



Public Private Partnership
Comhpháirtíocht Phoiblí Phríomháideach



PRINTED ON 100% RECYCLED PAPER



Public **P**rivate **P**artnership
Comhpháirtíocht Phoiblí Phríomháideach

FRAMEWORK FOR PUBLIC PRIVATE PARTNERSHIPS

“Working together for quality public service”

NOVEMBER 2001



CONTENTS

Foreword	i
1. Background	1
2. Scope of PPPs	1
3. Public Private Partnership	2
4. Statement of Principles	2
5. Goals and Benefits	3
6. PPP Process	4
7. Consultations with Stakeholders	4
8. Communications Strategy	5
9. Implementation	5
■ Structures	
■ Procurement	
■ Bid Costs	
■ Contract Terms	
■ Output Specification	
■ User Charges	
10. Central Co-ordination of the PPP Process	7
11. Review	7
12. Glossary of Terms	8
Members of the Public-Private Informal Advisory Group	9

BY THE MINISTER FOR FINANCE, MR. CHARLIE MCCREEVY, T.D.



Public Private Partnerships (PPPs) are crucial to the delivery of priority economic infrastructure projects under the National Development Plan and to the provision of quality public services. Delivery of the NDP programme within the required time frame and the achievement of value for money for the taxpayer are integral elements of the Government's strategy of maintaining competitiveness and sustaining strong economic growth and social progress over the long term. It is essential that there is a broad consensus in relation to the scope of PPPs, the process through which PPP projects will be developed and the benefits we expect to realise by adopting the PPP approach across all interests in both the public and private sectors. In this regard, I welcome and endorse the *Framework for Public Private Partnerships* agreed between the social partners as a significant milestone in advancing towards our shared objectives.

The *Programme for Prosperity and Fairness* (PPF) reaffirms the commitment of the social partners to PPPs in line with the conclusions of the National Economic and Social Council that PPPs embody significant potential for achieving accelerated delivery of strategic national infrastructure and quality public services on a long-term value for money basis for the Exchequer. There is a clear appreciation that the PPP approach is a means of building on the success of social partnership in a positive and tangible way. The PPF called for the development of a framework agreed with the social partners to assess the appropriateness of PPPs for infrastructure projects and to guide their implementation.

The structure for discussions in relation to this requirement was the Public-Private Informal Advisory Group (IAG). The Advisory Group, chaired by the Central PPP Unit in my Department, comprises representatives of the Irish Business and Employers' Confederation, the Irish Congress of Trade Unions, the Construction Industry Federation and Forfás as well as the main departments and agencies currently engaged in the PPP programme. All of the members of the Group approached the discussions in an open and constructive manner, leading to a positive outcome.

The adoption of the Framework is an acknowledgement that the delivery of projects through PPPs gives us all an opportunity to maximise the interaction and co-operation between the public and private sectors. Agreement on shared goals, objectives, principles and the appropriate distribution of risks for public investment and services delivery are fundamental. It is entirely appropriate that the full realisation of the potential benefits of Public Private Partnerships should be pursued under an agreed set of principles and common goals. This is now a reality.

The principal features of the Framework include clear statements of the scope, principles and goals of the PPP programme, the identification of key project implementation issues including the requirement for central co-ordination of the programme by the Central PPP Unit, as well as a clear recognition of the critical role of social partnership and stakeholder consultation in underpinning the success of PPPs. The Framework also makes provision for monitoring and review by the IAG of implementation of, and adherence to, the Framework.

The Framework constitutes an important statement of the high-level principles for the conduct of PPPs at national, sectoral and project level that will help embed PPP as an important pillar of public capital procurement and the provision of quality public services.

By further strengthening the sense of common purpose and commitment to genuine partnership that has made such a major contribution to progress achieved in the PPP programme to date, this Framework will therefore serve as a key building block for the successful development of PPPs in Ireland in the future.

