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Railway infrastructure financing and Public-Private Partnerships

UNECE PPP Rail Standard

Note by the secretariat

Questions on lessons learned in the development of Public-Private Partnership (“PPP”) programmes in the rail sector

UNECE is developing a standard providing guidance to governments planning to use PPP programmes to raise investment in their rail sector, and helping them to properly pursue and achieve the United Nation’s Sustainable Development Goals. The team working on the standard has a number of questions about lessons learned by private sector participants in rail PPP programmes, to provide evidence on which the recommendations in the standard can be based. We would be very grateful for any information you can provide in response to any of the questions.

We have identified six broad themes under which we will analyse experience to date. While there are a number of cross-cutting issues, this will help provide a structure to help governments develop their PPP policy.

- A. **Policy and legislation:** this theme will discuss the policy and legal context of the PPP programme, and how governments can ensure that the programme is legally constituted and consistent with other government policies.
- B. **Economic context and affordability:** this theme will cover issues which help ensure that the PPP programme is affordable and realistically deliverable within national governments’ economic constraints.
- C. **Planning, objectives and business cases:** this theme will provide guidance on how the PPP programme is planned and objectives are set, and how business cases for individual projects are prepared, evaluated and approved.
- D. **Training and resources:** this theme will help identify the resources necessary to plan and implement a PPP programme, and the skills and training needed to make sure public and private sector participants can understand and manage risks effectively.

- E. **Market assessment and engagement:** successful PPP programmes realistically reflect the needs and capacity of the commercial sector, so this theme will provide guidance on engaging with the private sector market and structuring the programme accordingly.
- F. **Transparent procurement and management:** transparency during procurement, delivery and operation of PPP projects is a key factor in attracting investment and demonstrating value for money; this theme will identify governance measures that will support it.

These questions are intended for sponsors, lenders, investors and advisors that are currently, or have been recently, involved in international rail PPP programmes. Any feedback you can provide, however brief, is most welcome, and if a question is not applicable please simply say so.

Many thanks for completing the questionnaire.

A. Policy and Legislation

1. What shortcomings have you identified in relation to policy and legislation in delivering PPP projects, and what would you recommend should be changed in light of experience on the first projects?
2. In light of your own experience, what advice would you give to governments enacting legislation for PPP projects in general and rail PPP projects in particular?
3. Does the PPP procurement methodology in the transport sector in your market allow you to maximise the value for money which a project delivers? Would the inclusion of other elements such as real estate development in these projects allow you more scope to maximise the value for money achieved?
4. Is there standard PPP guidance and documentation for the PPP projects in your markets, in particular for rail projects? Were these in place for early projects, and to what extent are they adhered to? How might they now be improved?
5. What are the major criticisms and plaudits for the rail PPP programme in this market and to what extent are they valid? What formal objections to the policy and legislation have been raised, and by what groups of people; and how were those issues addressed? In light of your experience, what would you suggest should be changed?

B. Economic Context and Affordability

1. How attractive to your business is PPP against alternative procurement options such as 'traditional' public sector funded capital procurement; and why?
2. Are you given information about the affordability of projects as part of the tender process? How reliable do you consider it, and does it influence your competitiveness? Can you suggest different approaches that might allow you to offer more innovative solutions or better value for money? In particular, what was the level of subsidy (if any) offered by the public sector and how was this established?
3. Did any projects include station redevelopment, and if so how was this approached within the commercial structure of the project? Were other real estate assets such as land for car parking made available to provide development opportunities, and if so how did this contribute to the overall affordability of the project?
4. What was the length of the concession and how was this assessed?

5. What charging basis was adopted for the use of railway infrastructure? Was it availability based, and did it include any performance measures, for example linked to levels of patronage?
6. What guarantees does the state provide in respect of PPP concessions, and how important are they to your business? Could the same objective be achieved in a different way? What are the key factors that influence investors and what is their approach in respect of their rights in the event of default?
7. In the event of termination of a PPP contract, what would you and your investors expect to see in relation to the respective rights of the parties, and do consider these arrangements to represent an optimum allocation of risk between the parties? In particular, what arrangements were made to ensure continuity of service?

