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Public-Private Partnerships Framework in India and Bangladesh for Infrastructure Development

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Public-Private Partnerships (PPP) in infrastructure development involves private companies in the design, financing, construction, ownership and/or operation of a public sector utility or service. Such partnerships between the public and private sector are now an accepted alternative to the traditional state provision of public facilities and services. Arguably, the joint approach allows the public sector client and the private sector supplier to blend their special skills and to achieve an outcome, which neither party could achieve alone.

The use of PPP is not straightforward. There are complex issues that should be addressed by governments in order to embrace this procurement method for infrastructure development. Malhotra (1997) has argued that governments involved in Private Finance Initiatives (PFI) need to concern themselves with issues such as transparency of the process, competitiveness of the bids, appropriate allocation of risk, developer returns commensurate with risks, government guarantees and credit enhancements. According to Malhotra (1997), risk sharing among the government, utility, lenders and developers is often at the heart of most reservations or debate about private sector BOT (Build Operate Transfer) or BOO (Build Own Operate) projects.

Examples of facilities developed through PPP project funding abound worldwide. It has been used in industrialised countries, such as the United States, in Eastern Europe, the Pacific Rim and in countries with tremendous new infrastructure demands, such as in Latin America. Where the energy generation has been privatised, this has encouraged

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the private development of new electric production. The capital intensive nature of road projects, in a time of intense competition for limited governmental resources, have made PPP road projects based on either shadow or toll revenues attractive. Other projects in which PPP infrastructure developments are being used include waste disposal and telecommunications.

Features of PPP

Although there is no unified definition of PPP all definitions have common features or characteristics. This has led Peters (1998) to identify five general defining features of partnerships.

Firstly, a partnership involves two or more actors, at least one of which is public and another from the private business sector, such as in the context of a Build-Operate-Transfer (BOT) project (Tiong, 1992) and joint venture company (Eckel and Vining, 1985).

Secondly, in the PPP, each participant is a principal, i.e. each of the participants is capable of bargaining on its own behalf, rather than having to refer back to other sources of authority. In some instances, the public sector has to back to other sources of authority. In some instances, the public sector has to set up a special agency capable of entering into partnership before collaboration becomes possible (Grimsey and Graham, 1997, NHS, 1999).

Thirdly defining feature of partnerships is that they establish an enduring and stable relationship among actors. There are numerous simple, one-off transactions between the public and private sectors. In a PPP there is a continuing relationship, the parameters of which are negotiated among the members from the outset (Moore and Pierre, 1998).

Fourthly, in a PPP, each of the participants brings something to the partnerships (Collin, 1998; Peter, 1998). Therefore, for the partnership to be a genuine relationship, each will have to transfer some resources – material or immaterial – to the partnership. The transfer of material resources (money or land, etc.) is rather obvious (Tiong, 1992). The transfer of other resources, such as authority and any other symbolic values (Bennett and Kerbs, 1991), can constitute a less obvious form of partnership.

Finally, a partnership implies that there is some shared responsibility for outcomes or activities (Collin, 1998; HM Treasury, 2000). This differs from other relationships between the public and the private sectors in which the public sector retains control over policy decisions after receiving the advice of organisations in the private sector.

Benefits of PPP

Generally, PPP procurement can provide a wide variety of net benefits for a government. Chief amongst these is the possibility of more and better projects being built and services being provided (HM Treasury, 1997). A detailed analysis of potential benefits from PPP is discussed below:

Enhance government's capacity to develop integrated solutions: In a conventional procurement process, projects with a broad scope are generally broken down into their component parts and managed as separate units that have to be implemented sequentially due to budget limitations. As a result, the opportunity to develop an integrated solution that effectively addresses a public sector need is often missed. With PPP procurement, the scope for procurement is expanded to reflect a broader context and the focus can shift to developing an integrated solution.

Facilitate creative and innovative approaches: By moving away from the detailed definition of inputs to a description of desired outcomes, the PPP procurement process allows bidders to compete on the basis of their ability to develop unique and creative approaches to the delivery of the required project (Birnie, 1999; NS, 2000).

Reduce the cost to implement the project: A PPP approach offers the potential benefits of reducing costs, often significantly, or delivering higher quality for the same cost, both for the design-build phase of the project and for the operational phase of the project. Although the issue of cost savings arising from PPP is still being debated, many PPP participants agreed that cost reductions have been obtained in addition to gains associated with faster delivery of the project and the transfer of risk to the private sector. Cost reductions in PPP procurement have been attributed to synergies, economies of scale and reductions in life cycle costs (NS, 2000).

