

PROJECT REVIEW GROUP – 2ND STAGE REVIEW PROCESS

Purpose of this document

A proposal was submitted in June 2004 outlining the case for a 2nd stage PRG review and the structure that such a process might take. This proposal received positive feedback from PRG members but, because of some concerns regarding practical implementation, a commitment was made to carry out a number of pilots. These pilots have now been completed and this document is intended to outline a 2nd stage review process incorporating the lessons that have been learnt.

Setting the Scene

The 2nd stage review is designed to evaluate project affordability and compliance with standardised contract terms and conditions¹ at a later stage in the procurement process than achieved by the existing PRG review (to be referred to as the 1st stage review). It will be completed at the point just prior to the procuring authority appointing its preferred bidder. The intention of the 2nd stage review is to highlight any issues that may have an adverse impact on the success of the project in reaching financial close at a time when the procuring authority can still enter into negotiations with bidders in a competitive environment. The introduction of the 2nd stage review does not impact in any way upon the level of scrutiny applied in the 1st stage review.

All PFI projects, whether undergoing a 2nd stage review or not, are strongly encouraged to achieve compliance with standardised contract terms and conditions prior to appointing a preferred bidder. In addition, participation in a 2nd stage review does not alter a projects obligation to seek Treasury approval for any new or modified derogations that arise after the review has taken place.

Structure

This section incorporates an explanation of the various aspects that build to form a definition of the 2nd stage review.

Scope

The 2nd stage review will consist of a review of affordability and of compliance with the current version of the HM Treasury publication “Standardisation of PFI Contracts” (SoPC) or, where applicable, a Treasury endorsed sector specific contract.²

1 As encapsulated in the latest version of the HM Treasury publication “Standardisation of PFI Contracts” or a HM Treasury endorsed Sector Specific Contract.

2 All mentions of SoPC refer to the latest version published on the HM Treasury website, or (where applicable) the latest HM Treasury endorsed Sector Specific Contract (as linked to from the HM Treasury website). Any uncertainty regarding which version of SoPC or Sector Specific Contract is to be followed should be raised with the PRG secretariat.

Affordability

The 2nd stage review will revisit the issue of whether a project has sufficient funding in place (from its various sources) to meet the anticipated expense. The review will be conducted on the basis of the evaluation of bids that have been received, and so will contain more accurate/certain financial information than the 1st stage review. A review of affordability at this stage should serve to reduce the number of projects returning for increased PFI credits at the Final Business Case (FBC) stage. The review will also provide guidance and comfort to the procuring authority (and the sponsoring department) that the project should continue to be affordable under its current arrangements.

If a project does not appear to have sufficient funding in place, then the procuring authority will have to demonstrate that either:

- The authority will commit to additional support.
- The procuring authority will apply for additional credits. This is subject to support from the sponsoring department.
- The bidder(s) price can be reduced. If this is by reducing the scope of the project, then the authority will need to demonstrate that the procurement still satisfies value for money requirements and does not conflict with EC procurement rules.

SoPC

It was announced in April 2004 that all derogations from SoPC had to be approved by HM Treasury. Whilst the 1st stage review ensures that a project commits to follow SoPC, it cannot provide assurance that this is achieved. The 2nd stage review is conducted at a stage in the procurement in which the SoPC compliance of bids can be more easily assessed, and the existence of competitive tension means that the reviews conclusions are more readily enforceable.

The review will be a detailed assessment as to whether the proposed Project Agreements comply with SoPC. The procuring authority will have to highlight those areas of the project agreement that do not comply with SoPC, and demonstrate that the proposed derogation is on a sector/project specific issue that is not currently covered by SoPC or a Treasury endorsed sector specific contract.

In all instances, the procuring authority must support the need to derogate and provide a detailed justification as to why the derogation should be permitted. It should be noted that requests for derogations that are based upon a preference for alternative drafting face a presumption that they will be denied.

The 2nd stage report sent to the procuring authority will state whether requested derogations are acceptable.

The information requirements for the 2nd stage review are provided in Appendix A. The procuring authority must provide the PRG secretariat (or its nominated reviewer) with the information listed in this appendix, and any supplementary documentation it feels would support its position.

