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INTOSAI



*Guidelines on Best
Practice for the
Audit of Public/
Private Finance
and Concessions
(revised)*

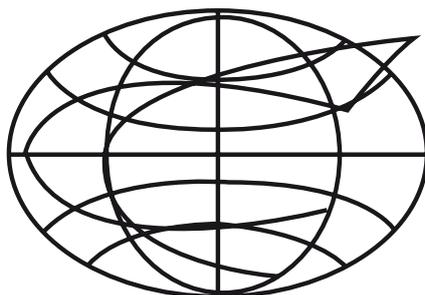
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Foreword

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Chairman of the Working Group on the Audit of Privatisation*

It is now six years since the Working Group published guidelines on Best Practice for the Audit of Public/Private Finance and Concessions. The use of Private Finance and Concessions has expanded since 2001 both in terms of the volume of contracts and the number of countries adopting these approaches. Increasing numbers of SAIs are now involved in the audit of Private Finance. As the Private Finance market in many countries has matured, there is growing collective experience of the operational phase of Private Finance contracts. The State therefore will be concerned with establishing arrangements which are likely to provide value for money over the full lifecycle of the contract.

For SAIs responsible for reviewing these contracts, a lifecycle approach to auditing is sensible. Value for money judgements depend on the context of the project, on how the procurement is handled and on how the operation is managed and can vary over the life of a project. In the light of experience therefore, members of the Working Group have attached priority to adjusting the original guidelines to reflect new developments, particularly in auditing the operational phase of contracts. I believe that the revised guidelines will continue to be of benefit to SAIs throughout the world involved in auditing Private Finance arrangements.

*John Bourn
Mexico City
November 2007*

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Introduction

Background

Following a decision taken by the XIV INCOSAI in Washington in 1992, the INTOSAI Working Group on the Audit of Privatisation was formally established by the Governing Board in May 1993 under the Chairmanship of Sir John Bourn, Head of the United Kingdom National Audit Office. Since the inauguration of the Working Group its remit has expanded into the associated areas of audit of economic regulation and Public Private Partnerships¹.

The membership of the Working Group comprises representatives from the SAIs of: 42 countries:

Albania	Estonia	Paraguay
Antigua and Barbuda	France	Peru
Argentina	Germany	Poland
Australia	Hungary	Romania
Austria	India	Russian Federation
Bahamas	Israel	Saudi Arabia
Bangladesh	Latvia	Slovakia
Brazil	Lithuania	Slovenia
Bulgaria	Mexico	Turkey
Chile	Morocco	United Kingdom (Chair)
Czech Republic	New Zealand	Uruguay
Ecuador	Norway	Venezuela
Egypt	Oman	Yemen
El Salvador	Papua New Guinea	Zambia

¹ The full set of guidelines includes the best practice for the audit of Privatisations, audit of Economic Regulation, audit of Risk in Public/Private Partnerships and Public/Private Finance Concessions. These guidelines may be found on the Privatisation Working Group (PWG) website <http://www.nao.org.uk/INTOSAI/wgap/home.htm>

In recent years Governments have been experimenting with a variety of ways in which the public and private sectors can work together to get better value for money for the taxpayer in delivering public services. The benefits come from creating a structure in which value for money is optimised, through private sector finance innovation and management skills; through the synergies from linking design, build and operate; through re-engineering; through the efficient allocation of risk; and through the whole-life and whole-service approach to service delivery.

In 1998 the XVI INCOSAI invited the Working Group to develop guidance on the audit of an important example of such public/private partnerships, the Public/Private Finance and Concession approach. The resulting guidelines were published in October 2001 and have since been used by SAIs involved in the audit of such contracts. At XVIII INCOSAI in 2004 the revised remit of the Working Group included the requirement to adjust existing guidelines in the light of experience. At the annual meeting of the Working Group in London in 2006 members concentrated on revising the Public/Private Finance and Concessions guidelines for the XIX INCOSAI in 2007.

The Public/Private Finance and Concession approach represents a departure from the traditional procurement of assets where the public sector pays for the construction or development of an asset and then makes separate arrangements for the continuing maintenance and operation of this asset. It is also different from traditional outsourcing which simply involves the provision of services. Instead, the Public/Private Finance and Concession approach involves the provision of services to the public sector by the private sector, which also takes responsibility for the construction/development and financing of any assets needed to provide the required services. Also, the services provided may extend beyond those support services which traditionally the private sector has provided to the public sector, such as building maintenance, to services whose delivery in the past has been the responsibility of the public sector itself, such as the provision and management of prisons, hospitals and schools.

Thus Public/Private Finance and Concession contracts typically involve public sector clients specifying services which they wish to purchase and, through competition, selecting private sector suppliers to provide them. Alternatively, they can involve the award of a concession to a private sector supplier who then charges the general public for the use they make of the services provided. Sometimes the private sector will need to construct new physical assets, such as buildings, to provide the specified services. And sometimes existing public sector assets may be transferred or rented to the private sector supplier, to enable the supplier to provide the services required.

As noted above, this approach to providing services can offer the prospect of better value for money than traditional publicly financed methods. It is however also both new and more complicated than the traditional methods and brings with it new pitfalls and new risks to value for money. All this means that securing the potential benefits of the Public/Private Finance and Concession approach requires new skills on the part of the public sector.

As the Public/Private Finance and Concession approach has matured there are increasing numbers of contracts which have entered their operational phase. Therefore the focus of scrutiny of deals has expanded from the issues that arise in the procurement and negotiation of deals, to include those arising during the life of the contract. In particular those responsible for managing contracts in operation must recognise the importance of responding to change. This includes building flexibility into the contract to cope with changes in technology in technology and the services which can be provided and ensuring that the public sector maintains a skilled and knowledgeable team to manage the contract over its lifecycle. There is also a need for the right governance structures; the importance of regularly reviewing value for money judgements; and ensuring the that expenditure on the contract is properly recorded.

The purpose of the Guidelines is therefore to provide a logical framework for SAIs wishing to audit these agreements to establish whether the public sector has got the best possible deal for the taxpayer. The guidelines aim to cover all the issues potentially involved on such deals, although not all the guidelines will be relevant in each case and an SAI may not have the powers necessary to follow each guideline in full. The Working Group recognises that the Public/Private Finance and Concession approach will still be new to some countries and therefore to some SAIs. Conversely, some countries now have several years of experience of the approach and auditing approaches will have developed in response to a maturing market. For that reason, the guidelines will need to be applied in the context of the country. None of the issues addressed in the guidelines is straightforward; all require the SAI to be well informed and balanced in reaching judgements. Each guideline therefore has been drawn up in a format designed to bring out the reasoning and experience underlying it. To this end, there are two parts to each guideline:

- the guideline itself; and
- the reasons for the guideline.

The Guidelines: Summary

These guidelines and also supplementary guidance, giving more detailed advice on how to follow the guidelines, are available on the Working Group's website www.nao.org.uk/intosai/wgap.

The guidelines themselves are grouped in six sections.

Section 1: The General Approach of the SAI

If the SAI is to carry out well thought through performance audits, leading to worthwhile recommendations and the spread of good practice, it needs to determine its remit in examining a Public/Private Finance and Concession contract and plan its audit thoroughly. It will also need access to a range of specialist skills.

