



**MOD Private Finance Unit  
Guidance Note  
Convergence Phase for PFI Projects  
using the Negotiated Procedure**

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## DOCUMENT CHANGE RECORD

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# Convergence Phase for PFI Projects using the Negotiated Procedure

## 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 guidance on the mandatory procedures to be followed.

## Authoritative Guidance Summary

2. This document provides guidance on the use and implementation of the Convergence phase in PFI projects using the Negotiated Procedure.

## The Convergence Process

3. Convergence can be defined as a process for progressively exploring uncertain areas of the projects scope, definition and acquisition strategy through an open exchange with industry and other stakeholders utilising papers, workshops and presentations. The process aims to encourage the required culture change by creating an environment that facilitates a continuous dialogue between the Authority and Suppliers.
4. Convergence is a flexible tool that can be adapted to meet the individual needs of projects. The main aims of such a phase are likely to be:
  - To develop and resolve key issues;
  - To assist in developing the scope and definition of the project;
  - To assist in the drafting of the ITN;
  - To provide sufficient information to inform a decision on the preferred procurement route by identifying and, to the extent possible, costing risk transfers and other areas of potential benefit;
  - To produce a fair and sensible method for down-selection, where appropriate, from the long list of bidders who pre-qualified to a short list of bidders who will receive the ITN;
  - To speed up the overall procurement process;
  - To build a partnering relationship with bidders.
5. From an Industry viewpoint the advantages of Convergence are likely to include:
  - It provides a deeper understanding of the requirement thus enabling better commercial decisions to be made;
  - It allows concerns to be addressed at the earliest opportunity;
  - It provides a basis for developing a partnering relationship with the Authority;

- It provides sufficient information to start developing technical and commercial solutions;
  - It aims to speed up the overall procurement.
6. Before embarking on the Convergence process project teams need to carefully consider what they want to achieve from the phase and whether Convergence or Invitation to Submit Outline Proposals (ISOP) is the best way of achieving it. It is not mandatory for projects to follow any form of interim stage, particularly where there is well established precedent for the procurement, and doing so will result in both MOD and bidders investing considerable time and effort. If the only reason for utilising this stage is to down-select to a short list of bidders who will receive the ITN, consideration should be given to making such a decision at the PQQ stage.

## **Strategy**

7. As with any part of the project competition, it is important to plan in advance what the objectives of the interim phase should be and, in particular, what issues require early bidder input to resolve. Before the commencement of the Convergence process a strategy paper should be issued to all competing consortia. The strategy paper should detail the workshops that will be undertaken, the contributions expected from MOD and industry and, when appropriate, the down-selection process and criteria. Bidders would be expected to commit themselves to engaging fully in the process before it commences.

## **The Workshops**

8. The Convergence process envisages a series (normally 4 or 5) of bi-lateral workshops being held with each pre-qualified bidder. Due to the resource requirements these workshops will impose on the Authority's team, the pre-qualification phase should be used to reduce the field to a manageable number before the Convergence process commences. Reducing the field to a specified number at the pre-qualification stage is an acceptable approach under the EU Negotiated procedure providing that such a field of bidders can be produced on the basis of objective selection criteria based on the economic and financial standing and technical capacity of bidders and, in the case of services, ability.
9. Each Convergence workshop would address a key aspect of the procurement. The actual subject of the workshops would depend on the specifics of the project but possible subjects would include:
- The scope of the project
    - Boundaries
    - Interfaces
    - Potential integration (horizontal or vertical) with other projects

- Potential trade-offs
  - Achievability of project timetable
- Commercial Principles
  - Bidders financial structure
  - Key terms and conditions
  - Payment mechanism
- Risk allocation
  - Optimum risk allocation to achieve value for money
  - Bidders willingness to accept demand risk
  - Bidders willingness to accept residual value risk
  - Risk management within the bidding consortium
- Manning issues
  - Use of Sponsored Reserves
  - Personnel issues
- Through life support;
- Sustainability;
- Scope for third party revenue generation
  - Scope for third party revenue
  - Bidders willingness to accept risk on third party revenue

Issues that should not be the focus of discussions in such a phase include:

- Likely balance sheet treatment
- Detailed technical proposals
- ITN evaluation criteria
- Affordability

10. Before each workshop MOD would issue a short focused position paper giving its current proposals on the issue under debate, this paper would act as a starting point for discussions. It is important that MOD demonstrates that it has carefully considered the issues under debate and has developed a preferred strategy. If bidders perceive that their resources are only being used to help MOD formulate their own ideas they will devote little time and attention to the phase. In the workshops an important aim will be to allow the bidders ideas to be debated and to let participants explore the many options and constraints of the project. Within two weeks of the completion of the workshop bidders would respond to the MOD paper with their own position paper which would draw on the MOD paper, the outcome of the workshop and internal work that they have completed. Consideration should be given to page capping the industry paper to ensure that it remains focused and that undue effort is not expended on its production. Notes of the workshops may also be recorded and agreed as a further auditable record of the process. Although open exchanges are valuable it is important, for evaluation and down selection decisions, to have a written record of bidders views.

