PFI/PPP policy and support within the MOD and provides DGDC, IAB and HM Treasury with corporate assurance that PFI/PPP projects are properly managed, governed and are viable, desirable and achievable and comply with current policy and legislation. Acquisition teams must consult the MOD PFU on all projects considering the use of private finance. Therefore, The MOD PFU will also expect functional lead assurers to consult the MOD PFU for subject matter advice before forming their own assurance opinion. This is particularly important in relation to potential derogations⁷ from HMT and MOD PFU mandated specific PFI terms and conditions in MOD PFI Agreement Version 1 – for which MOD PFU approval must be sought.

10. The benefits of assurance are to prevent poorly conceived, immature or unstable projects/programmes to proceed until appropriate action is taken to remedy their defects. Consequently, the assurance role needs to identify not only where projects/programmes are not appropriately structured, are making poor decisions, or are not sufficiently mature to proceed (especially prior to industry engagement or at the selection of preferred bidder), but should also identify the appropriate action to be taken. MOD PFU will therefore be robust in its provision of assurance advice in the interests of overall benefit to the MOD.

11. A list of evidence required by the MOD PFU and criteria used for establishing project/programme assurance (by phase) for each key PFI/PPP issue/risk (also known as critical success factors) is provided at Annex A. Annex B provides a guide to assessing the level of assurance established using the criteria and evidence mentioned above⁸. The list of “agreed issues/risks” are derived from the critical success factors of PFI/PPP projects/programmes as identified by the MOD PFU and supported by the MOD PFU’s own corporate risk analysis⁹ and other key sources, e.g. NAO report “Allocation and management of risk in MOD PFI projects”.

12. Acquisition teams (assisted by the functional lead assessor) are requested to provide the MOD PFU with full and open access to the required evidence (as identified in Annex A) in a timely manner through-out the life of the project as and when it is produced by acquisition teams; by means of ensuring MOD PFU is on the distribution/invite list of all project documents and meetings. They are also requested to ensure that project timescales allow sufficient time for assurance activities to take place. Where the MOD PFU believes that functional assurance is either not happening or is

⁷ See MOD PFU Guidance Note: MOD PFI Project Agreement Derogations Process, Version 1 dated May 2009.

⁸ In due course, MOD PFU hopes to provide more granular advice (by Phase) of what each assurance level looks like.

⁹ MOD PFU Risk Management Plan, Version 1 draft issue A dated Feb 09.

adequate, it may initiate an assurance “stocktake” review of the project in order to quickly establish an assurance snap-shot. Such “stocktake” will be based on the same issues/risks (critical success factors) and require the same evidence as outlined above.

13. The principle deliverable from the MOD PFU acting in the subject matter expert assurance role will be a written note (in the form at Annex C) jointly addressed to the functional assurance lead, acquisition team leader, and Senior Responsible Owner; copied to Head of CAG. It will provide a succinct summary of the issues arising from the assurance activity and making recommendations with regard to the action to be taken.

14. MOD PFU intends to use the same list of assurance issues/risks (critical success factors) as a means of corporately monitoring the MOD’s PFI/PPP portfolio of projects on a monthly basis. This reporting is principally internal to the MOD PFU and will help it identify trends and emerging issues, target advice/assistance and prioritise the development/promulgation of future guidance and best practice. Such monitoring does not remove the need for acquisition teams to have their own TLB and stakeholder project reporting mechanisms (in which the MOD PFU should also be a recipient) and the need for acquisition teams to engage with their TLB functional lead assurers when seeking investment decisions for changes post contract award. However, no additional reporting information is required from acquisition teams over and above the regular contact and provision of evidence outlined above.

Further Help and Support

15. Please contact the MOD PFU for all further help and support.

PFI ASSURANCE CRITERIA AND EVIDENCE REQUIREMENTS

<p>PFI Assurance Issue:</p>	<p>1. <u>Commercial risk allocation, transfer & management</u></p> <p>...to provide assurance that the PFI contract will be (or continues to be) <u>desirable</u> with all commercial & financial risks being comprehensively identified, analysed, allocated & managed in accordance with mandated policy and best practice. Risks shall be allocated to the party best placed to manage and cost them in a value for money way and supported by good historical data¹⁰.</p>	
<p>Commercial/Financial Assurance Guide Ref:</p>	<ul style="list-style-type: none"> • DE&S Commercial Assurance Guidance: 9. Risk • DE&S Finance Instruction: 06/08, "Through Life Financial Assurance": 3. Risk 	
<p>Relevant MOD policy/guidance used as measure for assurance:¹¹</p> <ul style="list-style-type: none"> • MOD PFU Guidance Note – MOD Standard Project Agreement v1 for PFI Projects • MOD PFU Guidance Note – Management of Risk in PFI Projects • JSP 507 • JSP 525 • AOF guidance on commercial risk allocation 	<p>Relevant external policy/guidance used as measure for assurance:</p> <ul style="list-style-type: none"> • HM Treasury: Standardisation of PFI contracts (SoPC) Version 4 • HM Treasury: The Orange Book, Management of Risk – Principles and Concepts • HM Treasury: The Green Book, [Appraisal and Evaluation in Central Government] • HMT Application note: interest-rate and inflation risks in PFI contracts • OGC Achieving Excellence Guide 4 - Risk and Value Management 	
<p>Evidence Required for each Procurement Phase</p>		
<p>All phases:</p> <ul style="list-style-type: none"> • Risk management plan & evidence of maturity assessment results • Risk register with qualitative and quantitative assessments, mitigations and fallback plans. To include analysis of performance, cost and time (3 point 		

¹⁰ Assurance does NOT include providing assurance of risk management plans, maturity assessments, optimism bias or risk assessments, but does include assurance of private finance related inputs/assumptions e.g. interest rates, & bank margins.