Reduce the time to implement the project: In a conventional procurement process, the government construction of major infrastructure projects is typically broken down into relatively small pieces and carried out over an extended period, with the initiation of each phase being tied to multi-year capital plan. Additionally, acquiring the funds for major public construction projects often entails a complicated and lengthy process with an uncertain outcome (Utt, 1999). Total implementation period in PPP can be reduced in different ways. The experiences associated with the building of the Tate's Cairn Tunnel in Hong Kong (Dower and Porter, 1992) and a PFI prison (Hall, 1998) have indicated that some time reduction can be associated with PPPs.

Transfer certain risks to private sector partner: One of the objectives of PPP in public procurement is to transfer risks from the public sector to the private partner. Thus, appropriate risk transfer strategy needs to be developed as part of the planning process of the PPP project, in which risks best managed by the private sector partner are transferred to it, and risks best managed by the public sector partners are retained by it (NS, 2000).

Attract larger, potentially more sophisticated, bidders to the project: By virtue of the size and scope of a PPP project, governments are often able to solicit interest among larger potential bidders and therefore increase the intensity of the competition. In this context, traditional and new bidders are motivated to propose new and more attractive terms to the government.

Access skills, experience and technology: Governments can gain new skills, technology and knowledge as a result of undertaking a PPP project. The PPP procurement process requires a rigorous analysis of the project including an analysis of opportunities for innovation.

India's Experiences

While progress has been made, both countries by having a substantial number of PPPs now in operation, and by putting in place legislative and institutional frameworks for PPPs in some states, scaling-up the use of PPPs. Many PPPs will be for services which are state, and, in some cases municipal subjects and capacities have to be developed at this level, where service responsibilities lie. However, there are roles the center could play in developing capacities at the sub-national level, in addition to developing capacities at the central level.

Both experience to date in India, and internationally, shows that there is no unique formula for developing a sound PPP framework. However, successful programs are characterized by clear policy and legal frameworks for PPPs, competent and enabled institutions that can appropriately identify, procure and monitor PPPs, and efficient oversight and dispute resolution procedures. We look at the following main steps that will be critical to scaling up the PPP program in India and assess the actions that could be taken by the center in the following areas:

1. Strengthening the monitoring of their fiscal costs;
2. Policy and legislative frameworks;
3. Information dissemination;
4. The development of guidance material;
5. Setting up a PPP unit to serve as a pool of expertise and
6. Project development funds for the preparation of PPPs.

Strengthening the monitoring of their fiscal costs

PPPs can involve substantial contingent liabilities as well as long-term purchase obligations. Fiscal Responsibility Acts passed at the central level and by the states of Karnataka, Uttar Pradesh, Punjab and Kerala all include statements on fiscal prudence and treatment of contingent liabilities that are relevant to PPPs. State legislation typically limits total liabilities as a percentage of GDP and includes provisions related to contingent liabilities. Karnataka's Act breaks new ground by including off-budget borrowing and other debt-equivalent instruments within the annual borrowing (consolidated fiscal deficit) cap. Nonetheless, implementing this may not be straightforward. More generally, while debt guarantees are often published, the values of other kinds of guarantees are not. Nor is it clear that government's value or calculate in kind support provided to many PPPs, for example real estate development options, which can be a further source of fiscal costs as well as an important factor in deciding whether a PPP offers value-for-money.

There are only emerging practices and models internationally since this is also new for most other countries. In general, reporting and disclosing PPP contracts and government guarantees and reporting the stream of future payments under existing PPP contracts would be good practice and, where a PPP program is of fiscal significance, a report on PPPs covering these areas should be included as part of the budget documentation. Some countries have started to implement enhanced programs of disclosure. Chile, starting with the October 2003 *Report on Public Finances*, now reports the contingent liabilities arising from PPPs as well as the cash payments to and from concession firms. Monte Carlo simulations and option-pricing models are used to value minimum revenue guarantees, revenue sharing agreements, and the exchange rate guarantees.

Policy Frameworks

Both the center and some of the states have had in place for some time policies on private participation for specific sectors: in ports, for example the center issued "Guidelines on Privatization" for the major ports in 1996 and Gujarat preceded this with a ports policy in 1995.

New policy initiatives would however be useful in an effort to scale up and broaden the PPP program, both at the central and state level. Importantly, this would have the government concerned set out clearly why PPPs are being pursued and the benefits sought and indicate that they will only be pursued where these benefits can realistically be expected. This could be addressed by a clear policy statement which would make clear both the rationale and also the limits to the use of PPPs. This would help to give the PPP program a clearer political mandate.