Guidelines

1. SAI responsibilities
2. Acquiring the necessary skills
3. Involvement of the SAI
4. Planning the Audit

Section 2: Scoping the project

This section covers the SAI's examination of how a procuring organisation decided the scope of a Public/Private Finance and Concession deal. In reviewing this subject the SAI will need to have a clear understanding of how the organisation chose this project ahead of other possible uses of its resources and what its objectives were in doing this. The SAI will also need to examine how the organisation structured the project to meet its needs and the role the organisation's assessment of the private sector's capabilities had in shaping this structure.

Guidelines

5. Selection of the project
6. Definition of project requirements
7. Private sector capabilities
8. Evaluation of potential benefits
9. Wider policy objectives
10. Selection of the most suitable form of partnership
11. Innovation
12. Risk assessment
13. Affordability and likely value for money
14. Outline business case

Section 3: Project management

This section covers the SAI's examination of how a procuring organisation managed the process of awarding a Public/Private Finance and Concession contract. Thus the SAI will need to examine whether the organisation established a team, with the necessary skills and expertise, with responsibility for delivering the project successfully and whether it established a proper system of cost control. The SAI will also need to review the planning that the organisation undertook to ensure that there was an effective competition for the award of the contract and that any agreed deal offered value for money.

Guidelines

15. Project team
16. Market investigation
17. Contractual matters
18. Tender strategy
19. Project timetable
20. Cost and benefit comparison
21. Tender list
22. Specification of requirements
23. Maintaining competition

24. Regular reviews
25. Budgets for project costs
26. Appointment of advisers
27. Cost management

Section 4: Tendering

This section covers the SAI's examination of how a procuring organisation selected a private sector partner and then negotiated the final contract with them. The SAI will need to examine that the organisation properly evaluated all aspects of the bids received, such as the allocation of risk between itself and the private sector and the price quoted, and then chose as preferred bidder that which offered it best value.

Guidelines

28. Bidders' proposals
29. Bid assessment
30. Choice of bidder

Section 5: The Right Contract

This section covers the SAI's examination of how a procuring organisation gained reassurance, before committing itself by signing the contract, that the deal was the right one. The SAI will also then need to review the negotiations between the organisation and its preferred bidder to identify the effects any changes agreed in these negotiations had on the deal's value for money. The SAI will also need to check the deal met its objectives, was evaluated against alternatives, ensures service delivery and remains affordable.

Guidelines

31. Changes during negotiation with winning bidder
32. Achievement of objectives
33. Evaluation of alternatives
34. Ensuring service delivery
35. Confirmation of affordability

Section 6: The Operational Phase

This final section covers the SAI's examination of how a procuring organisation manages the contract once signed. Thus the SAI will need to examine what steps the audited body took to ensure that any assets delivered under a contract were fit for purpose and that service provision continues to meet the business requirements of the public sector. It will also need to confirm that the deal remains value for money, is accounted for properly and that appropriate governance arrangements are in place. The SAI will need to review how the audited body managed changes and the allocation of risk between itself and the contractor and how, if applicable, the body managed its exit from the contract.

Guidelines

36. Is the asset fit for purpose?
37. Service provision meets business
38. The deal continues to be value for money
39. The right governance and relationship structures are maintained
40. A good contract management team is maintained
41. Proper allocation of risk is maintained
42. Accounting treatment is appropriate
43. Management of the contract's expiry

Conclusion

Although the Public/Private Finance and Concession approach is now well established in some countries it is still a fairly recent development in others. Good practice in successfully implementing such projects has already evolved since and will continue to do so. The guidelines proposed should therefore be seen as suggestions and advice, put forward in the light of experience so far. They are not laws or set procedures which every SAI should apply in their entirety to every study. Their purpose is essentially to offer guidance to ensure that an audit of such deals follows a professional and structured approach and identifies useful lessons for future deals. We believe nevertheless that many of the issues addressed are likely to remain valid and relevant, however the Public/Private Finance and Concession approach develops.

Section 1: The General Approach of the SAI

Guideline 1

SAI Responsibility

Guideline

The SAI should identify what its audit responsibilities are in relation to Public/Private Finance Projects and Concessions and decide how to carry these out.

Reasons for the Guideline

In nearly all countries the responsibility for auditing the state agencies letting Public/Private Finance and Concessions contracts rests with the SAI. Such contracts can also however be awarded by regional or local government. Contracts let by these bodies may or may not fall within the remit of the SAI, depending on the auditing framework in place within a particular country. In any case the SAI needs to be clear who was responsible for what in awarding any contract and what is the SAI's remit for examining the deal.

The use of a private company to finance and deliver an asset and then provide associated services means that a lot of the relevant record keeping on the delivery and performance will be held by the private company and not necessarily by the letting public agency. The SAI must therefore be clear about what access rights it has to a private company associated with a public private project.

In the field of public private finance and concessions, it can be particularly important that the state agencies letting such contracts exercise well-informed judgement and discretion. The SAI's responsibilities should not lead to the SAI substituting its own judgement for that of the audited body. On the contrary, it should be the aim of the SAI to encourage audited bodies to exercise their own discretion reasonably and wisely. In doing so, the SAI may well draw on lessons learned from audit examination of other cases in which state agencies have exercised their discretion.

Guideline 2

Acquiring the necessary skills

Guideline

The SAI should identify and secure the core in-house skills it needs to carry out authoritative studies of Public/Private Finance projects and Concessions, and supplement these skills with expert external support as necessary.

Reasons for the Guideline

The defining characteristic of Public/Private Finance projects and Concessions is that private sector entities become intimately involved in the delivery of services commissioned by the state: a private sector approach to a public sector problem. To provide the degree of looked for assurance to parliament and to the public about the value for money of such arrangements the SAI is likely to need a wider range of skills than might normally be deployed in the audit of a purely public sector project.

Thus, in addition to the more usual performance audit skills required to review any complex or high-risk assignment and specific expertise relating to the asset and /or service being examined, the SAI may need to recruit staff, or make use of consultants, with specialist skills in the specific areas relating to the use of private finance. In particular, skills and technical knowledge associated with the use of project finance are particular important, as a considerable proportion of public/private projects are set up using project finance structures.

Guideline 3

Involvement of the SAI

Guideline

The SAI should examine the procurement of a Public/Private Finance and Concession deal as soon as is practical after the contract is awarded and should then consider examining the project again when it is in the operational phase and the concessionaire / contractor is delivering the contracted services.

Reasons for the Guideline

The SAI faces a dilemma when reviewing Public/Private Finance and Concessions deals as to when to carry out its examination. In many cases the deal envisages that the private sector supplier will provide services over many years, even decades, in the future. Therefore it will only really be possible to make a final assessment of whether or not the deal has achieved value for money at the end of the contract in question. However this is too long a timescale if lessons are to be learned and improvements implemented in subsequent projects - and indeed in the project under examination. The need to demonstrate accountability also requires that such deals be examined sooner rather than later at a point when meaningful conclusions can be arrived at. The SAI should therefore examine Public/Private Finance and Concessions deals well before the end of the contract.

A good stage for first examining these projects should be soon after the contract has been awarded. Examining the deal soon after contract signature has the merit that the terms of the deal are fixed - prior to this the terms may be constantly changing as they are subject to re-negotiation – and the SAI has the opportunity to pronounce on how well the deal will meet the future requirements of the public authority.

