
CIPS POSITIONS ON PRACTICE

P&SM: Public Private Partnerships

Introduction

The CIPS' practice documents are written as a statement in time. They are a collection of views on good practice within a particular subject area and are intended to provide direction on good practice with some guidance for context and interest. The reader is encouraged to use the CIPS practice documents for their own purposes, such as writing policy statements, guidance or procedures. This particular practice statement has been written primarily for the benefit of full-time purchasing and supply management professionals, but can be used by anyone associated with, or interested in, purchasing and supply management (P&SM).

This document is about public private partnerships (PPP).

Definition

CIPS endorses the Treasury definition of PPP as follows:

"Public private partnerships are defined as bringing the public and private sectors together in long-term partnerships for mutual benefit. The public private partnership label covers a wide range of different partnerships, including:

- The introduction of private sector ownership to state-owned businesses using the full range of possible structures (whether by flotation or by the introduction of a strategic partner) with sales of either a majority or minority stake
- PFIs (Private Finance Initiatives) and other arrangements whereby the public sector contracts to purchase quality services on a long-term basis so as to take advantage of the private sector management skills incentives by having private sector finance at risk. This includes concessions and franchises, where a private sector partner takes on the responsibility for providing a public service, including maintaining, enhancing and constructing the necessary infrastructure [for more information, please see the CIPS position on practice on PFIs which is also available on this site]
- Selling government services into wider markets and other partnership arrangements where private sector finance and expertise are used to exploit the commercial potential of government assets."¹

Background

The PFI grew out of competition and market testing in the public sector in the early 1990s, based on the premise that there was something to be learnt from successful private sector management and that public finance might be freed up for other use if there were private sector investment. PPP has developed since and CIPS believes it to be a more commercial approach to contracting between the private and public sector.

¹ <http://www.hm-treasury.gov.uk/d/80.pdf>

Explanation

The role of the P&SM professional in PPP depends upon their level of experience and competence in this discipline and other complex projects. It also depends on the level of resource available to the buying organisation and other priorities. CIPS believes that P&SM professionals should encourage their organisations to involve them in PPP projects at the very outset and during the project they should take an increasingly prominent role whenever appropriate.

CIPS encourages all P&SM professionals to be familiar with the concept and mechanisms underpinning PPP, even if they do not get actively involved in PPP projects. PPP demands specialist skills and knowledge, over and above traditional P&SM skills. CIPS warns P&SM professionals not to assume that they can simply extrapolate from their existing skill set and experience; PPP procurement and contract management skills must be learned.

CIPS believes that all organisations and their P&SM and other specialist professionals acting as a team, should assess the full range of options before deciding to explore the PPP route. Options still include traditional procurement methods (such as make/buy, outsourcing, etc.) which should be properly evaluated as part of the development of the procurement strategy and should be accounted for in the business case for the PPP approach (for more information please see CIPS positions on practice on strategic sourcing strategy and outsourcing which are also available on this site).

If the P&SM professional is involved in the PPP project from the outset, the decision to proceed with a PPP will have been made with the full support of the commercially experienced team and can hence be justified on sound analytical and commercial grounds. CIPS emphasises the importance of selecting the right commercial team when embarking on a PPP project; the team must be cross-functional and involve external expertise as necessary and appropriate.

Where buying organisations have P&SM professionals experienced in PPP they should be able to determine the best value for money without the need for external advice. CIPS strongly suggests that P&SM professionals should assess their own competencies in respect of PPP and they should recruit specialist advisers as they deem necessary, ensuring that the terms of reference agreed ensure value for money is obtained. Where a P&SM professional and other specialist internal professionals have little or no experience of PPP then external specialist advisers are clearly a significant requirement.

Where the buyer is to have regular input to PPP type contracts, the contract with specialist advisers should enable skills transfers, such that over time the P&SM professional and other professional staff will become increasingly competent and confident with PPP projects and specialist advisers should be required less.

Whatever the role of the P&SM professional in PPP, as a minimum they should have responsibility for the proprietary procurement processes relating to PPP which may include, for example, documentation, advertisements, tendering, evaluation, debriefing, contract preparation and subsequent contract management, etc.

A common and valuable role undertaken by P&SM professionals in PPP projects is that of facilitator and translator, e.g. translating the requirements of a PPP invitation to tender to the contractors and other members of the team. Competent P&SM professionals should be involved with the market (i.e. the supply side) as they understand finance, contracts and broader issues and so can add commercial expertise to all aspects of the organisation's business.

P&SM professionals, when undertaking these roles and dealing with colleagues in other respects, should endeavour to learn in order to raise their awareness of broader business issues. In particular, P&SM professionals should assume the role of an intelligent client by, for example, providing contractors with accurate, full and relevant information in a timely and professional manner.

Some of the typical skills required for PPP include:

- Strategic partnering skills (e.g. co-operation with common goals)
- Relationship management skills
- Listening skills
- Change management, change implementation and control skills
- Facilitation skills
- Influencing skills
- Dispute resolution skills
- Risk identification and risk management skills
- Contract skills
- Sound knowledge of the European procurement procedures applicable to PPPs.

The P&SM professional should be involved with all PPP contracts both on the client side and, if working for a private company, on the supply side. The skills required are sophisticated and so PPP provides an opportunity for the P&SM professional to raise their own profile and that of procurement within their organisation. This should then lead to the P&SM professional being involved with other complex and high profile commercial projects.

