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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 national governments who have already developed rail PPP projects, 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 and this theme will identify governance measures that will support it.

These questions are intended for governments that are developing a rail PPP programme but have not delivered projects yet, as well as those with mature programmes; or those with PPP programmes in other sectors and are considering a rail PPP programme. 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 specific PPP legislation has your government enacted (or does it plan to enact) to enable PPP projects in general and rail PPP projects in particular, and what lessons would you commend to governments planning to enact similar legislation? What challenges or conflicts in legislation did you encounter in developing PPP legislation and policy and how were they overcome. If you implemented pilot projects, what lessons did they yield?
2. Please explain the role PPP programmes play in your country's transport infrastructure, and the rationale for determining that role – for example do projects only focus on the provision of railway infrastructure, or do they also include roads?
3. Have you developed PPP guidance and standard documentation for PPP projects, in particular for rail projects? Were these in place for early projects, and what lessons did you learn about their introduction? How might these now be improved?
4. What are the major criticisms and plaudits for your rail PPP programme? 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 change? Was it necessary to adopt a specific decision making process for the programme?
5. How well was the PPP programme supported by politicians and civil servants, and what measures did they take to champion it? Was it supported across the political spectrum, and what measures helped prevent party politics from disrupting the programme?
6. How did you ensure that PPP policy and legislation was developed in a way which protected the public sector and was in the public interest? Did you have a dedicated PPP unit and, if so how well did it work alongside your Finance/Treasury and Transport departments? Was it necessary to make any changes to your tax regime or regulations for foreign investment, and if so what were they?
7. What thought was given to the identity of the state entity/ counterparty entering into the PPP contract before contracts were tendered, and to what extent was the need for a government covenant or equivalent understood and accepted at the planning stage? What evidence informed your decision to take this approach?

B. Economic Context and affordability

1. What were the main factors in considering PPP against alternative procurement options such as ‘traditional’ public sector funded capital procurement; and how did you ensure they were compared objectively?
2. What were the economic drivers of your government’s rail PPP programme? What evidence informed the development of the programme, and how did you use it? Does your programme differentiate between urban and rural needs, and how?
3. What sources of capital finance were available for your PPP programme, and what were the advantages and disadvantages of each? How did you assess their relative impact on public finances, public accounting policy and value for money? How did you assess the affordability of, and how closely have outcomes reflected your assessment?
4. Did you include station redevelopment in the programme, and if so how was this done? Were you able to make available other real estate assets such as land for car parking to provide development opportunities?
5. What was the length of the concession and how was this assessed?
6. What charging basis did you adopt for the use of railway infrastructure? Was it availability based, and did you include any performance measures, for example linked to levels of patronage?
7. What guarantees does the state provide in respect of PPP concessions, and how did you gain assurance that they represent good value for money? How do you give investors assurance that payments will be made in a timely way, and what are their rights in the event of default?
8. In the event of termination of a PPP contract, what are the respective rights of the parties, and how did you gain assurance that those arrangements represent good value for money? In particular, how did you ensure continuity of service?

C. Planning, Objectives and Business Cases

1. What form does the ‘business case’ for a PPP project take? How are they prepared, and what methodology do you use to compare the relative value for money represented by PPP against alternative procurement routes?
2. What is the basis for your evaluation of tenders for PPP projects, and how are they compared to the business case prepared before procurement began? What were the key selection criteria and what performance indicators do you use to measure success? How closely have outcomes matched your intentions?
3. How detailed are your specifications for your projects? Are they true ‘output’ specifications or more detailed technical requirements? Are standard technical specifications used, and if so which? Have any specifications concerning the manner of execution, such as ensuring a local population’s support and commitment to the project, been used and if so, which? To what extent do your specifications take account of interoperability requirements?
4. Is sustainability considered to be a major source of value for your PPP projects? How do you promote and objectively assess sustainability in design and construction innovation and can you provide examples?
5. In the case of railway infrastructure did you propose an integrated solution combining construction, operation and/ or provision of rolling stock, or did you treat these elements separately?

6. Considering the long-term nature of the operating period of typical PPP projects, how do you assess the flexibility and adaptability of each PPP project, and the potential impact of technological developments?

D. Training and Resources

1. What people or groups were involved in the development of your government's rail PPP programme and the procurement and implementation of individual projects, and what were their key skills? What training did they receive, and could the programme have been improved with different resources and training? How did you ensure you retained these staff?
2. What use was made of external advisors at each stage, and how might you make better use of them in future?
3. What issues have you encountered in finding suitably qualified people, and sufficient financial resources? What skills shortages are evident, and how have you overcome them?
4. Following the award of each project, what resources and training were needed to manage construction and commissioning of the new infrastructure and how could they have been improved?
5. During the procurement and delivery of projects, what feedback did you receive from the private sector on the quantity and quality of public sector staff managing the programme?
6. Have there been any incentives identified in your PPP programme aimed at encouraging private sector parties to develop specific technology to transfer to local staff? If so, have these incentives helped to grow relevant capabilities and skills of local staff?

E. Market Assessment and Engagement

1. What type of rail PPP projects have you developed? Have you focussed mainly on railway infrastructure, and if so was it to enhance existing infrastructure or new build? Was it primarily heavy rail, or did it include light rail as well? And have you incorporated other elements such as station redevelopment or rolling stock procurement in your programme?
2. Were the projects you have implemented one-off or were they part of a programme, and if so were they developed as part of a wider inter-government initiative?
3. 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 you were starting to develop rail PPP policy now, would you recommend that any aspects should be included or excluded?
4. How did you assess local and international appetite for your government's 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?
5. A number of issues can constrain successful engagement with the private sector (such as a high country risk; a perception that it undermines competition; a lack of public sector capacity; low private sector interest; difficulty in getting private sector participants to engage openly and honestly; biased or commercially motivated feedback; or mixed messages from private participants). What constraints did you encounter and how did you address them? Was it necessary to provide support for bid costs to encourage private sector participation?

6. What was your approach to risk allocation? Were there pre-defined elements that were identified as retained risks or were the private sector invited to make their own assessment?
7. What tools (such as promotional meetings, investor days, formal technical and commercial dialogue) did you use before and after the launch of formal procurement to achieve maximum market engagement and encourage investors to commit to the programme and projects? Do you debrief and/or compensate losing bidders, and what is the extent and process of such debriefing and compensation.
8. When engaging with investors and providers during the development, execution and funding phases of the projects, what issues / potential challenges did investors raise (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 bank ability and value for money)? How consistent was their feedback, and how were those issues addressed before and during the tender procedure?

F. Transparent Procurement and Management

1. Do you have a formal definition of corrupt practices and how do you identify and record these and address them in your procurement processes?
 2. How do you ensure that the procurement process and criteria for eligibility and award of contracts is transparent? What challenges have you faced in ensuring transparency and what measures have you taken to overcome them?
 3. What is the role of central PPP unit and international PPP bodies in the PPP procurement process (if any)? How do you think that international PPP bodies can facilitate transparent and efficient management of the procurement process?
 4. What role has your government taken for rail PPPs in the form of subsidies, Viability Gap Funding etc.?
 5. Do you allow unsolicited proposals (such as Swiss challenge, bonus systems or complete project proposals)? If so, how do you ensure transparency and value for money?
 6. 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? Please explain your reasoning.
 7. Have you considered separating the project development phase (for example, development of specifications, preparation of design and definition of construction methods) from the execution/ construction phase in your PPP projects, so that construction can only commence when the project development phase confirms the financial figures (project benefits and costs, risks) as stated in the initial business case?
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