

Guidelines for Post- Award Contract Management for PPP Concessions



The Post Award Contract Management Manual for Highway PPP Concessions has been commissioned by the Department of Economic Affairs, Ministry of Finance, Government of India (DEA) with funding support from the World Bank and advisory facilitation from Deloitte.

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Preface

Over the last decade, Government of India (GoI) has been placing a strong emphasis on the use of Public Private Partnerships (PPPs) in its strategy for expanding the provision of infrastructure services. Also, to facilitate a large scale expansion of PPPs on a sustainable basis, GoI introduced several initiatives which inter-alia included establishment of PPPAC, PPPIADF, an Infrastructure Project Development Fund, Viability Gap Fund to provide financial support for PPP projects, implementation of a National PPP Capacity Building Program, development of knowledge products and guidance material including PPP toolkit. These initiatives have helped India develop a large PPP program in the infrastructure sector.

In the process of implementation of PPP projects, policy makers have been increasingly identifying issues related to project delivery of PPP projects. Such issues primarily focus on Post Award Contract Management of these PPP projects, at the transaction as well as programmatic level and also the broader fiscal implications such as, for example, direct and contingent liabilities.

With this objective, the Department of Economic Affairs, Ministry of Finance, Government of India has made an attempt to develop guidance material for improving the post-award management of PPPs, with particular focus on day-to-day monitoring and proactive management of key risks in a manner that best preserves the interests of the users of infrastructure services and the concessioning authority. The guidance material developed for Post Award Contract Management of PPP Concessions has three components:

Post Award Contract Management Guidelines: “Post-Award Contract Management Guidelines” have been developed as a quick reference strategic road map for Authorities and Contract Managers. The guidelines provide the foundation principles of post award contract management for PPP projects irrespective of the sectors. The Guidelines establish only “Why” and “What” of contract management practices and therefore, to understand “How” contract management needs to be undertaken in a specific sector, the “Post-Award Contract Management Manual” has been developed.

Post Award Contract Management Manuals: The Post Award Contract Management Manual for PPP Concessions has been designed to provide guidance on various activities required to be undertaken by the Authority officials at different stages of project lifecycle. The manuals have been developed for PPP projects in three sectors, viz. Highways, Ports and Schools (Volume I, II and III respectively), where each manual is based on the Model Concession Framework of Government of India for that sector. These manuals serve as model post award contract management guides with a detailed, step-by-step approach to effective contract management in these sectors.

Online Toolkit: The online toolkit is a web-based application which provides a quick reference, interactive and user friendly toolkit to understand and manage PPP projects. The online toolkit provides option to the users to use various checklists, project progress plans and excel tools to manage the PPP contracts. It also provides an interactive toolbox which is a dedicated tool for tracking progress of various post award activities. This feature allows officials to update the status of the activities, save their details and print for future use.

This toolkit would be available in the existing www.pppinindia.com web portal hosted by PPP Cell, Infrastructure Division, DEA. It can also be accessed through an existing online database by DEA for Infrastructure Projects, www.infrastructureindia.gov.in.

This guidance material for Post Award Contract Management for PPP Concessions has been developed by Deloitte Touche Tohmatsu India Private Limited. We would like to acknowledge the support and guidance of staff and officers of DEA, especially, Ms. Sharmila Chavaly, Joint Secretary, DEA and Ms. Abhilasha Mahapatra, Director, PPP Cell, DEA for providing their valuable inputs and feedback in making this guidance material highly comprehensive and user-friendly.

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Part I: Introduction to Contract Management

This section defines the fundamentals of contract management, its significance in the current scenario for PPP concessions and the scope of these guidelines is to assist the contract managers in implementing focused and relevant contract management practices.

1 Overview

1.1 What is Post Award Contract Management?

In Public Private Partnership (PPP) projects the Concession Agreement (CA) is signed between two parties i.e. the Authority and the Private Party/ Concessionaire. Each party is assigned certain rights and obligations under the terms of Agreement. Consequently, the parties are entitled to not only avail their rights but also obligated to perform their duties in a time bound manner and jointly accomplish the project objectives.

From the Authority's perspective, Contract Management denotes all those activities that are required to be undertaken by the Authority to administer, manage, govern and execute the project. Moreover, key objective of Contract Management is to ensure that the PPP project meets its objective on continuous basis, while managing risks proactively and taking stakeholders together in this process.

While managing a contract, there is much relevance of pre-award phase i.e. project identification, preparation and procurement. This phase is crucial in many ways and thus substantial focus is given on this phase. However, post-award phase of a PPP project is also equally important and it becomes more complex because of various reasons like, long time-period, impact of pre-award phase, number of stakeholders etc. This guideline document focuses on Contract Management of PPP Projects in such post-award phase.

Post-Award Contract Management commences upon Award of Concession/ Project (i.e. from the date of issue of Letter of Award to the Private Party/ Concessionaire) and ends after the completion of the Project and expiry/ termination of Concession Agreement.