Scale

Only those projects that have gone through the 1st stage PRG review (seeking approval for PFI credits) will be considered to undergo the 2nd stage review. However, only a proportion of these projects will actually undertake the 2nd stage review. It is anticipated that this proportion will be approximately 40% of all projects that come to the PRG. This will be subject to periodic review.

The 2nd stage review process will become operational on 15 March 2005. It will be mandatory for all projects that are submitted to the PRG after this date to undergo a 2nd stage review if selected. It will also be mandatory for those projects that have undergone the PRG 1st stage review prior to 15 March 2005, but that are not planning to appoint preferred bidder until after 31 April 2005. The first list of PFI projects that have not yet reached preferred bidder must be submitted to the PRG secretariat at the time of the 15 March 2005 PRG meeting.

Method of Selection

The projects that will have to undergo the 2nd stage review will be selected in one of the following ways:

- The project is identified from one of the sponsoring departments lists updated at the time of every PRG meeting. This list is to be provided to the PRG secretariat in the template provided.
- A condition is placed upon the project at the 1st PRG review to undergo a 2nd stage review. Such a condition would typically be made for one or more of the following reasons:
 - The project is of an unusually large scale.
 - The project is deemed to be unusually complex.
 - There are specific concerns raised by the PRG in the 1st review that are directly related to aspects investigated in the 2nd stage review i.e. affordability and SoPC compliance. This can include, if the PRG secretariat agrees, a request from the sponsoring department that a project be selected for a 2nd stage review.

It is envisaged that such a condition would only apply to a relatively small number of projects submitted to the PRG. Such a condition would be reported within the PRG minutes and would be included as part of the 40% selection.

Timeframes

The 2nd stage review will be completed at the stage in the procurement after the approval of the Outline Business Case (OBC) and the receipt of bids in response to the ITN, but just prior to appointing a preferred bidder. Sponsoring departments will provide the PRG secretariat (at the time of every PRG meeting) with a list of all PFI projects that are in procurement and are within 3 months of the planned appointment of preferred bidder.³ The PRG secretariat will inform sponsoring departments of those projects that are to be submitted for 2nd stage review

³ This list should be provided in the standard template developed by HM Treasury.

in the minutes of the PRG meeting (published 2 days after the PRG). The procuring authority should then agree with the 2nd Stage Reviewer when they will provide the information required. The latest date for submission is four weeks prior to the planned appointment of preferred bidder. Reviews will then be completed within 10 working days, submitted to the PRG secretariat for approval (copied to the sponsoring department), and then sent to the procuring authority.

It is important to note that this review will involve some additional work for procuring authorities and it is recommended that they allow some additional time in their plans for it to be completed. Projects with less than 1 month to the planned appointment of preferred bidder will only be selected to undergo the 2nd stage review in exceptional circumstances.

Cost

The cost of having a reviewer carry out a 2nd stage review will be born by HM Treasury. The costs of preparing the information for the review, and of any supplementary advice/discussions required after the review has been completed, are to be met by the project or (if agreed) its sponsoring department.

Complaints/Grievances

Any complaints/grievances regarding any aspect of the 2nd stage review process must be directed to the PRG secretariat through the sponsoring department. This will then be investigated by the secretariat and, if the Chair feels it necessary, raised with the PRG at the next scheduled meeting.

Roles and Responsibilities

HM Treasury

HM Treasury both chairs and administers the PRG. In this capacity it will also administer the 2nd stage review.

Responsibilities include:

- Collect lists of all PFI projects that are within 3 months of the planned appointment of preferred bidder from sponsoring departments (at the time of each PRG meeting).
- Select projects that will have to undergo the 2nd stage review – see Method of Selection above.
- Inform sponsoring departments of those projects that will have to undergo the 2nd stage review (in the PRG minutes).
- Appointment of a reviewer to undertake the 2nd stage review.
- Approve the 2nd stage review report and ensure that it is sent to the procuring authority and sponsoring department.
- Maintain a record of the following:
 - A list of all projects that are submitted to the PRG for the 1st stage review (and so are eligible for the 2nd stage review)
 - A list of all projects that are submitted to the PRG secretariat to be considered for 2nd stage review.
 - Those projects that are selected for 2nd stage review and when.
 - The 2nd stage review reports that are sent to procuring authorities.
- Draft and maintain a code of conduct governing the 2nd stage review process and publish it on the HM Treasury website. This will, when appropriate, be incorporated into a revised code of conduct for the PRG overall.
- Act as a central communication point for queries, clarifications etc.
- Be the contact point for any complaints/grievances to be raised regarding the 2nd stage review process.
- Provide feedback on completed 2nd stage reviews to the PRG.

