International Journal of Economics, Commerce and Management
United Kingdom Vol. VI, Issue 10, October 2018
http://ijecm.co.uk/ ISSN 2348 0386

A REVIEW OF MAIN PUBLIC-PRIVATE PARTNERSHIP APPLICATION FORMS

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Abstract

The purpose of this paper is to analyze the main public-private partnership application forms. The literature review comprises peer-reviewed journal articles, white papers, conference proceedings and the topic of public-private partnership and application forms. This study aims to present application forms of public-private partnership from many authors. PPPs involve organizations whose affiliations lie in respectively the public and private sectors working together in partnership to provide public services. Nationwide experiences have shown that states, no matter how powerful they may be, they have not been able to provide the entire necessary infrastructure in the right place and time. For this reason, there was a need for co-operation between the two basic sectors of the economy: the public and private sector. Such a need, noticed long ago, is becoming increasingly intense in different forms and levels of cooperation. However, the literature shows that there is still much uncertainty about the tailored models as well as the intended results of any cooperation. The main reasons for applying PPPs are: budgetary efficiency, cost reduction, increasing performance in infrastructure delivery, access to alternative funding, optimal risk distribution and project management.

Keywords: Public private partnerships, governments, public services, forms

INTRODUCTION

A PPP is a contract between the public sector entity and the private sector entity, where the latter performs the function of the public entity according to the results-based, fee-based specifications and the specified period of time. It involves the transfer of considerable risk to the private sector, and the public sector holds an important role as a buyer or facilitator of the services provided (Aiello, 2001).

Joint ownerships have a long history in Europe and are presented in various forms in many sectors. One of the most prominent examples of literature on common ownership is Volkswagen in Germany. The Federal Government of Germany and the Lower Saxony (Bundesland) own each of 20%, while 60% are owned by private shareholders (Akintoye et al., 2003). These partnership models are widely used in many countries of Europe such as the United Kingdom, Germany, Belgium, Ireland, Portugal, France, Austria, Netherlands, etc., where regulatory documents have been drafted and governmental structures aimed at promoting PPPs.

According to Merna and Smith (Merna and Smith, 1994), the use of public private partnerships in Europe is widespread. In particular, the Construction Use Transfer (CUT) model finds extensive use for the financing, construction, use and maintenance of infrastructural projects. Literature indicates that this model has been found to be used in small projects. Member States consider PPPs as appropriate structures for undertaking infrastructure projects, such as transport, public health, education and national security; they provide opportunities to boost the trans-European transport system (TEN), whose development lags behind due to lack of funds (Kraja, 2013). In general, the European Union states did not consider it necessary to draft legislation at national level by basing and regulating PPPs through some of the principles deriving from the Treaty of Rome of 1957 as the principles of equal treatment, respect for reciprocity, proportionality and transparency.

The European Commission (March 2003) identified several key private partner roles in PPP approaches: additional capital insurance; providing alternative management skills; providing added value to the costumer and the public; optimization in resource use.

Many researchers (Corbett and Smith 2006, Jefferies et al 2002) have found that project financing is a key success factor for private sector investment in public infrastructure projects. The availability of an efficient and mature financial market with the benefits of low funding costs and the diverse range of financial products would be an incentive for the private sector to receive PPP projects.

PPP, public-private partnerships are increasingly becoming an alternative to the conventional method of procurement of infrastructure and public services (Akintoye et al., 2003).

Given this, partnership allows the public and private sector to utilize those special skills and achieve better results that none of them can only achieve (Akintoye et al., 2003). Therefore, there are several reasons to form partnerships, particularly in providing public services. Previous researchers have identified the reasons for a partnership including risk sharing opportunities; achieving higher levels of efficiency and economies of scale; innovations and technology transfer (Osborne, 2000). Today, many countries have developed and are developing PPP programs for providing public services and infrastructure. This has resulted in significant volume growth and the number of PPP projects across the globe since the early 1990s. The researchers have previously defined PPPs in various forms. This has led Li &Akintoye (2003) to claim that there is no specific definition for PPPs and that all definitions have common features. Having said this, Yescombe (2007) concludes that PPPs should be seen within the overall context of public sector reform that encourages contracting public services with the private sector. The US Department of Transportation (1994) reports that regardless of the level of involvement of the private sector, governments continue to play a vital role by providing an adequate environment; support/ guarantee; security. Studies reveal that some PPP models have been implemented in different countries, models where private sector responsibility varies in apparent ways. And the level of risk that is being undertaken by the private sector. The models range from traditional procurement methods that do not involve the private sector to the PPP model, where the private sector's responsibility and the risk to the sector are significantly increased.