1. Background

- 1.1 It is Government policy to encourage the use of Public Private Partnerships (PPPs) in the provision of public infrastructure and services.
- 1.2 The National Economic and Social Council (NESC) concluded that PPPs have the potential to:
- play a pivotal role in supporting the accelerated delivery of strategic national infrastructure;
 - yield long-term value for money for the Exchequer - a concept embracing efficiency, effectiveness and economy rather than just least cost; and
 - ensure quality public services.
- 1.3 The *Programme for Prosperity and Fairness* (PPF) supports the PPP process - in line with the NESC recommendations - and calls for the development of a clear framework to assess the appropriateness of PPPs for infrastructure projects and to guide their implementation, taking into account the wider economic, social and environmental objectives that should guide infrastructural development, irrespective of the procurement method followed.
- 1.4 This Framework provides the starting point for departments and state agencies directly responsible for the programme areas for selecting and developing projects as potential PPPs in the light of overall economic and social priorities.

- 2.1 A PPP is an arrangement between the public and private sectors (consistent with a broad range of possible partnership structures) with clear agreement on shared objectives for the delivery of public infrastructure and/or public services by the private sector that would otherwise have been provided through traditional public sector procurement.
- 2.2 A particular arrangement or project may constitute a PPP where the following key characteristics are present:
- shared responsibility for the provision of the infrastructure or services with a significant level of risk being taken by the private sector, for example, in infrastructure projects, linking design and construction with one or all of the finance, operate and maintain elements¹;
 - long-term commitment by the public sector to the provision of quality public services to consumers through contractual arrangements with private sector operators; and
 - better value for money and optimal allocation of risk, for example, by exploiting private sector competencies (managerial, technical, financial and innovation) over the project's lifetime and by promoting the cross-transfer of skills between the public and private partners.
- 2.3 There is a clear distinction between a PPP arrangement under which the private sector partner supplies public infrastructure and public services on behalf of the state for the contract period and the sale (i.e. privatisation) to the market sector of specific state assets.

¹ Large and complex infrastructural projects being developed as PPPs (e.g. Dublin's Metro) may entail a chain of interlocking contracts closely linking design and construction with the financing, operation and maintenance of the infrastructure.

3 PUBLIC PRIVATE PARTNERSHIP

- 3.1 The creation of an environment supporting the development of PPPs extends beyond the application of contract law to the development of consensus and understanding of the main objectives of PPP including, in particular, the need for quality public services.
- 3.2 Collaborative management styles and working practices should foster successful partnership in PPP projects. Partnership skills at project level are a critical element of the PPP agenda.
- 3.3 The core strength of PPPs is the scope they allow for dynamic interaction and co-operation between the public and private sectors, highlighting the complementarity of the public service ethos with innovation in the provision of public capital infrastructure and services. PPPs are an important part of the ongoing agenda for the modernisation of public services.
- 3.4 Genuine partnership has a crucial role to play in helping to achieve the shared goals underpinning the PPP programme and also provides the opportunity for all parties - public and private sectors - to re-evaluate shared areas of interest and develop new and innovative ways of working together in PPPs.
- 3.5 The development of the PPP programme must remain fully consistent with the objectives of social partnership², the key principles underpinning the provision of Exchequer-funded public services and the effective and efficient use of public infrastructure and assets.

4 STATEMENT OF PRINCIPLES

- 4.1 The fundamental principles determining a successful PPP programme have emerged from the deliberations of the participants in the Public-Private Informal Advisory Group (IAG), drawing primarily on the work of the NESC and Government policy as set out in the PPF.
- 4.2 These principles, summarised in this section, are the foundation for this Framework and are central to the achievement of the objectives and the optimum use of PPPs including the maintenance of genuine partnership in the development of Ireland's PPP programme.
- 4.3 PPPs should be progressed within the context of national policy (as set out at present in the National Development Plan, the Dublin Transportation Office strategy and the PPF) particularly in relation to the timely and cost-effective delivery of economic and social infrastructure priorities and quality public services.
- 4.4 PPPs should yield value for money for the Exchequer, which includes:
 - allocating risks to the party best able to control and manage them; and
 - maximising the benefits of private sector efficiency, expertise, flexibility and innovation.
- 4.5 The adoption of a PPP approach should be determined by factors, including:
 - the likelihood of it providing value for money, particularly as compared to conventional public capital procurement;

² Economic, social and environmental.