In certain circumstances, however, and where this is constitutionally permissible, it may be necessary or desirable for the SAI to examine the deal before the contract is awarded; for example if concerns are being expressed about the probity or likely value for money of the procurement process. Also, some SAIs have a statutory responsibility to examine the financial models (i.e. the public sector comparators) used in justifying a procurement through the public/private finance route prior to signature of any contract. Examining a project at this stage has the advantage that any

Section 1: The General Approach of the SAI

weaknesses identified by the SAI can be corrected before the contract is signed and so more serious difficulties avoided at a later stage. This may be an appealing option to the SAI where it deems a project poses significant value for money risks and wishes to examine it at each of the most significant stages of procurement and operation.

In carrying out an examination before the contract is signed, the SAI will need to manage the risks involved in such an early intervention. For example, the risk that the SAI's examination could have an adverse impact on the tender process itself as the audited body may divert its scarce resources from negotiating the best deal possible for the public sector to dealing with the SAI examination, or the risk to the SAI itself that it might face a conflict of interest when commenting at a later date on some aspect of the deal which came about because of advice it gave on an earlier examination.

The early review by the SAI of a contract, before or just after its award, does not prevent the SAI from returning to examine it again at a later date. The ongoing management of a Public/Private Finance and Concessions contract, once signed, is important in ensuring the long term value for money of the project. The SAI should therefore consider looking at such public/private finance projects during the operational phase. An examination during the early years of such a contract should focus on analysing whether the private sector contractor is delivering the outputs stated in the contract. Any examination once the contract has been running for a number of years should focus on how well the public and private sector parties are working together to ensure that required outputs are being changed to ensure they are aligned with changing business requirements of the public authority.

Guideline 4

Planning the Audit

Guideline

In planning the audit of a Public/Private Finance and Concessions contract, the SAI should plan to cover all major aspects of the deal that have a bearing on value for money, as set out in the following guidelines, to identify the key parties to the deal and, where possible, to take evidence from them, and to be alert to identifying lessons for the future.

Reasons for the Guideline

Without good planning the SAI risks undertaking an audit that is ill-focused and lacking in the breadth and depth of evidence needed to secure a credible report. To form a view on a deal's value for money the SAI will need access to the public sector body letting the contract. However, as Public/Private Finance and Concessions projects typically involve a wide range of third parties in addition to the public sector body letting the contract, the SAI will also need to obtain the views of these other parties if it is to reach sound conclusions about the deal.

The aim of any examination should be to identify lessons for the future so that better deals are reached and procured efficiently and also so that the ongoing management of such contracts and performance of the contractor(s) are improved. If the SAI is to be effective in this aim, its planning of the audit should include how best any lessons identified should be presented so that they are acted on in future.

It is important that the SAI's examination should, so far as legally permissible, take into account all relevant information, including material that may be commercially sensitive or confidential. Even if such material may not be or should not be published in the SAI's eventual report, it may well have an important bearing on the SAI's conclusions.

Section 2: Scoping the Project

Guideline 5

Selection of the project

Guideline

The SAI should examine how the audited body prioritised potential projects and whether it implemented projects in that priority order.

Reasons for the Guideline

The use of public/private finance or concessions may be a means through which a project can be delivered earlier than if it had been financed as a purely public sector project. While this may be an advantage, it can mean that poor quality projects are developed simply because they can be financed in this way and that high quality projects, which can only be financed as public projects, are deferred. It therefore makes sense for the SAI to examine how the audited body considered its priorities amongst competing projects.

Guideline 6

Definition of project requirements

Guideline

The SAI should examine whether the audited body stated its requirements clearly from the start and expressed these in output terms making clear any particular constraints to which the private sector will be subject.

Reasons for the Guideline

It is important for the successful delivery of any project that an organisation states its requirements clearly from the start. Otherwise there is the risk that it will end up with a project that does not meet its real needs. For example, on one rail deal the audited body did not resolve early enough its requirements for concessionary travel for certain categories of passengers. Consequently the government had to negotiate arrangements with the contractor after the award of the contract when its negotiating position was weaker.

The Public/Private Finance and Concessions approach, if procured properly, should allow the private sector scope to offer innovation in areas such as service delivery. However the scope for such innovation is limited if the client fails to specify its requirements in output terms and instead concentrates on inputs and the mechanics of delivery, thereby placing unnecessary constraints on how the private sector can carry out the project. It is important therefore that an organisation specifies their needs in terms of deliverables. There may be good reasons why some particular constraints should apply, for example, there may be a need for charges to the public to be regulated, for certain environmental targets to be met or for the private sector to take over certain public assets for a given price. The audited body should consult with all relevant stakeholders to help ensure that it produces the appropriate specifications for the project.

In order to avoid wasting both its own and the private sector's resources in planning for projects which were never affordable from the start, the audited body will need to identify clear cost limits as to what it can afford. It should also identify what flexibility it requires, once the contract is operational, to make changes to service specifications and to re-evaluate the price being paid for these services to ensure it is receiving long-term value for money.

Guideline 7

Private sector capabilities

Guideline

The SAI should review whether the audited body made a preliminary assessment of the private sector's capabilities for delivering the requirements.

Reasons for the Guideline

In determining how to express the desired outcomes, an organisation should have regard to private sector capabilities. This should ensure that any project is presented to the market in such a way that the subsequent procurement can progress in an orderly way. In some cases, for example a payroll service, the private sector may be very familiar with the type of outcome likely to be required and therefore easily capable of providing it. In others, such as novel applications of information technology, the private sector may need more help in understanding what the requirements are. Where a new market is being developed the public sector may need to carry out activities to help develop understanding amongst potential bidders. The public sector partner should carefully consider, in each potential project, in what terms the private sector will best understand its requirements.

The SAI should therefore examine what initial soundings of the market an audited body made to ascertain how the private sector would best understand its requirements and of the extra help that the private sector would need to gain such an understanding.

Guideline 8

Evaluation of potential benefits

Guideline

The SAI should identify whether the audited body made a preliminary evaluation of the benefits it sought.

Reasons for the Guideline

At the early stages of developing the project, the audited body needs to have made a preliminary assessment of the benefits it is seeking from the project for the provision of the services concerned. It should also identify any potential costs and constraints as regards achieving these benefits. Such an assessment will enable the body to set meaningful criteria for its later evaluation of tenders received. The SAI should therefore check that the audited body was clear about the benefits from the project and used the identified potential benefits as the basis for setting evaluation criteria for tenders – it should confirm that the audited body did not just establish its evaluation criteria at the end of the procurement process simply to justify the deal reached.

Guideline 9

Wider policy objectives

Guideline

The SAI should review how the audited body assessed the impact any wider policy objectives might have on the project.

Reasons for the Guideline

In many areas of government business, there can be policy or regulatory reasons which place constraints on how a particular service is to be delivered. Consequently there may have to be trade-offs between these general political requirements and the other financial or quality of service objectives specific to the project in question. For example, a government may require the protection of the pension and employment rights of those public sector staff transferring to the private sector under a Public/Private Finance and Concessions deal. Procuring bodies need to identify such policy imperatives and understand fully the basis for these so that they can include them in their specified requirements and communicate them clearly to the private sector. In one deal, for example, the audited body's failure to consider sufficiently early their policy objectives on the protection of employees' rights resulted in the need to ask for revised tenders as the initial tenders received did not address this issue satisfactorily. The SAI should consequently examine how an audited body took account of these policy objectives when planning the project and what weight it gave to these.