Sponsoring Department

Responsibilities include:

- Inform PFI projects for which they are sponsor of the possible requirement to undertake a 2nd stage review and, provide a brief explanation of what this entails.
- Establish a process that enables them to maintain an accurate list of those PFI projects that are within 3 months of the planned appointment of preferred bidder. This process must serve to provide the information required by the PRG secretariat.
- Provide a list to the PRG in the template provided of all PFI projects (covered by the PRG process) that are within 3 months of the planned appointment of preferred bidder. This list is to be updated and submitted at the time of every PRG meeting.
- Inform PFI project teams of whether they have been selected to undertake a 2nd stage review.

- The sponsoring department may request that the PRG secretariat make it mandatory for a project to undergo a 2nd stage review. It is for the secretariat to decide whether such a request is granted.
- Establish the level of involvement that they wish to have in the 2nd stage review process and ensure that the procuring authority and the 2nd stage reviewer are informed.
- This process does not diminish the responsibility of the procuring authority and sponsoring department to secure value for money.

Procuring Authority

Responsibilities include:

- Keep the sponsoring department informed of the stage it has reached in the procurement and when it is planning to appoint preferred bidder. Specifically, the procuring authority should bring to the attention of the sponsoring department when it first believes that it is within 3 months of appointing preferred bidder. Any delay in providing this information to the sponsoring department may impact upon the intended date for appointing preferred bidder whilst the 2nd stage review process is completed.
- If selected for the 2nd stage review, the procuring authority must liaise with the 2nd stage reviewer and agree a date for the provision of information. It must then provide the 2nd stage reviewer (copying in the PRG secretariat and the sponsoring department) with the information listed in Appendix A, and any supplementary documentation it feels would support its position. This information should be provided at the very latest 4 weeks prior to the planned appointment of preferred bidder.
- Respond promptly to queries from the 2nd stage reviewer / PRG secretariat.
- Accommodate the level of involvement in the process that has been requested by the sponsoring department(s).
- Comply with the findings of the 2nd stage review in line with PRG expectations.
- This process does not diminish the responsibility of the procuring authority and sponsoring department to secure value for money.

PRG 2nd Stage Reviewer

Responsibilities include:

- Schedule resource for the 2nd stage review to be completed once it has been selected by the PRG secretariat.
- If required, provide the procuring authority with an explanation of the information that it must provide for the 2nd stage review.
- Complete the 2nd stage review within a maximum of 10 working days of receiving all the information required from the procuring authority.
- Produce a 2nd stage review report to be submitted to the PRG secretariat that includes the following:
 - A copy of the results of the affordability analysis that has been carried out. This analysis should be carried out on all bidders proposals.
 - A copy of the evaluation of SoPC compliance. This evaluation should be carried out on all bidders.

- A covering letter outlining conclusions from the analysis undertaken, a recommendation regarding whether the project should be approved and, if appropriate, any conditions that should be placed upon the procuring authority.
- Accommodate the level of involvement in the process that has been requested by the sponsoring department(s).
- Respond promptly to communications that are received from the PRG secretariat, sponsoring department, or procuring authority.

Process

This section aims to detail the PRG 2nd stage review process and, in so doing, draw together threads of some of the previous sections. A flow diagram of this process is shown in Appendix B.

Every PRG meeting (1st stage review)

PROCURING AUTHORITY – Inform the sponsoring department (through the process that the sponsoring department has specified) when it first believes that the project is less than 3 months away from appointing preferred bidder.

SPONSORING DEPARTMENT – Provide a list to the PRG secretariat of all PFI projects that are less than 3 months away from appointing preferred bidder.