¹¹ Note: Bullet point text in **BOLD** indicates mandatory requirements.

estimates), optimism bias and evidenced with appropriate historical trend analysis. For Cat A/B projects, it is recommended that a Commercial risk allocation matrix (covering details of the allocation of commercial risks as allocated between the MOD and contractor via the contract) be completed to inform the risk register.

Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award:
	<ul style="list-style-type: none"> Summary of any changes to the risk allocation profile since the last phase. 	<ul style="list-style-type: none"> Project Agreement (incl all schedules) Bidders response to risk allocation matrix and draft Project Agreement confirming their acceptance of proposed risk allocations. Interface agreements (where applicable) Summary of any changes to the risk allocation profile since the last phase. 			<ul style="list-style-type: none"> Interface agreements (where applicable) Summary of any changes to the risk allocation profile since contract award. Risk analysis for any proposed major changes.

PFI Assurance Issue:	<u>2. Requirements (commercial articulation in an output based specification and demonstration/certification of it)</u> ...to provide assurance that the PFI contract will be (or continues to be) <u>viable</u> where the requirement (can be / is) suitable for the principles of PFI (e.g. stable and long term) in accordance with mandated policy and best practice and is articulated in a manner that is clear, robust, legally enforceable, output based, is able to be demonstrated, certified & verified using objective criteria traceable forwards/backwards to the commissioning tests/solution/SRD/URD/KURs and where ongoing performance is monitored, and delivery of the requirement is appropriately incentivised by aligning it fully with the payment and incentive mechanism. ¹²	
Commercial/Financial Assurance Guide Ref:	DE&S Commercial Assurance Guidance: 1. Commercial scope/Requirement & 19. Acceptance Criteria	
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • MOD PFU Guidance Note – MOD Standard Project Agreement v1 for PFI Projects • MOD PFU Guidance Note – Demonstration & Certification of PFI Services • [MOD PFU Guidance Note – Output based Requirements for PFI Projects]¹³ 	Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • HM Treasury: Standardisation of PFI contracts (SoPC) Version 4 • OGC Achieving Excellence Guide 9 - Design Quality • OGC Achieving Excellence Guide 10 - Through Health and Safety • OGC Common Minimum Standards • HMT Technical Note 7: How to Achieve Design Quality in PFI Projects 	
Evidence Required for each Procurement Phase		
All phases: <ul style="list-style-type: none"> • Key User Requirements¹⁴ • User Requirement Document • Historical data and trend analysis to support requirement¹⁵ 		

¹² Assurance does NOT include assurance of the requirement itself or that it meets the customers needs.

¹³ In draft.

¹⁴ Including whether the original KURs are still valid for signed projects.

Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award:
	<ul style="list-style-type: none"> • Service/System Requirements Document¹⁶ (SRD) (as a schedule in Project Agreement) • Requirement traceability matrix (mapping KURs-URD-SRD-solution-demo/cert) • Description of Service Levels up to full service and Mechanism for transition to full service 				
	<ul style="list-style-type: none"> • ITN/ITT (instructions to bidders) • Design review process/mechanism (as a schedule in Project Agreement) • Demonstration/certification mechanism (as a schedule in Project Agreement) • Independent Certifier deed of appointment (as a schedule in Project Agreement) • Evidence of Customer/Sponsor sign-off of SRD 	<ul style="list-style-type: none"> • Design review process/mechanism (as a schedule in Project Agreement) • Demonstration/certification mechanism (as a schedule in Project Agreement) • Independent Certifier deed of appointment (as a schedule in Project Agreement) • Bidders acceptance of SRD (as a schedule in Project Agreement) • Evidence of Customer/Sponsor sign-off of SRD • Demonstration/Certification/Commissioning Test programme plan 	<ul style="list-style-type: none"> • System Demonstration Schedule(s) • Demonstration/Certification/Commissioning Test programme plan 		

¹⁵ Robust data is needed if project teams are to specify their requirements accurately and make clear to contractors the risks being transferred to them. Acquisition teams should ensure that the initial planning stage of each project includes the production of suitably robust data on any existing use of the required service, forecast usage and the condition of assets being transferred to the private sector. The PFU should check that this information is available before bidding competitions commence.

¹⁶ Also known as a Statement of Requirement (SOR) or Comprehensive Core Requirements (CCR) document.

