Applied Workshop on Preparing Infrastructure Projects Following the PPP Framework in Lao PDR

26th - 27th August
Landmark Hotel, Vientiane
Welcome and Opening Remarks
Workshop Objectives

• **Define** PPPs and key PPP concepts

• **Introduce** the new PPP framework in Lao PDR

• **Apply** key concepts for identifying, preparing and procuring PPP projects

• **Reflect** on lessons learnt with PPPs in practice

• **Case based & Applied !!!**
Applied, Case-Based Workshop

• You get to experience being a public agency or advisor working on preparing a PPP project...
• Financial Economic specialists founded by PPP pioneers

• From champions of PPP in Europe to global transaction advisor for Public & Private clients

• 120+ people – Netherlands, Belgium, USA, South Africa, Philippines, Indonesia

• 140+ transactions and financings

• Advise! – Implement! – Invest!
Introductions

- Mathieu Verougstraete
- Rolf Dauskardt
- Aishani Mishra

- Name
- Organisation, position, kind of work
- Interest / involvement with PPPs
- Expectations
Record your Lessons Learnt!

• Keep a running list of issues, observations, challenges, questions, opportunities...
  – PPP concepts?
  – Applying PPP in Laos?
  – New insights?
  – Challenges?
  – Etc.

• We will review these at the end of the workshop
<table>
<thead>
<tr>
<th>Time</th>
<th>Sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Day 1</strong></td>
<td></td>
</tr>
<tr>
<td>08:30 – 09:00</td>
<td>Welcome and Introductions</td>
</tr>
<tr>
<td>09:00 – 10:30</td>
<td>PPP Framework in Lao PDR</td>
</tr>
<tr>
<td>10:30</td>
<td>Coffee Break</td>
</tr>
<tr>
<td>Wednesday / Thursday</td>
<td>Case-Based Applied PPP Exercise</td>
</tr>
<tr>
<td>Thursday 4:30 – 5:00</td>
<td>Lessons Learnt and Wrap-Up</td>
</tr>
<tr>
<td>TODAY</td>
<td></td>
</tr>
<tr>
<td>---------------------</td>
<td></td>
</tr>
<tr>
<td>Introduction to the Exercise</td>
<td></td>
</tr>
<tr>
<td>Session 1: Project Characteristics and Selection</td>
<td></td>
</tr>
<tr>
<td>LUNCH</td>
<td></td>
</tr>
<tr>
<td>Session 2: Output Based Specification</td>
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<tr>
<td>Session 3: Risk Allocation</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>THURSDAY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
</tr>
<tr>
<td>Session 3: Risk Allocation</td>
</tr>
<tr>
<td>COFFEE BREAK</td>
</tr>
<tr>
<td>Session 4: Project Structuring</td>
</tr>
<tr>
<td>LUNCH</td>
</tr>
<tr>
<td>Session 5: Procurement Planning</td>
</tr>
<tr>
<td>COFFEE BREAK</td>
</tr>
<tr>
<td>Project Case Presentations and Discussion</td>
</tr>
<tr>
<td>Lessons Learnt</td>
</tr>
<tr>
<td>Closing</td>
</tr>
</tbody>
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PPP Framework in Lao PDR
Why Bring in a Private Partner?

- PPPs let each partner focus on doing what it does best

- Private
  - Overall innovation, technology
  - Entrepreneurship and asset exploitation
  - Professional management
  - Design, Construct, Project Management
  - Operational efficiency
  - Maintenance and lifecycle optimization
  - Financing

- Public
  - Securing the public interest
  - Policy & planning
  - Market management
  - Competitive procurement
  - Compliance management & regulation

Private performance that is driven by profit / risk purpose...

... can create public value and benefits ...

