PREPARING PROJECTS FOR MARKET – PROJECT CONTRACTS – STRUCTURING, TENDERING AND AWARDING

TABLE OF CONTENTS

SESSION OUTCOMES

- Compiling the procurement route and plan
- Examining design and technical requirements and output specs
- Defining the business terms and contract structure per project
- Finalising the qualification criteria for the call for bids/request for quotations
- Outlining the requirements and evaluation criteria for proposal submissions
- Deciding on the tender process i.e.: open, restricted etc

PROJECT PREPARATION & STRUCTURING PPP PROJECTS

INTRODUCTION

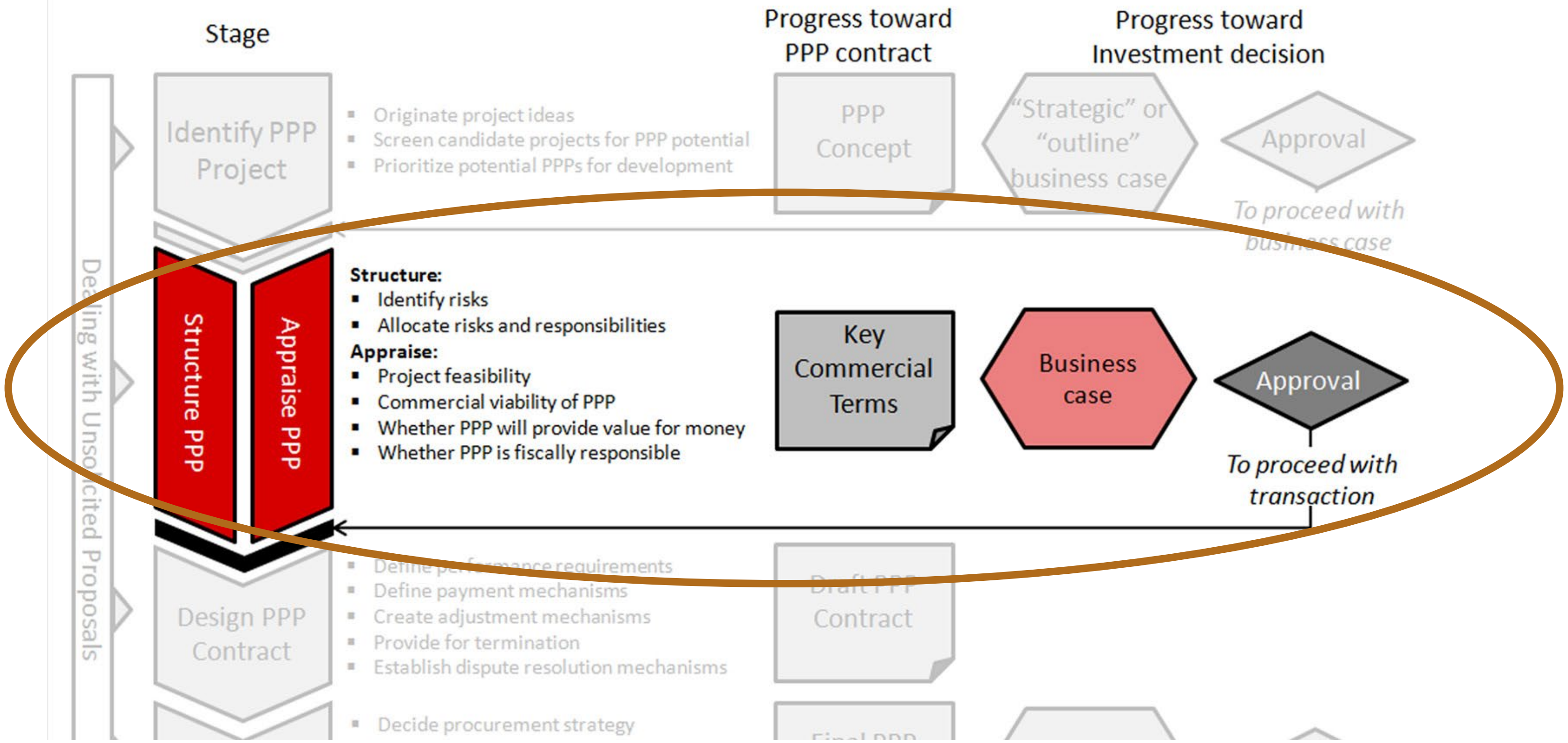
- One of the fundamental causes of project failure, for both traditional public sector procurement and PPPs, is often a lack of clarity on the part of the public authority regarding the exact scope and requirements of the project.
- Structuring a PPP project involves formulating the most effective and efficient structure for delivery of the infrastructure asset and/or service through a PPP - **It means allocating responsibilities, rights and risks to each party**
- The aim is to structure a PPP that will meet the Government's appraisal criteria – technically feasible, economically and commercially viable, fiscally responsible and provide value for money