Guideline 10

Selection of the most suitable forms of partnership

Guideline

The SAI should examine whether the audited body examined a range of alternative ways of meeting its needs, such as public sector traditional procurement or privatisation, before choosing the Public/Private Finance and Concessions option.

Reasons for the Guideline

Having defined the project requirements, the procuring authority should identify the most suitable form of partnership and / or procurement route for the project. For example, in the case of a road construction the procuring authority would need to decide whether it should be a toll road, or a design, build, finance and operate project financed by shadow tolls, availability payments, a mixture of both or perhaps just a design and build. The SAI should therefore review whether the audited body examined the possible use of a range of alternative project mechanisms before it chose to procure the project using the Public/Private Finance and Concessions approach.

Guideline 11

Innovation

Guideline

The SAI should review whether the audited body identified the room for innovation in advance in areas such as design and construction, operation and project financing.

Reasons for the Guideline

The Public/Private Finance and Concessions approach can produce improved value for money when scope is maximised for the private sector to develop innovative ways of delivering the services or outputs the procuring audited body requires (Guideline 6). For this to be achieved, it is highly important for the procuring organisation to ensure that any restrictions it may impose on innovation are justified. The SAI should therefore examine whether the audited body undertook a preliminary assessment of the scope for possible innovation to ensure that any restrictions on this that it identified were justifiable. This assessment will then form the basis of a proper system for the evaluation of any such innovation proposed by bidders.

Guideline 12

Risk Assessment

Guideline

The SAI should review whether the audited body investigated in advance the appropriate allocation of project risks between the public sector and private sector parties affected by the project.

Reasons for the Guideline

Appropriate allocation of risk between the public and private sectors is a key requirement if the Public/Private Finance and Concessions approach is to deliver better value for money than conventional procurement. In many cases the private sector is better placed to manage risks which traditionally the public sector has borne. For this reason any costs attached to such risks should be lower if responsibility for them is given to the private sector. If however the public sector seeks to transfer a risk which the private sector cannot manage, value for money will reduce as the private sector seeks to charge a premium for accepting such risks. The public sector should therefore seek not the maximum but rather the optimum transfer of risk; that is, it should not attempt to transfer all risks at any cost but rather to allocate individual risks to those best placed to manage them.

For certain risks the public sector remains the best placed. In other cases it may make sense for risks to be shared, for example by allocating a risk to the private sector but with the public sector offering some kind of guarantee if that risk materialises. (In such a case, the SAI will need to examine the rationale for the guarantee and the basis for deriving the amount.) Also relevant to risk allocation may be the arrangements for the private sector to take over any public assets as part of the deal. Procuring organisations therefore need to think through in advance whether there are any aspects of the deal they are proposing to put to the market which are likely to stand in the way of allocating risks optimally; for example by creating new risks which would fall on the private sector supplier.

The accounting treatment of the project in the accounts of the audited body may well depend on the extent of risk transfer to the private sector. There can therefore be an incentive for audited bodies to transfer risk to secure a particular accounting treatment - even if such risk transfer is poor value for money. It is therefore particularly important for the SAI to examine the reasonableness of the transfer of risk in the project.

Guideline 13

Affordability and likely value for money

Guideline

The SAI should examine the extent to which the audited body considered, before starting the procurement process, whether the project was likely to be affordable and offer value for money.

Reasons for the Guideline

It is a waste of time and money to go out to competition for a project which could have been seen to be unaffordable or bad value for money even before bids were sought. Although the procuring organisation might reasonably challenge the market by seeking novel approaches, including novel approaches to risk transfer, it is often possible, with appropriate external advice, to predict when the market is unlikely to be able to deliver a proposed requirement at an affordable price. Prior to going out to tender the procuring organisation will therefore need to demonstrate that the proposed project is likely to provide value for money when compared to other options, that it can afford to pay for the project and that it is likely that the private sector can provide the services required.

Value for money consists not simply of the lowest cost but the best combination of cost over the whole life of a project, flexibility and quality which meets an organisation's requirements. The evaluation of value for money will therefore involve the assessment not only of financial benefits and costs but also non-financial factors.

Guideline 14

Outline Business Case

Guideline

The SAI should examine whether the audited body prepared a proper business case to support the decision to begin the project's procurement.

Reasons for the Guideline

It is good practice to bring together formally the case for proceeding with a Public/Private Finance and Concessions deal, so that an organisation's senior management has clear evidence on which to take any decision to proceed. Without such a business case, there is the risk that a deal will be done because it can be done rather than because it should be done. At this early stage such a business case should only be in outline with a more detailed one being prepared prior to the decision to award any contract.

Section 3: Project Management

Guideline 15

Project Team

Guideline

The SAI should examine whether the audited body assessed the skills it would need to deliver the project successfully and where it could obtain these, for example from in-house staff or from external advisers, and whether the body then assembled its project team in good time.

Reasons for the Guideline

Just as the use of public/private finance or concessions may present the SAI with the need to deploy additional skills (Guideline 1), so may the audited body itself have needed to acquire special skills in order to negotiate such a contract. Whether the audited body was equipped with the right skills at the right time can have a major impact on the quality of the resulting contract. The reporting and decision making procedures within a project team will also need to be clear if the contract's procurement is to proceed efficiently and effectively.

Impropriety within the project team can pose a major risk to value for money. The SAI will therefore need to identify the measures the audited body took to safeguard the impartiality and integrity of the procurement. For example, the project team members can be required to comply with the provisions of a published code of conduct.

Guideline 16

Market Investigation

Guideline

The SAI should examine how the audited body investigated the market prior to beginning the formal procurement, to establish that there were suppliers who were willing to tender for the project.

Reasons for the Guideline

As part of the planning of the procurement the audited body should investigate the market for the services in question. The purpose of this investigation is to inform the way the project is presented to the market, so that potential suppliers will be able to appreciate the full extent of the business opportunity it offers. It is therefore useful to discuss a potential project with potential bidders to discover what aspects of the project are likely to appeal to them and what may not be so attractive. This is particularly important where the project is of a new type. However, when holding such discussions, the audited body will need to have regard to possible legal constraints imposed by any procurement regulations.

Guideline 17

Contractual matters

Guideline

The SAI should examine whether the audited body identified the contractual issues that were likely to arise during the procurement and drew up a draft contract, setting out initial proposals on each issue.

Reasons for the Guideline

The outcome of the procurement will be a contract with the private sector partner. It is therefore sensible in the planning stage of the procurement to consider what issues are likely to arise in negotiating the contract. The SAI should therefore examine whether early in the project the audited body identified the contractual issues that were likely to arise (for example, early termination of the contract, variations to the contract price) and drafted a proposed contract which reflected its preferred position on each issue. The aim should be to obtain as early as possible a contract which adequately protects the public sector's position but which at the same time is acceptable to the private sector bidders and their financiers. Early legal advice will therefore be essential for the audited body.

