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Institutional Responsibilities: Implementation

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Implementing a PPP project successfully requires commitment and a range of skills and expertise. Government agencies and individuals responsible for implementing projects need a sound understanding of the needs of the particular sector, skill in economic and financial appraisal of projects and PPPs, expertise in structuring privately-financed infrastructure project contracts, expertise in procurement and contract management, and experience in dealing with the private sector. The main challenge in designing the institutional arrangements for PPPs is to ensure that all these skills are available to implement PPP projects successfully.

By default, responsibility for implementing a PPP typically falls to the ministry, department, or agency responsible for ensuring the relevant asset or service is provided. However, particularly at the early stages of a PPP program, such entities usually to have the full range of skills and experienced needed: hence, other government entities are sometimes involved, namely the central PPP unit. Both in developed (UK, Canada, Australia) and developing countries (Philippines, Colombia, South Africa) a strong central unit has been shown to be critical to a successful program. This section briefly describes the range of institutional arrangements for identifying PPP projects; developing and implementing those projects; and managing the PPP contracts.

Identifying PPP projects

As described in PPP Process above, PPP projects usually emerge from the public investment planning and project identification process. Responsibility for identifying potential PPPs from among priority public investment projects therefore often rests with the relevant sector agency or entity under the oversight of entities responsible for public financial management and planning. For more on PPP review and approval responsibilities see Institutional Responsibilities: Review and Approval.

Sometimes a specialized PPP team may be involved in the PPP identification process, as described in Dedicated PPP Units. For example, a PPP Unit may provide support to sector agencies in screening projects for PPP potential—particularly at the early stage of a PPP program when sector agencies may have limited understanding of how PPPs work. Sometimes PPP Units are mandated to promote the use of PPPs. This can help overcome initial anti-PPP bias at the early stage of new PPP programs. However, it can also risk distorting the public investment planning process—pushing forward projects because they appear to be doable as PPPs, rather than because they are public investment priorities. Instituting a clear PPP process with appropriate approvals, as described in PPP Process and Institutional Responsibilities: Review and Approval, helps overcome this risk.

Level playing field vs. perverse incentives

The need for a level playing field, when assessing PPP versus non-PPP options, is critical for success in the procurement of infrastructure and services—even more at the subnational level, where technical capacity and the ability to reach the financial markets may be limited, and free-riding on upper levels of government is often an attractive alternative. The traditional procurement practices sometimes induce governments to avoid using the PPP route, even when it provides greater value to users and taxpayers. Conversely, fiscally stressed governments may look for PPPs even for projects where the PPP option is not the most efficient solution.

Some governments have created PPP incentives in an attempt to modify the behavior of civil servants. These approaches have not always yielded positive outcomes. While public procurement practices favored the procurement modes traditionally used, PPP incentives created bias in decision-making in the other direction. "PFI credits" in the United Kingdom are now recognized as having induced significant bias. Other governments have resorted to lines of funding available only for PPP projects, or for non-PPP projects. These types of discrimination may distort decision-making in favor of non-optimal solutions—and, even when not distorting the decision process, they create reasonable suspicions of bias, affecting public perceptions.

Developing and implementing PPP projects

Responsibility for developing and implementing the PPP project—that is, for structuring the PPP, designing the PPP contract, bidding out the transaction, and managing the contract—typically falls to the government entity responsible for the delivery of the relevant asset or service. This entity is often termed, for PPP purposes, the contracting authority or contracting agency, since it will usually be the public party to the PPP contract. The PPP law or policy may define the types of government entity that can be contracting authorities, and specify that these authorities are responsible for PPP implementation. For example:

- In the **Philippines**, **the BOT Law** (PH 2006, Implementation Rules and Regulations) delegates responsibility for developing and implementing PPPs to eligible government agencies, units, or authorities. These include Government-Owned or Controlled Corporations (GOCCs), Government Financial Institutions (GFIs), State Universities and Colleges (SUCs), and Local Government Units. These agencies are required to create a Pre-qualification, Bids and Awards Committee (PBAC) that will oversee the PPP process for each PPP project.
- Under **Tanzania's PPP Law** (TZ 2010), the contracting authority is responsible for facilitating project development, including project identification, a feasibility study, environmental impact assessment, and design and implementation of the PPP contract.
- In **Colombia**, the **Manual for PPP procedures** (CO 2014, Chapter 4.2, 34) allows contracting authorities to be ministries or other sector-specific institutions, and local and regional institutions. The contracting authorities are in charge of conducting eligibility and value for money analyses, and submitting the results to the PPP Unit, which develops and implements PPP-related policies and steers procurement processes in coordination with contracting authorities.

