



Source: Ministère de la Justice

**BUILT ENVIRONMENT CASE STUDY: FRANCE**

# PPP Prisons Program (Lots 1-3)

**Location**

Various locations in France (six sites)

**Grantor**

French Ministry of Justice

**Private Partner**

THEMIS / THEIA (Bouygues Group and investment funds)

**PPP Model**

Long-term Lease / Public-Private Partnership (PPP)

**Operating Term**

30 years

**Contract Value**

Lot 2: €155 million CAPEX

Lot 3: €165 million CAPEX

**Asset Class**

Built Environment (Correctional)

These projects are part of a major program of modernisation of the penitentiary estate initiated by the “Loi d’orientation et de programmation judiciaire” (LOPJ) of 9 September 2002, representing a total of 13,200 places to increase the national prison capacity by approximately 18%.

The specifications include reference to this program, which aims to improve working conditions of staff and living conditions of inmates, by implementing individual cell accommodation and facilitating access to social services such as legal advisory, healthcare or vocational training.

The following analysis considers the second and third batches of these prison PPP projects in France, awarded to two consortiums led by Bouygues subsidiaries. They were commissioned by the Ministry of Justice and comprise the financing, design, construction and maintenance of six new prisons across France, with the following nominal capacity:

- Lot 2:
  - Sarthe: Le Mans-Coulaines (400 cells)
  - Seine-Maritime: Le Havre (690 cells)
  - Vienne: Poitiers-Vivonne (600 cells)
- Lot 3:
  - Loire Atlantique: Nantes (570 cells)
  - Seine et Marne: Réau (798 cells)
  - Nord Pas de Calais: Lille - Annœullin (688 cells)

The construction period of each prison spanned between two and three years and all the prisons were completed by the end of 2011.

The facility management (FM) services provided are essentially hard FM, including security systems maintenance, cleaning of common areas (excluding the kitchen and cells), maintaining outdoor areas

and waste management. The Lot 3 specifications also comprised soft FM, including production in workshops, vocational training, inmates catering, laundry, an internal shop, transportation, employees’ accommodation, visitors’ management, and employee catering. The overall contract duration is 30 years for both projects.

**Output Specifications Development Approach Used**

Both contracts are availability payment-based PPPs. The contract for the Lot 2 (DBOM) is based on an authorisation for temporary occupation (AOT in French) of the State domain and a long-term lease, while the Lot 3 contractual scheme (DBFOM) is based on a partnership agreement (“Contrat de Partenariat”). For both projects, the private sector is responsible for the financing, design, construction, maintenance and lifecycle works, while Lot 3 also includes operation.

On both projects, the specifications focus on performance objectives that are required to be provided by the Consortium for the following elements:

- Security, including passive security (walls, fences, etc.), security systems and fire prevention;
- Facilities infrastructure management, including finishing, fittings, heating and cooling, structure, utilities, electricity, communications, lifts and furniture;
- Facilities management to the estate, including legislative compliance, cleaning (internal and external), waste management, grounds management and authority works;

- Program maintenance, including lifecycle servicing and reporting;
- Services to people (Lot 3 only), including prisoners’ work, vocational training, prisoner catering, accommodation services, canteen, transport, housing authority per-sonnel, reception of families and staff cafeteria;
- Contract management, including management of incidents, authority interface, quality management, reporting and contract reviews.

The specifications exclude regalian missions of the prison administration i.e. security, safety, health, inmates management.

The Lot 2 and Lot 3 projects are the second and third batches of prison PPP projects in France, and as such, the specifications were non-standard at the time of the procurement procedure. Newer projects’ specifications were built from feedback from these projects and have kept a similar structure. Lessons learned from Lot 1, which preceded the procurement of Lot 2 and Lot 3, allowed the specifications to be improved, including the dialogue procedure with the Private Partners.