"The key problem is not a lack of funding, as might be expected, instead, it is the lack of packaged, bankable projects – which in turn points to a need for more and better project preparation."

- World Bank/PPIAF

WHERE PPP STRUCTURING FITS IN THE PROCESS

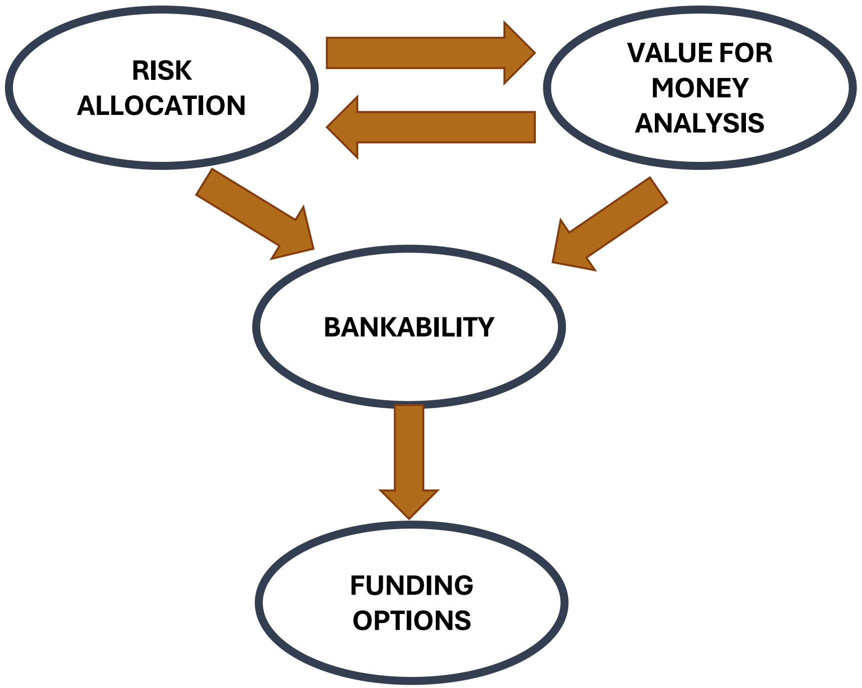
PPP structuring occurs after the project identification phases and feasibility studies have been completed



OVERVIEW OF PPP STRUCTURING

There are 4 core components of developing an effective PPP structure:

- Risk Allocation
- Value for Money analysis
- Feasibility/ Bankability
- Funding options



- **The PPP structure is developed iteratively**
- **The Risk Allocation and Value for Money analysis, while separate are closely linked and feed into each other**
- **The tools required to complete the structuring are:**
  - **A bankable feasibility study**
  - **Risk Matrix**
  - **Public Sector Comparator model**

RISK IDENTIFICATION AND ALLOCATION

- What do we mean by Risk?

A risk is an unpredictable variation in the project's value, arising from a given underlying risk factor.[1]

- PPP risks vary depending on the type of the project and the assets and services involved.

- Risks also vary over the various phases of the project – construction, commissioning, early operation, maintenance

- A detailed, accurate identification and allocation of **all** relevant risks to a project is crucial to developing an effective and sustainable project structure

- Other components of the PPP structure flow from the risk identification and allocation.

