



PPP Practioner's Notes

Capacity Challenges in PPP Program and Contract Management

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Key issues in PPP program and contract management

- Functions of the State in public services
- PPPs as a form of public investment
- Maintaining Value for Money over duration of the PPP contract
- Budgeting for PPPs, approvals, sustainability
- Performance of the grantor
- Essential role of PPP Units

Functions of the State in Public Service Concessions

Entity	Grantor	Operator	Equity Share holder	Funding Payments	Regulator	Inspector
Ministry Of Finance	PPP Agency PPP Unit		Capital Guarantees Loans, DEBT		C Bank Budget Office Eurostat	Finance Inspectorate
Ministries Transport Health Municipalities	Sector Authorities with Public Service Obligations	Direct operation within Public Administration Or indirect	SOE State owned Transport -Water -Hospitals -Municipalities	Operating Subsidies Investment Subsidies EU grants Shadow tolls Rents	Sector Regulator .Technical .Quality .Economic	Sector Inspectorates Court of Auditors Parliament
February 2012 Mariana ABRANTES de Sousa - http://pppl.usofonia.blogspot.com						

Attributes of the State as Grantor (Concedente)

1. Permanent **obligation** to provide the public service, temporarily concessioned
2. Annual **budget** allocation to support public service to the extent not supported by user fees
3. **Technical capacity** to define, control and guarantee provision of the public service
4. **Continuing involvement** in the public service provision
5. **Authority** and capacity to decide and to commit budget funds, current and future
6. Ultimate **political accountability** and responsibility

Critical success factors in all contract phases

Tender 18 months

3-5 years

25-30 years

Selection Preparation	Structuring Financing	Contracting	Construction	Operatitons Monitoriing	Transfer/ Reversion
<ul style="list-style-type: none"> •Feasibility, sustainability, realistic TRAFFIC forecasts, needs •Political priorities, technical solutions •Risk analysis, environment •Experienced fully dedicated permanent team •Stakeholder consultation, partners •Broad political consensus •Communication Strategy •TENDER 	<ul style="list-style-type: none"> •Stable, credible regulatory framework •Affordability of user fees and Govt subsidies •Attracting competititve bids, long term capaci y •Clear bidding documents, tender specs •Well paced tender process, lower cost *Firm, flexible PROPOSALS 	<ul style="list-style-type: none"> •Reasonable selection criteria and bids •Realistic risk allocation •Well balanced incentives/penalties •Bankable, full financing secured •Contracts well drafted and negotiated, good legal precedents •CONTRACT 	<ul style="list-style-type: none"> •Rights of way, expropriation, public domain •Environmental approvals •Cost control *Construction on time, within budget *No tacit approvals •Compensate extra works with costs elsewhere •ENTRY into SERVICE 	<ul style="list-style-type: none"> • Operating standards (service levels, quality) well defined, adequate, monitored (•Operating cost control, within budget •Compliance monitoring •Zero REF renegotiations, no change in duration, nor change in risk allocation • USER SATISFACTION 	<ul style="list-style-type: none"> •Vistorias •Avaliação de resultados e impactos •Satisfação de utilizadores •RE-CONCESSION

Overcoming **budget constraint** by far the biggest motivation, due to:

- Narrow definition of “public spending” and “public debt” (gaming Maastricht criteria)
- PPP liabilities (ex. future availability payments) excluded from current year expenditure, in the absence of MTEF (budget framework law)
- PPP projects excluded from budget or parliamentary approval requirements compared to traditional public investment program, or fast-tracked

**TRANSPORTATION
PROGRAM - 2008**

Ministerial offices
40 €MM

Investment subsidies:
169 €MM

MOPTC 449 €MM

Sector Regulators: 337 € MM

OE 700 €MM

Operating subsidies (MFAP) : 251 €MM

EU Grants €130MM

Earmarked fuel tax revenues €480 MM CSR

**Change in total liabilities of State Owned Infra and Transport companies
2.500 - 3.000 €MM**

**Change in the NPV of expected long term payment liabilities under transport
sector PPP concession contracts (base case only) 3.000 €MM**

Eurostat criteria questioned

❖ Concessionaires classified as mercantile companies

- Significant private capital ownership, or
- State owned company with mercantile revenues
 - Price paid by **users**, in line with usage
 - Superior to 50% of production costs

❖ Concessionaire with construction risk, plus either

- Traffic/volume risk, or
- Availability risk

PPP
expenditures
excluded
from
AP deficit
and
AP debt

❖ **April 2011: Several public sector companies and PPP contracts reclassified within AP, more to follow**

NOTE: “PPP” with construction *versus* service-only “concession” with user fees

PPP contract management

- PPP contracts “incomplete” by nature due to long durations, must be subject to renegotiation
- FIDIC and EU public procurement rules focus on initial adjudication, renegotiations relatively unfettered
- Unrestricted, frequent renegotiations suffer from
 - Asymmetric information and skills (incl. banks)
 - Risk of “capture” of public partner
- Bidders may engage in “strategic behaviour”, bid aggressively, price opaquely, then renegotiate one-on-one

PPPs and the financial crisis

- Re-pricing of project risk penalized bank portfolios and resulted in non-conforming Best-and-Final bids
- Government decision to maintain pipeline left local banks isolated, unable to sell down, lacking long term funding
- More demanding conditions of bankability threatened budget sustainability
- Traffic volumes down, increasing pressures to renegotiate and transfer traffic risk to the State, with trade-off between traffic risk and sovereign risk
- EIB now demanding collateralization of local bank payment guarantees due to declines in rating, further aggravating poor bank liquidity