- long-term affordability in the light of overall budgetary sustainability, forward commitments in relation to public expenditure and the potential for returns on private sector investment;
 - willingness of the private sector to participate in the project (i.e. financial viability considerations); and
 - the balance between economic and social benefits and costs (including the opportunity costs of the Exchequer contribution required).
- 4.6 Private finance in PPPs should be additional to public finance, complementing Exchequer (and EU) resources in funding investment in public infrastructure and public services.
- 4.7 The introduction and development of PPPs should take place within the overall process and structures of social partnership and should be managed in an open and transparent manner. PPPs should also be consistent with relevant EU requirements and with best industry and business practices and social partnership agreements.
- 4.8 As recommended by NESC, the role of PPPs in providing for social and community infrastructure should be actively explored.

5 GOALS AND BENEFITS

- 5.1 Identification of the goals of PPP and the prospective benefits from individual projects provide more certainty, in particular, for those (e.g. local communities) whom PPP projects are expected to serve³. These goals and benefits include the following:
- speedy, efficient and cost-effective delivery of projects;
 - value for money for the taxpayer, *inter alia*, through optimal risk transfer and risk management;
 - efficiencies from integrating design and construction of public infrastructure with financing, operation and maintenance/upgrading;
 - creation of added value through synergies between public authorities and private sector companies, in particular, through the integration and cross-transfer of public and private sector skills, knowledge and expertise;
 - alleviation of capacity constraints and bottlenecks in the economy through higher productivity of labour and capital resources in the delivery of projects;
 - competition and greater construction capacity (including the participation of overseas firms – especially in joint ventures and partnering arrangements);
 - accountability for the provision and delivery of quality public services through an incentivised performance management/regulatory regime;
 - innovation and diversity in the provision of public services; and
 - effective utilisation of state assets to the benefit of all users of public services.

³ Extract from NESC Report No.105, p.483 - “PPP projects should be conducted in an open and transparent manner. This would help to create a more certain environment for everyone involved, including the local communities that PPP projects are expected to serve”.

6

PPP PROCESS

- 6.1 PPP issues should be reviewed through the structures and systems currently in place for managing the PPP programme. It is essential to ensure a standardised approach consistent with this Framework to the development of the PPP programme overall, while recognising the need for sectoral flexibility to accommodate diversity at project level.
- 6.2 The inter-departmental Group (IDG), reporting to the IAG and drawing on private sector expertise as appropriate, should prepare discussion papers, address and resolve issues and make recommendations to the IAG with the primary objective of establishing the degree of standardisation needed to create an attractive market for PPPs across all sectors of public capital infrastructure and public services.
- 6.3 Where the implementation of recommendations requires a high-level policy decision, they should be submitted through the relevant Department to the responsible Minister and, where appropriate, the Minister for Finance.
- 6.4 The experience and expertise available across both in the public and private sectors and from the social partners should be utilised to advance the PPP process.
- 6.5 The PPP Unit in the Department of Finance should bring forward proposals for the priorities and work programme of the IDG and IAG for their consideration. The important role of the social partners in bringing forward proposals to the IAG is also recognised.
- 6.6 The principles underpinning this process which are summarised in this section should be taken into account in the operation of any new structures for managing the PPP programme.

7

CONSULTATION WITH STAKEHOLDERS

- 7.1 Stakeholders include employees and their trade unions, the public, the people who will use the assets and services provided, local community groups and sectoral interest groups. In selecting, developing and implementing PPP projects, the economic, social and environmental concerns of those directly affected at local level should be taken into account along with the statutory rights and legitimate economic interests of stakeholders, in line with the NESC recommendations.
- 7.2 Existing structures and agreements⁴ should be used to ensure extensive consultation and open communication in respect of PPP projects. Public service employees should be informed at the earliest possible stage of proposals for the introduction of PPPs and of significant developments throughout the process. They should also have the opportunity to contribute positively to the development of projects, building on progress in the development of workplace partnerships under the PPF. The partnership approach should be maintained throughout the project's lifetime.
- 7.3 All parties to a PPP arrangement should have regard to appropriate industry norms in terms of pay and conditions and of prevailing national and/or industry-wide agreements including health and safety regulations. Such an approach should be consistent with protections provided under the Transfer of Undertakings (Protection of Employees) Regulations and the Acquired Rights Directive. PPPs should be approached on the basis that no less favourable terms than the Transfer of Undertaking Regulations apply.

