SUMMARY HIGHLIGHTS

PPP Contract Management Tool

A new tool for managing PPP projects after financial close

In cooperation with Turner & Townsend

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Foreword

"Structuring, procurement and negotiation of quality PPPs are important to the success of those projects, but without effective management of a contract after financial close, there is significant risk that even the best projects can end badly."

Chris Heathcote, Chief Executive Officer, Global Infrastructure Hub

"This reference tool is designed to help the public sector to realise the value and opportunities created in PPP contracts from financial close and throughout the contract life."

Murray Rowden, Managing Director, Americas & Global Infrastructure, Turner & Townsend

The reference tool is a guide aimed at providing practical advice for public officials responsible for the management of PPPs and concessions after financial close.

A PPP typically involves a long-term contract that may last for more than 20 years after procurement. While attention on PPPs often focuses on the ability to attract financing and achieve financial close, less attention is usually given to the subsequent management of projects throughout construction and operation.

The PPP Contract Management Tool provides public sector officials responsible for managing PPP contracts after financial close with practical guidance and case studies, so they are better able to ensure project objectives and value for money.

Methodology

The reference tool has been created using systematic research into the data and actual examples of the practices used during the construction and operations phases of PPPs and concessions. The steps in the data collection that helped to inform the reference tool are set out below.

1. **Create master database**
2. **Randomly select 250 PPPs**
3. **Perform data collection**
4. **Investigate 25 case studies**
5. **Carry out three workshops**
6. **Create reference tool**

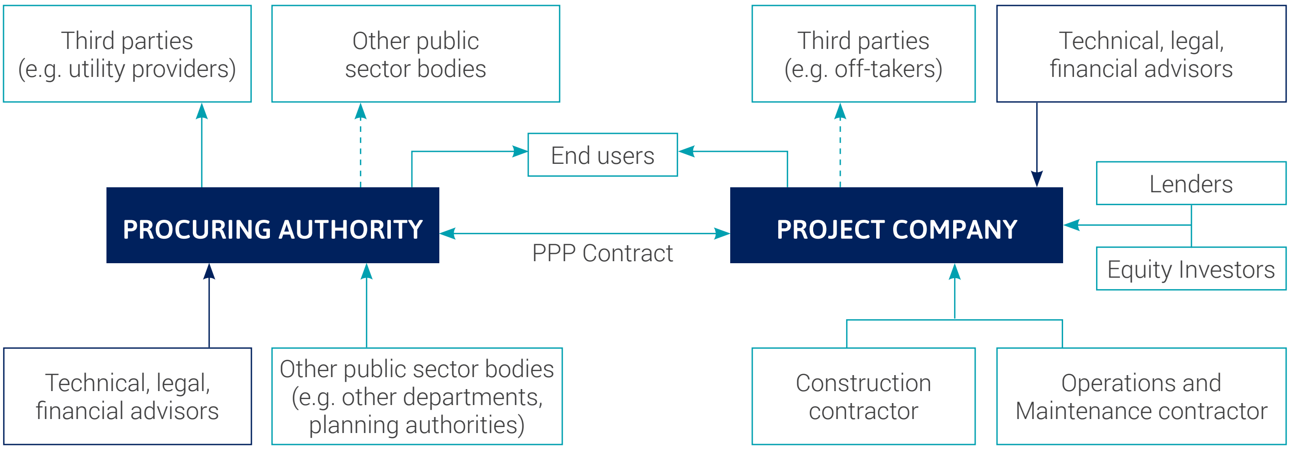
Chapters

Stakeholder management

By their very nature, PPP projects involve a vast array of interconnecting relationships. The success of the project depends, to a large extent, on how these relationships are managed, and poor relationship management can have significant knock-on effects.

Key guidance

- Define all stakeholders that are relevant to the project.
- Ensure good communications strategies and practices are developed.



Project Company

- Consider the interests of the Project Company, including any changes in circumstances.
- Do not penalise the Project Company by unfairly enforcing strict contractual mechanisms.

Other government agencies

- Consider the level of involvement required from other government agencies.
- Help the Project Company to work with other government agencies where appropriate.