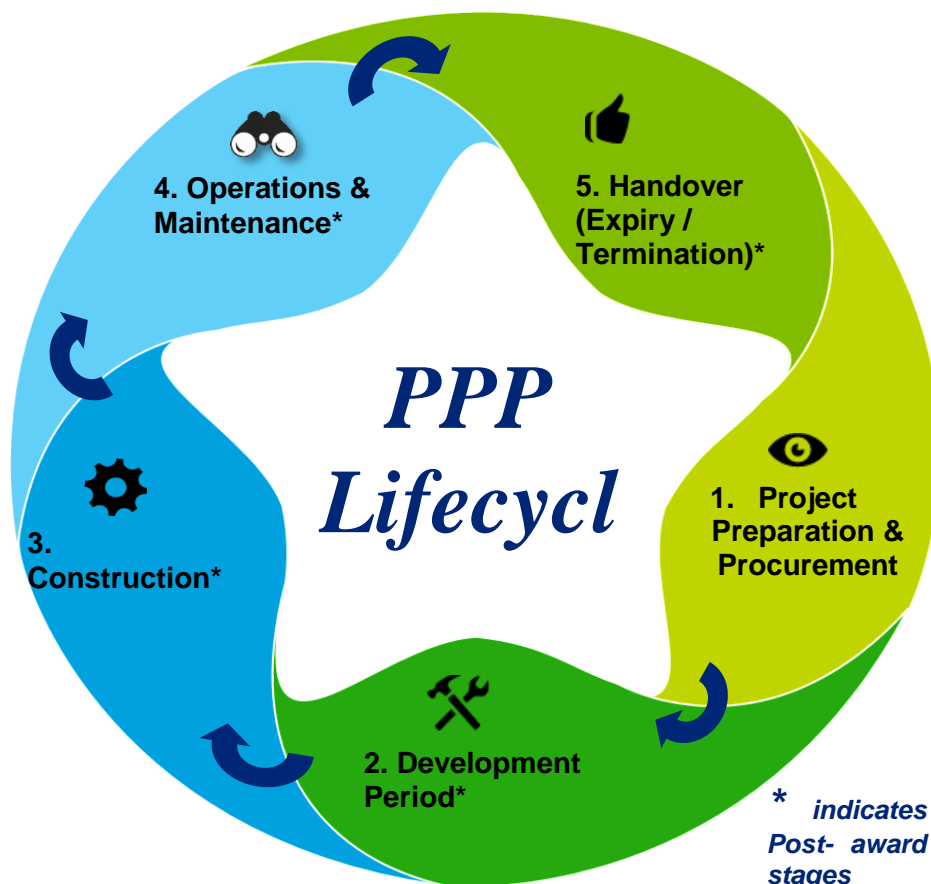
Hence, post-award Contract Management involves four key phases namely Development Period, Construction, Operations and Handover. It also takes into account, performance monitoring of the Private Party, relationship management with all Stakeholders, resolution to disputes if any, and in the nutshell try to serve all the objectives set out in the Concession Agreement in the best possible manner.

Contract management encompasses various aspects of an organization or a PPP project. The chart below provides an overview of key components of Contract Management in context of PPP Projects:



1.2 The PPP Lifecycle

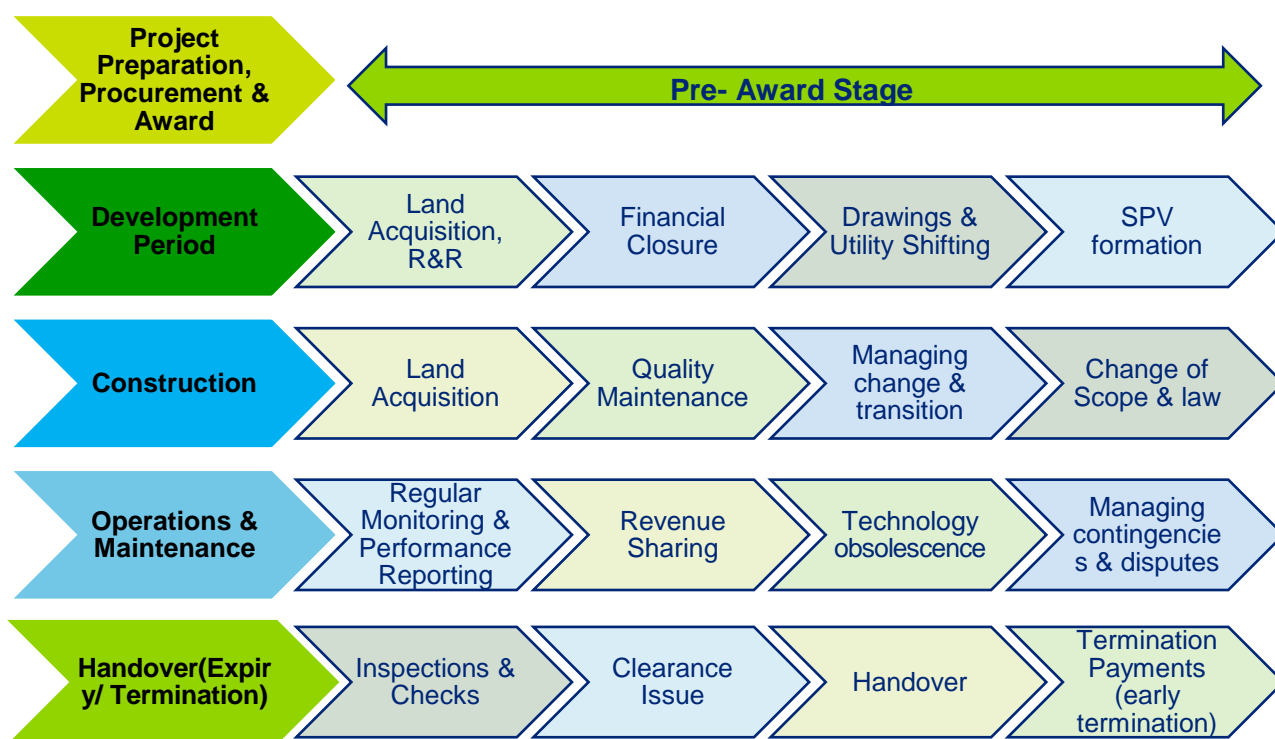
PPP projects are generally long tenure in nature and undergo a full lifecycle, right from the Authority inviting applications from the interested Private Parties and terminating with its handover to the Authority upon expiry of Concession Period/ termination of Concession Agreement, in case of early terminations. A lifecycle of a PPP Project typically consists of the following stages:



1.3 Contract Management throughout the PPP Lifecycle

Multiple risks might possibly materialize during various stages of the contract including market / demand risk, operational risks, financial risks, environmental / social risks, political and regulatory risks etc. Also, there are several contractual & administrative issues that require substantial coordination among multiple parties. In order to ensure efficient contract execution, it thus becomes imperative to manage and control such issues / risks through robust Contract Management practices. The Authority also needs to ensure that its contract management strategy evolves through the lifecycle stages and is adaptable in a changing scenario. Some of the key contract management issues at each stage of the lifecycle are listed as below:

Indicative Major Issues in PPP Projects during Post Award Stages



Effective contract management must take account of and adapt to changing circumstances and significant events through the project lifecycle. Also, above illustrated issues are generic in nature and depending on the sector and PPP project structure, the composition and nature of such issues may vary. In fact, one of the key objectives of the contract management framework is to identify such issues and develop detailed managed plans for the same.

1.4 Role of Government & Contract Management

Since infrastructure projects generally have long tenure, there can be instances where the services being delivered to the users vary on time, cost, quantity and quality standards. Irrespective of the obligations of Private Party, the government is the main party accountable to the public and subjected to criticism in case of default. Hence, as the GOI Guidelines

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(commonly known as the “Planning Commission Guidelines for Institutional Mechanism of PPP Projects”) also suggest, it is the responsibility of the government to ensure that all conditions set out in the Concession Agreement are adhered to by the Private Party.

Moreover, the projects are set out for the benefit of the economy and in no way should become monopolistic in nature where the users are exploited at the hands of the Private Party with respect to user or charges, etc. Hence, care must be taken by the government to examine and curb any such wrong practices being employed by the Private Party and safeguard public interest. Accordingly, effective contract management becomes critically important for the Authority.

1.5 Objectives of a Contract Management Framework

From PPP perspective and after taking into account above discussed components, life-cycle stages and generic issues, it can be stated that a Contract Management framework should serve the following key objectives:

S.No.	Objective	Key Aspects
1.	Planning and Project Management	<ul style="list-style-type: none"> • Identification of constraints and addressing same • Advance planning / Risk Management through early alarm bells
2.	Regular Management / Monitoring	<ul style="list-style-type: none"> • Management of Government’s rights, obligations and contingent liabilities • Ensuring performance of obligations by Private Party • Management of Incentives & Penalties • Monitoring of critical tasks / timelines • Tariff / Payment Adjustment • Handover Management • Dispute Resolution
3.	Compliance	<ul style="list-style-type: none"> • Ensuring adherence to laws, policy & regulation • Ensuring adherence to required Governance principles
4.	Government’s Accountability	<ul style="list-style-type: none"> • Continuity of adherence to objective of the project • Ensuring intended use of public resources
5.	Managing Eventualities	<ul style="list-style-type: none"> • Management of eventualities / contingencies like Force Majeure, Termination etc. • Renegotiation Management • Change Management
6.	Effective Coordination	<ul style="list-style-type: none"> • Relationship Management with Concessionaires • Internal coordination amongst departments • Coordination with third parties
7.	Institutional Perspective	<ul style="list-style-type: none"> • Ensuring uniformity in contract management approach • Streamlining Communication • Maintaining Institutional Memory • Capturing and monitoring performance indicators
8.	User Perspective	<ul style="list-style-type: none"> • Protection of user rights

S.No.	Objective	Key Aspects
		<ul style="list-style-type: none">• User grievance / feedback management• Knowledge Management & Information Sharing with Stakeholders

All these objectives will be served jointly by the Post Award Contract Management Guidelines and the manuals which will provide valuable insights for both the Authority and other stakeholders to effectively & efficiently manage the contract. This will help in leading a PPP concession to a successful handover stage with obligations and rights of all stakeholders duly served and users reaping maximum benefit out of the public facilities and / or services created / delivered as a part of the project.

2 Scope of Contract Management Guidelines

Post-award contract management framework has been envisaged in form of two levels of guideline documents. The first level is covered under this document i.e. Post-award Contract Management Guidelines, which presents key principles of contract management across sectors. The second level has been envisaged in form of Contract Management Manuals, which would be sector specific and closely linked to the specific PPP project structures in the sector. Such manuals are expected to be based on the Guidelines and showcase implementation of such Guidelines in form of Model Contract Management Plans for PPP projects in respective sector.

These Contract Management Guidelines are envisaged to serve as a useful tool in solving major hurdles that arise during a project lifecycle. These guidelines can be used by contract managers whenever in doubt to seek a clear understanding of how a particular issue can be managed or any dispute can be resolved. Also, it serves as a guide for adopting good contract management practices. This chapter talks about how the Contract Management Guidelines for the Indian practitioners in the PPP segment have been designed and gives a brief snapshot of the overall scope of all these guidelines.