⁴ i.e. formal Partnership agreements and fora established under the *Programme for Prosperity and Fairness* (e.g. Public Transport Partnership Forum, Health Services Partnership Forum and the Local Authority Partnership Fora).

- 8.1 The success of the PPP programme requires widespread public support. A PPP communications and awareness strategy⁵, led by the PPP Unit in the Department of Finance, will be directed at key stakeholders, officials of public service procuring agencies, employees in sectors where PPPs will be developed and the general public. It will continue to be developed by the IAG, in co-operation with other departments and agencies and collaboratively with the social partners.⁶
- 8.2 Information on progress in assessing and implementing the various PPP projects should be made available to all those interested in Ireland's PPP programme, using project trackers posted and updated regularly on the national PPP website (www.ppp.gov.ie). This information will also be reported at regular intervals to the IAG.

- 9.1 **Structures:** PPP projects under the Framework are implemented by the appropriate public authority (e.g. Government departments, the Office of Public Works, the National Roads Authority, local authorities or other relevant agencies). Implementation of PPP projects should follow the Framework and the *Best Practice Guidelines for Project Implementation*, approved by the Cabinet Committee on Infrastructural Development and PPPs, and relevant future policy directives.
- 9.2 **Procurement:** The projects should be procured in an open and transparent fashion consistent with national and EU procurement rules and with the need to ensure effective competition. Opportunities to avail of e-procurement should be actively explored.
- 9.3 **Bid Costs:** Section 2.8.5 of the PPF requires that the question of a client contribution to PPP tender bid costs be negotiated. In any event, insofar as possible the procurement process should be operated in a manner that does not unnecessarily raise the costs of bidding for PPP projects for firms/consortia.
- 9.4 **Contract Terms:** In PPP projects, a long-term partnership is created for the procurement of an asset and/or the delivery of a service to a specified quality level. The design of the PPP contract is crucial. As the pilot PPP programme is rolled-out, a number of broad principles should guide the design of PPP contracts.⁷ These include the following:
- risks should be clearly identified and distributed appropriately between the parties to the contract;
 - innovation by the private sector in providing infrastructure and public services should be encouraged, to realise value for money over the life-cycle of the project;
 - the provisions governing the transfer of public capital infrastructure from a public authority to a private sector consortium (i.e. by means of lease or license) and its reversion at expiry of the concession period should be clear and transparent at the outset and over the lifetime of the PPP project;

⁵ In accordance with the General Communications Strategy under the NDP, 2000-2006.

⁶ Funding for associated approved communication activities is available under the CSF Technical Assistance Programme, administered by the Department of Finance.

⁷ Pending the development of model contracts and standard documentation.

- the payment mechanism should provide a clear procedure for establishing the charge on public expenditure over time;
- reduction in costs over the life span of the contract should be incentivised in order to bolster price-competitive quality public service provision;
- adequate flexibility, where feasible, to encompass, with the agreement of the contract parties, new and innovative ways of upgrading the quality of services (in response to advances in technology and innovations in potential delivery mechanisms);
- full disclosure of all relevant information relating to the conduct of the PPP over time should be encouraged in order to minimise the scope for costly information gaps arising between the public and private sector partners; and
- regard for prevailing national and/or industry wide agreements on pay and conditions, including health and safety regulations.

9.5 **Output Specification:** The output specification should take account of the following general principles:

- the level of service quality and design should be related to the objective for the service and user requirements;
- social and environmental sustainability and gender equality/disability considerations; and
- any need for improvements in service standards over the lifetime of the contract required to comply with regulatory obligations, for example, relating to environmental, and public health standards.

9.6 **User Charges:** These charges, where they apply in PPP projects, can make a valuable contribution to enhanced service quality and efficient use of infrastructure or services consistent with the need to maintain environmental sustainability and to conserve scarce environmental resources (taking account of the “polluter pays principle”).