Use of Lawyers

Buying organisations embarking on a PPP project should procure the expertise of lawyers; this procurement should always be undertaken by the P&SM professional (reference should be made to the CIPS position on the Use of Lawyers). Lawyers should be instructed by means of a specifically tailored brief to negotiate the principles of the contractual arrangement and not the precise wording.

When the process of negotiation includes precise wording at the same time as the principles this will result in very large, albeit negotiable, lawyers' fees. P&SM professionals need not necessarily use external lawyers; in-house lawyers are an option for those organisations which employ them and such professionals can brief a barrister directly, which may save costs compared to the use of a larger city firm of lawyers.

Advantages of PPP

There are several advantages to PPP, including:

- Providing a disciplined and structured approach to contracting
- Demanding the production of a robust business case
- Requiring a clear definition of the outcome/requirement to be established at the outset
- Requiring a rigorous method of supplier selection and recruitment
- Facilitating the establishment of long-term relationships on a non-adversarial basis
- Bringing together design and construction and service delivery so that the whole project is seen as an entity
- Encouraging the proper assessment of risk
- Requiring skilled project management techniques

- Requiring benchmarking and refreshment which should generate continuous improvement
- Demanding clear change control procedures and a professional approach to change management
- Allowing mutual exchange of valuable skills
- Requiring clear thinking on the exit strategy from the outset

CIPS recognises that these points are good procurement practice and should be applied when undertaking different forms of procurement. The point here, however, is that PPP generally promotes such good practice.

It is important to remember that having procured an asset an authority will have to look after it. The fact that maintenance has always been the first to suffer from cutbacks has previously created the problem of a large maintenance backlog, which PPP sets out to address.

Disadvantages

However, there are a number of complex issues to understand and address using normal risk management processes (for more information, please see the CIPS position on practice on risk management). One negative point is the 'lock-in' and exit problems where, for example, local authorities have to set aside a large part of their income to cover payments; this reduces their flexibility elsewhere.

Partnering can be difficult as members of a PPP consortium may have very different goals that they wish to achieve from the project, so careful management of the partnering arrangement is required (reference should be made to the CIPS position on partnering). CIPS suggests that if a true partnership is envisaged then this should be made clear at the start of the procurement process and it should have a bearing on the choice of consortium. The aims of the buying organisation and the consortium members should be aligned where possible.

The ICT required to support a PPP service can easily be overlooked at the start of PPP projects, leading to higher costs later on. CIPS recommends that ICT, along with other support tools, should always be addressed at the very outset of the project.

The correct management of an in-house workforce potentially affected by PPP and their trade unions is fundamental to the success of a project. Transfer of Undertakings and Protection of Employment (TUPE) law must be complied with; however, post-transfer staff may perceive their conditions to have changed for the worse whilst others may experience advantages.

Public sector workers may, prior to the introduction of Best Value legislation, have felt constrained from establishing close relationships with contracting bodies. However, the establishment of close but proper relationships is essential if the aims of Best Value are to be achieved.

Infrastructure Issues

- The creation of a 'Special Purpose Vehicle/Company' (SPV/SPC) is often necessary to deliver the contract. This can involve significant investment to create and manage as senior directors of the consortia member companies are often involved with the management of the SPV. It can be argued that SPVs are not necessarily expensive, as they provide a corporate framework as a counterpart for the authority, rather than a joint venture or indeed separate companies which would have to be managed on a collective basis
- A consortium is often created as a result of the SPV with additional contractors. A contract is then created with a bank, which generally provides the majority of the finance and thus forming a tripartite relationship

- The members of the consortium, the bank and the client all have different needs and objectives from the PPP project and these have to be recognised, understood and managed
- SPVs do have an important 'single role responsibility' to play for all those residual risks that cannot be transferred to the subcontractors. The key is the internal rate of return the SPV obtains for absorbing these risks. This to some extent relates to the point as to whether an operator should be an equity shareholder in the SPV. It does not greatly matter either way, but if the SPV is getting a higher rate of return than is commensurate with the level of risk it accepts then, arguably, the operators are in fact being paid twice. However, there is no evidence to date to indicate whether or not the SPV is receiving excess profit for the risk for which it has taken responsibility.

Payment/Cost Issues

- Third party finance can result in a disproportionate amount of attention being given to the financial arrangements at the expense of the service provided
- Assets can be transferred from the public balance sheet to another party, or parties, and the issue of who is responsible for the asset underlying the service (both in management and accounting terms) has to be determined
- There are various options available to assess the contract baseline (e.g. open book accounting, balanced scorecard, benchmarking, etc.) and the choice should be made on a project by project basis
- Banks are mainly interested in their Return on Investment (ROI); they have 'Step in Rights' which create uncertainty for contractors and increases the contractors' commitment towards the banks. Negotiations can be lengthened by bankers requiring verification of the ROI
- The payment regime on PPP projects tends to be a unitary charge regularly payable by the public sector buying organisation when the service is being delivered (which may not commence until possibly two years into the contract). Such unitary charges need not be uniform through the contract, nor are they the only payment mechanism available in respect of PPP projects

Conclusion

CIPS recognises that PPP type procurement projects are complex commercial exercises demanding high level skills from a range of experienced professionals. The buying organisation usually needs to recruit the services of specialist advisers, lawyers and others; P&SM professionals should be responsible for the procurement of such services and should, ideally, be involved in the entire PPP project from the outset. CIPS encourages P&SM professionals to develop the necessary procurement skills required to add value to, if not lead, PPP projects since they are best placed to handle the intricacies and ramifications of such a means of procurement.