Guideline 18

Tender Strategy

Guideline

The SAI should identify whether the audited body prepared a tendering strategy, covering the number of tender rounds to be held, the number of bids to be invited at each tender stage, the body's approach to communicating with bidders, and a realistic timetable for the tender process.

Reasons for the Guideline

Competition is usually an important factor in helping a procuring organisation get a deal that provides value for money. To ensure maximum competition the organisation will need to plan the procurement with this aim in mind. A key part of this planning is the tender strategy, which sets out the number of tender rounds and bidders at each stage, how the organisation will communicate with bidders, and the timetable for the tender exercise.

The principle which should govern the tendering strategy is to maximise competitive tension throughout so that tenderers will always feel under pressure to put forward their best possible bids. Competitive tension will be greatest when bidders are competing keenly with each other. Bidders are however unlikely to be willing to compete strongly if a procuring organisation asks an excessive number of firms to submit bids and commit the substantial resources that the preparation of a full bid involves. It will therefore make sense for an organisation, when preparing its strategy, to be sensitive to the time and costs that bidders incur in preparing bids and to limit the number of rounds to the minimum consistent with a successful competition.

There will be occasions where competition for a contract will not be great, for example, the service required is of a specific technical nature and there are few suppliers in the relevant field. In such cases where competition is going to be limited it is important that the tendering strategy addresses this risk to value for money and proposes mitigating actions to help ensure that the procuring organisation gets a good price.

Guideline 19

Project timetable

Guideline

The SAI should identify whether the audited body prepared a credible project timetable which identified milestones against which progress could be measured, and points within the process at which the body was to review the project's continued viability.

Reasons for the Guideline

When planning the procurement the audited body should have updated the project timetable in its outline business case (Guideline 14) to reflect the tender timetable contained in its tender strategy (Guideline 18). The project timetable will be more comprehensive than that for the tender exercise as it will need to reflect the detailed work to be done by the project team and the contractor before both the award of the contract and the start of service delivery. Where possible this timetable should contain milestones against which progress can be measured and set out the various points in the timetable where the audited body will pause to review critically whether it was still worth proceeding with the project.

Guideline 20

Cost and benefit comparison

Guideline

The SAI should examine whether the audited body assessed costs and benefits of the public/private finance option against an alternative procurement option

Reasons for the Guideline

The decision on whether a proposed Public/Private Finance and Concessions deal represents value for money will be better informed if the procuring organisation produces details of a cost comparator against which the costs of the Public/Private Finance and Concessions deal can then be measured.

Two typical types of cost comparator are a public sector comparator and a should-cost model. The public sector comparator is usually modelled as a calculation of the costs of a publicly funded alternative means of delivering and operating the project; this is usually taken to mean what it would cost if traditional procurement methods were used and the resultant asset was then operated by the procuring authority. A should-cost model is usually taken to mean an independent calculation of the expected costs of delivering the same technical solution as is being proposed by the bidder.

In addition to a comparison of potential, an analysis of the benefits of using different procurement routes should be conducted by the audited body as well. This benefit analysis should be used in conjunction with the cost comparisons in contributing to the decision about whether a public/private finance procurement route is the best option to take. It is relatively easy for the figures to be manipulated to produce a desired result. Complex models can also be prone to error. The SAI will therefore need to review details of any such comparisons thoroughly in order to establish whether the presumed costs and benefits of the different procurement options are reasonable.

Guideline 21

Tender List

Guideline

The SAI should examine whether the audited body succeeded in creating a good tender list.

Reasons for the Guideline

Competition is important to getting good value from Public/Private Finance and Concession deals. One of the key conditions for a successful competition is a good tender list of firms invited to bid. Such a list cannot be expected to emerge by itself. A procuring organisation needs actively to stimulate interest in the proposed project, to publicise the procurement competition in accordance with the relevant law and regulations, and to give all necessary guidance to potential tenderers on how to submit good bids. The procurer may also need to assist the process through which firms can become aware of each other's interest and come together into consortia. All of this must, of course, be done in accordance with the relevant legal framework.

After stimulating the market's interest, the procuring organisation will need to select for its tender list firms with good technical, managerial and organisational capabilities. Without these capabilities, it is unlikely that a firm will be capable of providing the required services should it be awarded the contract. The procuring organisation should also, however, seek to assess, when selecting its tender list, a firm's willingness and ability to submit a bid. Experience has shown that firms who express an interest and are then invited to tender sometimes fail to submit bids, resulting in a reduction in the extent of competition.

Guideline 22

Specification of requirements

Guideline

The SAI should consider whether the audited body set out a clear specification of the requirements.

Reasons for the Guideline

A condition for a successful competition is a clear specification of the procuring organisation's requirements. Tenderers cannot submit good bids unless they know clearly what is that the procuring authority wants. The lack of a clear specification may result in the submission of only a very limited number of bids that adequately meet the requirements, thus effectively reducing the extent of competition. However clarity in itself is insufficient. A clear specification may still result in poor value for money if it does not state the procuring organisation's real needs or if it contains excessive detail, particularly detail focussed on inputs rather than desired outputs or outcomes. Specifying inputs or the methods of service delivery will limit innovation (Guideline 6). In determining whether a specification is sufficiently clear the SAI will therefore need to consider whether it addressed the organisation's real needs and was sufficiently output-based. Particular attention will need to be paid to the quality of service identified as being required where one of the main objectives of putting a service out to concession is to improve its quality.

Guideline 23

Maintaining competition

Guideline

The SAI should identify whether the audited body succeeded in maintaining competitive tension to contract award and managed the negotiations with the preferred bidder well.

Reasons for the Guideline

The maintenance of competitive tension throughout the procurement process is an important factor in getting a good contract that is value for money as it helps draw out the best bids from tenderers. There is a risk to the procuring authority that the terms of a deal can alter to its detriment when or if it is left negotiating with a single potential supplier and competitive tension has effectively disappeared. The SAI should therefore assess whether the audited body took relevant steps to ensure that competitive tension was maintained up to contract close.

Guideline 24

Regular Reviews

Guideline

The SAI should identify whether during the procurement the audited body regularly assessed that the project continued to offer value for money.

Reasons for the Guideline

It is very important that a procuring organisation should not lose sight of the original purpose of a project during the course of detailed negotiations, to avoid continuing with a project that is no longer worthwhile and thus wasting management time and incurring unnecessary costs. For this reason someone not directly involved in the negotiations should be responsible for considering, as the negotiations evolve, whether the expected outcome is likely to be fully consistent with the objectives originally set. In a number of cases, external consultants have been specifically appointed to carry out this monitoring role; in other cases internal audit have carried it out.

Any important departure should be reported to the procuring organisation's senior management as soon as it is clearly established (or highly probable) and a decision should be sought on whether to change the objective or abort the deal. Senior management should in any event keep in touch with progress on significant projects.

The SAI should therefore examine whether, after the preparation of the outline business case (Guideline 14), the audited body's project team regularly reviewed the project to identify whether it was still worthwhile and whether, at certain key points as procurement progressed, the body's senior management sought assurance on this issue from the project team.

Guideline 25

Budgets for project costs

Guideline

The SAI should examine whether the audited body set and controlled realistic budgets for all project costs, including internal and external resources.