PRG SECRETARIAT – Collate the lists of PFI projects that are provided by departments and select those that will undergo the 2nd stage review. Report the projects that have been selected for 2nd stage review in the PRG minutes (published 2 days after the meeting to a mailing list incorporating all sponsoring departments).

It should be noted, that those projects not selected for the 2nd stage review are still required to be SoPC compliant, and are strongly advised to ensure that this is achieved prior to appointing preferred bidder.

Within 1 week (of the PRG meeting being held)

SPONSORING DEPARTMENT – Inform PFI projects whether they have been selected for a 2nd stage review or not.

PROCURING AUTHORITY – Acknowledge requirement to undergo a 2nd stage review, agree a date for the submission of information with the 2nd stage reviewer, and begin preparation of the documentation required by the reviewer.

2ND STAGE REVIEWER – Be appointed to the selected projects and establish a dialogue with the project team. The reviewer ensures that they are available to respond to enquiries from the procuring authority regarding the preparation of required documentation.

4 weeks prior to the planned appointment of preferred bidder (at the latest)

PROCURING AUTHORITY – All required documentation must have been submitted to the PRG reviewer (copied to the PRG secretariat and sponsoring department). If agreed with the reviewer, it is acceptable to submit different aspects of the review at different times (as long as none are submitted less than 4 weeks prior to the planned appointment of preferred bidder). The procuring authority must ensure that it is available to answer questions from the 2nd stage reviewer.

2ND STAGE REVIEWER – Maintains dialogue with procuring authority and provides a reasonable level of guidance to ensure that the 2nd stage review documentation is completed correctly. This guidance should not be treated by the procuring authority as a substitute for receiving effective assistance from its own advisers.

Once the required documentation has been received from the procuring authority, the reviewer will undertake and complete the review within 10 working days. If required, the reviewer will contact the procuring authority whilst undertaking the review to seek clarifications.

2 weeks prior to the planned appointment of preferred bidder (at the latest)

2nd STAGE REVIEWER – Submits the completed 2nd stage review to the PRG secretariat (copied to the sponsoring department) no later than 10 working days after the required documentation has been received from the procuring authority. The required content of the 2nd stage report is outlined in the Roles and Responsibilities section.

PRG SECRETARIAT – Ensure that the 2nd stage report is produced on time and to the required standard. Approve the 2nd stage report and ensure that it is sent to the sponsoring department and procuring authority within 2 working days of receiving it.

PROCURING AUTHORITY – Comply with the findings of the 2nd stage review, if necessary, in discussion with the sponsoring department.

SPONSORING DEPARTMENT – If required, support the procuring authority to comply with the findings of the 2nd stage review.

Appendix A – Project Review Group 2nd Stage Review Information Requirements

Partnerships UK (PUK) will undertake the second stage review on behalf of the PRG. PUK, in discussion with PRG, has developed a methodology for how the affordability and SoPC compliance reviews will be undertaken. In order to perform a substantive review within a short time frame that will not impede on an Authority's procurement timetable it is necessary to be clear and precise regarding the information that is required to complete the review. The remainder of this appendix details the information required to review affordability and SoPC compliance at the pre-preferred bidder stage.

Affordability

To undertake the affordability review of (non-HRA) projects the following information will be required:

- Projected date for financial close (month and year)
- Unitary charge information to be paid to contractor:
 - Basic annual unitary charge and price base
 - Ramp up information, in terms of percentages to be paid in each fiscal year from Financial Close (not project years)
 - Indexation provisions (e.g. proportion to be indexed by RPI or other index)
 - Unitary charges to be paid for each fiscal year of the contract in outturn or money of the day terms, i.e. nominal payments from Financial Close until the end of the contract.
 - Any other information that is needed to derive the nominal payments from the base unitary charge figure
- Details of and amounts of any other payments to be proposed to be made to the contractor and the years in which such payments are due (e.g. any lump sum or completion payments)
- If the authority believes that there will be deductions from the unitary charges then the amounts and reasons for this assumption
- An estimate of the risk of changes to the PFI contract that might result in increased unitary charge payments and the contingencies the authority has in place to cope with such changes.
- Details of any other payments that the authority will be required to make in respect of the project after financial close – e.g. monitoring payments
- Details of proposed sources of funding from the local authority including:
 - PFI credit awarded
 - Revenue from land sales
 - Any third party income which may impact on the unitary charge
 - Existing budgets
 - Additional contributions (together with confirmation from Members that these are committed)
 - Interest rate that is expected to be earned for cash deposits
- Details regarding changes in the projects scope that have occurred since the project received approval at the 1st stage PRG review, and the impact that they have had on affordability.