- New financially viable free-standing PPP infrastructure projects will, where possible, be expected to generate a revenue stream from user charges sufficient to remunerate and redeem the private sector finance.⁸
- Any Exchequer contribution should ensure that the level of charges is consistent with efficient use of the infrastructure.
- Mechanisms should be developed, where feasible, to reduce the negative impact of user charges on low income groups.⁹

⁸ This does not imply any change in government policy regarding domestic water charges.

⁹ Taking account of other Government policies and measures towards these groups.

- 10.1 Central direction should continue to be provided to the PPP process by the institutional structures established by Government to manage the PPP programme. This will ensure a consistent and co-ordinated approach and maintain a positive business climate for the private sector.
- 10.2 The Central PPP Unit in the Department of Finance, working together with the other sectoral PPP Units and the social partners, should continue to give a high priority to:
- delivery of the PPP programme;
 - developing a standardised approach in terms of tendering procedures, model contracts and documentation, in step with progress in the pilot programme;
 - developing PPP policy; and
 - resolving outstanding obstacles to the wider use of PPPs (including legal, taxation, financial and other issues).
- 10.3 This will ensure that:
- PPP becomes a standard element of Government procurement methods; and
 - a stream of PPP projects is developed and a sustainable and dynamic PPP market is created in Ireland in the long term.

- 11.1 A comprehensive and regular review of the overall process should be a core responsibility of the structures managing the development of PPPs. Reviews should be prepared openly and transparently within an appropriate time-frame. The review should specify implications for the procurement of assets and the delivery of quality services helping to shape the future evolution of the PPP programme.
- 11.2 The implementation of, and adherence to, the Framework will be monitored and reviewed by the IAG focussing, in particular, on the consistency of conduct of the PPP process with the Framework and the need for any revisions required to maintain its consistency with ongoing developments and expansion of Ireland's PPP programme.

- **Conventional Public Procurement**
Covers the range of procurement methods traditionally used by public procuring agencies in providing public infrastructure projects and services (e.g. contracting the private sector to construct infrastructure to a predetermined public sector commissioned design).
- **Inter-departmental Group on PPPs (IDG)**
Comprises representatives of all public service bodies engaged in PPPs (Department of Finance PPP Unit and PPP Units in the Department of the Environment and Local Government, the Department of Public Enterprise, the Department of Education and Science and the National Roads Authority - also represented are the Department of the Taoiseach, the Department of Enterprise, Trade and Employment, the Department of Health and Children, the Office of Public Works and the National Treasury Management Agency). Its primary role is to bring together key decision makers across the public service to ensure that there is coherence and consistency across the public service in advancing Ireland's PPP programme.
- **Optimal Allocation of Risks**
Sharing of a project's risks between the public and private sector parties to the contract so that specified risks are managed by the party best positioned to do so and at least cost.
- **Public-Private Informal Advisory Group (IAG)**
Includes IBEC, ICTU, CIF, and Forfás in addition to members of the Departmental PPP Units, the NRA and the OPW, and helps to develop partnership arrangements with the private sector by reflecting the interests of the social partners in the area, facilitating the parties involved to exchange views and information on issues arising in relation to PPP.
- **Quality Public Services**
The provision of a service to a level that meets or exceeds the requirements of the group to be served by the service and the public at large.
- **Value for Money (VFM)**
Value for money for the Exchequer in PPP projects is gained through the engagement of private sector efficiency, effectiveness and economy and the appropriate allocation of the risks in the project.

Department of Finance

Eamonn Kearns (Chair)
William Beausang (now in Department of Health and Children, replaced by Jim Deane)
David Walsh (Secretary)
Stephen O'Neill
Aoife O'Sullivan

Department of An Taoiseach

Deaglán O Briain
John Shaw

Department of the Environment and Local Government

Eddie Lewis

Department of Education and Science

Gerry Murray

Department of Public Enterprise

Maurice Treacy

Department of Health and Children

Patrick J. Kehoe

National Roads Authority

Gerry Murphy

Luas Light Rail Office

Dónal Mangan

Office of Public Works

Una Redmond

Irish Congress of Trade Unions

Paddy Keating

Irish Business and Employers' Confederation

Reg McCabe

Construction Industry Federation

George Hennessy

Forfás

Marie Bourke