Reasons for the Guideline

The procurement of a Public/Private Finance and Concessions deal often involves the procuring organisation in heavy costs. The principles of cost control apply. Consequently the audited body should have set budgets for its costs as early as possible. This may have been difficult because the body may be inexperienced in procuring Public/Private Finance and Concessions and have little knowledge of the amount of work that this involves.

Although, however, it may be difficult to set a firm budget for costs at the outset of the procurement, that is no reason for failing to set an initial budget and revising it later when more is known about the work that needs to be done.

Budgets should have been set and controlled on a project basis and should have included not only expenditure on external advisers but also in-house resources. For external advisers it is good practice to set budgets for the individual tasks that they have to perform.

Guideline 26

Appointment of advisers

Guideline

The SAI should check that the audited body appointed good quality external advisers after competition.

Reasons for the Guideline

Good quality external advisers can be essential to the successful negotiation of a Public/Private Finance and Concessions deal. The best way to secure such advisers is after a proper competition since one can then choose from a range of good quality firms. The principle behind such competition is to obtain advisers who will provide the best value for money. They will not necessarily be the cheapest advisers, although that does not mean that there is no role for competitive pressure on the fees advisers wish to charge. Thus when choosing advisers the audited body should have taken into account not only the price but also the likely quality of advice. The audited body should also ensure that any advisers it appoints do not have any conflicts of interest, i.e. that they have worked for or are working for one of the bidding firms for the project or that if such conflicts of interest may exist that appropriate processes are put in place to manage such conflicts or perceived conflicts. The adviser, if it does have any working relationships with any of the bidders, should either reject the assignment or put in place appropriate safeguards to ensure its team working for the procuring organisation is totally separate to and has no contacts with staff engaged, or previously engaged, on working with the bidders.

Once appointed the performance of advisers should have been monitored to ensure that they were providing the quality of advice required at the fee cost they quoted in their tender.

Guideline 27

Cost management

Guideline

The SAI should review how the audited body monitored and managed its project costs, including internal and external resources.

Reasons for the Guideline

Cost control consists not only of setting budgets (Guideline 25) but also of the regular monitoring of costs incurred against these budgets. The audited body should therefore have carried out such monitoring for all costs, including both internal and external resources, and only increased budgets for well-defined additional tasks. The body should also have clearly identified the work it expected from its advisers in return for their fee. Unclear or incomplete specifications of the scope of the work required from an adviser can result in the need for an additional contractual agreement and the payment of extra fees.

As part of any examination of the management of project costs the SAI should review the appropriateness of the basis that the audited body chose for the advisers' remuneration. The body should have chosen a basis which gave the advisers an incentive to meet the project's objectives, while controlling its own costs. At the same time, if the external advisers were engaged to provide advice on the merits and method of proceeding with the project, the remuneration basis chosen should not create conflicts of interest or bias the advice given. If advisers were commissioned to carry out a significant volume of work, the SAI will wish to examine whether they were pressed to offer a discount to their normal fee rates.

Section 4: Tendering

Guideline 28

Bidders' Proposals

Guideline

The SAI should examine whether a good range of solutions was proposed by bidders.

Reasons for the Guideline

One of the main ways in which the use of Public/Private Finance or Concessions can improve the value for money received by the public sector is through obtaining innovations. In examining the effectiveness of the procurement, it therefore makes sense for the SAI to see how far the audited body succeeded in eliciting from bidders a number of different and innovative solutions to the problem of delivering what the audited body wants. If there is not a good range of solutions, this may be a sign that the audited body's specification was expressed too much in terms of inputs, thus restricting the scope for innovation. The SAI should therefore assess whether bidders suggested a variety of practical innovative solutions in the areas of asset design, service operation, financing, variations to the specification, and the allocation of risk between the public and private sector parties.

Guideline 29

Bid Assessment

Guideline

The SAI should identify whether the audited body carried out a broad ranging assessment of the bids.

Reasons for the Guideline

The next stage after the receipt of bids is their evaluation by the audited body. The evaluation of bids will need to take full account of all relevant financial and non-financial aspects of bidders' proposals which could significantly affect the value for money of the deal. Thus the criteria for evaluation will not just be price, or price subject to technical compliance with the service specification. The audited body will need also to take account of such matters as the degree of risk-taking by the potential suppliers, the extent of innovation, and trade-offs between price and quality.

Because of the complexity of the evaluation it is highly likely that the exercise of informed judgement will be required. The exercise of this judgement should however be within the context of an evaluation framework which ensured that the method of evaluation was consistent with the audited body's objectives for the project and with what tenderers had been told about their requirements. To be effective the audited body should have set up this framework early in the procurement (Guideline 8).

It may make sense at the start of the bid evaluation process for the audited body to evaluate separately each of these factors, for example through the use, pragmatically and without undue bureaucracy, of separate working groups to examine each major aspect of the evaluation. This helps to avoid any risk that the initial evaluation of the technical and quality of service aspects of the bids might be unduly biased by knowledge of the prices proposed.

Guideline 30

Choice of Bidder

Guideline

The SAI should review how the audited body assessed the results of the evaluations so as to select the bid offering the best value.

Reasons for the Guideline

The final choice for the winning bidder is likely to turn on the trade-offs between price and quality proposed by the bidders. In such circumstances, the conclusions of the separate analyses of the aspects of the bids received (Guideline 29) need to be brought together into a comprehensive ranking. In doing this the procuring organisation will then be able to address these trade-offs explicitly in their final evaluation of bids by taking account of both financial and non-financial factors and seeking to identify the bid that offered the best combination of these.

In the event that only one bid is received, it will be impossible for any such ranking to be constructed. It is, nevertheless, good practice for a single bid to be evaluated against an evaluation framework to assess its quality. The situation will have moved directly from an invitation to bid to negotiations with a single bidder. Guideline 31 will therefore apply.

It is important for the procuring organisation to put in place a robust scoring system for ranking the bids. However, they should avoid uncritically following some arithmetical scheme of weighting since it is very unlikely that such an evaluation scheme can accurately represent the value of differing bids in such a complex field as Public/Private Finance and Concessions projects. Such an evaluation scheme should not be used as a substitute for the necessary exercise of informed judgement when attempting to address the necessary trade-off between price and quality. Organisations should be prepared to be flexible and open to alternative, innovative proposals. For example, they should be careful not to exclude bidders' innovative ideas for deliverables such as payment mechanisms. Despite these caveats, evaluation schemes along the lines outlined above can provide a useful discipline in helping ensure that a contract is not awarded solely on the grounds of cost but went to the bidder offering best value, that is, the combination of price, quality of service, and risk transfer which best suits their needs.

Since this final evaluation of bids is a critical phase in the procurement exercise, the SAI should be concerned to see whether the audited body selected the best available deal using consistently applied evaluation criteria.

Section 5: The Right Contract

Guideline 31

Changes during negotiation with winning bidder

Guideline

The SAI should review whether there were any changes and, if so, how the audited body minimised changes to the terms of the deal during negotiations with the winning bidder.

Reasons for the Guideline

Because of the complexity of Public/Private Finance and Concessions deals, it is not uncommon for bidders to have offered final bids which were not unconditional hence resulting in an often lengthy period of exclusive negotiations with a preferred bidder.