2.1. Significance of the Guidelines

Over the last decade, a number of PPP projects have become operational in various infrastructure sectors, with evidence suggesting that many of such projects are working well and delivering significant benefits to the stakeholders. At the same time, it has also been noted that these projects can sometimes be subject to political, economic and other external stresses due to their characteristic long time horizon. Failure of the projects leads to severe financial losses and reputational damage to the Authority and the government, apart from the loss to private parties and users. Many a times, one of the key differentiating factor noted between successful and failed /troubled projects has been the co-ordination between the Private Party and the Authority. Hence, these guidelines can prove to be the reference book for PPP contract management providing support and advice to those responsible for managing the PPP projects.

2.2. Objective of Contract Management Guidelines

The objective of these guidelines is to provide:

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- General guidance for respective Authority's management of a PPP contract through the lifecycle of a project – to help achieve project objectives incorporating balanced and desired outcomes;
- Advice on adoption of best practices and policies in the PPP Contract management which lead to pro- active management and successful handover of projects;
- Assistance in identifying the key principles of contract management, developing a contract management plan based on specific problems faced currently by the Authorities and building a successful long-term relationship with the Private Party;
- Identification of key specific issues and risks faced in duration of a typical PPP project and detailing the control and mitigation strategies for it;
- A methodical approach to issue management and dispute resolution for the Authority with clear delegation of responsibilities, time-bound escalation mechanisms, appropriate response timelines & effective relationship management guidelines;
- Directions for all Authority officials on various other issues faced throughout the PPP lifecycle.

The purpose of these guidelines is to be a user-friendly, quick reference strategic road map for Authorities and Contract Managers who are in the process of managing PPP projects for the post- award phase of the project.

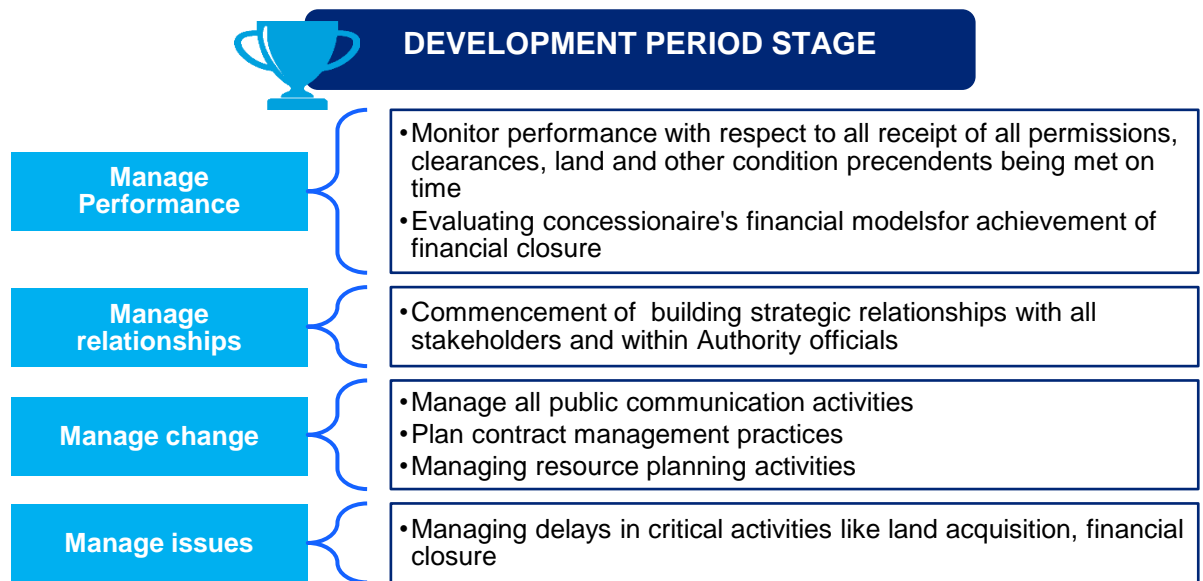
2.3. Coverage/Applicability of Guidelines

A typical PPP project in India has five distinct stages of Project Procurement, Development Period, Construction, Operations & Maintenance and handover. Among all these stages, the post award stages comprise of:

- **Development Period Stage:** Process leading up to contract execution, starting from the date of Letter of Award up till the date of commencement of Construction consisting of all pre-construction project activities like land acquisition, meeting financial handover, etc.
- **Construction Stage:** From the time construction starts on the date of commencement of construction through the commissioning process to the completion of construction as specified in the terms and conditions of concession agreement.
- **Operations & Maintenance Stage:** Extending for the longest portion of the contract life-cycle. It covers the provision and use of the contracted services during the remaining life of the concession.
- **Handover Stage:** The period leading up to and after contract expiry or termination