11. The workshops should be phased so that MOD is producing the second position paper when bidders are considering the first. This will provide for a continuous flow of work for both parties. The venue of the workshops would be agreed between the parties but the process does offer the ideal opportunity for at least one workshop to be held at the bidders premises and for this to be combined with a demonstration of facilities, equipment etc to a range of stakeholders. If such site visits are to be carried out, the project team should consider whether they will be evaluated and, if so, how.
12. Following completion of the individual workshops a final workshop would be held in which bidders would be invited to draw together their thoughts from the previous work in the form of a business case for the project. The case will focus on the bidder approach to developing a solution rather than detailing an actual solution. The final presentation should particularly focus on the identification of cost drivers, risk issues and areas of benefit that can be expected to result from the proposed approach. In common with the previous workshops, the views expressed in the final workshop should be recorded in writing by the bidders.
13. The workshops can be whatever size the project deems appropriate but the general rule would be that the smaller the group the more effective it is. Balanced against this, however, is the fact that the Convergence approach provides the opportunity to actively involve all stakeholders in the project. Involvement of stakeholders will not only inject important ideas but will also aid the overall education process that any project must undertake (the project team will need to ensure, however, that internal MOD issues are resolved prior to such open meetings being held). One possible method of balancing these potentially conflicting requirements would be to hold a main session featuring all interested parties and then breaking into smaller working groups to consider specific issues.
14. The workshop timetable can be varied as required if further issues develop during discussion or issues take longer to resolve than had been anticipated. In doing so, however, teams must ensure that they are being fair to all bidders. Following completion of the final workshop, it would also be advisable, and beneficial to all parties, to continue this open dialogue during the drafting of the ITN.
15. As with all other stages of the procurement process MOD will be under an obligation to protect commercially confidential information that arises during the Convergence process. However, non-commercially confidential information will be shared with all competitors. This issue is best managed by openly addressing it after each workshop and agreeing what information needs to be regarded as "commercially confidential". Projects teams will have to be particularly careful not to inadvertently disclose other bidders commercial positions in their open discussion with bidders or in the ITN which is ultimately issued.

16. Examples of strategy papers and workshop position papers are available from the PFU.

## **Down-Selection**

17. Convergence is part of the negotiation phase of the procurement rather than the pre-qualification phase. Any down-selection decisions that are made must therefore reflect an assessment of the bidders ability to meet the final contract award criteria. In the majority of cases, particularly those governed by EU procurement regulations, this will be an assessment of which bidders are likely to offer a compliant solution that will be most economically advantageous to the Authority. Bidders must be made aware of the down-selection process to be used at the outset, this should include details of the criteria which will be assessed and the ranking of criteria should a ranking exist.
18. As Convergence will not generate firm solutions or costs the down-selection judgement will be based on the bidders approach to developing a solution that has been demonstrated in the Convergence work. Criteria that could be examined in this regard include the following:
  - The degree to which the bidder demonstrates an understanding of the requirement;
  - The degree to which the bidder has demonstrated that he is likely to be able to identify, accept and manage risk in order to produce an economic solution;
  - The degree to which the bidder has demonstrated an innovative approach which could be expected to underpin the development of an economic solution;
  - The degree to which the bidder has demonstrated an appreciation of the whole life aspects of the procurement which can be expected to underpin the development of an economic solution;
  - The degree to which the bidder has recognised cost drivers and identified ways of managing these aspects that can be expected to result in the production of an economic solution.
19. Further criteria may be added to the list on a project specific basis but each criterion should aim to highlight areas where positive attributes are sought from bidders during the Convergence process. In particular, given the partnering nature of the eventual contract, a criterion based on relationships may be appropriate. The assessment against the down-selection criteria will inevitably include an element of subjective evaluation but judgements should, to the maximum extent possible, be supported by objective evidence (and corporate commitment thereto) from the Convergence phase papers.

## **De-briefing**

20. Following the completion of the Convergence phase unsuccessful bidders should be offered the opportunity of a de-brief. The aim of the de-brief should be both to explain the reasons for the down-selection decision and to point out weaknesses which could be worked on by the bidder to improve future competitiveness.
21. Successful bidders should also be de-briefed in order to point out any weaknesses in their approach. This de-brief should aim to give feedback which can be used to improve the overall quality of the eventual ITN response.
22. Some project teams have also found it helpful to give bidders formal feedback at set points of the Convergence process. This feedback allows bidders both to improve on areas of weakness before a down-selection decision is made and to assess whether they believe it is worthwhile continuing with the process. MOD should not, however, make any final down selection decision until the end of the process in accordance with the original strategy.

## **Summary**

23. Convergence is a flexible tool that offers an alternative method of conducting an interim stage between PQQ and ITN. Although pursuing many of the same aims as an ISOP Convergence does so in a manner that can be more effective in making substantial progress on the project and which encourages the partnering approach required for a successful PFI project.
24. Although the Convergence phase is unlikely to be quicker than an ISOP, it is expected that, provided real progress is made during the phase, it will shorten the overall project timescale. As a result of progressing issues during Convergence the ITN should reflect a feasible project and contractual structure against which detailed bids can be formulated. It is likely that the need for a BAFO stage in the procurement can thus be avoided.
25. DE&S Projects, which have already adopted the Convergence process, have received a positive reaction from both industry and stakeholders. The following quote from Amey Ventures in relation to the C vehicles project is representative of these views:

*“Convergence is particularly beneficial on ground-breaking projects for which there is no tried and tested template. When compared to our experience on similar ISOP based procurements, the benefits of the Convergence process are clearly evident in terms of speed of project development and a mutual understanding of key project issues.”*

## **Key Points:**

- Acquisition teams should carefully consider whether an interim stage between PQQ and ITN is required and, if so, what it needs to achieve.
- If an interim stage is required the acquisition team should consider whether ISOP or Convergence offers the best method of achieving their aims.
- The Convergence process should be tailored towards the individual requirements of the project, focusing on the issues where bidder input is required, and should involve all key stakeholders.
- Down-selection decisions should be based on the final contract award criteria and should be supported, to the maximum extent possible, by objective evidence.
- Convergence should be used to develop the partnering relationship with bidders that should be maintained throughout the life of the project.