Alignment to QI Focus Areas	Mechanisms used to achieve QI alignment	Market Comparison Analysis
<p>Sustainability and longevity of an Infrastructure asset.</p> <p>Ability of the asset to meet the needs of end users</p>	<p>The Grantor will be able to call upon the contractor guarantees under the conditions set out in the project agreement, in the event of a failure by the Private Partner to comply with the handback obligations. These guarantees can be utilised for failures noted up to the end of three years following the expiry of the term.</p> <p>Appendix 11 of the contract details the service payment mechanism related to maintenance, renewals and operating costs: the rent is based on a fixed annual amount, covering investment and financing costs, to which a variable semi-annual amount is added, indexed based on a range of indices. This variable part of the payment can be adjusted according to the average occupancy level of the prison over the preceding six-month period.</p> <p>The contract states that, during the two years following the end of the works and take-over of the facilities (“prise de possession”), the Private Partner is fully re-sponsible for any work that does not meet the output specifications, and the Grantor can decide to reject the take-over of the facility. Penalties can be charged on the availability payments until the snagging issues are fixed.</p> <p>This phase is coupled with a take-over period for the first year of operation, during which some technical penalties are reduced to consider the challenges faced by the Private Partner in the operation and maintenance of these complex projects.</p> <p>The project agreement also defines the services to be provided in the project period and obligations between the parties with respect to the maintenance of the new building facilities.</p> <p>Furthermore, based on feedback from end users of similar penitentiary projects in France, the output specifications highlight the importance of end users’ quality of life, for both on-site staff and inmates, and especially insist on performance targets linked to the reduction of anxiety-provoking situations (i.e. access to natural light, safety measures), as well as the ergonomics of work-stations.</p> <p>Similarly, the output specifications consider specific prison constraints and translate them into intervention time requirements (e.g. increased deadlines to address access difficulties, specific working hours), which are associated to levels of severity of the defects and relative importance of the premises impacted.</p>	<p>The handback requirements are considered standard for PPP projects in France. A period of three years after contract expiry or termination for a latent defect liability on the handback works is considered a long period compared with other PPP accommodation projects but is nonetheless favourable for the Grantor.</p> <p>The complexity of the contract monitoring requires strong engagement both from the public authority and the private partner (numerous and precise indicators), and continuous support and training of administrative penitentiary staff must be implemented to ensure consistent application of the contract requirements across all sites. A national PPP unit has thus been created within the Penitentiary Administration to centralise issues and provide cross-functional support for delegated management and PPP prisons.</p> <p>However, the large number of indicators allows for a better response to the wide range of issues that can be encountered in prisons. The needs and expectation of end users are a particularly sensitive issue of penitentiary facilities, which explains the emphasis of the output specifications on ergonomics and the reduction of anxiety-provoking situations.</p> <p>Finally, the service payment indexed partially on occupancy level is unique to Prison projects.</p>