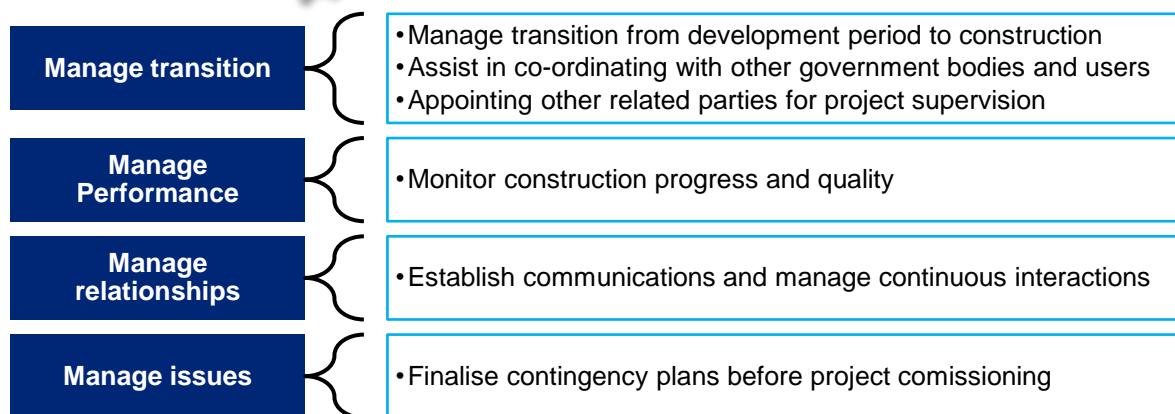
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For each lifecycle stage, there is a range of contract management activities that need be conducted by the Authority as and when required for effective management, as summarized below:

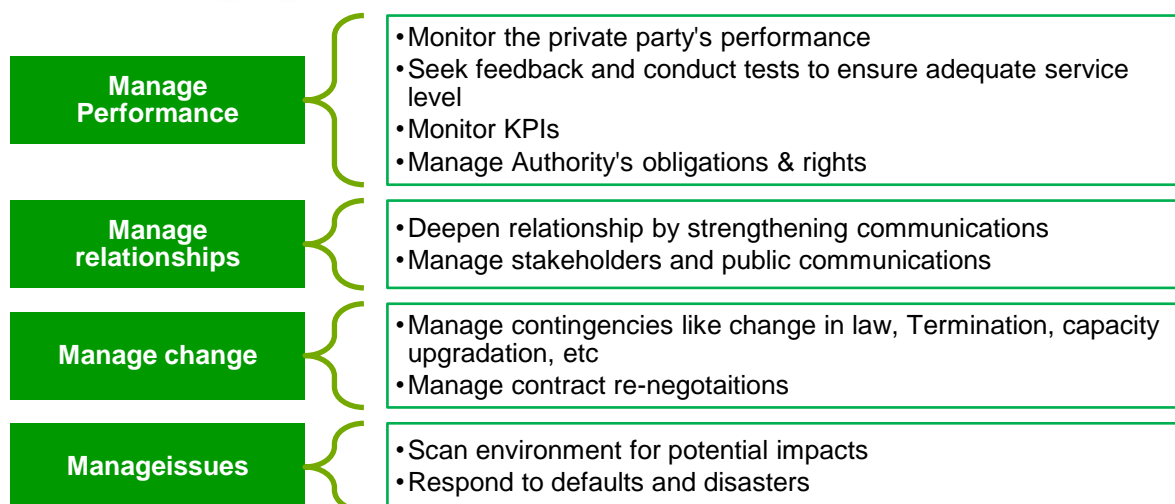




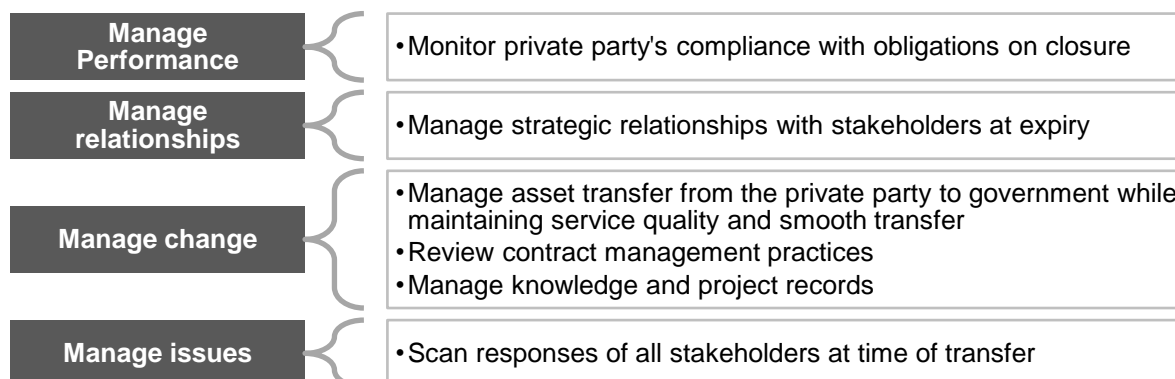
CONSTRUCTION STAGE



OPERATIONS & MAINTENANCE STAGE



HANDOVER STAGE



2.4. Caveats & Limitations

Immense care has been taken to ensure that this guide covers all possible situations that can arise in PPP projects post award stages. Even then, there might be some cases that fall out of the scope of this guide. Following are the major limitations of these guidelines:

- The scope identified in these guidelines is post-award of the contract and as such issues observed hence forth have only being delineated upon.
- These guidelines are of advisory nature and detail general steps to be taken for effective resolution of issues and overall management of a PPP Contract. These should not be considered as a detailed step-by-step resolution process specific to a sector. For the same, refer to the sector specific Contract Management Manuals.
- Even though utmost efforts have been put in to provide an exhaustive and comprehensive list of issues, it should not be assumed that there are no issues beyond the ones explained in the guidelines.
- These guidelines enlist templates and checklists for reviewing and managing the contract management activities during ongoing projects. These checklists are of generic nature and hence all parameters might not apply in a particular scenario. Required amount of project/ contract specific adaptation needs to be done.