In each case the basic assumptions, the price base for these, and the appropriate inflation assumptions should be provided together with outturn (nominal) amounts for each fiscal year and part year from financial close until the end of the contract.

For HRA projects the following information is required to undertake the affordability assessment.

- Cash Inflows
 - Rental Income
 - Housing subsidy (this being management & maintenance allowances less rents attributable to the units)
 - PFI subsidy
 - Housing benefit subsidy
 - Cash savings in the HRA reinvested in the project
 - Additional contribution from the Authority
- Cash Outflows
 - Unitary charge
 - Housing benefit cost
 - Contract management
- Details regarding changes in the projects scope that have occurred since the project received approval at the 1st stage PRG review, and the impact that they have had on affordability.

Compliance with Standard Form Contract Guidance

At the date of writing the extant standard form guidance is SoPC3, which is being implemented in line with the HMT letters of 29 April 2004 and 19 July 2004

http://www.hm-treasury.gov.uk/documents/public_private_partnerships/key_documents/standardised_contracts/ppp_keydocsstandard_index.cfm

For the second stage review the procuring authority and its legal advisors will need to provide the following information for each bidder:

- A copy of the project agreement black-lined against SoPC3 or, where applicable, a Treasury endorsed sector specific contract.⁴ (Note we will expect the contract to comply fully with the HM Treasury implementation letters published on 29 April 2004 and 19 July 2004)
- If necessary, a derogations report from the Authority's legal advisors detailing where, with sector/project specific justifications, the project agreement deviates from SoPC3. Derogations that do not relate to project or sector specific issues will not be accepted.

⁴ Any uncertainty regarding which version of SoPC or Sector Specific Contract is to be followed should be raised either with the 2nd stage reviewer, the sponsoring department, or with the PRG secretariat.

Appendix B: 2nd Stage Review Process

TIME (COUNTDOWN TO PREFERRED BIDDER)	ACTION BY PROCURING AUTHORITY	ACTION BY SPONSORING DEPARTMENT	ACTION BY PRG SECRETARIAT	ACTION BY REVIEWER
Every PRG meeting (1st stage review)	Inform sponsoring department if it believes it is within 3 months of appointing preferred bidder.	Provide a list to the PRG secretariat of PFI projects that are within 3 months of appointing preferred bidder (in standard template).	Collate lists of PFI projects provided by sponsoring departments and select those that will undergo the 2 nd stage review. Report those projects that have been selected in the PRG minutes.	
Within 1 week (of the PRG meeting)	Acknowledge requirement to undergo the 2 nd stage review, agree a date with the 2 nd stage reviewer for submission of information, and begin preparation of required documentation	Sponsoring department to inform those projects that have been selected to undergo the 2 nd stage review.		Reviewer is appointed to the PFI projects selected for 2 nd stage review. Provide limited support (if necessary) to ensure that correct information is supplied for review.
4 weeks prior to planned appointment of preferred bidder (At the latest)	Latest date for the procuring authority to submit required information to the 2 nd stage reviewer (copied to the sponsoring department and 2 nd stage reviewer).			Complete the review once all necessary information has been provided. Submit 2 nd stage report to the PRG secretariat (copied to the sponsoring department) no more than 10 working days later.
2 weeks prior to planned appointment of preferred bidder (At the latest)			Latest date to provide the procuring authority with the 2 nd stage report.	

- In addition to this table, the PRG has responsibility to consider complaints/grievances referred to it by the Chair of the PRG.
- The PRG secretariat will also provide feedback to PRG members on 2nd stage reviews that have been completed since its last meeting.

It is important to note that the later a procuring authority provides the information required to complete the 2nd stage review, the more likely it is that it may impact on the planned date for appointing the preferred bidder.