LITERATURE REVIEW

The European Investment Bank (EIB) 2004 defines PPP as an investment that shares the risk of offering public goods and services considered by the government as a way of launching investments whose realization would have been impossible under the terms of a limited budget and time.

Akintoye (Akintoye, 2006) in his work describes PPP as a joint contractual property agreement, where the public and private sector pool resources and share the risks and benefits to create efficiency in providing public and private services.

By examining different definitions of PPPs in existing literature, it is important to place emphasis on the nature and characteristics of contractual arrangements between the public and private parties. Different researchers have introduced a large number of public private partnership models that vary among them from the degree of government control and the degree of private sector involvement in project risk.

Based on the European Commission's assessment (Green Paper, 2004), PPPs can be classified in a general plan in two forms:

1. Contracting PPP: These approaches are based on contractual links between the parties and are more widely applied in construction and management projects. In these types of partnerships, the private party provides the service or infrastructure including financing, design and management under the control of the public party. Private partner is usually paid by user-collected taxes or by regular payments from the public party. In this type of contract, PPP is implemented by a legal entity that is established by a private partner or a legal entity established by a public partner for specific purposes in the PPP contract (BNJVL, 2008).

2. Institutional PPP: means establishing a new legal person from a private and public partner for the purpose of realizing public services. In addition to the establishment of a new legal entity, PPP can also be realized by acquiring ownership by a private partner on a legal person established by a public partner. These approaches are based on the collaboration between the public and private partners within a distinct third entity, held jointly by both partners. An institutionalized PPP may address the management of a particular objective entity, or a private partner who is involved in an existing public enterprise (Berber, 2013). According to the European Commission (Green Paper, 2004), the subject moves jointly to the parties and the co-operation between them is closer.

These two PPP forms, in addition to specific specifications that make them more widely applied to a project type than to another, have in common:

▪ Public ownership of the immovable asset;

▪ The private partner selection is realized through public competition procedures.

Looking at the latter, during the literature we encounter PPP forms which are based on negotiations for the selection of private parties. These approach models are classified as a separate group and have beginnings in urban planning by developing entrepreneurial private initiative for urban regeneration and planning (Longa, 2011).

Based on the large number of PPP types as well as the variety of their fields of application, researchers and PPP-specific institutions have made their calcification by grouping them according to their specific characteristics.

1. Build-Operate-Transfer (BOT) or Design-Build-Operate (DBO)

The private sector designs, finances and builds the new facility under a long-term concession contract and develops (operates) the economic activity during the concession period, after which ownership is transferred back to the public sector. In some cases the public sector participates in the realization of capital expenditures by providing a part of the investment and in other cases the private sector finances the whole project and secures profit through setting tariffs for the users. The duration of PPPs of BOT and DBO is usually about 15+ years. BOT and DBO projects are generally designed to bring private capital to the construction of new infrastructure. The operating period is long enough to allow the private company to pay construction costs and earn a profit - usually 10 to 20 years. The government maintains the ownership of infrastructure facilities and becomes the customer and service regulator. The private sector provides capital to build new facilities and the government agrees to purchase a minimum level of output over time, regardless of the final consumer demand. Having a commercial risk to the government is what differentiates BOT from concessions.

2. Build-Own-Operate (BOO)

This partnership model implies the construction of the project by the private party through private funding, and then ownership and use. This means that the public sector does not have ownership rights over this project until the end of the contract.

3. Buy-Build-Operate (BBO)

This approach implies the sale of public assets to the private sector in order to rehabilitate, improve and modernize it. The private party buys the asset and makes the constructions according to the specifications in the contract and uses it to recover the investment and make a profit.

4. Build-Own-Operate-Transfer (BOOT)

In these types of agreements, the private sector undertakes to carry out an activity that was previously performed by the state for a certain period of time by setting a fee for service users. After the expiry of the time limit the ownership is transferred back to the public sector.

5. Build-Operate-Training-Transfer (BOTT)

As far as BOTT is concerned, the private sector organization finances, builds and operates a facility or building that provides public service. The public entity pays the fee, usually based on the service unit. The private sector organization also trains human resources that will remain with the project after the transfer. The duration of BOTT projects is usually 15+ years. The complex nature of a BOTT Concession requires the responsible private organization to have strong skills in contract management, program and project development, coordination and quality control. The BOTT contract is one of the forms provided by the government for the rapid improvement of water and sewerage services in rural and non-urban areas. The power of the BOTT model is the ability to bring private money into building new facilities or substantially renewing existing ones. Weaknesses typically involve only a single structure or a limited number of objects, thus limiting the ability of partnership to help optimize resources or efficiency across the system.