End users, businesses and the community

- Ensure end users, businesses and community stakeholders are engaged at all stages of infrastructure delivery to ensure its viability.
- Define the role of the Project Company in the management of end users, businesses and community stakeholders.

EXAMPLE

Design input

The I-495 Express Lane project in the USA highlights that public engagement with key stakeholders can deliver a better project for the community and for the project sponsor. Initial plans for the project included just one access point into the region's largest employment centre. After early feedback from major employers, elected officials and transit advocates, the project team changed the scope of the project to include three major entry and exit points to serve the busy commercial area. By proactively engaging stakeholders early, the parties were able to work collaboratively to develop a transportation solution that provided a better outcome.

Transitions

All PPP projects go through transitions between different phases of the project. Each of these transitions is inevitably a period of substantial change, and if handled inadequately, issues that arise during a transition period can continue to cause problems throughout the life of the project.

Procurement → **Construction** → **Operations** → **Handback**

Key guidance: financial close to construction

- Begin to establish the contract management team at a very early stage.
- Base the size of the contract management team on the nature of the project and the availability of external resources.
- Centralise resources where there is a program of PPPs and it makes sense to utilise synergies.
- Consider arranging for joint training with the Project Company.

EXAMPLE

Joint training program

The Qiaoxi District Central Heating project in China highlighted the ways in which the experience of the private sector can assist Procuring Authorities in their training programs. On that project, the training for the Procuring Authority staff is primarily ‘on the job’ training, with employees learning from the technical staff of one of the equity investors in the Project Company, Beijing Yuantong Heat Company Limited, a private company specialising in heat supply and management.

Key guidance: construction to operations

- Allocate appropriate time and resources to testing and commissioning.
- Focus on the relationship with the Project Company during the transition between construction and operations, and mitigate the risk of disputes.
- Allow adequate time for the parties to become familiar with the operational Key Performance Indicators and payment mechanisms.

EXAMPLE

Operations ‘bedding in’ periods

Several case studies highlighted the need to allow adequate time for the parties to become familiar with operational Key Performance Indicators including allowing “bedding-in” periods for both the Project Company and the Procuring Authority to establish teams, procedures and plans in the first months of operations.

Key guidance: handback

- Plan for handback (or the transfer to a new Project Company or operator) well in advance of the end of the PPP contract.

Performance monitoring

The principal objective of performance monitoring is to ensure that the Procuring Authority and end users are receiving the service the Project Company has agreed to deliver and to confirm, on an ongoing basis, the risk allocation agreed in the PPP contract.

Key guidance

- Ensure adequate resources are allocated to performance monitoring activities.
- Use KPIs and payment mechanisms to ensure the Project Company is performing in accordance with the PPP contract, not as punitive measures.
- Closer performance monitoring will be required for risks that cannot be fully transferred to the private sector, due to their inherent nature.
- Utilise interim construction milestones to stay on top of the progress of works.

EXAMPLE

Performance monitoring team

The Procuring Authority for the Zaragoza Tramway project in Spain had four dedicated staff solely responsible for performance monitoring. The case studies showed that many other projects had less staff for performance monitoring but relied more on consultants.

EXAMPLE

Pro-active management of KPIs

There was an issue with excessive noise due to the use of the light rail on the Brabo 1 Light Rail project in Belgium. The mitigation, however, was proactively managed by both parties. Data was collected during noisy periods and appropriate mitigations were developed and implemented by both parties.