PFI Assurance Issue:	3. Timescales (timetable and strategy to close & in-service delivery) ...to provide assurance that the PFI contract will be (or continues to be) <u>achievable</u> where the plan & timescales proposed are realistic (when allowing for past performance, best practice, available IPT/industry resources & skills and when compared to relevant guidance), and are sufficiently detailed for the project phase identifying all key activities reflecting PFI acquisition processes.				
Commercial/Financial Assurance Guide Ref:	DE&S Commercial Assurance Guidance: 14. Contractual Process				
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • [MOD PFU Guidance Note - Negotiation of PFI Projects]¹⁷ • [MOD Guidance Note – Tips on using estimates, assumptions & cost inputs when analysing affordability & vfm of PFI projects]¹⁸ • AOF guidance 			Relevant external policy/guidance used as measure for assurance:		
Evidence Required for each Procurement Phase					
All phases: <ul style="list-style-type: none"> • Project gantt chart or timetable (plan relevant to phase) • Fallback Plan (and trigger points) 					
Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award:
		<ul style="list-style-type: none"> • Bidders acceptance of agreed timetable • Negotiation timetable/diary with key dates and outline agendas 			<ul style="list-style-type: none"> • Evidence of performance against contract timescales (assets)

¹⁷ In draft.

¹⁸ To be drafted.

			<p>being delivered on time and contract milestones achieved)</p> <ul style="list-style-type: none">• Evidence of timescales processing/delivering changes
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PFI Assurance Issue:	4. <u>Affordability (and whole life costs)</u> ...to provide assurance that the PFI contract will be (or continues to be) <u>achievable</u> where the project/programme whole life cost estimates are comprehensive, robust, accurate, valid, have been benchmarked, independently certified or obtained in competition, make appropriate allowance for risk, and are affordable against the agreed budget. ¹⁹	
Commercial/Financial Assurance Guide Ref:	DE&S Finance Instruction: 06/08, "Through Life Financial Assurance": 2. Affordability & 4. Estimates	
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • MOD PFU Guidance Note - Assessing Value for Money for PFI Projects • JSP 507 • Resource Accounting Bulletins (e.g. RAB 472/462 & RATb13) • Departmental budgeting guidance • Departmental plans • [MOD Guidance Note – Tips on using estimates, assumptions & cost inputs when analysing affordability & vfm of PFI projects]²⁰ 	Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • International Accounting standards (e.g. IFRS and/or ESA95) • OGC Achieving Excellence Guide 7 - Whole-Life costing • HMT Value for Money Assessment Guidance, dated Nov 2006 	
Evidence Required for each Procurement Phase		
All phases: <ul style="list-style-type: none"> • Indicative costs, e.g. reference or should cost model • Affordability analysis (including modelling various payment mechanism scenarios including updated inflation assumptions) • Quantitative cost risk analysis and optimism bias, evidenced with appropriate historical trend analysis. • Master Data Assumption List (MDAL) 		

¹⁹ Assurance does NOT include assurance of any affordability analysis, but does include confirmation of any accounting treatment analysis with NAO.

²⁰ To be drafted.

Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award:
<ul style="list-style-type: none"> Project Funding Responsibility Matrix (PFRM) Confirmation from appropriate authority of tax (incl VAT) & accounting treatments 					
	<ul style="list-style-type: none"> Confirmation from the acquisition team and its financial advisors that the project is affordable in CDEL/RDEL in total and profile Balance Sheet treatment paper 		<ul style="list-style-type: none"> Bidder's/Contractor's financial model(s) & cost analysis 		<ul style="list-style-type: none"> Bidder's/Contractor's financial model(s) & cost analysis
	<ul style="list-style-type: none"> ITN/ITT (instructions to bidders) 	<ul style="list-style-type: none"> Bidder's/Contractor's financial model(s) & cost analysis 	<ul style="list-style-type: none"> Bidder's/Contractor's financial model(s) & cost analysis Financial model audit report 		

PFI Assurance Issue:	5. <u>Value for Money (VFM)</u> ...to provide assurance that the PFI contract will be (or continues to be) <u>value for money (i.e. viable, desirable & achievable)</u> where the project/programme VFM analysis is comprehensive, robust, accurate, valid, with inputs benchmarked, independently certified or obtained in competition, an appropriate allowance for risk, in accordance with relevant guidance.	
Commercial/Financial Assurance Guide Ref:	DE&S Finance Instruction: 06/08, "Through Life Financial Assurance": 1. Value for Money & 4. Estimates	
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • MOD PFU Guidance Note - Assessing Value for Money for PFI Projects • MOD PFU Guidance Note – MOD Standard Project Agreement v1 for PFI Projects • MOD PFU Guidance Note – VFM reviews • [MOD Guidance Note – Tips on using estimates, assumptions & cost inputs when analysing affordability & vfm of PFI projects]²¹ • JSP 507 	Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • HMT Value for Money Assessment Guidance, dated Nov 2006 • HMT Value for Money Quantitative Assessment Guide, dated Nov 2006 • HM Treasury: Standardisation of PFI contracts (SoPC) Version 4 • Value Testing HMT/PUK guidance • OGC Getting Value for Money from Construction Projects through Design • Operational Taskforce Note 1: Benchmarking and Market Testing Guidance • HM Treasury: The Green Book, [Appraisal and Evaluation in Central Government] • OGC Best Practice - VFM - Evaluation in Complex Procurement 	
Evidence Required for each Procurement Phase		
All phases: <ul style="list-style-type: none"> • COEIA/IA • Master Data Assumption List (MDAL) 		

²¹ To be drafted.

Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award ²² :
<ul style="list-style-type: none"> Stage 1 & 2 qualitative & quantitative vfm assessments 	<ul style="list-style-type: none"> Confirmation from acquisition team and its financial advisors²³ that the proposed contract is VFM Value testing & VFM Review mechanism in the Project Agreement Benefits realisation plan 				<ul style="list-style-type: none"> Value testing (Benchmarking & Market Testing) & VFM Review reports Project Evaluations, LFE reports and OGC Gateway 5 reports Benefits tracking and evidence of benefits realisation
	<ul style="list-style-type: none"> Stage 2 qualitative & quantitative vfm assessments Plans for a funding competition 	<ul style="list-style-type: none"> Stage 3 qualitative & quantitative vfm assessments Plans for a funding competition 	<ul style="list-style-type: none"> Stage 3 qualitative & quantitative vfm assessments Plans for a funding competition 	<ul style="list-style-type: none"> Stage 3 qualitative & quantitative vfm assessments Evidence of & results from funding competition 	

²² The focus post contract award is assurance of ongoing vfm and continuous improvement. This may be demonstrated via benchmarking, market testing or vfm reviews.

²³ External Assistance advisors letter of support addressed to MoD PFu must cover:

Whether the deal is appropriately structured to deliver the commercial outcome the MoD is seeking and that it is a realistic commercial position that represents value for money and is deliverable and financeable in the current PFI market;

Whether the commercial aspects of the project have reached an appropriate level of maturity to support the current phase of engagement with the market and identify significant areas outstanding where the MoD could be exposed to risk of increased cost or delay through lack of maturity; and

Whether the timetable proposed to deal close is realistic indicating key risks that may impact on the delivery of the timetable.

PFI Assurance Issue:	6. <u>Contracting strategy & terms and conditions of contract (Project Agreement)</u> ...to provide assurance that the PFI contract will be (or continues to be) <u>viable, desirable and achievable</u> where the contracting strategy is based on sound market intelligence & industry engagement, and the contract, negotiation & tender evaluation strategies are in accordance with legislation, procurement rules, mandated policy and best practice.	
Commercial/Financial Assurance Guide Ref:	DE&S Commercial Assurance Guidance: 1. Commercial scope/Requirement, 3. Commercial Approach, 6. Market Analysis/Supplier Capability & capacity, 14. Contractual Process, 15. Contract Conditions, 18. Contract Signature & Implementation	
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • MOD PFU Guidance Note – MOD Standard Project Agreement v1 for PFI Projects • MOD PFU Guidance Note – SoPC Derogations Process • MOD PFU Guidance Note – Preparing the Invitation to Negotiate for PFI Projects • MOD PFU Guidance Note – Market Soundings for PFI Projects • MOD PFU Guidance Note – Pre-Qualification Questionnaires for PFI Projects • MOD PFU Guidance Note – Selection of a Preferred Bidder for PFI Projects • MOD PFU Guidance Note – Convergence Phase for PFI Projects using the Negotiated Procedure 	Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • Legislation, EU Procurement Rules & MOD procurement policy • HM Treasury: Standardisation of PFI contracts (SoPC) Version 4 • Treasury Taskforce Technical Note 4: How to Appoint and Work with a Preferred Bidder • HMT Operational Taskforce Note 2: Project Transition guidance • Competitive Dialogue in 2008: OGC/HMT Joint Guidance on using the procedure • OGC Achieving Excellence Construction Projects Pocketbook • OGC Making competition work for you • OGC Early Market Engagement: principles & examples of good practice • OGC Achieving Excellence Guide 6 - Procurement and Contract Strategies • OGC Achieving Excellence Guide 3 - Project Procurement Lifecycle • OGC Achieving Excellence Guide 1 - Initiative into Action • OGC Best Practice - Improving procurement efficiency to achieve faster delivery • HMT Guidance Note: The Use of Internal Rates of Return in PFI Projects 	

- HMT Guidance: Opinion Letters

Evidence Required for each Procurement Phase

All phases:

- List of dependencies, incl GFA etc & confirmation of supply from “owner”

Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award ²⁴ :
<ul style="list-style-type: none"> • Acquisition, Procurement & Support strategies (covering outline procurement plan with procurement options) • Prior Indicative Notice (PIN) • Market sounding results/report (Market/supplier) 	<ul style="list-style-type: none"> • Acquisition, Procurement & Support strategies • Project Agreement (incl all schedules) • ITN/ITT • POQ & results (assessment of contractors/bidders) 	<ul style="list-style-type: none"> • Acquisition, Procurement & Support strategies • Project Agreement (incl all schedules) • Master issues list (against every clause & schedule in PA) • Negotiation Strategy document • Negotiation strategies for all key issues (in master issues list) outstanding in PA • SoPC4 & MOD PAv1 derogations matrix and PFU/PUK approval • Bidders acceptance of Project Agreement (incl schedules) • Monthly dialogue/negotiation status summary reports²⁶ 		<ul style="list-style-type: none"> • Acquisition, Procurement & Support strategies (especially for fall-back plans in the event of default or termination) • Project Agreement (incl all schedules)²⁷ • Negotiation Strategy document 	

²⁴ The focus post contract award is assurance of ongoing vfm and continuous improvement. This may be demonstrated via benchmarking, market testing or vfm reviews.

²⁵ External Assistance advisors letter of support addressed to MoD PFu must cover:

Whether the deal is appropriately structured to deliver the commercial outcome the MoD is seeking and that it is a realistic commercial position that represents value for money and is deliverable and financeable in the current PFI market;

Whether the commercial aspects of the project have reached an appropriate level of maturity to support the current phase of engagement with the market and identify significant areas outstanding where the MoD could be exposed to risk of increased cost or delay through lack of maturity; and

Whether the timetable proposed to deal close is realistic indicating key risks that may impact on the delivery of the timetable.