... but only when the public manages the process effectively
### PPP Concept & Definition

<table>
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<th><strong>PPPs</strong> refer to arrangements under which the private sector supplies infrastructure assets and infrastructure based services that traditionally have been provided by the government</th>
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<tbody>
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<td><strong>IMF:</strong> PPPs, Government Guarantees and Fiscal Risks</td>
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<th><strong>PPPs broadly refer to long-term, contractual partnerships between the public and private sector agencies, specifically targeted towards financing, designing, implementing, and operating infrastructure facilities and services that were traditionally provided by the public sector</strong></th>
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<td><strong>Asian Development Bank, 2006</strong></td>
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<th>A ‘partnership’ style approach to the provision of infrastructure as opposed to an arm’s length ‘supplier’ relationship. PPP involves a sharing of risk, responsibility and reward, and is undertaken in those circumstances when there is value for money benefit to the taxpayers</th>
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<td><strong>The World Bank, 2003</strong></td>
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<th>A partnership is an arrangement between two or more parties who have agreed to work cooperatively toward shared and/or compatible objectives and in which there is shared authority and responsibility; joint investment of resources; shared liability or risk-taking; and ideally, mutual benefits</th>
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<td><strong>European Commission, 2003</strong></td>
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The partners in a PPP, usually through a legally binding contract or some other mechanism, agree to share responsibilities related to implementation and/or operation and management of an infrastructure project.

United Nations Economic and Social Commission for Asia and the Pacific, 2011
A Public Private Partnership is an agreement between the public sector and the private sector for the purpose of delivering a project or a service, conventionally provided by the public sector, to implement a project with a public interest.

Lao PDR, 2015
In detail a PPP in Lao PDR is...

- A contractual arrangement between a Project Executing Agency and a Project Entity
- Concerning the delivery of a public service and infrastructure for which the Project Executing Agency remains accountable
- Where the required service and infrastructure is specified as an output
- Where significant risks, meaning at least construction risk in combination with demand risk and/or availability risk, are transferred to the Project Entity, making its private investment and financial returns linked to its performance
- Procured through an international competitive tendering process or competitive conditions
- Often wholly or partly financed by the private sector
- Possibly involving Government Support and Official Development Assistance
End point we are aiming for...

• A **good partner** with a **well structured contract** delivering public services to citizens with better value over the **long term** than can be achieved by government alone...

• Project preparation and procurement leads to award of a good long term partner...
Value-for-Money

Bankability
(Market and Bank/Equity Requirements)

Affordability
(Users Affordability and Public Budget Capacity)

(Optimal Balance Depends on Market and Public Conditions)
Challenges

- PPPs are ‘new’ concept
- Often not well understood by public or private
- Not clear who is responsible
- No specific procedures
- Limited experience
- Higher risk perceptions
- Un-transparent procurement
- Barriers to entry
- ...
PPP practice

Political and policy framework

Legal and regulatory framework

Financial framework

Clear institutional arrangements

Proper procedures

Public and Private Sector Capacity and Experience

Establishing a PPP Framework
Laos PPP Framework

- Laos PPP Policy (2014)

- **Laos Prime Minister Decree on PPP** (2015?)
  - Decree Implementing Rules and Regulations

- Project Preparation Facility (PPF)

- Standard Bid Doc Templates

- PPP support – FAQ, PPP Manual, Guidelines

- Pilot Projects to have demonstration effect
Lao PPP Decree

“Decree determines principles, rules and measures in promoting and governing Public Private Partnerships for developing the infrastructure and related services within the scope of the Government plan, ensuring transparency, efficiency and effectiveness, fair benefits to the private sector and Government, and sustainable development.”

- Decree Chapters:
  1. Objectives & scope
  2. Principles
  3. Roles & responsibilities – Project Executing Agency, PPP Unit, Investment Committee
  4. PPP Project Cycle
  5. Project identification & appraisal
  6. Project tendering & contracting
  7. Unsolicited proposals
Scope and Principles

• Decree covers all sectors

• Sets basic principles:
  – Ensure public awareness
  – Prioritize major investment projects
  – Ensure consideration of Value-for-Money
  – Ensure transparent, competitive and rule-based Tendering
  – Socio-economically sound and commercially viable projects
  – Fiscal affordability
  – Participation of Lao companies
  – No renegotiation approach
  – Etc.
Roles and Responsibilities

Investment Committee

- Adopting PPP regulations, guidelines and standard documents
- Supervising and approving PPP initiatives
- Evaluate functioning of the Decree or of a particular Tendering

PPP Unit

- Supervision of Tendering and contracting
- PPP program promotion
- PPP knowledge management
- Administration of the PPF
- Project-based capacity building to PEAs

Project Executing Agency

- Establishing PPP teams
- Identifying, developing, preparing, Tendering and monitoring PPPs
- Managing and monitoring awarded PPP Contracts
Procedures – key issues with PPPs