2.5. Structure of Guidelines

These guidelines have seven parts:

- **Part One: Introduction to Contract Management** outlines the nature and function of contract management
- **Part Two: The Contract Management Team** outlines the mapping of roles and responsibilities within an organization structure from contract management perspective
- **Part Three: The Transition plan** outlines the process map to move from procurement stage to post-award stage & defines the team that is required to be set up
- **Part Four: The Contract management plan** outlines the contract management tasks and related aspects , which can be used by a contract management team as a step-by-step guide
- **Part Five: The Exit plan** is focused on the process regarding handover of the project and asset transfer from the Private Party to the government.
- **Part Six: Appendices & Templates** contains all the checklists and model templates for customization and use to a specific project requirement
- **Part Seven: Important Terms & Definitions** enlists all the major terms and their meanings used throughout this book

Part II: The Contract Management Team

This section provides for setting up Contract Management Team, best practices to be adopted from the Government of India Guidelines, Authority level responsibilities and roles of the officials for clarity and clear demarcation of contract management related functions.

3 Planning & Appointment for Contract Management Team & other related parties

Contract management is a highly critical activity for any project to be executed smoothly. Hence, it is important that the team executing the contract management activities is also selected with great care and precision to ensure the selection of the right set of people with the required skillsets. The criticality of Contract Management Team cannot be stressed enough without emphasizing on the need of an all - encompassing team structure where all levels of Authority as well as its link to the government is clearly established.

Understanding the significance of the team, Government of India (GOI) has also issued “*Guidelines on Institutional Mechanism for Monitoring PPP Projects*”, hereby referred to as “**GOI Guidelines**”, which provides institutional level framework for monitoring of PPP projects within the Government of India and their reporting guidelines.

This chapter discusses how an ideal framework within an organization for contract management should be established, who should it comprise of, provides details of responsibilities and roles of various levels and establishes its clear reporting lines to the GOI. Also, such Authority level framework is also discussed in context of GOI guidelines.

3.1. Significance of Contract Management Team

A Contract Management team just acts like an Ombudsman for managing contracts. Given, most Authorities are involved deeply into their regular management activities; it becomes difficult for them to take up a complex task like Contract Management completely. To ensure coordination among various divisions and stakeholders throughout the project lifecycle it is imperative for the Authority to set up a Contract Management Team. The contract management team can provide an unbiased point of view on all issues in the project and how they should be managed. It also increases the efficiency of managing communication between the private party and the Authority. Hence, Contract Management team is important for a transparent, fast and efficient Contract management mechanism to function smoothly.

3.2. Background, Purpose & Applicability of the GOI Guidelines

The GOI guidelines are developed as a response to the need for establishing an institutional mechanism that would ensure compliance of the contractual framework contained in the Concession Agreements for PPP Projects mainly with a view to safeguarding the interests of the government body and the users. It majorly establishes the association between the Government and the Authority.

The key objectives served by these guidelines are:

- To provide a common framework across all sectors in which PPPs have been awarded to develop their institutional mechanism accordingly

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- To cater to the need of institutional structure which monitors such projects for enforcing the obligations of the Private Party, especially with respect to the service quality as well as the user charges
- To develop an understanding of aspects of monitoring for the institution which are based on agreements between the Authority on the one side and the private entity on the other side

Thus, the guidelines serve as a ready reference for the Authorities to supervise and inspect the proceedings of the project and check whether they are in line with the terms set in the Concession Agreement. They are applicable to all the following scenarios:

- The guidelines are relevant and supposed to be followed by all PPP Projects sponsored by Central Government Ministries and statutory authorities. The proposed structure would also have to be followed for State projects that seek Viability Gap Funding (VGF) from the Central Government.
- Also, these guidelines should be referred to when monitoring any PPP project where a Concession Agreement between a Government body and Private Party has been signed for developing infrastructure service in return of payment in user charge form or annuity payments by government
- These guidelines may find acceptance in Social sectors like Healthcare and Education if the nature of monitoring required is similar.

3.3. Major stakeholders in a PPP Project

In any PPP project, each stakeholder has an important part to play for it to function well. For smooth execution without any hitches, it is essential that all stakeholders are apprised of their responsibilities clearly so that there is minimum overlap and confusion. The major stakeholders and their duties involved in a PPP project are:

3.1.1. The Authority

The Authority represents the Government and owns the PPP project. Typically, the Authority consists of:

- **Field Level officers & Project Managers** are responsible for day-to-day monitoring and are directly involved in the project for recording the progress and managing inconsistencies observed. They work closely with the technical & finance teams as well as the independent engineer for smooth execution of the project.
- **Regional Level Authorities** review and supervise all projects being implemented within their region. They make sure that the project remains on track within pre-decided timelines. They also oversee handling of regular monitoring issues occurring at regional level.

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- **Headquarter Level officers** of various divisions (Finance, Admin, Projects, etc.) & regions which are responsible for decisions and managing processes that are more efficient to manage centrally such as procuring external consultants/engineers or managing disputes. They also support regional and field offices with obtaining certain clearances or managing financial handover. They also review project progress from time-to-time and ensure smooth progress.
- **Highest Decision Making Level (Members, Chairman & The Board)** responsible for overall strategic direction of the project. They also take decisions on granting approval for change of scope, variations or extension of time which may have significant impact on the project.

