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Performance Requirements

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The PPP contract should clearly specify what is expected from the private party in terms of the quality and quantity of the assets and services to be provided. For example, this could include defining required maintenance standards for a road, or defining the required service quality and connection expansion targets for utility services provided directly to users. Performance indicators and targets are typically specified in an annex to the main PPP agreement.

A key feature of a PPP is that performance is specified in terms of required outputs (such as road surface quality), rather than inputs (such as road surfacing materials and design) wherever possible. This enables the private PPP company to be innovative in responding to requirements as described in **Farquharson et al** (Farquharson et al. 2011, 34). For more guidance and examples on the differences between output and input specification, see **Hong Kong's guidance on managing outsourcing contracts** (HK 2007, 32–33), and **Guidance on output specifications from the United Kingdom's Ministry of Defence** (UK 2010a), which also sets out a process for developing the specification for a PPP project.

Specifying outputs rather than inputs also keeps competition as open as possible and reduces the opportunities for corrupt practices. The **World Bank's sourcebook on governance in the electricity sector** describes a power sector procurement, in which a particular technology was specified in the RFP, with the intent of limiting competition and facilitating corruption.

The PPP contract should set out the following:

- **Clear performance targets or output requirements**. **Farquharson et al** (Farquharson et al. 2011, 34–36) note performance targets should be SMART—that is, Specific, Measurable, Achievable, Realistic, and Timely—and provides an example of SMART targets for a government accommodation PPP.
- **How performance will be monitored**—specifies what information must be gathered, by whom, and reported to whom and how frequently. This can include roles for the government's contract management team, the private party, external monitors, regulators, and users (see Managing PPP Contracts).
- The consequences for failure to reach the required performance targets, clearly specified and enforceable. This could include:
    - Specifying penalty payments, liquidated damages or performance bonds. **Iossa et al** (Iossa et al. 2007, 47–49) describe the pros and cons of these kinds of enforcement mechanism. The **United Kingdom's standardized PPP contracts** also include a chapter on protection against late service commencement (UK 2007, Chapter 4), describing when and how liquidated damages or performance bonds may be used.
    - Specifying payment deductions for poor performance (or bonuses for good performance), built into the payment mechanism (see Payment Mechanism).
    - Following a formal performance warning procedure, lenders will be allowed to exert their step-in rights, in order to improve performance and avoid contractual default. Persistent unsatisfactory performance can escalate into termination for default, as described in Termination Provisions.
- **Step-in rights for the public party**, to take control of the concession (typically temporarily) under certain well-defined circumstances. As described by **Iossa et al** (Iossa et al. 2007, 81–83), the intention is to enable the public party to resolve problems threatening service provision when it is better able to

deal with these problems, such as a riot in a PPP prison.

The following resources provide more guidance and examples on these three elements of setting performance requirements:

- **Kerf et al's Guide to Concessions** (Kerf et al. 1998, 70–74) describes issues and provides examples of performance targets in the context of concession contracts for utilities.
- **4Ps paper on the United Kingdom's PFI experience** (4ps 2005, 7–10) presents lessons learned on specifying output requirements. These include the need for clarity to avoid differences in interpretation, leading to disagreement, and ensuring reporting requirements are adequate.
- The **South Africa PPP Manual** Module 6 *Managing the PPP Agreement* (ZA 2004a, Module 6, 25–26) briefly outlines how performance requirements, monitoring and enforcement mechanisms should be established; more detail is set out in South Africa's Standardized PPP Provisions on performance monitoring (ZA 2004a, Standardized PPP Provisions, 121–133).
- The **Scottish Government** has produced standard output-based performance requirements for PFI schools (SCT 2004), which also describe some key issues in defining performance requirements.
- The **United States Department of Transportation's Key Performance Indicators in Public-Private Partnerships** (US 2011) reviews the indicators used in several countries and their efficiency.

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- **Key References - PPP Cycle**

Additional Resources

- Structuring Management, Operation and Maintenance Services
- Approaches to Utility Reform

Find in pdf at PPP Reference Guide - PPP Cycle or visit the PPP Online Reference Guide section to find out more.

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