However, sector agencies may lack some of the skills needed to identify and develop PPP projects successfully. Particularly at the early stages of a PPP program, sector agencies may have little or no experience with engaging with the private sector on privately-financed projects. For this reason, other government entities are often also involved, to provide additional skills or perspectives. This can be achieved in different ways, including:

- Involving dedicated PPP units, as described in Dedicated PPP Units. These units are a repository of skill and experience in developing PPPs. They often support contracting authorities in implementing PPP projects. In a few cases the PPP unit may take over primary responsibility as implementing agency. For example, the PPP Law in **Chile** authorizes the Ministry of Public Works as the implementing agency for PPPs, through its dedicated concessions unit (CL 2010b, Article 1–3, 6–9, 15–21, 25, 27–30, 35–36, 39–41). Dedicated PPP Units provides several more examples of PPP units and the extent of their roles in implementing PPPs.
- Forming interdepartmental committees to oversee each PPP transaction—often including representatives from the sector ministry as well as ministries of finance and planning, and legal representatives.
- Involving specialist entities in different implementing roles. This is the case in Peru, for example, where the procurement agency is responsible for implementing the PPP transaction, and sector regulatory agencies are responsible for monitoring the private parties' compliance with the PPP contract.

Even governments with extensive PPP experience may not have all the expertise and skills in-house needed to develop PPP projects. **PPIAF's guide for hiring and managing advisors** (PPIAF 2001) describes how they will benefit from using external advisors who will provide support in the appraisal, preparation and transaction phases of a proposed PPP. These external advisors may engage in detailed, technical tasks such as conducting feasibility studies and drafting PPP contracts. Developing countries governments are too often unaware of the significant disadvantage of not having competent external advisors by their side when negotiating with private parties. While they may be expensive, experienced advisors equip governments to take informed decisions and safeguard the public interest. Private parties seldom make the mistake of not hiring them. The best advisors in the market usually advise them. With this asymmetry in negotiating ability, PPP contracts will often be biased in favor of the private parties.

The **EPEC report on the role and use of external advisors** (EPEC 2014d) outlines how governments may best utilize the support of external advisors. The extent and nature of external advisory support needed may change as the government and the country gains PPP experience. Initially, governments may rely heavily on advisors, and contract full-service transaction advisors providing the full range of technical skills needed as well as strategic support. Over time, responsible government teams may be better able to play an integrating role, and use advisors to provide specific technical or legal inputs. Even when working with experienced advisors, however, it is important for the contracting authority to develop the internal capacity to manage the process effectively—to oversee the work of the advisors, and retain ownership of the structuring decisions. Over-relying on external consultants to drive the procurement process can put the contracting authority in a weak position for managing the contract over its lifetime.

External advisors

Governments can use the advisory services provided by commercial firms or multilateral organizations. The IFC paper on independent advisors outlines several key characteristics that external advisors should possess:

- The ability to balance private and public sector interests by designing projects that guarantee long-lasting benefits for the population
- Reputation as an honest broker to demonstrate transparency and inspire investor confidence
- Multi-skilled team with extensive, direct experience in infrastructure project structuring and financing
- Direct experience in the relevant sector and market
- Ties with the global investment community

Source: (Jagun and Marques de Sá 2006)

Managing PPP Contracts

Monitoring the project performance and managing the contract usually falls to the contracting authority. From roads and bridges to water provision and hospital services, line ministries and agencies typically have the required technical knowledge and the policy focus for monitoring delivery. Some countries reduce conflict in contract management by outsourcing to credible external entities, such as engineering firms, or research institutions, certain specialized monitoring activities. For example, in Brazil, the state government of Minas Gerais hires Independent Verifiers for monitoring PPP performance; in France, engineering firms are hired for monitoring PPP hospital infrastructure performance.

However, managing PPP contracts can be complex—particularly when it comes to dealing with change that inevitably occurs over the lifetime of the contract (as described in Dealing with Change). Some countries

therefore involve other, specialized entities in the contract management function; for example, by:

- Creating a **centralized contract management support function**. For example, in 2006, the British Treasury invited the then-PPP Unit, Partnerships UK, to create a PFI Operational Taskforce, operating on behalf of the Treasury (UK 2006a, 3). This taskforce provided support to hundreds of contract managers and published guidance. The central PPP unit for British local governments, 4Ps (now called Local Partnerships—a company jointly owned by HM Treasury and the Local Government Association) also has a role in supporting local governments in carrying out their contract management role. In 2007, it published a **Guide to Contract Management for PFI and PPP Projects** (4ps 2007).
- **Including responsibility for some aspects of contract management among the responsibilities of a dedicated PPP Unit**. For instance, the Concessions Unit of the Ministry of Public Works in Chile monitors performance and manages PPP contracts on behalf of several ministries. Often this involvement may be limited to non-routine events, or particularly challenging contract management tasks. In Korea, the PPP Unit PIMAC manages PPP contracts during the sensitive construction phase.
- **Allocating contract management responsibility to an independent regulator**—a solution when relevant variables, such as the mechanism determining the fees to collect over time, are not clearly prescribed in the contract. However, the functions of regulator and contract manager may collide—the contract manager is supposed to protect the public interest and the public purse, while the regulator may have a distinct and legally-mandated set of interests to preserve.

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Additional Resources

- PPP Project Preparation Status Tool
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