EXAMPLE

Federal labour laws

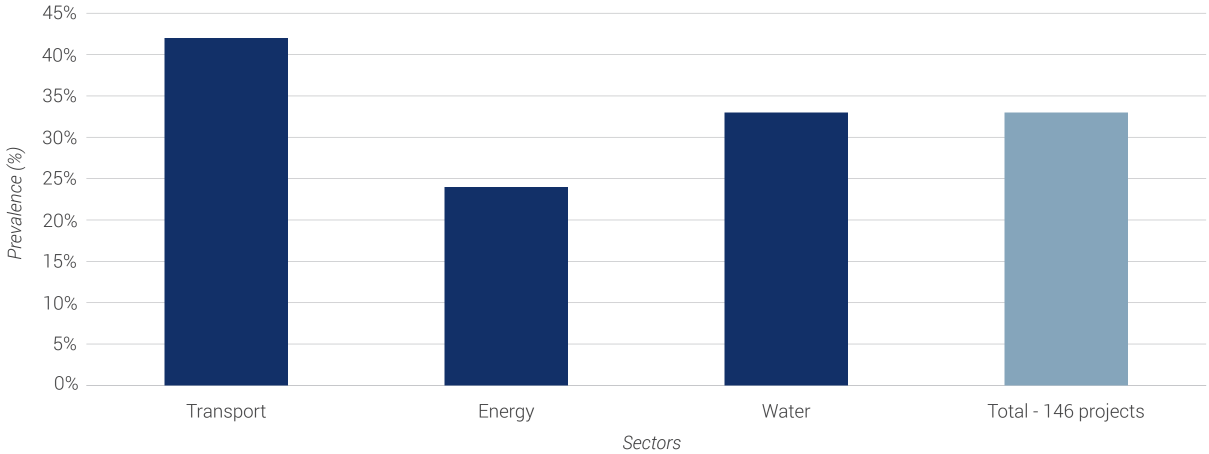
The Port of Miami Tunnel project in the USA highlights the importance of the Procuring Authority monitoring that the Project Company is fully aware of and in compliance with the relevant federal labour laws affecting the project. On this project, the Procuring Authority was also liable for fines if any of its projects were not compliant with relevant laws and regulations.

Renegotiation

As PPP contracts are long-term in nature, they will be exposed to various external changes arising from political, social and economic circumstances over their duration. Accordingly, there is a strong likelihood of renegotiation occurring at some stage during the contract term.

The study found 48 examples of renegotiation, out of the 146 projects for which data was available, which is an incidence of 33%. It should be noted that the prevalence of renegotiation results is heavily influenced by the timeframe that was selected for the research (i.e. projects that reached financial close between 2005 and 2015). While all projects in the sample have been running for at least two years, this reduces for each subsequent year, and only 50 projects have been in progress for more than eight years. The influence of this is that, while only 33% of projects in the entire sample experienced renegotiation, once this is restricted to only projects that have run for more than eight years, the proportion increases to almost 50%. This suggests that the true prevalence of renegotiation is higher than was found in the study, due to the timescales involved. As demonstrated in Figure 1, the transport sector has the highest incidence of renegotiations overall, with 42% of transport projects renegotiated compared to 33% of projects overall.

Figure 1: Prevalence of renegotiation by sector, based on 146 projects with data available



Key guidance

- Introduce policies to limit frequent renegotiations.
- Fully assess the appropriateness of a renegotiation.
- Consider termination as an alternative to renegotiation.
- While limiting frequent renegotiations, also be mindful of opportunities that may be available through renegotiation.
- Ensure adequate resourcing is employed during a renegotiation.
- Be aware of the broader implications of a renegotiation, including assessing opportunities for better procurement of PPPs.

EXAMPLE

Opportunities to be assessed

The original plan for expanding the Queen Alia International Airport in Jordan had been to execute the project in two stages. Once it became clear that the first stage of expansion would not be sufficient to account for passenger growth, both parties agreed to change the design to allow the expanded terminal to be able to accommodate higher volumes than originally estimated. The incentives for both parties were in alignment, and the changes had a positive impact on the project.

Insolvency

It is possible for the Project Company to encounter some form of financial distress during the contract term, but insolvency is relatively rare.