Broad policy initiatives would also enable governments to announce more clearly the institutional framework for PPPs. This could include the regulation, oversight and evaluation of PPPs, all areas which need strengthening, as well as the role of any new cross sectoral units in developing and implementing PPPs. Another important area to be addressed would be procedures for the procurement of PPPs, in particular the use of competitive processes, and approaches to be adopted towards unsolicited projects. While broad policies provide an important signal of political commitment, it may also be necessary to translate this into action plans and policies for individual sectors. These could provide a more precise orientation to encourage line ministries and agencies to pursue and implement PPP programs.

Legal Frameworks

Cross-cutting PPP laws are not needed in India to permit central or state governments to enter into PPPs. Both the center and many states have done so without such laws. Sector specific legislation has of course been used to restructure industries, introduce competitive markets and set up new institutions, such as sector regulators. it was argued that one of the benefits of cross-cutting PPP legislation is that it allows the consolidation of relevant legal provisions into one law, and also allows the government to legislate the use of certain processes for the development, procurement and regulation of PPP projects. While not strictly necessary, the use of new processes might be better enforced if given the force of law. This might be more important at the state level, where checks and balances and oversight are not as strong as at the center.

Particularly at the state level, therefore, consideration should be given to the development of cross-cutting PPP legislation. The legislation already passed by Gujarat, Andhra Pradesh and Punjab provides possible models for other states. One important aspect that could be addressed by such legislation is mechanisms for dispute resolution. The national legislation in telecommunications provides one model of how such as process and institution can be created that leads to a quicker and more efficient process of settling disputes. Legislation could also establish alternative dispute resolution procedures that could be used to efficiently settle differences between the parties.

The development and passage of legislation also allows for consultation and open debate about the government's policy for pursuing PPPs, including the expected benefits and rationale. This could be an important mechanism to help increase the public legitimacy of PPPs.

Information dissemination

One main component of an information dissemination program would be a web-based portal that would feature: a publicly accessible national database that would contain on a project level basis information on its basic structure including sector, expected/actual contract award date, capital cost, executing government agency and private developer, and method of tender; links to websites of both Indian and foreign PPP agencies and contact information for agencies in India developing PPPs; and PPP pipelines for different states and municipalities. Sufficient resources for ongoing maintenance of the database must be provided to ensure continued relevance.

A second major component would be the development of training materials. The main target group would be project teams in contracting authorities, but training could also be targeted at more senior government officials, as well as those in other ministries, such as Finance, that interact with the contracting authorities and have an oversight role. The private sector may also benefit from such training. Substantive evaluation efforts, for example analysis of successes and failures of individual projects, and case studies would assist in the development of training materials and help both in designing new PPPs and managing existing ones. Over time this could be broadened into the provision of data on the performance of PPPs to improve decision making on the use of PPPs versus traditional public procurement.

Finally, efforts could also be made through workshops and other information dissemination mechanisms to reach politicians, consumers and other stakeholders, so that they are better informed about the nature and structure of PPPs. This would also be helped by greater transparency including placing PPP contracts in the public domain. There may be concerns over disclosure.

The public good nature of information dissemination means that it would make sense for this to be led by a unit located within a single central ministry with cross-sectoral responsibilities, such as Finance. Most of the work would be contracted out and delivered by others, including the development and maintenance of the portal and database on PPPs.

Bangladesh's Experiences

The recent socio economic success story of Bangladesh has been widely acknowledged locally and internationally. On the social front Bangladesh has made significant strides in meeting several of the UN Millennium Development Goals such as reducing income disparity ratio, attaining gender parity in education, reduction in infant mortality etc. In addition, Bangladesh has made remarkable progress in reducing the prevalence of underweight children, increasing enrolment at primary schools, lowering the maternal mortality ratio and improving immunization coverage.

On the economic front it is one of the few countries to have demonstrated consistently strong GDP growth rate averaging over 6% over the last five years despite the general global slowdown. Over the same period per capita income has increased from $638 in 2009 to over $1000 in 2013 (www.pppo.gov.bd).

The foundation to this path of socio-economic growth, success and prosperity for Bangladesh has been set out in the Vision 2021; the Vision that sees Bangladesh progress to a middle income country by the year 2021. The strategy for implementing Vision 2021 identifies the need to increase investments in infrastructure from around 2% to 6% of GDP as one of the key requirements to achievement of the vision. Therefore, the government has identified and prioritised the Public Private Partnership (PPP) as one of the key initiatives to meet this investment priority and close the infrastructure gap.

