

CODE OF CONDUCT FOR OPERATIONAL PFI/PPP CONTRACTS

Purpose

The Code sets out the basis on which public sector bodies and their PPP partners (investors, lenders, construction contractors and service providers) agree on a voluntary basis to identify and deliver efficiencies and savings in operational PFI and PPP contracts.

It supports a collaborative approach to working together and its intention is to enhance the long term partnership between parties through developing an improved and informed working relationship.

It is recognised that due to the multi party nature of PFI/PPP projects it may not be possible for individual signatories to deliver efficiencies and savings on behalf of their partners. The commitments set out below should therefore be interpreted and applied by each party in the context of the involvement and role of that party in each transaction. However, in signing up to this Code, parties commit to identifying and delivering those efficiencies and savings which they are directly able to do while at the same time proactively supporting the delivery of efficiencies and savings by others.

Details of signatories to the Code will be published on the HM Treasury website.

Applicability of Code

The Code applies to all operational PFI and PPP contracts across central and local government and the NHS. The Code is voluntary and is not intended to be legally binding. It does not seek to add to, amend or replace the existing project specific contractual agreements that are in place for each operational project.

Private sector commitments

Private sector parties to the Code commit to:

1. Provide, or agree, in conjunction with their PFI/PPP partners a single local point of contact for each project. The point of contact will have responsibility for co-ordinating the activities and collating the views of all the private sector parties on a project and will also represent the private sector's views in discussions with public sector bodies.
2. Engage constructively and in a timely manner when approached by public sector bodies to make savings on a specific PFI/PPP contract or across their portfolio of PFI/PPP contracts, including but not limited to exploring the potential cost savings measures set out in the July

2011 guidance entitled “Making savings in operational PFI contracts”. This approach should be flowed down from senior management to contract managers to support effective engagement.

3. Contract managers meeting with their relevant public sector body on a regular basis to discuss what savings and operational efficiencies have been made and to identify opportunities for improvement.

4. Work to identify operational improvements and engage pro-actively with the public sector to develop and support with the provision of information joint strategies to deliver efficiencies and savings including:

- Promoting measures that will deliver cost savings and value for money for the public sector over the short, medium and long term.
- Suggesting measures which will provide added value to public sector bodies and which will assist those bodies in meeting their work priorities.
- Incorporating measures to ensure operational flexibility and the identification of ways of working which public sector bodies could carry out in order to ensure greater efficiencies.
- Participating in the identification and implementation of measures to optimise asset management and use (including the promotion of more flexible use of assets, for example, minimising charges for and blockages to out of hours usage).

5. Engage responsively when considering the type and price of variations, waivers, changes or approvals. Not unreasonably refuse to consent to these or make unreasonable charges for such consents. Where reasonable, implement the March 2008 Operational Taskforce Note 3: Variations Protocol for Operational Projects to contracts which do not incorporate it or similar SOPC provisions.

6. Provide public sector bodies with clear and transparent information and evidence regarding a project’s consumables, energy and utility usage and unit costs. Provide appropriate assistance to encourage building users to reduce consumption and waste.

7. Where they are vendors or purchasers to inform the contracting public sector body, sponsoring department and HM Treasury or relevant devolved administration whenever ownership of project company risk capital (or economic interest) changes, providing details of the new ownership structure (investors, instruments and percentage held).

8. Ensure constructive engagement with their PFI/PPP partners, including the public sector, through the reasonable interpretation, taking account of professional responsibilities and obligations, of all existing rights and obligations set out in the project documents so as to facilitate a clear understanding by the public sector and its stakeholders of the costs and benefits of efficiency and savings opportunities.

Public sector commitments

Public sector parties to the Code commit to:

1. Provide a single point of contact who will have responsibility for co-ordinating the activities and collating the views of the public sector contracting party on a specific project and representing these views in discussions with private sector bodies.
2. Engage constructively and in a timely manner when dealing with private sector parties on specific PFI/PPP contracts.
3. Meet with their relevant private sector contract managers on a regular basis to discuss what savings and operational efficiencies have been made and to identify opportunities for improvement.
4. Work to identify options for operational improvements and engage pro-actively with the private sector to develop joint strategies to deliver efficiencies and savings.
5. Give reasonable and prompt consideration to measures and issues promoted by the private sector taking into account policy and practice requirements and commercial considerations.
6. Provide appropriate public sector resources and skills to ensure that any engagement with their PFI/PPP partners is as efficient and effective as possible.
7. Ensure that any engagements take into account the costs likely to be incurred by all parties and the economic benefit likely to be gained and act to minimise unnecessary expenditure.
8. Ensure constructive engagement with its PFI/PPP partners through the reasonable interpretation of all existing rights and obligations, taking into account statutory obligations and public service needs, set out in the project documents so as to help ensure that the private sector costs associated with realising efficiencies and savings are proportionate.