²⁶ Using traffic light or RAYG system showing maturity of each clause, schedule and project document (e.g. sub-contracts, shareholders agreements) against the following maturity levels:

- I principles established, but not yet drafted in detail
- II largely drafted in detail, but not yet agreed with bidder(s)
- III fully drafted and agreed with bidder(s) with no material outstanding issues
- IV fully drafted and agreed with bidder(s) with no outstanding issues

<p>assessment)</p> <ul style="list-style-type: none"> • Case for dispensing with competition (if relevant) • Contract term – evidence of analysis & justification 	<ul style="list-style-type: none"> • OJEU/CB advert • Negotiation Strategy document • Negotiation strategies for all key issues (in master issues list) outstanding in PA • SoPC4 & MOD PAV1 derogations matrix and PFU/PUK approval • Market sounding results/report (Market analysis) • Legal advisors letter of support²⁵ • Tender evaluation strategy/plan (selection criteria) • Case for dispensing with competition (if relevant) • Contract term – evidence of analysis & justification 	<ul style="list-style-type: none"> • Tender evaluation report & tender evaluation panel minutes • Tender evaluation strategy/plan (selection criteria) • Legal advisors tender evaluation report • Legal advisors letter of support 	<ul style="list-style-type: none"> • Legal advisors letter of support • Bidders acceptance of Project Agreement (incl schedules) 	<ul style="list-style-type: none"> • Bidders acceptance of Project Agreement (incl schedules) • Transition Plans 	<p>(for changes)</p> <ul style="list-style-type: none"> • Negotiation strategies for all key issues – if required for changes • SoPC4 & MOD PAV1 derogations matrix and PFU/PUK approval – if required for changes
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²⁷ Projects closed pre SoPC3, SoPC4 and MOD PAV1 mandates are not required to conform to these standardised terms and conditions. However, where major changes are being considered or where contract management highlights shortcomings in contract drafting, SoPC and/or MOD PAV1 drafting may be considered as proposed amended drafting subject to contractor and lender agreement.

PFI Assurance Issue:	7. <u>Payment/incentive mechanism & performance management</u> ...to provide assurance that the PFI contract will be (or continues to be) <u>viable and desirable</u> where the payment and incentive mechanism and performance reporting is understood and in accordance with mandated policy and best practice, is linked to and appropriately incentives delivery of the requirement, with no scope for price movement.				
Commercial/Financial Assurance Guide Ref:	DE&S Commercial Assurance Guidance: 16. Pricing & Incentivisation, 17. Payment & 20. Performance Management				
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> [MOD PFU Guidance Note – Payment & Incentive Mechanisms for PFI Projects]²⁸ 			Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> HM Treasury: Standardisation of PFI contracts (SoPC) Version 4 		
Evidence Required for each Procurement Phase					
Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award²⁹:
<ul style="list-style-type: none"> Principles for how the Performance monitoring, Payment & incentive mechanism will 	<ul style="list-style-type: none"> Performance monitoring, Payment & incentive mechanism Calibration methodology and results (spreadsheet) Historical trend analysis (e.g. usage data) Financial advisors letter of support³⁰ 			<ul style="list-style-type: none"> Performance monitoring, Payment & incentive mechanism 	

²⁸ In draft.

²⁹ The focus post contract award is assurance of ongoing vfm and continuous improvement. This may be demonstrated via benchmarking, market testing or vfm reviews.

³⁰ External Assistance advisors letter of support addressed to MoD PFu must cover:

Whether the deal is appropriately structured to deliver the commercial outcome the MoD is seeking and that it is a realistic commercial position that represents value for money and is deliverable and financeable in the current (2009) PFI market;

Whether the commercial aspects of the project have reached an appropriate level of maturity to support the current phase of engagement with the market and identify significant areas outstanding where the MoD could be exposed to risk of increased cost or delay through lack of maturity; and

Whether the timetable proposed to deal close is realistic indicating key risks that may impact on the delivery of the timetable.

<p>work</p> <ul style="list-style-type: none"> Historical trend analysis (e.g. usage data) 	<ul style="list-style-type: none"> Evidence of dry runs or piloting on existing services 			<ul style="list-style-type: none"> Evidence confirming adequacy of performance reporting, helpdesk and sharing of contractor generated management information (e.g. MIS) Data summarising level of deductions or service credits to date (as % of unitary charge) and any waived deductions or service credits (if any) Notices/warnings of poor performance (if any) Details of step-in events (if any) Evidence of deductions or service credits affecting the contractor's behaviour (i.e. incentivising the 'right' behaviours) Evidence of periodic audit of
<ul style="list-style-type: none"> ITN/ITT (instructions to bidders) Protocol for calibration post Preferred Bidder 	<ul style="list-style-type: none"> Protocol for calibration post Preferred Bidder Tender evaluation report Bidders acceptance of payment/incentive mechanism & calibration (& protocol) 	<ul style="list-style-type: none"> Bidders acceptance of payment/incentive mechanism & calibration (& protocol) 		

³¹ Including assessment of the appropriateness of the systems used to validate contractors' service performance. In particular acquisition teams should be alert to the risk of the extent of successful service delivery being overstated in situations where this would not result in an adverse experience for users of the service. Acquisition teams should carry out additional audit work of the performance monitoring systems, consider whether the performance data being provided is adequate and carry out spot checks of the authenticity of the underlying data.