1. PPIAF

RISK ALLOCATION

- Involves allocating the responsibility for dealing with each risk among the Local Government and private sector
- The objective is to allocate the risk to the party in the best position to manage that risk.
- For each identified risk, three principles should guide which party is best placed to manage the risk:

The party best able to control the likelihood of the risk occurring

The party best able to control the impact of the risk on project outcomes

The party best able to absorb the risk at lowest cost

RISK ALLOCATION

- The allocation of risks is between the public and private sector

Public sector
- Regulatory
- Political
- Social/Environmental
- Force majeure

Private sector
- Project
- Demand/volume
- Financial
- Force majeure

TOOLS FOR EFFECTIVE RISK IDENTIFICATION AND ALLOCATION & VALUE FOR MONEY

Bankable Feasibility Study

- To assess a project's feasibility, the Local Government promoting the project needs a clear picture of the feasibility of the project
- A bankable feasibility study is a detailed analysis of the technical, commercial, and economic components of the project
- It is the tool through with the risk identification and allocation, as well as the value for money analysis occurs
- Elements of a Bankable Feasibility Study:
  - Define the technical components of the project
  - Specify the value for money and the PSC if required;
  - Analyse the various Project Delivery Options identified
  - Outline risk sharing arrangements

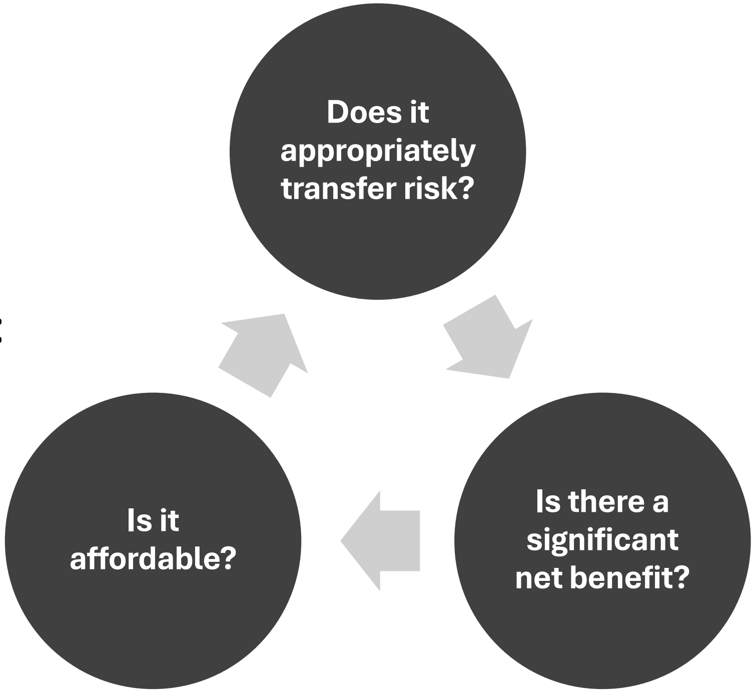
Risk Matrix

- A risk matrix is used to identify, allocate and track risk allocation through the project structuring until financial closure.
- It consolidates all identified project risks, their impacts and possible mitigation measures.
- The risk matrix will be a vital input into the calculation of the associated costs of all risks to the Local Government and private sector

VALUE FOR MONEY (VfM)

VfM means that the provision of a public sector function by a private party results in a net benefit to the public sector, defined in terms of cost, price, quality, quantity, risk transfer, or a combination of these.[1]

- The VfM analysis allows the local Government to assess whether the PPP procurement is the best choice for the project.
- Three important questions need to be answered:



1. South Africa National Treasury PPP Manual

VALUE FOR MONEY – Guiding principles

The likelihood that a PPP project will provide value for money is enhanced when all or most of the following conditions are met:

- There is major investment involved
- The private sector has the expertise to design and implement complex projects
- the public sector is able to define its service needs as outputs that can be written into the PPP contract
- risk allocation between the public and private sectors can be clearly identified and implemented
- it is possible to estimate on a whole-life basis the long-term costs of providing the assets and services involved
- The technological aspects of the project are reasonably stable

BANKABILITY

A bankable project is one that is suitably structured to attract private investment.[1]

- PPPs typically work through the traditional project financing model – based on an asset with associated cash flows.
- Financiers of PPP projects usually look to the project's cash flows as the principal source of security. The two important elements of the cash flow is that they must be **sufficient** and **secure**.

Sufficient

- Operating cash flows need to be high enough to cover debt service, plus an acceptable margin.

