UNECE/UNOG Special Session on PPP
Procurement Issues

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What is a Public-Private Partnership?

A public-private partnership (PPP) is usually defined as:

***A form of collaboration or joint endeavor between the public and private sectors for the purpose of developing, constructing or operating an infrastructure project through a series of interrelated agreements between public and private participants which define their respective rights and responsibilities*.**

Public-Private Partnership Options

Form	Asset Ownership	Operations & Maintenance	Capital Investment	Commercial Risk	Typical Duration
Service Contract	Public	Public and Private	Public	Public	1–2 years
Management Contract	Public	Private	Public	Public	3–5 years
Lease	Public	Private	Public	Shared	8–25 years
Concession	Public	Private	Private	Private	25–30 years
BOT/BDO	Private and Public	Private	Private	Private	20–30 years
Divestiture/ Privatization	Private or Private and Public	Private	Private	Private	Indefinite (may be limited by license)

PPP Procurement Process Alternatives

- Full design, build, finance, operate, maintain (DBFOM)
- DBOM with “stapled” financing (financing arranged by sponsor)
- Separate design and BOM, etc.
- RFQ, RFP, Preferred Bidder, Closing
- All should have limited # of rounds, evaluation criteria
- Consider reimbursing losers to enhance competition

Procurement in PPP Projects
Key Questions

- Public side determination of how much public control is required
- Definition of Project
  - Technical and performance requirements
  - Allocation of public/private risk and performance responsibilities in terms of design, construction and operation/maintenance
- Based on the foregoing, what is the best legal structure and procurement process
- Very important to understand and address bidder and lender perspectives – requires multi-discipline team with technical, legal, financial etc.
- Expensive – typically US$2 – 5 million

Procurement in PPP Projects Key Considerations

- The more cost and performance responsibility is shifted to the private partner, the greater the cost certainty for the public side but the pricing will include risk allowance
  - Risk premium can be reduced with increase in certainty of requirement and efficiency of process
  - Potential private sector efficiencies can help offset risk premium
- The greater the public side certainty in terms of requirement, process and politics, the more likelihood of better private participation and pricing
- In some circumstances, it may be more efficient and less complex to procure financing separately from EPC and operations /maintenance (for example, lease structures).