				<p>the performance management system³¹</p> <ul style="list-style-type: none">• Customer survey results• Third party income
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PFI Assurance Issue:	8. Flexibility for variations and changes ...to provide assurance that the PFI contract will be (or continues to be) <u>viable</u> where the change (incl exit) strategy/mechanism is based on a sound understanding of potential future changes and historical trends and is in accordance with mandated policy and best practice.				
Commercial/Financial Assurance Guide Ref:	N/A				
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • MOD PFU Guidance Note – MOD Standard Project Agreement v1 for PFI Projects • MOD PFU Guidance Note – Change Management in PFI 			Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • HM Treasury: Standardisation of PFI contracts (SoPC) Version 4 • Operational Taskforce Note 3: Variations Protocol for Operational Projects 		
Evidence Required for each Procurement Phase					
All phases: <ul style="list-style-type: none"> • Analysis of potential future changes 					
Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award³²:
<ul style="list-style-type: none"> • Historical trend analysis (e.g. volume and type of past changes) 	<ul style="list-style-type: none"> • Change mechanism in Project Agreement • Historical trend analysis (e.g. volume and type of past changes) • Project Agreement (to check exit strategies/termination break points, termination provisions (incl related IPR), change in law provisions etc) • Process for change management & control of customer requirements 			<ul style="list-style-type: none"> • Process for change management & control of customer requirements • List of proposed/planned 	

³² The focus post contract award is assurance of ongoing vfm and continuous improvement. This may be demonstrated via benchmarking, market testing or vfm reviews.

		<ul style="list-style-type: none"> • Bidders (and lenders) acceptance of change mechanism • List of changes to the customers requirement and any proposed/planned changes 	<p>changes (including all nil costed, Authority proposed, urgent, and/or Contractor proposed changes)</p> <ul style="list-style-type: none"> • List (e.g. change register) & copies of all agreed changes³³ (including all nil costed, Authority proposed, urgent, and/or Contractor proposed changes) Evidence of changes being processed and agreed with the contractor in an efficient and timely manner
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³³ Including evidence of undertaking regular assessments (at least yearly) of factors that could affect future requirements and the impact these may have, and when considering a possible change in the use of an asset delivered by the private sector take, evidence that account has been taken that the MOD become liable for repairs arising from the change.

PFI Assurance Issue:	9. <u>Financing structure, availability of finance & Special Purpose Vehicle (SPV) robustness</u> ...to provide assurance that the PFI contract will be (or continues to be) <u>achievable</u> where the private finance is demonstrably available, structured in a cost effective way and the SPV is demonstrably robust, in accordance with mandated policy and best practice.				
Commercial/Financial Assurance Guide Ref:	DE&S Commercial Assurance Guidance & DE&S Finance Instruction: n/a				
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • MOD PFU Guidance Note – MOD Standard Project Agreement v1 for PFI Projects • MOD PFU Guidance Note – Refinancing of PFI Projects • [MOD PFU Guidance Note – Financing PFI Projects]³⁴ • MOD PFU Guidance Note – Preparing the Invitation to Negotiate for PFI Projects 			Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • HM Treasury: Standardisation of PFI contracts (SoPC) Version 4 • HMT Guidance: Preferred Bidder Debt Funding Competitions - draft outline guidance for feedback • HMT Guidance: Refinancing of Early PFI Transactions - Code of Conduct • HMT Guidance Note: Calculation of the Authority's Share of a Refinancing Gain • HMT Covering Note: Value for Money in Refinancings • HMT Application Note: Value for Money in Refinancings 		
Evidence Required for each Procurement Phase					
Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award³⁵:
<ul style="list-style-type: none"> • Market sounding results/report (Market analysis) 	<ul style="list-style-type: none"> • ITN/ITT (instructions to bidders) • Financial advisors letter of support 	<ul style="list-style-type: none"> • Financial advisors tender evaluation report • Financial advisors letter of support confirming the contract is bankable, appropriately/efficiently structured and robust • Bidders proposals (incl term sheets, finance documents, funder letters) 			<ul style="list-style-type: none"> • Evidence/results/plans for Refinancing • Evidence of SPV change of

³⁴ In draft.

³⁵ The focus post contract award is assurance of ongoing vfm and continuous improvement. This may be demonstrated via benchmarking, market testing or vfm reviews.