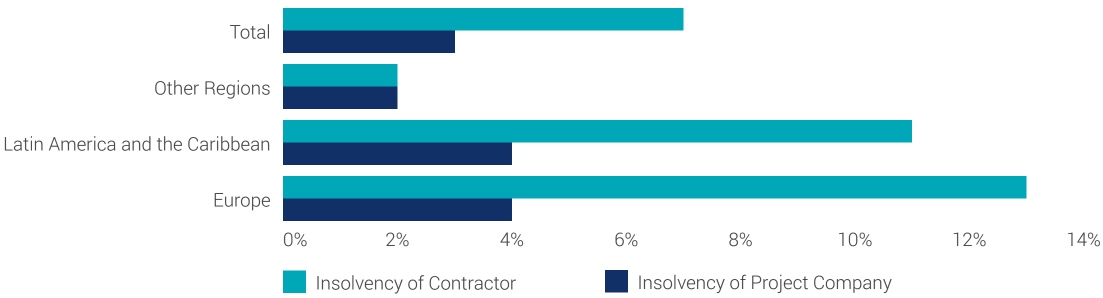
Where there are continuing difficulties during the construction and operations phase, the Project Company is at risk of becoming insolvent, putting at risk the delivery of the services the project was designed to provide.

The study found that across the projects with data covered by the study, 3% of Project Companies had gone insolvent and 7% of key contractors (including suppliers) had gone insolvent.

Key guidance

- Monitor the financial performance of the Project Company.
- Monitor the financial performance of the key contractors whose failure could also have a huge impact on the project.
- Seek specialised legal expertise in the case of insolvency, or near insolvency of the Project Company.

Figure 2: Insolvency Events, based on 204 projects with data available



Disputes

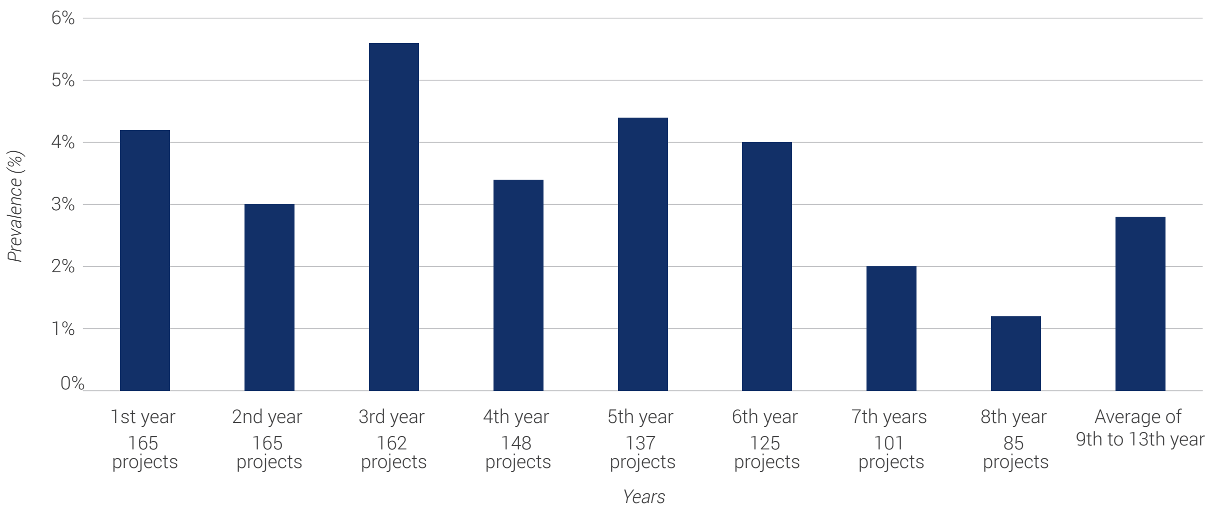
Given the nature of PPP projects, contractual disputes are quite common during both construction and operational periods. Our research found that a formal notice of dispute was issued by one of the contracting parties on 42 projects out of 165 PPPs studied for which dispute data was available, which is a prevalence of 25%.

There was an approximately even split between disputes during construction and operational phases. 28 disputes have been resolved at the time of writing, out of the 42 projects that had a dispute. The time taken to resolve the dispute was generally within one year, however there were a small number of disputes which took three to four years to resolve.

Key guidance

- Use contractual provisions to protect the rights of the Procuring Authority, not as punitive measures.
- Clarify ambiguous and unclear contract drafting before it becomes an issue.
- Consider the full cost of a chosen dispute resolution mechanism and proceed with the option that offers the greatest value for money.

Figure 3: Prevalence of disputes in each year after financial close



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