• Public sector takes the lead in defining projects

• Public sector brings the project to the market – competitive procurement

• Checks required – these are long term government contracts committing the budget

• Government must spend more initially on project preparation and procurement, but gets this back with better projects (role of PPF)
Implementing Rules and Regulations

• **Tender Documentation Contents:**
  - Initial Project Proposal
  - Feasibility Study
  - Bidding Documentation Package
  - Public Private Partnership Contract

• **Tender Procedures:**
  - Eligible interested parties and Bidders
  - Pre-Qualification Process
  - Proposal
  - Confidentiality
  - Qualification Process
  - Technical Proposal Evaluation Process
  - Financial Proposal Evaluation Process
  - Clarification and Negotiation Process
  - Procedural Complaint Mechanism
PPP Process in Lao PDR

Following the Laos PPP Decree and Implementing Rules and Regulations
- Make **list of eligible PPP projects**
- **No detailed assessment yet**
- Quick scan to **discard unsuitable project**

Two distinct types of PPP projects are recognized:

1. performance of public service by a private party on behalf of a public authority;
2. carrying out commercial activities by a private party using public property (for instance publicly owned land or infrastructure).
• FS is basis for government’s investment decision, not just a bureaucratic requirement

• Also covers what gov financial support is required
• RfQ – Request for Qualification
• RfP / ITB – Request for Proposal / Instructions to Tenderers
• ToR – Project Terms of Reference
• PIM – Project Information Memorandum
• Data Room
• Draft PPP Contract

• Clear, transparent, fair
Prequalification
Selection of BAFO bidders
Request for proposals
Proposal
Selection of preferred bidder
Best And Final Offer
Final negotiations
Contract/Financial close
• Final verification of the PPP Contract and award

• **NO changes to contract or terms** at this stage
• Unsolicted bids do not allow for competition
• Less transparent procedure
• Difficult for best Value for Money bid
• Government cannot compare the feasibility stages or the other phases of the process, makes the quality of the project questionable
• Often widespread allegation of public resource misallocation, corruption, fraud and poor quality of the infrastructure or services involved

PEA may review such bids if:
• was developed and submitted independently by a private party
• is beneficial to the public and Lao PDR
• was prepared without Government Support
• includes sufficient details and information required by a Project Executing Agency to prepare a Feasibility Study
Key Value Drivers for PPPs

1. Output Specification
2. Risk Allocation
3. Competitive procurement

• Central themes for the applied exercise
Coffee Break- 10 Min
Case Based Applied Exercise
Team to Prepare and Procure a PPP Project

- Investment Committee
- PPP Unit
- Transaction Manager
- Transaction Advisor Team Leader
- Secretariat
- Project Officers / Admin.
- Departmental / Sectoral Staff
- Financial
- Legal
- Technical
- Env. / Social Safeguards
- Procurement
- Communication
Applying central concepts to structuring PPP projects

• S₁: Basic project characteristics
• S₂: Output specification
• S₃: Risk allocation
• S₄: Project structuring
• S₅: Procurement Planning
Applied Case Studies Introduction

- Groups – each works on a case study for Session 1 – 5

- Case Studies are:
  1. Regional Highway Expansion
  2. New Public Health Clinic
  3. Solid Waste Management

- Each session involves:
  - Conceptual / theoretical introduction (plenary)
  - Group case work
  - Report back and discussion (plenary)

- PPP Project Structuring Exercise Handbook

- Final presentation by each group on Thursday afternoon
Case 1: Regional Highway Expansion

- Renovate / upgrade road to a dual lane highway, provision for adding third lane in future
- Estimated USD 200 million of capital works
- Ministry of Transport is considering to procure a private partner to deliver the highway

Some Issues:
- Tolls insufficient to cover costs – additional funding?
- Future traffic demand uncertain
- Toll charge and frequency uncertainty.
- Additional land to be acquired to accommodate the dual lanes and a future third lane
- Pedestrian safety concerns
Case 2: New Public Health Clinic

- New 50 bed specialized clinic
- Estimated USD 20 million to construct and install medical equipment
- Ministry wants the private partner to provide the clinic building, medical equipment and services (maintenance, cleaning, laundry, security)