Risks

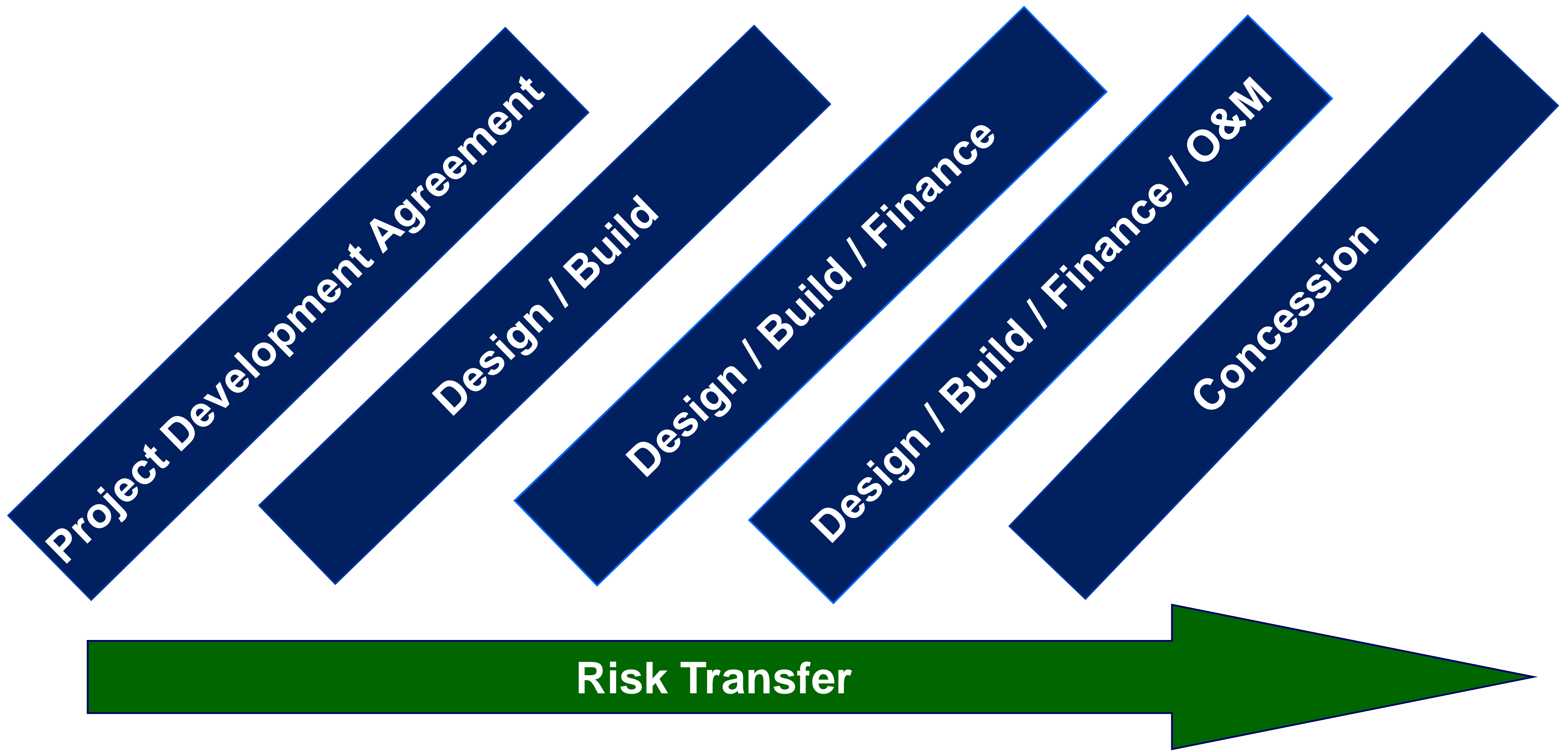
The parties will need to consider the allocation of three principal kinds of risks:

Government and Regulatory Risks

Financial and Economic Risks

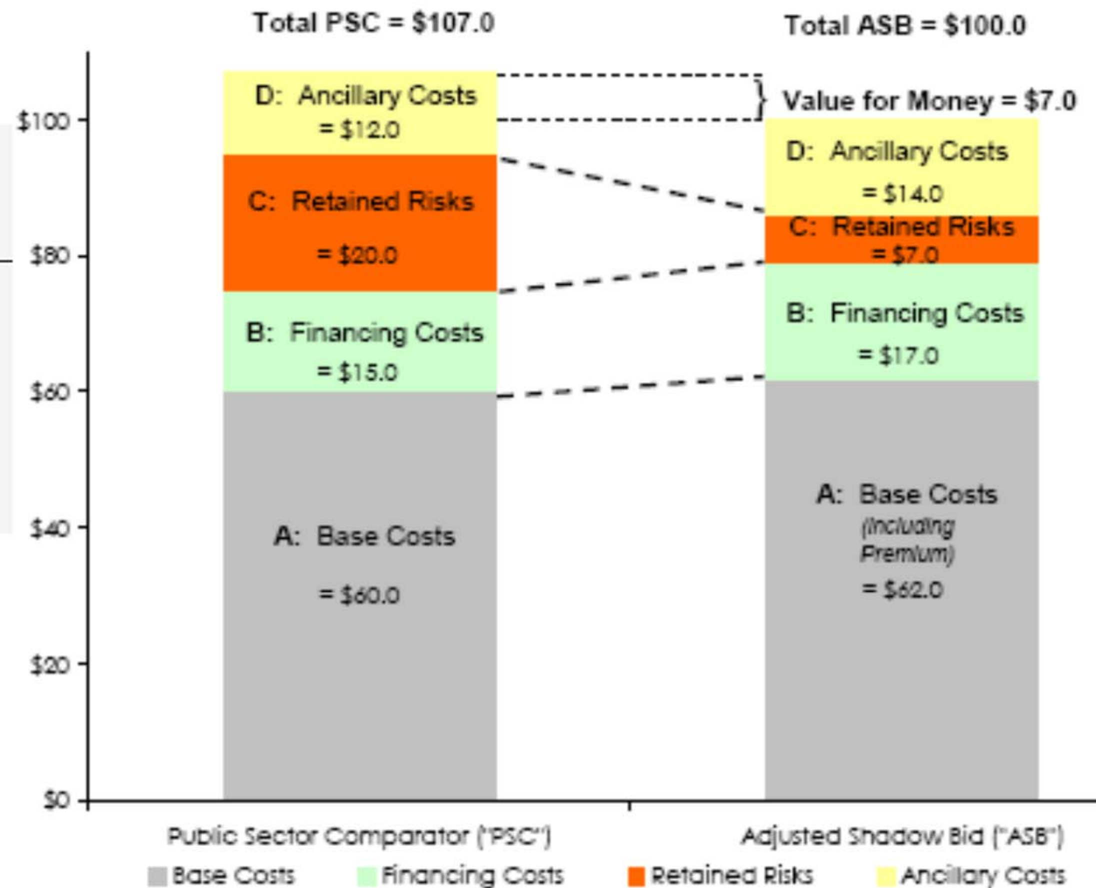
Technical, Construction and Operational Risk