During such a period, some weakening of competitive tension is almost inevitable. Unless the procuring organisation can keep a careful control on concessions to the preferred bidder, there is a high risk of the terms of the deal changing so that they are less favourable to the procurer. Ideally these exclusive negotiations should be concerned purely with the detailed terms of the deal as the matters of principle underlying these details should have been agreed prior to the selection of the preferred bidder. However the worsening of the terms of the deal for the procurer often happens when important matters of principle are still not agreed at this selection point. For example, on one vehicle fleet project, negotiations with the preferred bidder began before a clearly superior outcome in terms of risk and return had been identified. The SAI should therefore examine how the audited body managed this phase of the procurement to ensure that concessions to the preferred bidder were minimised.

Guideline 32

Achievement of objectives

Guideline

The SAI should examine whether the deal meets the project's original objectives or the latest circumstances if these objectives changed during the procurement. In the latter case, the SAI should examine the significance of any such changes.

Reasons for the Guideline

A key requirement of any project is that it should do what it was intended to do. However it is possible that a deal where the contract has been awarded may not meet the audited body's objectives and so not offer value for money. This can arise because a Public/Private or Concessionary project is often highly complicated and takes many months to negotiate. Consequently there is a risk that the audited body may have lost sight of its original objectives. Alternatively the audited body's objectives may have changed during this period. It may also be the case that the terms necessary to meet the objectives were simply not available in the market.

To avoid continuing with a deal which was unlikely to meet its objectives, the audited body's senior management should have been reviewing at regular intervals during the procurement whether the deal was still worthwhile (Guideline 24). It is especially important that the body undertook such a review before it signed the contract since the audited body will not be easily able to back out of a deal after this point. The SAI should therefore check that, immediately prior to signing the contract, the audited body's senior management reviewed the deal negotiated, to ensure that it met its objectives, either those originally set or the latest ones if these have been amended. The review should also have taken full account of any policy changes that were likely to occur in the foreseeable future. The SAI can then take assurance from their examination of this review that the deal signed met the audited body's objectives.

An audited body should be wary of changing its objectives in a way which might be seen by potential tenderers as fickle, as that will reduce the public sector's future prospects of getting good Public/Private Finance and Concessions deals. If therefore an audited body changed its objectives during the procurement, the SAI should check whether it took appropriate advice and examine whether any legal problems might arise from such a change for example the risk of legal challenge by the bidders.

Guideline 33

Evaluation of alternatives

Guideline

The SAI should examine whether the audited body confirmed that the proposed deal offered best value for money, compared to reasonable alternatives, before awarding the contract.

Reasons for the Guideline

To establish that a public/private finance deal is good value necessarily requires a procuring organisation to satisfy itself that it is better than the realistic alternative option or options. To do that it will need to carry out a systematic, comprehensive and thorough comparison at key stages of the procurement (as addressed in guidelines 14 and 20). A final such check should be conducted prior to signing the contract with the preferred bidder.

The procuring authority should confirm that the proposed contract it intends to sign reflects a deal that means its objectives for the project, obtains a good price for the quality of services and assets to be provided and reflects an appropriate allocation of risk between the public and private sectors.

Guideline 34

Ensuring service delivery

Guideline

The SAI should review whether the contract's provisions on matters such as performance measurement and supplier remuneration will be likely to ensure delivery of the service required.

Reasons for the Guideline

If a contract is to ensure the delivery of the services required, the arrangements for monitoring the contract and the contractor's performance will be crucial. The SAI should therefore assess the adequacy of the audited body's arrangements for these. The SAI will also need to review the provisions in the signed contract for termination and handover, the audited body's rights of access to the contractor's records, and the payment regime, to assess whether the contractor has sufficient incentives, and the audited body adequate safeguards, to ensure that the service will be delivered to the required standards. Where the contract provides for the public sector to share in surplus income arising from the private sector's operation of the project, the SAI will need to examine the mechanism for identifying and accounting for such surplus. The SAI should also assess the contract provisions for handling any changes to the audited body's requirements and other variations to the contract price, such as indexation and market-testing. These provisions should include adequate procedures for resolving any disputes over the pricing and any other aspect of proposed changes.

Guideline 35

Confirmation of affordability

Guideline

The SAI should identify whether there are sources for any capital funds required to implement the project and for the ongoing payments payable under the contract.

Reasons for the Guideline

Public/Private Finance and Concessions deals represent a contractual commitment by a procuring organisation to pay for services, provided they are delivered. As such, these deals reduce the future flexibility of the organisation to manage its expenditure. It would therefore be irresponsible for the organisation to enter into such a deal without verifying that it would have access to the funds needed to meet the contractual commitment. This verification would have to cover both any capital costs, which might arise in the short-term, and long-term ongoing commitments to pay the private sector partners. A check on the impact, if any, of the deal on the availability of funds for other projects should also be made.

Section 6: The Operational Phase

Guideline 36

Is the asset fit for purpose?

Guideline

The SAI should review whether the audited body assessed whether any assets required as part of the deal were delivered to the appropriate quality standard and subsequently remain fit for the audited body's business purposes.

Reasons for the Guideline

The provision of a fixed asset for subsequent service delivery is essential to most public private partnership projects. Therefore a key requirement for success of such projects is that the private sector delivers and maintains a good quality asset for the duration of the contract.

Usually under public private partnerships, the state body transfers the risks associated with late delivery of the asset, failure to meet relevant quality standards and any increase in the construction cost to the private sector. Therefore the key value for money issues that the SAI should consider when examining the outturn of the construction of the asset is whether indeed the asset was delivered to time and to the appropriate quality with the relevant contractual specifications met. Where there were any increases in construction cost transferred back to the audited body then the SAI should assess whether such increased payments were justified, for example, the audited body may have requested changes to the design of the asset which necessitated cost increases for the private sector contractor.

Once service delivery is underway, for example, the road is open to traffic or the hospital open to patients, the SAI should look for evidence that the audited body is ensuring that the private sector company is maintaining the asset to the standards required in the contract.

Guideline 37

Service provision meets business requirements

Guideline

The SAI should review whether the services required as part of the contract are being delivered to the appropriate quality standards and remain aligned with the audited body's business needs.

Reasons for the Guideline

A key determinant of whether a public/private finance deal is providing value for money is that the procuring authority is receiving the services from the project that meet its business needs.

At the start of service provision by the private sector contractor the key issues that the SAI should be checking are whether services are being delivered and payment is in line with the provisions of the contract. The SAI therefore needs to seek assurance that the reporting of service performance and calculation of payments, often termed the performance measurement system (PMS), accurately reflects all services required under the contract and the actual performance by the contractor.

As public/private finance deals can involve the provision of services for extensive periods of time (30 years or more is not uncommon), the audited body will need to ensure that it periodically reviews the services required under the contract, determining whether they are still relevant to its current business needs and negotiating changes where applicable. The SAI should therefore confirm whether the audited body is carrying out such analyses.

Guideline 38

The deal continues to be value for money

Guideline

The SAI should examine whether the audited body periodically reviews the progress of the public/private finance deal and assesses whether it continues to provide value for money.