Secure

- Risk of variation to the cash flows must be minimal and likely to stay within an acceptable margin

- PPIAF Reference Guide

BANKABILITY

Important considerations of financiers

Is there a secure cash flow?	Is there legal recourse for default?	Is there an appropriate institutional structure	Is there political will?	Is there a sustainable business model
• The project has a clearly outlined revenue streams (e.g. PPA) • Cash flow uncertainties are minimised (Guarantees possibly provided)	• The PPP structure clearly outlines responsibilities for the project risks, and recourse for default	• The public sector agency has the right legal standing to contract with the private sector • The Local Government agency is able to isolate and clearly account for the cash flows • The appropriate governance and institutional capacity exists	• The project has the signoff at the right political level political risk insurance instruments are available (e.g. Multilateral International Guarantee Agency (MIGA) of the World Bank)	• The project has a sustainable market it services • The right management and technical expertise are in place to manage the project

FUNDING OPTIONS

- PPP projects are usually funded through **project funding**, not corporate funding.
- Project Finance is typically viewed as a contractual network that revolves around the Special Purpose Vehicle (SPV). The SPV is created to deliver the project and importantly, access finance for the project on a limited recourse basis

Advantages of project finance for the public sector
▪ Off balance sheet financing ensures sponsors release debt capacity for additional investments ▪ Public sponsors (governments) lessen fiscal imbalances through off balance sheet financing ▪ Lenders have limited recourse to assets outside of the SPV ▪ Higher levels of risk allocation support greater D/E ratios ▪ Though contracts between sponsors and the SPV are essentially commercial guarantees, they are not reported statutorily.

FUNDING OPTIONS

PPP projects are typically funded through a combination of debt and equity, and occasionally grant funding

DEBT:
Securities issued by the project, with the liability to pay a specified amount at a specified time

EQUITY:
An investment in the project representing an ownership stake

GRANTS:
Non-repayable financial injections into the project

Senior Debt

Subordinated Debt

Mezzanine Financing

- Development Finance Institutions
- Export Credit Agencies
- Commercial Lenders

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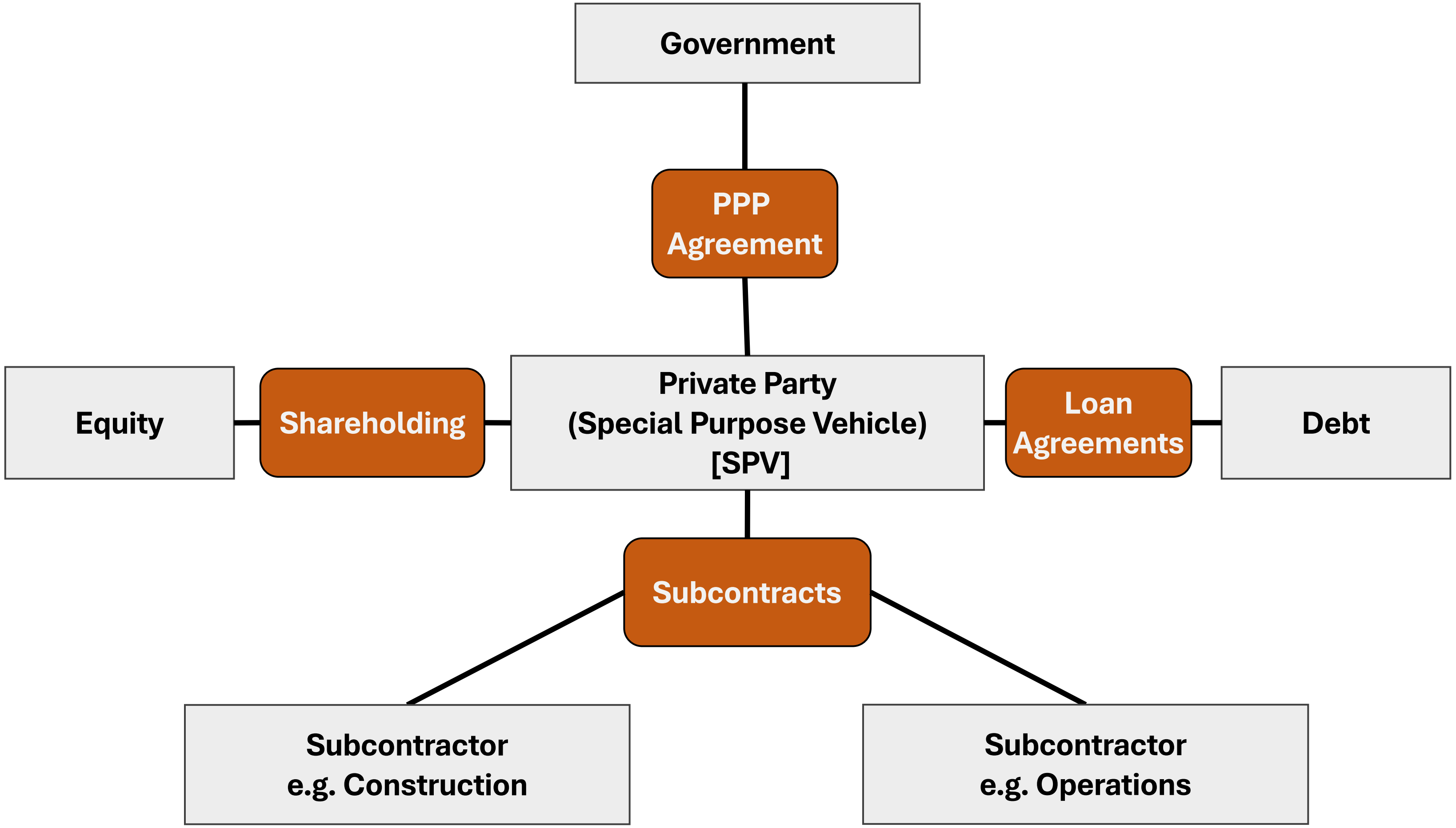
REPAYMENT PRIORITY