However, it may be noted that in an organization there can be different hierarchal structure, based on nature, scope and role of the organization, wherein roles discussed above are either clubbed together or distributed further.

3.1.2. The Private Party/ Concessionaire

The Private Party is responsible for the entire execution of the project in timely and efficient manner. In accordance with the terms and conditions of the Concession Agreement, the Private Party procures, finances for and undertakes the design, engineering, procurement, construction, operation and maintenance of the project. It is allowed to recover its cost and generate returns by collecting user fees or is paid annuities by the Government (depending on the contract terms).

It needs to comply with all legal, technical and financial requirements through the project lifecycle and is paid for the entire project delivery on the project mode basis.

3.1.3. Escrow Bank

The escrow bank acts as an agent between the Authority and the Private Party managing all payments and related transactions made to and by the Private Party. It thus looks at segregation of funds, notification of balances, communication and notifications and regulatory approvals.

3.1.4. Safety Consultants

The safety consultant is appointed by the Authority for carrying out safety audit of the project in accordance with the safety requirements. The firm appointed as the safety consultant in turn appoints a road safety expert and a traffic planner to ensure all safety requirements of a project are met. It reports to the Independent engineer with respect to safety and traffic planning.

3.1.5. Senior Lenders

Senior lenders are the major financing agents for the project. As per the financing agreement, they are responsible for infusing the required amount of capital for the project continuity. They disburse all funds through the escrow bank account unless otherwise specified in the agreement.

3.1.6. Independent Engineer

Monitoring of construction, operation and maintenance is undertaken by an Independent Engineer selected for the project. Its independence provides added comfort to other stakeholders, besides improving the efficiency of project operations. An independent engineer remains involved with the project right from the development period to the project handover phase. If required, a public sector consulting firm may discharge the duties of Independent Engineer.

Above discussed stakeholders are generic in nature and their number as well as role might vary depending on the project structure and sector.

3.4. Planning for Contract Management Team

It is important for Authorities to start scoping out the details of a project with regards to resource planning, costing, affordability, risks, procurement methods, etc. from the time of procurement stage itself. These estimates, however, are under constant revision with changing needs of the project and its complexity. Following activities need to be planned and finalized at the time of project award itself:

- Resource Estimation- number, type and stage wise requirements of all resources
- Resource monitoring during the construction phase
- Information on staff transfer arrangements
- Skills and experience of the monitoring team
- Day to day contract management
- Governance arrangements for the construction and operational phases
- The communications strategy
- Arrangements for the regulatory Authority's internal auditing of the project
- Funding approval and payment mechanism

3.4.1. Appointment of the Contract Manager

The key personnel from the Authority's side during the operational phase of the PPP project will be the Contract Manager. He/ She will represent the Authority's interests and ensure that service quality is in sync with the contract terms. Key desired skills for such a person are:



• Effective Negotiation Skills:

Traditionally, the Works have always been executed by the departments themselves under Item Rate Contracting (IRC)/ Engineering Procurement & Construction (EPC) modes and the officers have always been well versed with engineering aspects of Works. However, they somehow lack that level of expertise in contract management. With more emphasis on PPP projects now, the role of officers in the field is shifting from technocrats to effective contract managers. Now-a-days, the contract managers often face situations where negotiation with the Private Party or

other related parties is a pre-requisite. Be it agreement on sanction of payments or reviewing the project quality in terms of benchmarks set, negotiation well before coming to a consensus so that interests of both parties are preserved well is of utmost importance.

- **Clear Technical & Financial Know how:**

The Contract managers need to understand the basic technical aspects to evaluate whether the quality standards have been adhered to by the Private Party or not. They also need to understand the mechanisms that are required to be undertaken by the Authority e.g. land acquisition, utility shifting and rehabilitation and resettlement so that the core processes of a Project can proceed smoothly without hitches.

- **Articulate:**

Clear communication is the key to sound contract management practices. All orders given to subordinates or conversations with various stakeholders of the project can be made highly effective for the parties to develop an understanding through clear and transparent communication styles of Contract Managers

- **Relationships Management Skills:**

Relationships are likely to breakdown when parties do not understand each other's position or where poor communication has led to misunderstanding

- **Change management:**

The operational phase will mean a new way of working for many Authorities as they will now procure services rather than deliver them

Authorities should plan for change within the team, and appoint a Contract Manager as part of the procurement from at least the time of awarding of contract. He/ she should be involved in the negotiations with the Preferred Bidders on relevant technical aspects, such as the performance measurement system. If this does not happen, it may lead to the danger of the bidding team being unable to communicate the reasons for negotiations on certain terms with the bidder which might later have a grave impact on contract management.