6. Build-Lease-Operate-Transfer (BLOT)

This form differs from BOOT only in the fact that in this case the private entity (concessionaire) does not enjoy the ownership of the object built during the concession period. In this case, the private entity commits itself to carrying out a public economic activity through the financing of the facility, design, construction and operation of an object on a land leased from the public sector. The private entity benefits the user service fees and finally the ownership passes to the public sector.

7. Contract Services (CS)

They are seen as the simplest form of PPP. In such contracts, the private party has the right and the obligation to perform a specific service within well-defined specifications for a period of perhaps one to three years. The Government retains the ownership and control of all objects and capital assets. The public entity pays a fee for the private organization to provide specific operational services such as reading meters, collecting bills, or collecting waste. (Plummer, 2002). The service contract may also be a supply contract, a civil works contract or a contract for technical assistance. Service contracts can be found, for example, in cities without sewerage when the maintenance of special tools for cleaning septic tanks is contracted for a fixed term to local entrepreneurs. They may be of the form:

- Operations and Maintenance (O&M) The public partner contracts the private sector entity to use and maintain the project, with the specificity that ownership and management always remain the responsibility of the public sector;
- Operations, Maintenance & Management (OM&M) - is similar to the previous one with the only change that the private entity can use, maintain and manage the project by having the opportunity to invest in it. In such cases, the contract time limit is carefully calculated so that the private party has the opportunity to take the logical return of the investment.

8. Design Built (DB) and Design Build Maintain (DBM)

In the DB model the government contracts a private partner to design and build in accordance with the required specifications. After completing the construction, the public sector has the right to use and maintain the project. Benefits of this approach seem to be reducing the time of construction, carrying the risk from the private sector, and reducing conflicts by having a single private company responsible both for project design and project building. The DBM model varies in the fact that the private entity has the responsibility of maintaining the project, except for design and construction. The Government enjoys the right of ownership and use.

9. Joint Venture (JV)

The joint venture is an institutional agreement that is preferred to meet the dual objectives of strengthening local governance and encouraging private sector participation in public service delivery. The arguments presented in favor of the joint venture are economic and political. The economic argument states that the municipality retains ownership of the assets under the concession contract agreement, but with the added advantage that as a key shareholder in the joint venture, the municipality has a financial interest in promoting efficiency in service delivery. The political argument underlines that, as the main shareholder, the municipality is more positioned to monitor and control the activities of the private sector partner. This was in contrast to the concession contract, according to which the public sector effectively handles control of the daily operations of the concessionaire.

According to the Treasury in the UK, a joint venture with public and private sector shareholders is a distinct form of PPP. A joint venture is the creation of a new company, which will be a separate legal entity with its own name. This new company will be the means by which the joint venture service is performed. It is important to distinguish the formation of a joint venture by a purely contractual agreement, such as providing goods or services.

Establishing a joint venture company requires legal foundations to agree to the founder. These documents will determine: the way the new company will be run and the settlement of disputes; exit strategies; how often the directors and shareholders meet; and the nature of business and constraints. JV activities are usually governed by a business plan that will determine the direction and future JV activities. Joint venture enterprises and other types of public-private partnerships are usually created because the parties have additional objectives: each has a contribution to make successful business or venture which they would not be able to achieve independently at lower cost or risk. Generally, joint ventures are appropriate when creating a business that needs investment and flexibility to maximize its potential. However, there are many instances where desired results can be more easily achieved through a contractual relationship or other types of partnership. Some of the key features of joint ventures from the public sector point of view are:

- It will have its own legal capacity, separate from its founders. Consequently, the new company can own and deal with assets, employ people, conclude contracts in its own right, and whether it is classified as a private entity will be subject to private sector accounting and tax considerations. It will succeed or will fail with its own efforts.
- Using the company's structure can improve access to other private sector skills and resources, such as financing and manufacturing technology.

• The company's structure provides a mechanism to capture value over a longer period, as the public sector will retain a share of equity in the company.

• Staff can be given a greater incentive to succeed through higher salary prospects and bonuses, such as bonuses or stock options.

• Independent management team can be deployed to the new company.

• The company structure encourages greater focus on the business plan and achievement of goals. The new company, as a single entity, can assist in product/ service labeling/ marketing and handling client inquiries.