GENERIC PROJECT FINANCE STRUCTURE FOR PPPS



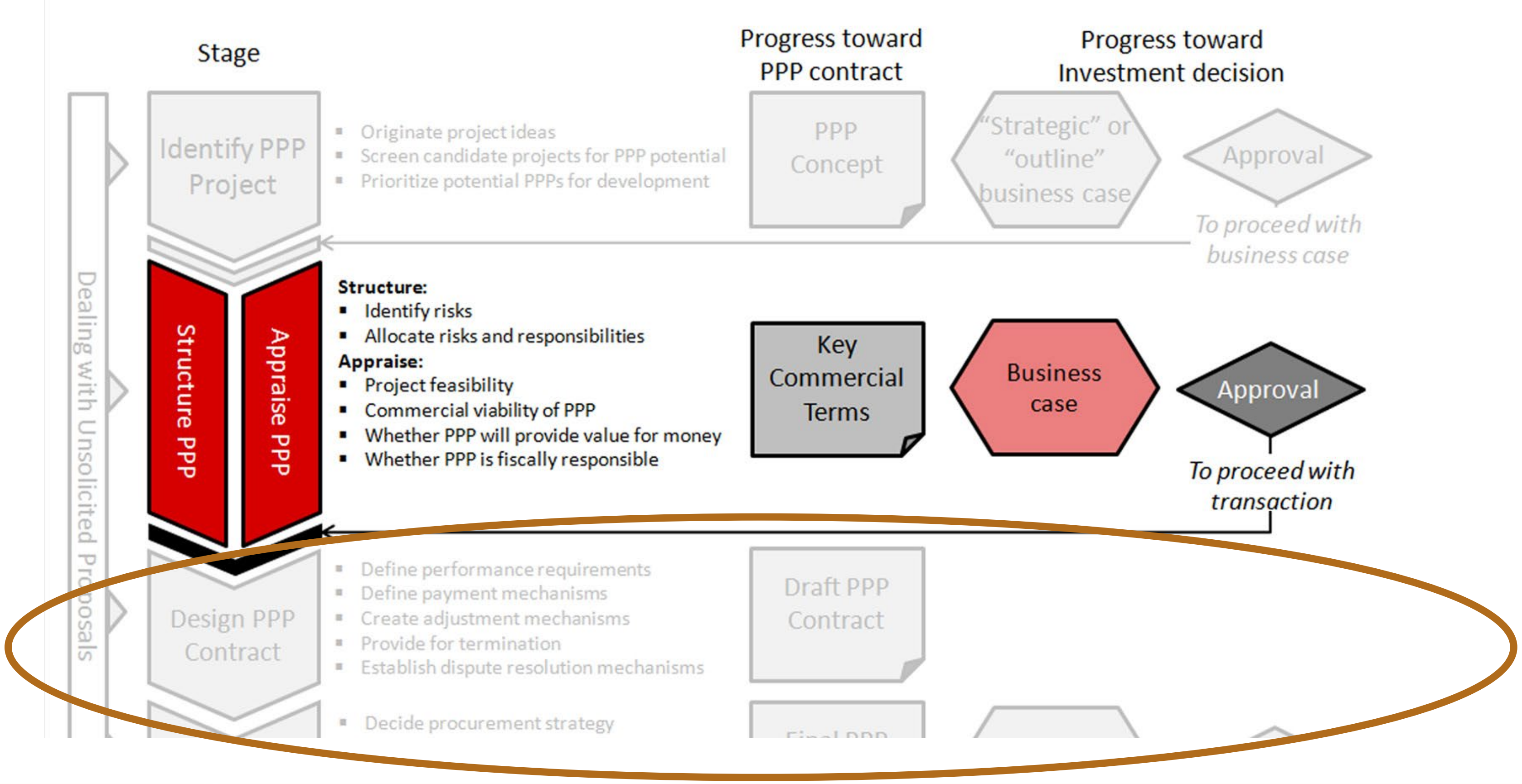
TYPICAL PPP STRUCTURES

USUALLY USER-PAID = CONCESSIONS	USUALLY, PUBLIC-SECTOR PAID = PFI MODEL	VARIOUS MODELS – MAY BE PRIVATISED RATHER THAN PPPS
Transportation ▪Roads / bridges / tunnels ▪Rail / mass transit ▪Ports ▪Airports	▪**Military equipment** ▪**Social Infrastructure** ▪Education ▪Health ▪Prisons ▪Public housing ▪Public buildings (administration)	▪ **Power generation/distribution** ▪ **Water, Sanitation & Waste** ▪Water supply / distribution ▪Sanitation ▪Solid waste / sewage

PROJECT CONTRACTS & TENDER PROCESS

WHERE PPP CONTRACRING FITS IN THE PROCESS

PPP contracting occurs after the structuring , due diligence and appraisal studies have been completed



