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Establishing Contract Management Structures

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Establishing the contract management structures means defining responsibilities for contract management within government, and how the relationship with the private party will be managed. It also entails taking consideration of the long term and cyclic operational nature of PPP contracts where different contract management skills will be required at different times during the contract's life. This includes designating a PPP contract manager (or management team) within the implementing agency who will be dedicated specifically to the management of the PPP contract, as well as defining the roles of other entities within government in managing the PPP. Commitment, collaboration and coordination are needed to manage a PPP contract effectively. The government will need to be clear on where the contract manager has autonomy, and can act with discretion, and where it needs to consult or gain approval from someone else—a higher level officer, or another entity such as a Finance Ministry. It also requires establishing communication and contract management protocols for the relationship with the private party.

The **United Kingdom Treasury Operational Taskforce project transition guidance** (UK 2006a) is a helpful overview of the resources that are needed to establish efficient contract management institutions. The guide covers resource planning for contract management, setting up monitoring and management arrangements, and establishing the communication approach.

Designating a PPP contract manager and management roles

The implementing agency typically has primary responsibility for contract management throughout the life on the contract. This responsibility is often centered on a designated PPP contract manager—the main point of contact within government for all matters relating to the PPP.

Some countries allocate responsibility for procurement to a specialized team or agency, benefiting from specialized knowledge on PPP tendering and negotiation. The rationale behind this approach is that contract negotiation requires highly specialized skills that are different from those required for contract management. However, in this configuration, it is important that the institutional memory concerning the history of the contract be documented and transmitted to the contract management team. In particular, the history of the discussions concerning the drafting of critical clauses of the contract may provide valuable information to the contract management team.

The PPP contract typically designates a particular public sector entity as the contractual counterpart—for example, a health board for a new hospital. The contract may also specify the individual contact point (and should provide for this to be changed simply, by notice to the private party) and articulate the duties and responsibilities of the contract point or counterpart. In practice, there is a lot more to contract management than these statements in the contract. The PPP contract manager—or management team—needs:

- **Sufficient resources**. Depending on the complexity of the contract—and resources available—the manager may be supported by a team, with members responsible for different aspects of contract management. The same individual or team could also manage more than one PPP contract. **Farquharson et al**'s chapter on contract management (Farquharson et al. 2011, 136–137) highlights the need for the implementing agency to budget for the cost of the team and their training.
- **Appropriate skills**. The **4Ps Guide to Contract Management** for PFI and PPP Projects in the United Kingdom (4ps 2007, 15–16) provides a typical job profile and skills required for a contract manager.

The **United Kingdom Operational Taskforce guidance** (UK 2006a, 2) emphasizes five key skills: communication, negotiation, change management, financial competence (to understand the payment mechanism), and analytical skills. This taskforce was set up to address concerns about a lack of commercially-skilled contract managers in public authorities.

- **Appropriate seniority**. The **South Africa PPP Manual** module on contract management (ZA 2004a, 15–16) notes that the contract manager should be senior enough to have the ear of senior staff at the implementing agency and other government entities. Seniority is also required to give the counterparty the confidence that decisions can be made quickly and effectively.

The **4Ps Guide to Contract Management for PFI and PPP Projects** (4ps 2007, 8–10) describes the process of setting up a contract management team. Drawing on the experience of contract managers in the UK, the guide emphasizes the benefit of having the contract manager involved early—ideally when contract management provisions in the contract are being designed. Continuity is also important during the contract lifetime, since the contract will most likely outlast its management team. The guide describes how careful succession planning, supported by a detailed contract management manual, can help ensure continuity (4ps 2007, 19).

Roles of other entities in contract management

Several other entities within government can also have roles to play in managing a PPP contract, typically working with the contracting authority and designated contract management team. These can include:

- **Sector regulators**, who often have responsibility for monitoring service standards and managing changes in tariffs for PPP companies providing services directly to the public (see PPP Processes and Institutional Responsibilities). For example, in **Peru**, contract management responsibilities in the transport sector are mostly allocated to OSITRAN—the agency in charge of regulating and supervising the management of public transport infrastructure. OSITRAN oversees monitoring the concessionaire's compliance with the concession contract. This includes monitoring economic, commercial, operation, investment, administrative, and financial aspects of the contract. OSITRAN also has the authority to resolve controversies between users and the concessionaire. Similar regulatory agencies exist in other infrastructure sectors in Peru.
- The **Finance Ministry** is often involved, particularly where potential changes to the contract could have a fiscal implication. In Chile, the Concessions Law (updated 2010) states that any changes introduced to the PPP contract during implementation must be done through a supreme decree of the Ministry of Public Works, and that the decree must be approved by the Ministry of Finance (CL 2010b).
- **Central PPP units** or other specialized support units may have a role in supporting the contracting authority's contract management team. **Farquharson et al** notes this can be particularly useful for dealing with complex issues, such as a refinancing, that may only occur once in a project lifetime (Farquharson et al. 2011, 137–138). For example, the United Kingdom has a central PPP unit that reports directly to the UK’s Treasury and works across all other central UK government departments involved with PPP contracts. The PPP unit provides help and guidance to public sector managers of PPP projects on contract management strategies and implementation, benchmarking, technical operational compliance, achieving whole life value for money, and refinancing of operational contracts.