Risk Transfer



Risk Transfer in Value for Money

Model #1 Public Sector Comparator (PSC)	Model #2 Adjusted Shadow Bid (ASB)
Total estimated costs to the public sector of delivering an infrastructure project using traditional procurement processes	Total estimated costs to the public sector of delivering the same project to the identical specifications using AFP

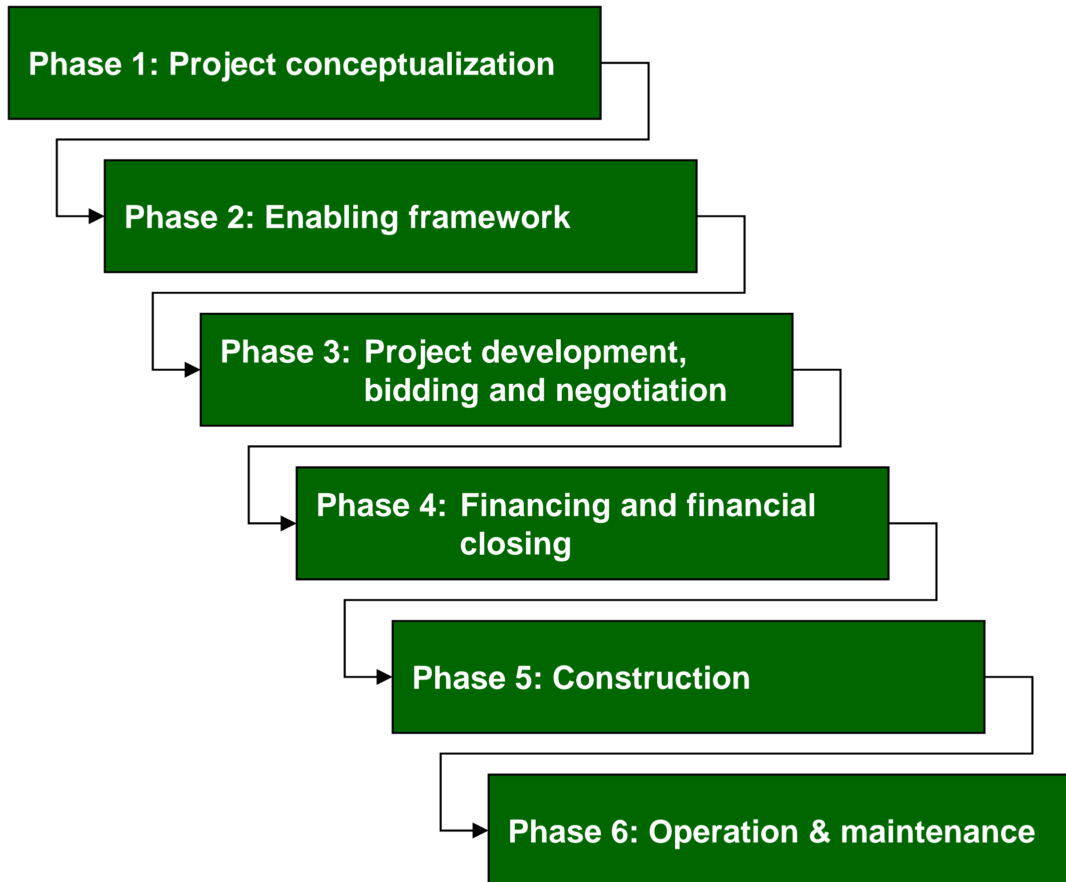


Project Phases

A typical project takes a minimum of 18 months to financial closing.

Basic phases of the overall project are shown at right.

Definition of requirement and process will precede formal procurement process



PPP Procurement
Financing Considerations

- Financing can be private (DBFT, DBFOT, BFOT, etc.) or public responsibility (separation of cost and financing risks)
- Alternatives include:
  - public side "pay as you go" from public funds
  - Public borrowing through bonds, loans or leases
  - Project finance (non-recourse) where project generate predictable revenue
    - Risk of revenue shortfall allocated to private operator or lender
  - Private financing of construction phase with public payment upon delivery (lump sum) or use (periodic)
    - Borrower could be public or private party
- Strategy should be driven by economic realities – can project support cost risks allocated to private side

Deal Killers -- Private Perspective

- Excessive risk in participation in procurement (e.g., proposal cost vs. chance of success)
- Excessive risk relating to public requirement (obligation "subject to..") or ability to pay
- Excessive public control over decisions affecting costs for which contractor is responsible
- Absence of meaningful legal remedy within or outside contracts in the event of a public side breach

PPP Procurement
Key Pre- Procurement Decisions

- Define requirements
  - Control (who operates and maintains/all or only specific project elements)
  - Financing responsibility/approach
  - Allocation of key risks
- Resolve political issues
  - Establish efficient public decision making process
  - Resolve collateral issues (e.g., country of origin restrictions and subcontracting requirements)
- Establish transparent structure and procurement process including award criteria

US Precedent Deals – The Good, The Bad and the Ugly

Good: I-595, Long Beach Courthouse, Denver RTD, Chicago Skyway, Baltimore Seagirt Marine Terminal, Puerto Rico PR-22

Bad: Alligator Alley, BART Light Rail I, Florida High Speed Rail, Chicago Parking

Ugly: Pennsylvania Turnpike, Midway Airport

Sale-Leaseback of Existing Assets

Using the Public Private Investment model more and more municipalities and government agencies are monetizing assets in sale-leaseback transactions to raise critically needed capital while retaining control over core assets.

In a sale-leaseback, the government sells the asset to a private investor for a lump sum price and in most cases is equal to Fair Market Value. Then the agency leases the asset back from the investor for 15 to 30 years. At lease maturity the asset may revert back to the government agency.

This is an effective way of raising substantial amounts of inexpensive capital without incurring additional debt or reducing services to the Community, and it can be combined with an obligation on the private lessor to renovate/upgrade and/or maintain all or a portion of the asset during the lease.

Lease Structure Resulting Advantages to the Strategic Heritage Project Objectives

This alternative finance structure retains full control. It's less complex and uniquely flexible, with the lowest cost of capital. For the Strategic Heritage project this means:

- Phasing can be used to optimize business and operational continuity
- The lessee can assert own requirements for local and international regulatory compliance
- As all costs are included, and there is a lower cost of capital, more money to optimize information technology, communication and energy efficiency upgrades
- There is a direct accountability for life cycle extension and building quality and maintenance
- Simple, fast and not complex
- Many fewer stakeholder issues
- Control—the capital is passive
- Preservation of a strategic heritage with private partnership