Some Issues:
- Medical services should remain public (MOH doctors / nurses)
- Clinic can take private patients, but not at cost of referrals from public hospitals
- Other services on a commercial basis (like parking, a hotel for visitors, accommodation for staff, internet access, etc.)?
- Land available, but power sub-station currently located there
- Clinic must meet appropriate medical / hygiene standards
- Must handle at least the minimum number of patients referred by the general hospitals
Case Study 3: Solid Waste Management

- The Ministry of Public Works and Municipal Government intend to find private partners to be involved in the waste collection and disposal.
- Considering to procure one or more PPP arrangements, covering:
  i. Collection and disposal of commercial and medical waste
  ii. Collection of household waste from parts of the city – possibly a single contract for the whole city, or several contracts covering parts of the city
  iii. One or more contracts for making proper landfill or waste incineration sites that meet environmental standards

- **Challenges/Conditions:**
  - All services must meet environmental standards.
  - Poorer areas need to be well served
  - Uncertainty on responsibility of street sweeping and cleaning city drainage
  - Uncertainty on enforcement for people who are illegally dumping waste
Session 1: Project Characteristics & Selection Criteria
Basic Project Criteria

- Legitimate public service and infrastructure
- Mandate of a Project Executing Agency
- If national defense or public security additional consideration required
- Consistent with government planning
- Real societal needs
- Potential for private involvement
Basic Characteristics

• What is the public service (infrastructure)?

• Who are the users?

• Greenfield (new) or brownfield (existing)?

• What assets are involved (e.g. buildings, facilities, equipment, etc.)?
  – Large, small; complex, simple; etc...
  – What scale of investment?
  – How long do these assets last?

• Project life-cycle costs – initial investment versus operation & maintenance?

• How does the funding / payment work? (next slide...)
Funding / Payment will be critical

• PPPs are not “free lunch” – someone must pay

• How are (or will) the services be paid for?
  – By users directly
  – By government

• Two types of PPP
  – Revenue-based PPP (users pay firm directly)
  – Availability-based PPP (government pays firm)

  – And hybrid – above options plus firm generates commercial returns from assets (e.g. parking, canteens, accommodation, etc.)
Case Work

• Review and discuss your project

• Is it eligible as a PPP?

• Discuss and describe project characteristics:
  – Service
  – Users
  – Greenfield / brownfield
  – Assets / scale of investment
  – Duration of assets
  – Lifecycle costs – initial investment versus operational
  – Funding

• Be prepared to make a brief report back to plenary
Session 1 Plenary Group Report Back
Lunch Break -1 hour
Session 2: Output Based Specification
Output Specification

• A central part of the RfP / ToR for the project

• What service must the project deliver?
What is **Input** Specification?

- **EXAMPLE OF A BRIDGE CROSSING A RIVER**

- Government prepares detailed specification for a bridge (**input**)  
- Government determines exactly how it should be built, what materials used, and makes the detailed plan and design (**input**)  
- Construction company is hired to build the bridge (usually based on cheapest price) – **construction contract**  
- If the bridge does accommodate the traffic (or could have been better or cheaper) it is the government’s problem

- **Consequence of Input Specification:**  
  - Limited private innovation (they just build what government asks for)  
  - All design, operation and maintenance risk stays with government
What is **Output** Specification?

- Government specifies it wants traffic to cross the river (output)
- Government invites companies to propose the best solution (this could be a bridge, a ferry or a tunnel)
- Government hires the company with the best solution to provide that solutions – **PPP Contract** where company only gets paid over future years if their solution works

**Consequence of Output Specification:**
- Space for private companies to innovate and determine best solution
- Company is at risk over time if their solution does not work (hence they will get it right)
Output Specification is a **BIG CHANGE** for government

- Usually new approach, with consequences
- Can be more difficult to do than input specification
- Should cover outputs required as well as minimum standards (e.g. environmental requirements, etc.) that must be met
- Should be able to be monitored and measured in practice
Case Work

- Discuss your project
- Define a few main possible output specifications for the project
- Indicate whether and how each one will allow for private innovation
- Indicate how the output could be monitored and measured
- Identify if any minimum standards would apply to the project
- Be prepared to make a short report back to the plenary
Session 2 Plenary Group Report Back