	<p>confirming the contract is bankable, appropriately/efficiently structured and robust</p> <ul style="list-style-type: none"> • Plans for a funding competition • Plans for Parent Company Guarantees and/or Collateral Warranties 	<p>of support)</p> <ul style="list-style-type: none"> • Parent Company Guarantees and/or Collateral Warranties 		<p>control/ownership</p> <ul style="list-style-type: none"> • Evidence of change of key sub-contractors • Evidence of call on Parent Company Guarantees and/or Collateral Warranties
		<ul style="list-style-type: none"> • Plans for a funding competition 	<ul style="list-style-type: none"> • Evidence of & results from funding competition 	

PFI Assurance Issue:	10. <u>Project/Programme Governance & leadership</u> ...to provide assurance that the PFI contract will be (or continues to be) <u>achievable</u> where the project governance arrangements are agreed, demonstrably effective and in accordance with mandated policy and best practice.				
Commercial/Financial Assurance Guide Ref:	N/A				
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> [MOD PFU Guidance Note – Project Governance in PFI]³⁶ 			Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> HM Treasury guidance “Project Governance: a guidance note for public sector bodies” Association for Project Management “Directing Change: A Guide to governance of project management” OGC Common causes of project failure 		
Evidence Required for each Procurement Phase					
All phases: <ul style="list-style-type: none"> Project governance document Evidence of effective project governance in action (e.g. minutes and/or PFU attendance of board meetings confirming effective decision making and management) 					
Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award³⁷:
		<ul style="list-style-type: none"> Details of bidders governance arrangements 			

³⁶ In draft.

³⁷ The focus post contract award is assurance of ongoing vfm and continuous improvement. This may be demonstrated via benchmarking, market testing or vfm reviews.

					<ul style="list-style-type: none">• Details of how any proposed joint governance with the Contractor will work
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PFI Assurance Issue:	11. <u>Acquisition team skills & resources (incl External Assistance)</u> ...to provide assurance that the PFI contract will be (or continues to be) <u>achievable</u> where the acquisition team skills & resources are sufficient, appropriate and of the right mix in accordance with mandated policy and best practice in order to deliver the project.	
Commercial/Financial Assurance Guide Ref:	DE&S Commercial Assurance Guidance: 2. Team Resources	
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • MOD PFU Guidance Note – Contract Management in PFI • Portfolio, Programme and Project Management Maturity Model • Defence Instructions & Notices: PPP/PFI Legal Framework Agreement, 2006DIN04-110 dated Aug 2006 • Defence Instructions & Notices: Framework Agreement for Financial Advice & Support for PFI & Partnering Projects, 2007DIN05-003 dated 2007 • Defence Instructions & Notices: General Insurance Brokerage advice & assistance, 2007DIN08-020 dated 2007 	Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • HMT Operational Taskforce Note 2: Project Transition guidance • OGC Best Practice Portfolio • Programme & Project Management Specialism Brochure • Skills Framework & Skills Framework Assessment Guide • Achieving Excellence Guide 2 - Project Organisation • Achieving Excellence Guide 5 - The Integrated Project Team • HMT Technical Note 3: How to Appoint and Manage Advisers to PFI Projects 	
Evidence Required for each Procurement Phase		
All phases: <ul style="list-style-type: none"> • Details of team resources & skills (quantity, experience, mix of skills), vacancies & gapping of business critical posts, and succession plans³⁸ • Contract Management Plan (part of TLMP) • Business cases for External Assistance • 6 monthly EA reviews & reports 		

³⁸ Acquisition teams should ensure that at least one senior member of the team remains in post for the first year after the contract has been let, to ensure that there is a suitable transfer of knowledge to the team who will manage the contract.

PFI Assurance Issue:	12 <u>Contract management and industry relationships</u> ...to provide assurance that the PFI contract will be (or continues to be) <u>achievable</u> where the contract management arrangements and industry relationships are effective and in accordance with mandated policy and best practice.				
Commercial/Financial Assurance Guide Ref:	DE&S Commercial Assurance Guidance: 22. Contract Management & Project Review/Evaluation				
Relevant MOD policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • MOD PFU Guidance Note – MOD Standard Project Agreement v1 for PFI Projects • MOD PFU Guidance Note – Contract Management of PFI Projects 			Relevant external policy/guidance used as measure for assurance: <ul style="list-style-type: none"> • HM Treasury: Standardisation of PFI contracts (SoPC) Version 4 • OGC Best Practice - How Major Service Contracts Can Go Wrong • HMT Technical Note 6: How to Manage the Delivery of Long Term PFI Contracts • OGC Best Practice - Managing partnering relationships • OGC Best Practice - Forming partnering relationships with private sector in an uncertain world 		
Evidence Required for each Procurement Phase					
All phases: <ul style="list-style-type: none"> • Contract Management plan 					
Up to Initial Gate:	Up to Market Engagement:	Up to close dialogue and Preferred Bidder appointment:	Up to Main Gate:	Up to Contract Award:	Post Contract Award³⁹:

³⁹ The focus post contract award is assurance of ongoing vfm and continuous improvement. This may be demonstrated via benchmarking, market testing or vfm reviews.

	<ul style="list-style-type: none"> • Liaison schedule(s) in PA • Relationship management plan – if any • Monthly project reports/briefs to TLB & stakeholders (where available) 				<ul style="list-style-type: none"> • Evidence of contract management being implemented in accordance with the plan • Systematic user satisfaction assessment results, project evaluation or Learning from Experience reports • Contract user guide • User guide to services provided • Relationship management plan & results of any formal relationship measurement (e.g. SCRIA and/or SMCPM) – if any • Partnering Principles Agreement (if any) • Evidence of contract management meetings being held with Contractor (e.g. via minutes and/or PFU attendance) • Evidence of issue resolution and any Disputes • Evidence of any
<ul style="list-style-type: none"> • Tender evaluation plan 	<ul style="list-style-type: none"> • Tender evaluation report • Evidence of consortia/bidder behaviour & cohesion 	<ul style="list-style-type: none"> • Tender evaluation report • Evidence of consortia/bidder behaviour & cohesion • Partnering Principles Agreement (if any) 	<ul style="list-style-type: none"> • Contract user guide • Evidence of consortia/bidder behaviour & cohesion • Partnering Principles Agreement (if any) 		

