Monitoring and Managing PPP Delivery and Risk

Full Description

To achieve the whole life value for money promised by a PPP, government needs to make sure that the planned allocation of responsibilities and risks is put into practice, monitored, recorded and continually analyzed and verified. Throughout the lifetime of the contract, the contract manager needs to:

- Monitor contract compliance and service performance by the private party, and ensure penalties or bonuses are paid appropriately
- Monitor and ensure compliance by government with its responsibilities under the contract
- Monitor and mitigate risks
- Evaluate and allocate risk to the appropriate party resulting from contract change

The actual activities undertaken and skills required will differ between implementation stages—design, construction, implementation, preparation for contract close and project close. For an overview of service delivery management—including key elements of risk management and performance management, see the **South Africa PPP Manual** module on contract management (ZA 2004a, 20–28) and **Fortea et al's *Seguimiento de una Concesión*** (Fortea et al. 2011) which describes the project monitoring process in Spain.

Monitoring and enforcing service performance and contract compliance

The implementing agency needs to ensure the private party meets its obligations under the partnership by monitoring outputs or service and performance standards. This does not generally involve detailed monitoring of construction, which is the responsibility of the private party. Instead, it means monitoring against the performance indicators established in the contract, as described in Performance Requirements. In many cases, infrastructure and equipment are certified to obey the contractual specifications by reputable independent engineering firms under careful public sector scrutiny. The **4ps guide to contract management for PPPs** (4ps 2007, 28–36) provides an overview of managing service performance (focused on government-pays PPPs), and a checklist of key issues.

As described in Establishing Contract Management Structures, monitoring service performance and contract compliance is often the responsibility of the contract manager and management team. For PPPs in sectors that are regulated, the sector regulator may also undertake some or all monitoring responsibility. In either case, sources of monitoring information can include:

- **Data provided by the private party**. Typically, the private party is responsible for providing project performance data in regular reports to the contracting authority. The content, format and frequency of these reports should be specified in the contract. For example, the **Partnerships Victoria Contract Management Guide** (VIC 2003, 54–55) describes how reporting requirements can be specified, including suggested templates for the different contract stages. The usefulness of data provided by the private party depends on auditing and checking by the public sector.
- **Independent experts** can be used to carry out checks on construction, maintenance on service standards, while avoiding concerns of bias in results. For example, the **Partnerships Victoria Contract Management Guide** (VIC 2003, 55) describes how independent reviewers are used at construction and service delivery stages. **India's guidelines on monitoring PPP projects** (IN 2012) also describe the use of an independent engineer to monitor compliance during design, construction, and operations.
- **Service users** have a wealth of information on the quality of service and the prevalence of faults, which the government can draw on by setting up processes for feedback. The **4ps Guide to Contract Management** (4ps 2007, 33) describes a maintenance helpdesk, to be established by the service

provider, as a good practice. Another good practice is collecting user feedback, creating a contractual obligation on the contractor to have frequent customer satisfaction surveys—at least annually.

These arrangements should be specified in the contract, as described in Performance Requirements.

The implementing agency also needs to ensure enforcement mechanisms are implemented as appropriate based on the monitoring information received. This could include adjusting payments (for government-pays PPPs) following the rules in the contract, or in severe cases, calling performance bonds. It also includes communicating with the contractor and monitoring attempts to rectify performance shortfalls. To avoid an accumulation of unnecessary disputes, good practice recommends creating an escalation ladder from day-to-day contract management discussions, senior management discussions, arbitration, and on to the formal dispute resolution mechanisms. When all else fails, contract enforcement will be require a judicial ruling. Finally, it could include identifying if and when trigger points are reached for default, step-in by the lenders or the public party, or termination (see Dealing with Change).

Monitoring and managing government responsibilities and risks

A crucial element in ensuring good performance and sustained service delivery under a PPP contract is monitoring and managing the risks and responsibilities allocated to government. A central tool often used by implementing agencies in doing so is a risk management plan.

A risk management plan lists each risk and associated responsibilities borne or shared by the government; it identifies those that may undermine sustainability of the PPP, and so lead to risk of default, or poor performance. For each risk, the plan should also identify the information needed to monitor the risk, and possible actions to mitigate the risk or its impact. These information requirements should also be part of the reporting requirements defined in the contract. **Farquharson et al** provides a sample extract of a risk management plan for a PPP, which lists risks, and for each risk describes the owner, status, estimated impact, comments, mitigating actions, target dates for action, and current risk status (Farquharson et al. 2011, 153–158).

Some risks that are contractually allocated to the private party may also require monitoring by the public party, if they could put it at risk. For example, if lifecycle and maintenance activities are not implemented according to plan, long-term performance and asset handback may be at risk and could impact the public sector.

The risk management plan should be developed by the contract manager prior to the start of the contract. It should then act as a resource and guide through the duration of the contract. The contract manager typically collects the relevant risk monitoring information from the private party, and relevant external information (such as on economic trends), to regularly update the plan. The contract manager then needs to:

- Monitor indicators against expected levels, to identify emerging risks. For example, traffic levels failing to climb as projected may indicate a risk that a minimum traffic payment will be triggered.
- Take the planned mitigating actions, where there are risks that the implementing agency can control (or ensuring private party is doing the same). For example, if government is responsible for associated infrastructure that is falling behind schedule, the plan may be to transfer responsibility for that infrastructure to a higher level team in government, or to the private party.
- Even where risks cannot be controlled, consider possible actions and responses. For instance, if floods threaten critical water service facilities, government may start work with the private party on an emergency response, including alternative supplies, rationing, and a service re-instatement plan.

Example of Weak Risk Monitoring—Victoria Trams and Trains provides an example of weak risk management, where the government's contract monitor collected risk information, but failed to act on it.

Example of Weak Risk Monitoring—Victoria Trams and Trains

The **trams and trains franchises in Melbourne, Australia** provide an educational example of the implications of inadequate risk monitoring. The government awarded a series of franchises for the city's urban transport system. Demand risk was largely borne by the private parties. Demand turned out to be substantially lower than expected, resulting in financial difficulties for the companies. The government's contract monitor was receiving information from the private parties, which showed deteriorating financial performance. However, the monitor failed to hear the alarm bells or take any remedial action. Performance continued to deteriorate to the point that the private parties' best option was to walk away from the contract, and the government had no option but to renegotiate.

Source: (Ehrhardt and Irwin 2004)

The following resources provide further guidance and examples of risk management approaches:

- The **South Africa PPP Manual** module on contract management (ZA 2004a, 20–24) describes how risk monitoring and management should center around a risk management plan.
- The **Partnerships Victoria Contract Management Guide** (VIC 2003, 49–54) describes the monitoring information—beyond KPIs—that the government will typically collect, to monitor risks to the sustainability of the contract.

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Appraising Potential PPP Projects
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Designing PPP Contracts
Managing PPP Transactions
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Dealing with Unsolicited Proposals
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