

4. Public-Private Partnership (PPP) project definition

4.1 REFERENCE GUIDE PPP DEFINITION

There are numerous definitions for PPP projects, with variations depending on jurisdiction. However, there is also consensus among key international organisations of a broad definition of PPP that typically includes “government pays” arrangements as well as “user pays” concession style arrangements. The APMG PPP Certification Program¹¹, the World Bank’s ‘PPP Knowledge Lab’¹² and the PPP Reference Guide¹³ define a PPP as:

“a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance”.

This GI Hub Reference Guide has adopted this broad definition of a PPP, and considers examples across the following dimensions to develop a tool that is relevant to a wide audience, and to show how the specifications are influenced by the nature and scope of the project:

Figure 2: PPP dimensions

Asset class	Social infrastructure	Economic infrastructure
	Assets and services that typically support the delivery of social services such as healthcare, education, housing, and corrections and justice.	Assets and services that support the economic foundation of a city, region or country including transportation, energy, communications and water and waste.
Basis of payment	Government pays	User pays
	Payments (often termed “availability payments”) are linked to the asset being available at a contractually-defined quality and services being provided in accordance with qualifiable performance metrics, regardless of level of use.	The Private Partner provides a service to users and generates revenue by charging users for that service, often under a concession contract. The Private Partner bears all or part of the “demand risk”.
Current state of development	New (Greenfield)	Existing (Brownfield)
	A project where the Private Partner is responsible for the design and construction of a new asset and its related services.	Where the Private Sector assumes responsibility for the rehabilitation and/or maintenance of an existing asset and its related services. May also include components of a ‘new’ build.

11 Available at <https://ppp-certification.com/>

12 Available at <https://pppknowledgelab.org/>

13 Available at <https://pppknowledgelab.org/guide/sections/83-what-is-the-ppp-reference-guide>

This Reference Guide considers all types of PPP models that have long-term maintenance components, and recognises this is relevant for a broad range of jurisdiction specific contract structures, such as the 'Marché global de performance'¹⁴ contract in France, or the South African Public Finance Management Act Regulations (TR 16), concession contracts under specific local laws or regional definitions of PPP, such as 'P3' in Canada or private finance initiatives (PFI) in the United Kingdom.

4.2 PROJECT RESPONSIBILITIES AND PPP MODELS

The case studies in this Reference Guide consider a range of PPP procurement models based on the allocation of the following project responsibilities or functions:

- **Design** involves developing the project from initial concept and the development of the output specifications (typically the responsibility of the Owner) to the detailed design of an asset that is to be constructed in compliance with the specifications (typically the responsibility of the Private Partner).
- **Build** could be the construction of a new asset, or could be the rehabilitation of an existing asset, or a combination of both. The Private Partner is required to complete construction work in compliance with the output specifications. The build phase also includes the supply and installation of specified equipment.
- **Finance** is where the Private Partner is required to finance some or all of the construction of the asset, which is then repaid over the life of the asset through availability payments (government-pays model) or user-payments, or a combination of both. Private Partner financing supports risk transfer, as the Private Partner faces reduced financial return or financial loss if the services and scope are not delivered in compliance with the contract.
- **Operate** mainly relates to economic infrastructure and user-pays models and relates to operating an asset for its intended purposes to meet end user expectations (for example the delivery of clinical services in a hospital or driving trains in a transit system).
- **Maintain** can include a range of scope items aimed at maintaining an asset to a specified standard over the contract term. From the regular preventative and reactive maintenance of the physical asset to services that support the operations of an asset (such as cleaning, security and pest control). The 'maintain' component typically includes lifecycle and rehabilitation requirements, where elements of the asset are required to be replaced at the end of their useful life. The Private Partner may be responsible for maintaining all, or just specified elements, of the asset.

The project responsibilities transferred to the Private Partner typically define the 'type' of PPP, such as design-build-maintain (DBM), design-build-finance-maintain (DBFM), and design-build-finance-operate-maintain (DBFOM or concession contract), and the key components of the output specifications will be informed by the specific aspects of the scope of works. For example, a concession contract where the Private Partner operates the service is likely to have different output specifications (related to the level and the quality of service) to a design-build-maintain project where the service is operated by the government.

This Reference Guide focuses on the output specifications and the typical allocation of responsibilities and functions to the private sector under a PPP model, rather than the specific detail of other contractual aspects, such as contract term, allocation of certain project specific risks (such as financial market risks or insurance risks) or the contractual mechanisms that govern how the eventuation of project risks are to be managed.

However, for technical risks, there will always be an overlap between the output specifications and the contractual allocation of risks. For example, the output specifications may describe the required performance of a road surface; however, the Private Partner may incur additional costs and require additional time to deliver the performance required because of the eventuation of a risk (such as the discovery of archaeological findings), and the contractual risk allocation will describe which party bears the time and cost implications of managing that risk. The GI Hub's *Allocating Risks in Public-Private Partnership Contracts* tool provides detailed guidance on contractual risk

¹⁴ In 2015, France created a new category of global contract called the 'Marché global de performance', with specific and measurable performance commitments. "The global performance contract combines operation or maintenance with the construction or design and construction of an asset in order to fulfil quantified performance objectives. These objectives are defined in terms of level of activity, quality of service, energy efficiency or environmental impact." Article L2171-3 Public Procurement Code

in a PPP contract allocation by sector, and further guidance on translating these to the contract can be found in the World Bank's *Guidance on PPP Contractual Provisions*.

A contract that combines the scope from design through to operation (e.g. a DBFOM scope) can help drive efficiencies by focusing on the entire lifecycle of the project. The private sector is better placed to influence the public sector outcomes over the life of the asset (sometimes referred to as a 'lifecycle approach') than in a traditional public procurement where the design, construction, operations and maintenance functions are delivered separately. The integration of the design, construction, operations and maintenance functions in a single contract shifts the needs and expectations of the public sector from the delivery and completion of the asset to the service and functionalities offered by the asset to serve the final end users.

In some jurisdictions, specific output-based performance procurement contracts exist, for example, in France with the "Marché Global de Performance" where the Private Partner is in charge of the design, build and maintenance of the infrastructure with output-based specifications and performance-based remuneration linked to the achievement of measurable performance commitments.

The ordinance of the 23 July 2015 (codified at the article L2171-3 and R2171-2 of the "Code de la Commande Publique") created a new category of global contract the "*Marché global de performance*", with specific and measurable performance commitments in terms of output specifications.

"The global performance contract combines operation or maintenance with the construction or design and construction of an asset in order to fulfil quantified performance objectives. These objectives are defined in terms of level of activity, quality of service, energy efficiency or environmental impact. The global performance contract has measurable performance commitments."