Reasons for the Guideline

The audited body should be periodically reviewing the progress of the project for two main reasons: to assess whether the deal continues to provide ongoing value for money; and whether the public/private finance route is actually delivering better outcomes than alternative procurement routes. As part of the work on the former reason, the SAI should be confirming that the affordability of the deal is being maintained, that stakeholders are satisfied with project progress, that desired outcomes are materialising and, where there is poor performance, an adequate assessment of continuing with the deal has taken place. The assessment of whether the public/private finance route delivers better outcomes than alternatives should be conducted by the audited body so as to build an evidence base as to what procurement and delivery routes work best.

Guideline 39

The right governance and relationship structures are maintained

Guideline

The SAI should examine whether the audited body has the right governance structures for the project and maintains a good relationship with the contractor(s).

Reasons for the Guideline

Governance structures are key to the accountability of the parties involved and therefore have a big impact on the effectiveness of the deal. Good relationships between parties are likely to help all parties achieve their objectives.

Guideline 40

A good contract management team is maintained

Guideline

The SAI should examine whether the audited body maintains a skilled and knowledgeable team to manage the public/private finance contract.

Reasons for the Guideline

Whatever the potential value for money of a public/private finance deal when it is first signed, subsequent poor management of the contract can result in higher costs, wasted resources, impaired performance and potential criticism from stakeholders. The SAI should therefore examine whether the audited body established a team that was sufficiently resourced and with the necessary expertise to manage the contract intelligently. The audited body should understand what team the private sector is providing and match those responsibilities. The team established by the audited body needs an understanding of the contract and its context, an understanding of the business and its objectives, and strong negotiation skills.

The audited body should have maintained that team's expertise during the period of the contract and regularly reviewed its performance in managing the contract, as well as periodically re-evaluating the value for money offered by the contract. The SAI should look for evidence that, as a result of lessons identified in such reviews, the audited body sought improvements in existing and subsequent contracts, where possible.

Confusion over who is responsible for what can also result in ineffective management of a contract. The SAI should therefore review whether the roles and responsibilities for the management of the contract, and the procedures to be followed, have been clearly defined. However the correct application of procedures and compliance with agreed responsibilities will not, by themselves, be sufficient to guarantee value for money. Delivery of the contractual requirements depends also on the individuals involved. The management of the relationship between the audited body and the contractor will also need to be examined by the SAI.

Guideline 41

Proper allocation of risk is maintained

Guideline

The SAI should examine whether the allocation of risk between the public and private parties remains optimal throughout the project lifetime.

Reasons for the Guideline

The allocation of a particular risk to the party best able to manage it is a key to getting value for money from a public/private finance project. The appropriate allocation and successful management of risk must therefore be maintained throughout the project's lifetime. The SAI should therefore be assessing that risk allocation remains optimal and that the audited body is properly managing any retained risk.

Guideline 42

Accounting treatment is appropriate

Guideline

The SAI should review the accounting treatment for the asset delivered under the public/private finance deal and assess whether it abides by current accounting regulations and guidance.

Reasons for the Guideline

Once the project becomes operational, the actual risk transfer may differ from that initially envisaged when the project was being developed. Any actual change in risk transfer may affect any assessment of how the asset is accounted for in the audited body's accounts. The SAI should therefore confirm, where relevant, that the audited body's external auditors (if not the SAI itself) have re-evaluated the risks and rewards associated with the asset once it is fully operational and are content with the relevant accounting treatment.

Similarly, the SAI should confirm, where accounting standards and guidance for projects developed under a public/private partnership model have changed, that the audited body has amended its accounting treatment accordingly.

Guideline 43

Management of the contract's expiry

Guideline

The SAI should examine whether the audited body planned and managed effectively its exit from the contract on its expiry.

Reasons for the Guideline

The final risk to the value for money comes at a contract's end when poor management can adversely affect the value for money of any subsequent arrangement for service delivery that the audited body enters into. It is important therefore that the audited body carries out adequate planning towards the end of the contract, so that it can make informed decisions about the options available to it on the contract's conclusion, and then manage that exit properly.

The SAI should therefore assess whether the audited body had identified how the services will be delivered once the contract finishes, what risks associated with any handover of service provision may materialise and what plans it has for managing these risks.

Glossary

Term	Definition
Business case	Document outlining a specific proposal, covering its positive and negative aspects, and providing a conclusive argument as to how and why the proposal should be implemented.
Competitive tension	Situation in which competitors are forced to make their offers of goods/services/bids as attractive to the procuring organisation as possible so as not to lose their position to rival competitors, resulting in a better deal for the procurer.
Conflict of interest	Situation in which a certain person or organisation is acting in two capacities, the goals or interests of which are opposed. This term may also be used to describe an opportunity for someone to abuse their position and authority for their own personal gain.
Deliverable	In the context of the guidelines, an indication of the possible ways of delivering a service, before a contract is awarded. After the contract's award, the agreed service specification.
Evaluation framework	Pre-defined set of criteria capturing the objectives of the project, used to ensure consistency when assessing the subsequently received bids during the tender process.
Financial model	Analytical tools (e.g. spreadsheets) designed to show the financial outcome of a particular set of estimated costs, revenues and fixed and capital charges for delivering a service over time.
Governance structures	The system of oversight in place to enable management to maintain control over the project, including the allocation of management responsibilities and the processes and systems for reporting to management.

Operational phase	Period of time following the signing of the contract during which the private sector operator provides the goods/services as stipulated by the contract, i.e. the life of the contract.
Performance measurement system	Process by which the procuring authority assesses how well the private sector operator is fulfilling its contracted requirements, by measuring performance against pre-defined standards established for all relevant aspects of the deal.
Preferred bidder	Bidder selected by the procuring organisation as being the party with whom they wish to sign a contract, subject to the completion of negotiations and legal arrangements. In the later stages of the tender process the procuring organisation will likely move into exclusive negotiations with the preferred bidder.
Public sector comparator	An estimate of what the project would cost if traditional procurement methods were used. This is used to help determine whether private finance offers better value for money than traditional procurement.
Risk allocation	The agreement between the parties to a public/private finance deal or concession which defines which parties or party is responsible for bearing the financial or other consequences of that event occurring, minimising the chance that a particular adverse event should arise, and for mitigating the impact of that event.
Risk level	An assessment of the significance of the risks to be assumed by a party. It combines the likelihood of a given risk arising with the impact of that particular risk.
Risk transfer	The passing of risk borne by the procuring organisation to the private sector service provider.

Should-cost model	An independent calculation of the expected costs of delivering the same technical solution as is being proposed by the bidder.
Stakeholder	Any person, group, body or organisation that is involved with or affected by the proposed public private finance and concessions deal, and therefore has an interest in its success.
Tender process	The practice of advertising for, then receiving and evaluating offers or bids from different private sector companies to operate the services under the public private finance and concessions deal, with a view to achieving the greatest value for money.
Tender strategy	Detailed plan outlining how the tender process is to be conducted so as to achieve the best possible outcome. It will include the number of rounds and bidders to be involved, a timetable and a plan for optimal communication with bidders.
Traditional procurement	A contract in which the customer simply pays the contractor for the provision of an. Such assets are usually fully paid for on their completion. The maintenance of these assets is dealt with in separate contracts, while their operation remains the responsibility of the public sector.
Value for money	The achievement of the combination of cost over the whole life of a project and quality which is affordable and best meets an organisation's requirements.
Variation to contract	An agreement between all parties in a contract to alter some of the conditions outlined in the original contract, with the provision to do so being made in the original contract.