					<p>step-in rights being exercised</p> <ul style="list-style-type: none">• Evidence of SPV accounts, records and insurances being reviewed annually• Evidence of any annual re-certification exercises• Evidence of any annual insurance reviews conducted• Monthly project reports/briefs to TLB & stakeholders (where available)• Evidence that collocation of MOD & Contractor staffs (where applicable) is facilitating better working relationships
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PFI PROJECT/PROGRAMME ASSURANCE ASSESSMENT GUIDE

	No assurance to proceed	Limited Assurance to proceed	Full Assurance to proceed
Individual Issue/Risk Assessment & Assurance statement	<p>RED</p> <p>MOD PFU recommends that the functional lead assesor provides NO assurance that the PFI contract will be (or continues to be) [viable/desirable/<u>achievable</u>⁴⁰] where [<i>insert assurance issue/risk statement from Annex A</i>].</p>	<p>AMBER</p> <p>MOD PFU recommends that the functional lead assesor provides LIMITED assurance that the PFI contract will be (or continues to be) [viable/desirable/<u>achievable</u>] where [<i>insert assurance issue/risk statement from Annex A</i>].</p>	<p>GREEN</p> <p>MOD PFU recommends that the functional lead assesor provides FULL assurance that the PFI contract will be (or continues to be) [viable/desirable/<u>achievable</u>] where [<i>insert assurance issue/risk statement from Annex A</i>].</p>
Overall Issue/Risk Assessment	<p>1. The issues / risks to delivery of the next phase of the investment proposal have not been identified and an agreed assurance plan established.</p> <p>and/or</p> <p>2. The level of unmitigated risk/issues is unacceptable</p> <p>and/or</p> <p>3. The assurance evidence fails to address mandated assurance requirements.</p>	<p>1. The issues / risks identified in the assurance evidence indicate a level of risk that is likely to threaten delivery within the approval parameters.</p>	<p>1. The agreed issues / risks are fully mitigated by the assurance evidence or</p> <p>mitigated with the exception of minor risks for which agreed mitigation is in the course of completion.</p>
Overall Assurance	RED	AMBER	GREEN

⁴⁰ Delete as appropriate.

<p>statement</p>	<p>1. Assurance has not taken place against an agreed assurance plan and/or</p> <p>2. The unmitigated risks/issues identified below are considered to be unacceptable and must be mitigated/ resolved before progression of the investment proposal can take place. Risks/Issues: Predicted Impact without Mitigation:</p> <p>and/ or</p> <p>3. The following mandated assurance requirement has not been met - Mandated Assurance Requirement:</p>	<p>Assurance has identified the following major risks /issues remain unmitigated and must be considered prior to endorsement/approval: - Risks/Issues: Predicted Impact without Mitigation:</p>	<p>Assurance has confirmed all major risks / issues to delivery have been identified and mitigated. The following agreed minor risks are in the course of being mitigated and are not considered to prevent progression of the investment proposal.</p>
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MOD PFU TEMPLATE ASSURANCE LETTER



Andy Baker

Head of MOD Private Finance Unit
Deputy Head Commercial Assurance & Governance

Spruce 1c, #1115
MOD Abbey Wood
Bristol, BS34 8JH

Tel: 0117 9132639

Email: Andrew.Baker700@mod.uk

To....

Please reply to:

Our Reference:

Date:

PROJECT [NAME] – MOD PFU THOROUGH LIFE ASSURANCE REPORT

Dear [names],

1. The MOD PFU has conducted an assurance review in accordance with MOD PFU Guidance Note: Assurance of PFI/PPP Projects Version 1 and has assessed the assurance status of the project as [Red/Amber/Green] and therefore recommends the functional lead assessor provides [no/limited/full] assurance that the [name] project is currently viable, desirable or achievable. The reasons for this assessment and recommendations to address the issues identified are detailed below.

2. [insert relevant assurance statements from Annex B above].

A S Baker

Annex:

A. MOD PFU Assurance Comments & Recommendations

Copy to:

[copy addressees]

MOD PFU SUBJECT MATTER ASSURANCE COMMENTS & RECOMMENDATIONS

	Issue	Assurance Statement & Remarks	Recommendation	Assurance Status
1	Commercial risk allocation & management	[insert comments and list of evidence seen and evidence required but not yet seen]	[insert recommendations]	[insert Red/Amber/Green]
2	Requirements (commercial articulation and acceptance/demonstration of)			
3	Time (timetable and strategy to close & in service delivery)			
4	Affordability (and whole life costs)			
5	Value for money (VFM) & ongoing VFM testing			
6	Contracting strategy & Project Agreement (contract) compliance with mandatory drafting			
7	Payment & incentive mechanism			
8	Flexibility for variations and changes			

	Issue	Assurance Statement & Remarks	Recommendation	Assurance Status
9	Financing structure & Special Purpose Vehicle (SPV) robustness			
10	Project/Programme Governance & leadership			
11	Acquisition team skills & resources			
12	Commercial relationship management (consortia/bidder/contractor behaviours & cohesion, and contract management plan/strategy etc)			