Securing the Value in PPP

- Real **Value** in overcoming historic infrastructure deficit (1986)
- Good **Value for Money** depends as much on program and contract management over time as it does on initial contract design and competitive tendering
- Concessions with multiple renegotiations and rebalancing are likely to show low or even negative **VfM**
- Rigorous Government execution in tender, adjudication and monitoring phases essential
- Importance of role of Grantor (Concedente) over the whole life of concession should not be underestimated nor understaffed

State as Concedent (Grantor) is the “ultimate **risk** underwriter” in public services and PPP

- Concessions are temporary and public service infrastructure must be taken back in case of default or abandonment
- Concedente (Grantor) has to maintain essential public services in all circumstances
- Concessionaire has asymmetric bargaining power after adjudication, more information, less to lose, and thus can engage in “strategic behaviour”, may “capture” Concedent
- Public sector is less sensitive to risk, it’s “natural” for State to absorb costs of inflation or to suffer political pressures and changing priorities
- Transaction management vs. Contract monitoring

PPP Program: Organizational implications

Organization

- Concedent – sectoral public service unit
 - LT management,
 - LT budget
- Central PPP Unit Treasury, budget, risks, knowledge center
- Articulate with external debt management, Central Bank
- Transparency and best practices, disclosure
- “PPP Officer” training, certification
- Manage learning curve, institutional memory
 - Senior/junior teams
 - Continuity, professionalism
- Prompt, well grounded Govt decision making, avoid costly policy reversals

Policy guidelines

- People-based culture of risk-management, not just rules-based
- Multi-party political support, consensus essential
- Create PSC comparator with on-budget cost, including contract management costs
- Annual monitoring of VfM, budget sustainability, long term costs
- Strong legal and budget framework
- Long term monitoring arrangements, avoiding renegotiations

Conclusions

- No real substitute for public sector contract management capacity, training and rotations are essential
- Managing indirect public investment through a PPP contract is much more complex than managing direct public investment projects
- Great attention to market risk capacity and pricing in determining risk allocation
- Ongoing monitoring and evaluation key to maintaining Value for Money in the face of renegotiations and equilibrium
- Value for money must include concept of **budget sustainability**, renegotiations and equilibrium for the public partner, as well as the private partner

Recommendations

- Create permanent Central PPP Unit
- Plan for public sector capacity building, guidance, guidelines, reviews
- Simplify specifications, standardization of documents and procurement procedures
- Adjust to changing market conditions, manage project pipeline so as to avoid crowding and accumulation of external debt
- Find alternative, even if temporary, sources of financing to overcome funding gaps and overly tight market conditions
- ✓ **Keep PPPs the exception, not the rule, as a form of financing public investment and public services, below 25%**
- ✓ **Include PPP contract obligations in public investment expenditure and public debt**



Obrigada!

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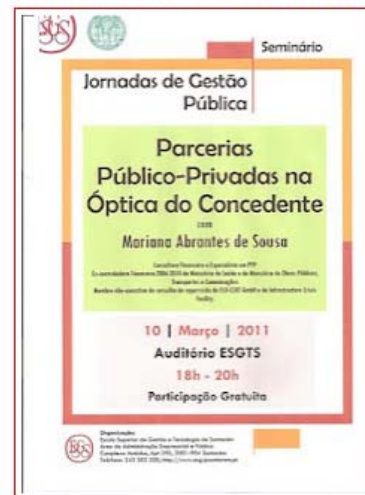
CONTRATOS PPP E CONCESSÕES

As **PPP** são regimes contratuais, incluindo concessões de obras e/ou serviços públicos, em que o Estado-Concedente envolve um Concessionário no cumprimento das SUAS obrigações e responsabilidades de prestação de serviços e infra-estruturas públicas.

lh4.googleusercontent.com/.../ppp_239_utente_contribuinte.jpg

SEXTA-FEIRA, MARÇO 04, 2011

Parcerias Público-Privadas na Óptica do Concedente



Jornadas de Gestão Pública

Seminário: Parcerias Público-Privadas na Óptica do Concedente com Mariana Abrantes de Sousa

Data: quinta-feira, 10-Março-2011, 18h-20h

Local: Escola Superior de Gestão e Tecnologia, IP Santarém, Auditório ESGTS

Contacto: tel. 243 303 200

Ver mini-curso sobre project finance e gestão de contratos de PPP com os mesmos formadores [aqui](#) a 3-5 Maio em Lisboa.

VER alguns dos temas e Conceitos PPP:

Portugal é um dos países mais dependentes das PPPs, no topo do financiamento de projectos em 2009

Os serviços públicos que não são pagos pelos Utentes **têm que ser pagos pelos Contribuintes**
Encargos extra-orçamentais com serviços públicos e PPP de transportes (icebergue de dívida)

Estradas de Portugal acumulam dívida contra a lógica do novo modelo de financiamento

Renegociações de concessões passam riscos para o Concedente e prejudicam o rating de crédito da República, 2

"Gaming" tradicional nas empreitadas é agravado nos contratos de PPPs de muito longo prazo, segundo a teoria de jogos

Aplicação da Lei de Enquadramento Orçamental é essencial para a sustentabilidade orçamental das PPPs

Forte Agência Central de PPPs é essencial para a sustentabilidade orçamental

...tória está cheia de casos de triste memória de má gestão de garantias para