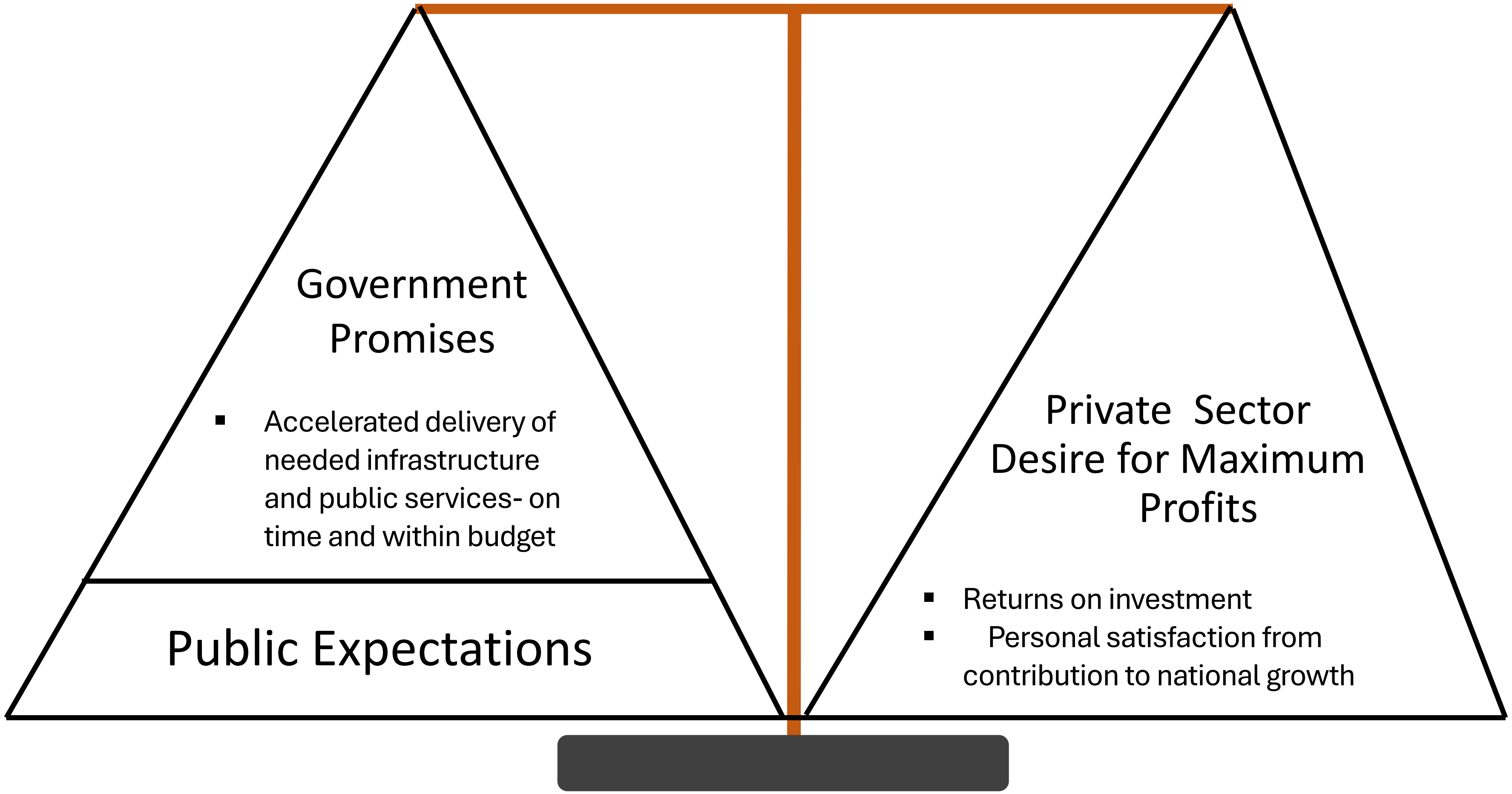
SCOPE OF PPP CONTRACTS

"All forms of **CONTRACTUAL ARRANGEMENT** between a **CONTRACTING ENTITY** and a private sector party with a clear **AGREEMENT** on shared objectives, for the provision of **PUBLIC INFRASTRUCTURE AND SERVICES** traditionally provided by the **PUBLIC SECTOR** as a result of which the **PRIVATE** sector party **PERFORMS PART OR ALL OF GOVERNMENT'S** service delivery functions, and **ASSUMES** the associated **RISKS** over a significant period of time".

TYPES OF PPP CONTRACTS

Contract	Type of Asset	Functions Transferred	Payment Source
Design-Build-Finance-Operate-Maintain (**DBFOM**); Design-Build-Finance-Operate (**DBFO**); Design-Construct-Manage-Finance (**DCMF**)	New infrastructure	As captured by contract name	Can be either government or user pays
Build-Operate-Transfer(**BOT**), Build-Own-Operate-Transfer (**BOOT**), Build-Transfer-Operate (**BTO**)	New infrastructure	Typically, design, build, finance, maintain, and some or all operations Under some definitions, BOT or BTO may not include private finance, whereas BOOT always includes private finance	Can be either government or user pays
Concession	New or existing infrastructure	Design, rehabilitate, extend or build, finance, maintain, and operate—typically providing services to users	Usually user pays—in some countries, depending on the financial viability of the concession, the private party might pay a fee to government or might receive a subsidy
Private Finance Initiative (**PFI**)	New infrastructure	Design, build, finance, maintain— may include some operations, but often not providing services directly to users	Government pays
Operations and Maintenance (**O&M**)	Existing infrastructure	Operations and maintenance	Government pays
Affermage	Existing	Maintain and operate, providing services to users	User pays—private party typically remits part of user fees to government to cover capital expenditures
Management Contract	Existing	Operations and maintenance	Management fees extended to the contractor
Franchise	Existing or new	May include design, build, and finance, or may be limited to maintaining and operating an asset	User or government pay

THE BENEFITS OF PPPS – a balancing act



PUBLIC POLICY ISSUES BEHIND PPPS

- The Need for infrastructure - Markets, bus terminals, schools, hospitals etc.
- The "social" inclination of the public sector- If possible, everything should be free
- Large scope of infrastructure needs – hospitals, schools, roads, rail, ports
- Need to maintain and continuously provide the services –eg waste management, toll collection, etc.