The **World Bank's Water PPP Toolkit** (PPIAF 2006, 126–130) describes a range of options for institutional structures for monitoring and managing PPPs, focusing on PPPs providing services to users, with examples. It also sets out criteria for choosing the most appropriate institutions.

Other actors within and outside government may also be drawn on to fulfill particular roles. For example, private contractors and end users can play a role in service monitoring, as described in Monitoring and

Managing PPP Delivery and Risk. Independent expert advisors or panels are also often used to help deal with change or operational compliance disputes in the PPP contract, as described in Dealing with Change. In **Chile**, a permanent PPP advisory board (Panel técnico de concesiones) provides recommendations in case of dispute between the parties, by request of any party (CL-Panel).

Communication and contract management protocols

Besides establishing institutions, the government needs to specify the structure for communication between the public implementing agency and the private party. This often requires relationships at different levels of both organizations—from the more senior levels (if dealing with emerging problems with the contract), through those primarily responsible for contract management, to the day-to-day operational staff. For example:

- The **4ps Guide to Contract Management for PFI and PPP Projects** in the United Kingdom (4ps 2007, 11–13) describes the set-up recommended for municipal councils in the United Kingdom, which comprises a partnership board at the most senior level; a contract management board, and an operational management team to deal with day-to-day management. The guide describes how often each would meet and the types of issues they would deal with.
- **The South Africa PPP Manual** module on contract management (ZA 2004a, 13–17) describes a similar structure, setting out the focus and typical parties to communication at the strategic, business, and operational level.

Some governments formally establish the communication and relationship management arrangements in a contract administration manual, or plan. The **4ps Guide** (4ps 2007, 19–20) describes and provides suggested contents for an operational contract manual, which includes defining the governance structure and communication approach.

The relationship between the government agency and the private party is also important. The **United Kingdom Operational Taskforce note on project transition** describes the importance of building good relations with the contractor (UK 2006a, 21–22). The **4ps Guide** (4ps 2007, 26) also describes the need for trust, while also setting boundaries and being ready to challenge. The guide emphasizes the need to avoid developing a ‘cozy’ relationship that could lead to opportunism.

Regulation by contract

Most governments implement PPPs without creating an overall sector regulatory regime. A common approach to sector regulation is to address tariff and service standards directly through the contract with a private service provider. In this approach, no special tools or regulatory bodies are required. The contract itself sets out the service standards to be reached.

In the case of a concession contract, the contract will also establish the tariff, and rules and processes for adjusting the tariff. In a lease or affermage contract, tariff setting powers may be retained by the government, but the payment to the operator—which is also linked to the amount of the service supplied—is set in the contract. This approach is used in many countries. For example:

- Urban water concession, **Senegal**—in 1995, the government implemented reforms to bring in private operators under an affermage and performance contracts to improve the performance of the water sector. Provisions within the contracts outlined performance standards and indicators, allowed for monitoring by a committee, and included an effective dispute resolution mechanism. The private operator was legally obliged to meet the standards—such as water quality, access, non-revenue water—set out under the contract (WB 2006b).

- Manila water concessions, **Philippines**—when the government of the Philippines decided to end a water crisis in Manila by offering two concession contracts for supply of water in the city, it considered establishing an independent statutory regulator. However, it decided that going to congress to pass the necessary laws would be too time-consuming and risky. It therefore created a regulatory office for the two concession agreements within the public utility (which remains the asset owner and counterpart to the PPP contract). A clause in the concession agreement required the private operators to cooperate with the regulatory office, which in turn was responsible for interpreting the regulations in the agreements (Dumol 2000).
- The Bucharest water concession, in **Romania**, also provides an interesting example of a regulatory structure created under contract. The concession had two different regulatory bodies—a technical regulator created to monitor the technical performance of the private operator against the indicators set out under the concession contract, and an economic regulator to approve tariff adjustments according to the formula set out by the concession contract.

For further discussion of issues specific to regulation by contract and case studies, refer to **Regulation by Contract: A New Way to Privatize Electricity Distribution?** (Bakovic et al. 2003) and **Explanatory Notes Series on Key Topics in Regulation of Water and Sanitation Services** (Groom et al. 2006).

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