C. Planning, Objectives and Business Cases

1. What form does the 'business case' for a PPP project take? Were there sufficient opportunities for you to be involved in the preparation, and how could the methodology used be improved to compare the relative value for money represented by PPP against alternative procurement routes more accurately?
2. How transparent are the business cases, and what opportunities do you have to comment upon them or improve the value and costs associated with the transfer of risks?
3. How transparent is the basis for the evaluation of tenders for PPP projects? Do you think the right performance indicators are used to measure success, and how closely have outcomes matched programme intentions?
4. Generally, how detailed are the specifications provided for projects? Are they true 'output' specifications or more detailed requirements, and could they be improved? Are standard technical specifications used and if so, which? Is the issue of sustainability incorporated in the specifications, and if so do the specifications only relate to the future transport system or do they also envisage implementation in a sustainable manner? To what extent do the specifications take account of interoperability?
5. In the case of railway infrastructure was an integrated solution combining construction, operation and/ or provision of rolling stock proposed, or were these elements treated separately?
6. Considering the long-term nature of the operating period of typical PPP projects, how do you address the need for flexibility and adaptability of each PPP project, and the potential impact of technological developments?

D. Training and Resources

1. Do you think that the right people or groups were involved in the development of your government's rail PPP programme and did they have the right key skills? If not, what would have improved outcomes? Were they appropriately trained, and could the programme have been improved with different resources and training?
2. Did the public sector use external advisors at each stage in the development of their PPP programme, and how might they have made better use of them?
3. What issues have you encountered in finding suitably qualified people, and sufficient financial resources? What skills shortages are evident in this market, and how have you overcome them?

4. During the programme's procurement phase, where did you observe gaps in government and external resources and training in the oversight, regulation and approval of the projects, and how could it have been improved?
5. Following the award of each project, what resources and training were needed from the private sector to manage construction and commissioning of the new facilities? How well trained and resourced were their public sector counterparts and how could these have been improved?

E. Market Assessment & Engagement

1. What type of rail PPP projects have you been involved with? Have they focussed mainly on railway infrastructure, and if so was it to enhance existing infrastructure or new build? Were other elements such as station redevelopment or rolling stock procurement included in the programme?
2. How did the private sector contribute to the development of PPP policy and legislation, what issues did they raise and how were they overcome? If policy and legislation were being developed afresh, would you recommend that any aspects should be included or excluded?
3. How did your government assess local and international appetite for their PPP programme in the rail sector before launching it (and developing documentation/ enacting legislation), amongst potential bidders and investors? Which international precedents were used, and why? Which specific features of the local rail market could prevent use of best international practices and how were they addressed?
4. How important is the consideration of the stability/commercial position of a country in whether you choose to bid for a PPP project/programme? How well did the public sector engage over these issues, and did they really address the feedback you gave them? What could they have done better?
5. What approach was taken to risk allocation? Were there pre-defined elements that were identified as retained risks or were you invited to make your own assessment?
6. What tools (such as promotional meetings, investor days, formal technical and commercial dialogue) did the public sector use before and after the launch of formal procurement to achieve maximum market engagement and encourage investors to commit to the programme and projects? Did you feel they listened and acted upon what they heard, and did they provide accurate and meaningful debriefing and compensation for losing bidders, and to what extent?
7. What issues/ potential challenges did investors raise during the development, execution and funding phases of PPP projects (e.g. the country risk and public financial capacity, the scope of the project, risk allocation, financial structure and any other issues which could affect bankability and value for money)? How were those issues addressed before and during the tender procedure?

F. Transparent Procurement & Management

1. Does your business have a formal policy defining corrupt practices and how do you identify and record these and address them in your business processes?
2. How do you ensure that your participation in a procurement process and its criteria for eligibility and award of contracts is transparent? What could the government do to ensure that the process is more transparent and fair?

3. What do you see as the role of central PPP unit and international PPP bodies in the PPP procurement process (if any)? Could international PPP bodies facilitate transparent and efficient management of the procurement process, and how?

4. Does your government provide support for rail PPPs in the form of subsidies, Viability Gap Funding etc. and what impact do these have on the attractiveness of projects from your perspective? For PPP projects where investment is supported by government, how is accounting of expenditure presented and are there any obstacles in this process to your providing the best possible value for money?

5. Do you consider the project specific evaluation criteria and evaluation methodology to be fair, objective and transparent? How could they be improved, and how could public authorities better ensure that terms do not change after a preferred bidder is identified?

Do you have provision for post-award procurement audits? If so, what form do they take, who carries them out and are their findings published? Do you find them helpful, and if not how could they be improved? Please explain your reasoning.