Alignment to QI Focus Areas	Mechanisms used to achieve QI alignment	Market Comparison Analysis
<p>Health and safety considerations during both construction and operation of the asset</p>	<p>The Private Partner is required to implement health and safety measures for its own staff during construction and operation. Under applicable regulations, an independent health and safety coordinator shall be nominated to review and approve the Private Partner's health and safety plan, who also ensures that the plan's measures are implemented on site. However, the Private Partner is not in charge of the health and safety of prison staff and inmates during operation, as it is the Grantor's responsibility.</p> <p>On the other hand, security issues are central to penitentiary projects specifications, and a specific section of the program is dedicated to security measures and systems and their monitoring. Large penalties are awarded for security faults and failures, and the Grantor closely monitors the achievement of security performance goals.</p>	<p>For public facilities projects in France, contracts always refer to Health and Safety requirements meeting national legislation, and many have specific requirements, particularly around vehicle deliveries to the construction site, where staff from potentially multiple organisations are entering the facility. For penitentiary facilities, the security issue is especially critical and closely monitored.</p> <p>Fire safety regulations are also specific to these types of projects.</p>
<p>Job creation, capacity building and transfer of knowledge and expertise</p>	<p>If the Private Partner fails to reach the SME objectives during construction and operation, the contract allows for associated penalties.</p> <p>Regarding the operation of the projects, the contract stipulates that the Private Partner shall provide training for all prison staff involved in the operation of the facility prior to commissioning. This training shall allow the handling of all technical equipment or functions that are no longer managed by the Partner after the take-over.</p>	<p>This is typical for large scale public projects in France, as there are often specifications about the number of staff which must be recruited from SMEs and within the local area (usually 20% for infrastructure projects).</p> <p>Requirements for training of operations staff prior to take-over is now standard for PPP projects in France.</p>
<p>Social impacts and inclusiveness</p>	<p>If the Private Partner does not comply with the Grantor's requirements, the contract plans for associated penalties.</p> <p>Furthermore, when the prison workshops are managed by the Private Partner, work activities are proposed for the inmates with associated performance targets (number of hours and salary amount) for which the underperformance leads to a penalty.</p> <p>It should however be noted that the reintegration process and the support of the detainees themselves are managed by the supervisors and staff of the Penitentiary Service for Integration and Probation (SPIP), and not by private partners.</p>	<p>Professional integration program requirements during construction works are standard for public projects in France.</p> <p>However, penalties related to detention work are specific to PPP prisons projects. The delegation of prison work management predates PPP projects since it has been created in 1987 (Loi Chalandon on Delegated Management). Private partners in France have a strong business culture in this area, which is seen as an opportunity to employ more inmates.</p> <p>When compared to other countries, experience shows that there is no standard practice related to the transferring of professional integration and detention work activities to the private partners. In most countries, rehabilitation programs are supported by public sector probation services, but others delegate rehabilitation program management to the private sector to a larger extent. Attempts have for instance been made in the United Kingdom, where privately-owned companies were commissioned to manage low- and medium-risk offenders, introducing 'payment by results' based on KPIs related to reducing reoffending.</p> <p>In France, the so-called sovereign missions (direction, guard and registries) are never delegated.</p>



Alignment to QI Focus Areas	Mechanisms used to achieve QI alignment	Market Comparison Analysis
Environmental impacts	<p>The contract includes energy consumption targets based on occupancy, with a monthly evaluation and a pain-gain share mechanism that encourages the Private Partner to reduce its energy consumption (KPI based on overall consumption with a variable part based on occupation).</p>	<p>These requirements are standard for prison projects in France, but for newer social infrastructure projects, energy consumption by end users is often excluded from energy consumption targets, since they are considered to be out of the direct control of the Private Partner.</p>
<p>Ability of the asset to respond to changes in resource availability, population levels, demographics and disruptive technology</p>	<p>At the design stage, flexibility and scalability requirements are reviewed and approved by the Authority along with the design package.</p> <p>During operation, evolution of the equipment's performance over the duration of the contract is a key issue for penitentiary institutions, especially for security systems. However, the cost of technological change is not often considered in PPP contracts in a formal way and is often addressed during operation using the lifecycle budget, unless there is a change of technology, for which case variation orders can be made.</p>	<p>Requirements on the flexibility of premises and extra capacities of the technical networks are typical for such projects.</p> <p>PPP contracts generally allow good management of equipment renewal over the duration of the contract by setting up lifecycle budgets: the technical expertise offered on these subjects by private partners provides support to the prison administration services.</p> <p>However, lessons learned have shown the importance of defining accurate equipment renewal times when drafting the contract, especially for technologies that are rapidly evolving, such as security and CCTV equipment. Indeed, the frequency of equipment renewal stipulated in the contract must allow the Private Partners to evaluate the expected levels of performance at the bidding stage. The formulation of expected performance levels for equipment has thus been reformulated in new contracts to allow private partners more flexibility in defining technical characteristics so they can focus on performance objectives for each equipment.</p> <p>Another challenge is the inclusion of specification changes during the Project's life in the contract, which should ensure good responsiveness and rapid implementation of the expected changes: consideration should be given to a clause with a bonus or adjustment on requests for amending work.</p>