• The joint venture can allow for better risk management and can be used to limit liabilities to the public sector.

There are a number of issues that need careful scrutiny in order to secure the potential benefits of the joint venture. For example, such companies may be difficult (and unsuccessful) when partners have profound differences in culture or different goals. The public sector body will have to manage its exposure to risk. Over time, the new unit could change its strategic direction from what it was originally desired by the founders if the joint control mechanisms were not put in place. Also, the creation of a joint venture may create conflicts of interest between public sector staff acting as the company's directors and their roles as public employees. There may be many cases when a joint venture is not the best option and the desired outcomes can be achieved more easily or better with other options. A variety of contract types may be alternatives to the creation of a joint venture, including:

•Service/ Supplies Contracts;

•Licensing Agreements;

•Contracts for Research and Development/ Cooperation

10. Strategic alliances

In the private sector, these alliances are "long-term agreements between various but tied organizations that allow firms to gain or retain competitive advantage over their competitors outside the network."

11. Franchise

Under franchise contracts, the public entity, usually a municipality, gives a private firm an exclusive right to provide a certain type of service within a given area. Often used for solid waste, the franchise is similar to rent, but instead of leasing facilities and infrastructure, the operator is only granted the right to provide the service. This is often limited to a certain area and constitutes a zone monopoly over a certain period of time.

The Canadian PPP Council (CCPPP, 2001) identifies five major models used in Canada:

a. Design Build Finance Maintenance Use (DBFMU)

b. Design Build Finance Property Maintenance Use Transfer (DBFPMUT)

c. Design Build Maintenance Finance (DBMF)

d. Design Build Finance (DBF)

e. Build Finance (BF) and Build Finance Maintenance (BFM).

CONCLUSION

The use of private sector funding to ensure new capital resources has a bearing on reducing public borrowing. The ability to accelerate the development of projects that otherwise will have to wait for resources. Project Risk Allocation for the Private Sector that would otherwise need to be undertaken by the public sector. The ability to create a private landmark to measure the efficiency of similar public sector projects and provide opportunities for enhancing public infrastructure management.

Successful implementation of PPPs requires a stable political and social environment, which is based on the stability and ability of the host government (Wong 2007). Political and social issues that go beyond the private sector should be addressed by the government. If unjustly victimized, it is legitimate for the private sector participants to be adequately compensated.

Nationwide experiences have shown that states, no matter how powerful they may be, they have not been able to provide all the necessary infrastructure in the right place and time. For this reason, there was a need for co-operation between the two basic sectors of the economy: the public and private sector. Such a need, noticed long ago, is becoming increasingly intense in different forms and levels of cooperation.

However, the literature shows that there is still much uncertainty about the tailored models as well as the intended results of any cooperation. This is supported by Li and Akintoye (Li and Akintoye, 2003) who claim that academics as well as participating professionals in partnerships consider these structures as still unspecified. One of the most widely used approaches for realizing public-private partnerships is what is known as Public Private Partnership (PPP).

To summarize, the main reasons for applying PPPs can be:

- ✓ Budgetary Efficiency: One of the main reasons for expanding PPPs over the last decade is that they do not require public sector funding. A PPP disburses the cost of a public service during its duration instead of requiring immediate funding from the state budget.

This cost is paid either by the public service user (concession) or billed to the public sector during the duration of the PPP contract by payment of service fees (IPF model).

- ✓ Cost Reduction: There are arguments for using partnerships to realize cost reduction. To support the cost reduction argument, it would be necessary to give an accurate comparison of the costs involved in providing a certain service to the public or privatization.
- ✓ Increasing performance in infrastructure delivery: Basic infrastructure development, such as energy, water, telecommunications, transport, etc., is considered the pillars of a country's economic development.
- ✓ Access to alternative funding: The need for access to alternative funding may also be a cause for partnership. PPP can contribute to the creation of a viable benefit through the implementation of cost-effective processes, and also through the injection of funds needed for capital investment (Plummer, 2002).
- ✓ Optimal risk distribution: Among the main principles of PPP is the risk distribution to the party that is best able to cover it, aiming at optimizing its distribution.
- ✓ Project Management: Private sector expertise as well as motivation for maximum profit maximization result in more efficient management of complex projects and hence delivery on time and within the budget envisaged.

Also a performance measurement form for collecting data on PPP-outputs and PPP-outcomes should be developed, as a task for further study and research. Such forms can give valuable empirical data for the successes or non-successes of PPP-projects and the final answer to the question if public-private partnership is a suitable measure for increasing the efficiency of the public administration.

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