GUIDING PRINCIPLES

- Environmental and social safeguards
- Clear objectives and output requirements
- Accountability - records, records, records
- Fairness and Transparency- criteria, criteria, criteria
- Competitiveness- open to all qualified
- Responsibility For Managing The Process- Local Assemblies, Government Entities
- Stakeholder Consultation- public scrutiny all the time
- Restrictions on public sector eg conditions for equity stake
- Impact of all relevant laws and policies

TYPICAL PPP PROCUREMENT CYCLE

1. Identification- Public Investment Program, National Infrastructure Pipeline, Assembly’s Resolution, Political Promises, Unsolicited Proposal, etc.
2. Planning- structure, structure, structure

At this stage be mindful of the following

- *Concept Note, Pre-feasibility, Feasibility, Output Specification is very key at this stage*
- *Approval requirements*
- *Registration and Effect of Registration*

TYPICAL PPP PROCUREMENT CYCLE

3. Document Preparation – No standard documents yet or prior approval required:
    3. Several factors affect this - specify key outputs- reflect the agreed recommendations of the planning stage here
4. Invitation- newspaper
5. Unsolicited- how did it originate?- from National/ District Development Plan, New and Innovative sources
6. Evaluation and Selection – responsiveness test, scoring criteria is context specific, Use of Weighted Technical and Financial Score is generally limited, etc.

TYPICAL PPP PROCUREMENT CYCLE

- Intention To Award – e.g., pending Parliamentary or approval of DA
- Negotiations
- Award
- Contract Management – often in the form of a team (must be very strong
- Contract Management (Useful if a matrix is developed)
- Reversion to MMDA or Government, etc.
- Post Contract Evaluation / Case Study/Lessons (*Ghana Water & Aqua Vitens Rand Limited- AVRL)
- Lessons learnt lead to policy revisions etc.

* https://www.world-psi.org/en/aqua-vitens-hands-over-operations-back-ghana-water-company

TYPICAL PPP PROCUREMENT CYCLE

Why there's a Difference between PPP procurement and normal business procurement

- Private Sector Motive
- Public Scrutiny
- Public Interest e.g., Tariff And Fee Fixing Resolution Impact
- Reversion Effect
- Complexity and Agreement intensiveness

BEFORE DECIDING TO PROCEED ON PPP ROUTE

Some Good Strategies

- Decide whether to do “Market Sounding” (No Commitment)
- Approval required to start market sounding
- Depending on the “market response” – decide whether public procurement or PPP
- Cost / Budgeting / Sponsorship / Financial Implication
- Who bears the cost of Feasibility Study
- Approval/review requirements – factor into the time projections

TYPICAL PPP TENDER PROCESS

- Document preparation- solicitation plan and solicitation documents
- Invitation/RFP- *Agree on the Contents of a PPP/RFP, Adverts open*
- Pre-bid meeting- *Submission and Opening of Bids, Records of Clarification, Confidentiality of Proposals, Bid Securities*
- Evaluation
- Approval to proceed after evaluation
- Negotiation – *preparing for negotiations; negotiation team; key ticket items; non-negotiable issues, Making Changes Requested by Public Private Partnership Approval Committee (PPPAC)/Attorney-General*
- Discussion of possible Post-Contract Management Issues- *Agreeing on Definition of "Financial Close", Setting Time Limit and CPs for Financial Close, Completing Record Of Selection And Award Proceedings*
- Award - formal award and cps , nature of award, public information
- Contract management- *governing law of PPP agreements , matters related to ownership of assets in the PPP project, acquisition of rights related to project site*
- Post contract evaluation

COMPLAINTS MECHANISM- Settlement Of Disputes

- Right to Review
- PPP Complaints and Appeals Panel
- Compliance Bond
- Impact of Dispute on projects during Construction
- Disputes Involving Customers or Users
- Disputes between Contracting Entity and Private Sector Party after the Contract Entry into Force
- Suspension of Solicitation Proceedings following Complaint

Things to Note:

- Private sector’s goal- profit, profit, profit
- Public sector goal- public interest, public interest, public interest

- Always be mindful of the risks and ensure they are covered
- It is a partnership and each partner has an objective

QUESTIONS


Thank you