

Bidding Issues

Define the Scope of Works

In particular for a BOT type of concession contract, an initial question is to decide who, at each stage, should be in charge of designing the road: the public authorities? the operator? or both? Depending on the stage the project has reached, the consequences of the answer to this question is of the utmost importance for sharing the risks and responsibilities between the partners of the project.

The most frequent case of public-private partnership (PPP) for the construction of a new road is that of motorway concessions with real or shadow tolling. The investment is considerable, the return on investment is very long and the risks are very great. It is essential to pay considerable attention to finding the right advisors for the feasibility studies and then subsequently the private partner who must be both technically and financially competent and especially risk management aware.

It must also be taken into account that one of the main advantages of PPP is that of being able to derive maximum profit from the concessionaire's capacity to innovate, as well as its knowledge gained through practical project experience. For this purpose, sufficient freedom must be left to the concessionaire to precisely determine the project at the tender and design stage. Experience has shown that allowing the concessionaire considerable initiative within the key objectives set down by government may lead to considerable reductions in project costs.

Other considerations

Being obliged to associate the public in the project design phase often lengthens the time required for the studies necessary for determining the alignment. Leaving these studies entirely up to the private operator would mean considerably lengthening the time between awarding the contract and the start of the works (10 years or more!) and considerably aggravating the pre-construction risks. This should encourage the public authorities to carry their alignment investigations out in sufficient detail before inviting tenders.

Other arguments come in support of this. The decision of the public authorities to undertake the operation in the form of a PPP can only be taken on the basis of serious economic and financial studies. Such studies suppose having available a reasonably accurate evaluation of the financial, social and environmental cost of land acquisition.

It can thus be seen that the problem of the level of precision to be aimed at during the preliminary studies prior to the tender is very complex. It is even one of the central problems in concession projects which gives rise to much debate internationally, of which contractors are very much aware. A balance must be found between the solution where the public authorities simply determine the points of origin and destination, leaving the operator to carry out all studies and meetings with the public and that where,

on the contrary, the public authorities determine precisely all the characteristics of the project.

In any case, it is essential, except when specific problems arise (archaeology, dangerous materials, deep mine shafts, etc.), to leave all technical risks to the private operator, except in cases of force majeure, as otherwise, the public authorities will seriously run the risk of seeing the concession become bogged down in inextricable dispute procedures. For this reason, it should be specified in the tender regulations and in the contract, that in all cases, and even if the public authorities have got very far in determining the alignment, it is up to the operator to carry out all the necessary complementary investigations to identify and measure the extent of the standard construction risks, the standards and required outputs and descriptions submitted by the administration only being given for information purposes.

This right balance in sharing the studies between the road authorities and the operator very much depends on the characteristics of the operation and the local, technical, political and sociological conditions. In inter-city areas with no particular difficulties, a recommended approach is to have determined, by the end of the preliminary studies prior to bidding, not necessarily a precise alignment, but at least a corridor in which the alignment will be situated, and to have made sure that it will raise no opposition from the public or environmentalists. It will then be up to the concessionaire to carry out the necessary studies to precisely determine the optimum alignment within this corridor along with the project characteristics. However, a full FS would provide close to the final alignment, subject to the winning bidder proposal.

The width of this corridor may vary according to the density of the constraints and the sensitivity of the environment in each zone. To give the concessionaire maximum choice, he may even be left to decide between several corridors, once it has been made sure that they are all acceptable to the public and on condition that the national laws authorize such a solution (which supposes in particular that several alternatives may be declared simultaneously to be in the public interest).

In urban zones, two cases must be distinguished:

If the only solution is a surface alignment, this alignment will need to be determined precisely right from the preliminary study stage on account of the multiple problems to be dealt with, and in any case, examined in detail before launching the operation (re-housing, relocation of utilities, restoring roads, dealing with public transport networks, noise protection measures, reducing cut-off effects, insertion into the landscape, conditions for performing the works, etc.). The corridor is thus reduced to the alignment itself.

In the case of an underground solution, these difficulties mostly disappear and as much freedom as possible should be allowed regarding the alignment and even the general design of the structure.

The same applies for major bridges or major underpasses in inter-urban zones. It is essential to leave as much freedom as possible to the operator both as regards layout and technical solution. Such structures are in fact always special cases which require being analyzed on a case-by-case basis by the public authorities and their consultants.

Lastly, it should be underlined that the level of project preparation studies obviously depends on the wishes of the government, the characteristics of the project and on the procedure chosen for bidding.

In any case, the operator should be fully informed in the tender documents of the constraints to be respected and the administrative procedures to be followed for those studies placed under its responsibility. The winning bidder should also benefit from the support of the public authorities, particularly for carrying out public information campaigns and meetings.

Define Expected Performance

Choice of definitions

PPP-type contracts give rise schematically to three types of requirements corresponding to the different project stages:

- quality requirements for the construction, reconstruction and rehabilitation phases;
- performance requirements throughout the maintenance and operation phase;
- hand-back requirements which concern returning the conceded facility to the conceding authority on expiry of the concession contract.

These requirements are not independent. There should be continuity and coherency between the quality requirements for the works and performance requirements (e.g. the level of evenness required during construction or rehabilitation should be at least equal to that required regarding the performance of the road pavement in service).

It should also be underlined that, as far as possible, as regards the initial quality or performance, the requirements regarding results should be given priority compared to the requirements concerning the means and method of execution. With these reservations, we will only deal here with the last two requirement categories, which are specific to PPP.

The design of the contract should stimulate the operator to perform well

The fact that it is to the operator's advantage to perform well is a powerful aid to respecting quality requirements (at the construction stage) and performance requirements at the operation and maintenance stage. Contracts that follow this objective can lead to major savings in supervision work. Their wording may be more concise: it is unnecessary to go into detail concerning requirements which, if they are not respected by the operator, will prove very costly. It is essential to take this principle into account right from the PPP design stage.

Type of contracts encouraging better performances

It is essential, when organizing the project and the contract, to make sure that the operator has a real interest in better quality works and better performance.

The following examples illustrate this principle:

- When the public authorities wish to entrust road construction, rehabilitation and maintenance to the private sector, they would be strongly advised to include them in the same contract and entrust them to the same contractor. Thus, any defect in the quality of the works will result in extra costs for the operator which constitutes a powerful encouragement for it to perform the works well.
- With sufficiently lengthy maintenance contracts (5 years, for example) work defects which are not immediately visible will become so. Of course, the optimum period to be considered should also take account of other elements: the advantage of experimenting with shorter contracts during the launching phase of a PPP policy; the worry of not being bound for too great a period to the same operator, etc.
- The quality of service on the rest and service areas is one of the parameters of motorways attractiveness. For toll motorways, it is desirable that the concessionaires of service areas (service stations, shops, restaurants, hotels, etc.) be sub-contractors of the conceding authority, which will thus have a direct interest in the good quality of the services provided and be able to regulate and control it directly.
- Being given a choice of toll payment means (cash, credit cards, electronic tolling, etc.) is well perceived by users. The operator will be encouraged to increase this variety and to develop new techniques if it collects tolls itself. This will not be the case if the sums collected are handed back to the conceding authority. In the first case, it will also very naturally be encouraged to actively fight against fraud at the toll barrier, which is a permanent source of worry to toll managers as in this field, drivers' imagination is boundless!
- The possibility of extending the contract if performance is achieved also encourages the private sector to perform works and services well.