Bangladesh's success has been built on the foundations of a very dynamic and vibrant private sector. The public sector has worked together with the private sector in different modalities in delivering infrastructure projects for nearly two decades. As such it is keen to build on this strength and forge a lasting partnership between the public and private sector for the accelerated development of our country. Through the PPP program the government intends to pursue opportunities that benefit the private sector through generating a profitable revenue stream one that delivers to its citizens much needed social and economic public infrastructure services and fulfill the commitment of government to meet its social obligations and development imperatives.

PPP Projects in Bangladesh

A policy framework for PPPs was introduced in Bangladesh as early as the mid 1990's with the Private Sector Power Generation Policy (PSPGP) 1996. This marked the launch of PPP projects in the power sector, with the 450MW Meghnaghat and 360MW Haripur Power Projects; two early success stories.

The policy for encouraging partnerships with the private sector continued throughout the 2000's with the introduction of PSIG 2004 (Private Sector Infrastructure Guidelines 2004). The Policy and Strategy for Public-Private Partnership (PPP), 2010 (PPP Policy 2010) has now been introduced (replacing the PSIG 2004) to update the policy framework and incorporate best international practice to further boost the use of the PPPs across multiple sectors and to provide a clear and transparent regulatory and procedural framework.

Interested Private Sector Investors Participation Process in PPP of Bangladesh

The public agency with the mandate for the PPP project has responsibility for the procurement and selection of a private sector investor. The procurement process to be used is detailed in the PPP policy framework, which mainly provides for the option of a single stage or a two stage open and competitive tender process.

The two stage procurement starts with the Request for Qualification (RFQ) being issued to interested investors. An inter-ministerial committee evaluates the qualification submissions to select the pre-qualified bidders. This is followed by issuing the Request for Proposal (RFP) to the pre-qualified bidders. The same inter-ministerial committee will complete the evaluation to recommend the preferred bidder. On selection of the preferred bidder the public agency (supported by the PPP Office) will negotiate on issues specified in the RFP (if any), following which the legal vetting is completed on any non-standard contractual provisions. The public agency will seek final approval from the approving authority, before awarding the contract to the preferred. In the single stage procurement the RFQ and the RFP Stage is combined into a single RFP stage; however the remaining steps remain unchanged.

In both single and two stage procurement processes the public agency may issue a Request for Registration of Interest prior to the formal procurement launch. This is an optional stage designed to support the market engagement process, create awareness and help enhance the procurement documentation.

The government of Bangladesh has provided for a number of incentives and benefits for PPP investors in its PPP policy framework. These include:

- Viability Gap Financing: A budgetary fund to provide financial subsidy for PPP projects that have high socio-economic value but are not sufficiently commercially viable to be delivered on a PPP basis. Up to 30% of the total project cost can be subsidised either as part of a capital contribution during construction or in the form of annuity payments during operation. (Please refer to "Guidelines for Viability Gap Financing for PPP projects 2012" for more details.)

- Fiscal Incentives: There are provisions permitting PPP investors to benefit from various fiscal incentives (for e.g. reduced import tax on capital goods, various tax holidays) to reduce the cost of implementing the project and to enhance viability of project.

- Special Incentives (Non-Fiscal): Any specific project may get special incentives or other non-fiscal incentives to support the implementation of policy objectives or to enhance the ease and efficiency of delivering the project. These may include exemption from specific provisions related to insurance regulations, banking regulations, foreign exchange regulations etc.

- Unsolicited Proposal: To encourage private investor participation and innovation in PPP projects, government has permitted the submission of unsolicited proposals for the delivery of PPP projects. However, to ensure openness and transparency unsolicited proposals are also subject to an open and competitive procurement process. The unsolicited bidder is incentivized through the application of either the Swiss Challenge System (where the unsolicited bidder is given the right to resubmit and enhance his bid) or Bonus System (where the unsolicited bidder is given a pre-agreed bonus to be applied during the evaluation).

The government of Bangladesh recognises the importance of availability of long term finance to enable private investors to finance the implementation of PPP projects. To facilitate access to long term finance government has established two non-bank financial institutions, IDCOL and BIFFL with the remit to provide funds to private investors for the financing of infrastructure and PPP projects. IDCOL is capitalised mainly through the contribution of multilateral donors; while BIFFL is capitalized through the provision of ring fenced budgetary funds from Government of Bangladesh.

Conclusion

PPP has provided opportunities for public and private sector for a win-win situation for both the partners. In India and Bangladesh it was seen that the private sector leveraged advantages in financing, greater operational efficiency, better marketing practices, lower costs, efficient delivery systems, faster decision making, management flexibility, quality service and better up scaling technologies. Whereas the public sector leveraged upon administrative base, public support, certifications, market base, extensive infrastructure.

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