Large sizes and complex PPP projects might also require another team to be constituted alongside the Contract Manager for supporting him/ her in his activities. The need, size and profile of members maybe decided based on:

- The need of specialized advice or consultation from Internal sources
- The estimated demand for additional resources during the project lifecycle. For example, in first few years of construction more monitoring and technical support might be required
- Whether a separate contract management division will be set up in the Authority and its role and responsibilities

- The appropriate level and role of support staff
- Complexity of Project
- Performance Monitoring System & Relationship Management Protocols

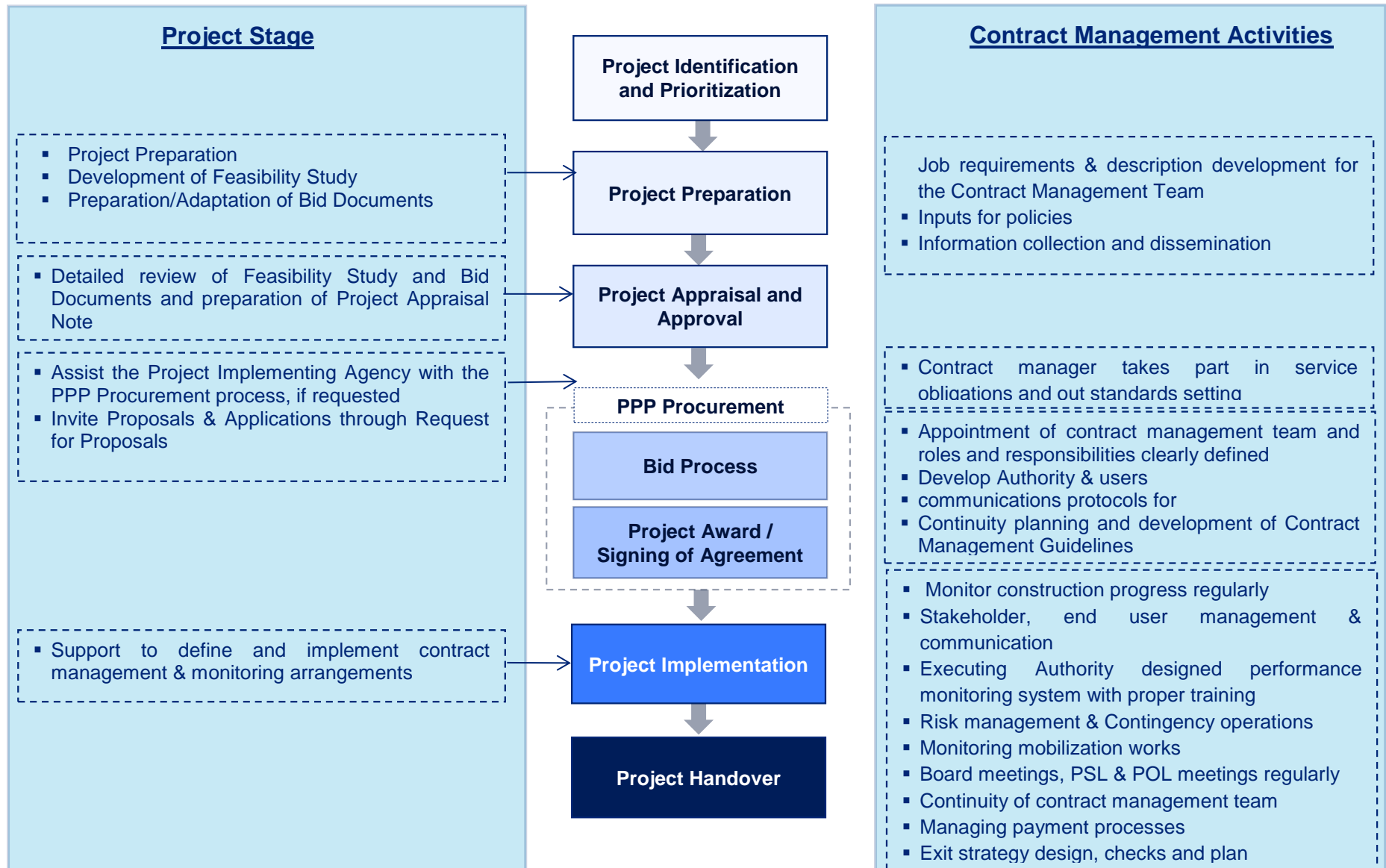
3.4.2. Time of Incorporation of the Contract Management Team

A smooth handover from the procurement team to the contract management team has to be best achieved during the construction phase. This is simpler and happens without any hitches if the contract management team is involved early in the project lifecycle. Thus, it is best to begin the process of forming the Contract Management Team in the procurement stage itself so that it helps the team to gain the knowhow and details of the project from its inception.

While all major contract management activities including appointment of team, preparation of Contract Management Manual, setting up communication protocols occur right after project award, the Contract Manager is deployed in the Procurement Stage itself for him/ her to develop an understanding on project, its complexities and details about the preferred bidder. Post this, major chunk of Contract Management activities begin from Construction stage onwards:

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All activities of the contract management team during the procurement and project development stage of the lifecycle can be mapped as shown in the figure below:



3.4.3. Job Profiles, Skills and Competencies required for Contract Management Team

It is important that the Authority considers at an early stage in the project lifecycle, the number of staff members that will be required for the contract management team. Authorities need to identify and appoint the staff with right experience and attributes and needs to empower them to carry out contract management duties. Any delay or failure to do so will inevitably lead to staff crunch, particularly in the early stages which are most demanding from the contract management perspective.

The contract manager, who acts as the center point between the Authority and the Private Party, plays a very critical role in the contract management activity and hence needs to be chosen with high PPP prudence and thought. This appointment needs to take into account the project criticality and risks involved. The major responsibilities and knowledge skills of the Contract Manager are:

3.4.3.1. Responsibilities:

- Develop the Contract Management Plan
- Put in place an appropriate performance monitoring and audit system
- Oversee and ensure the service provider mobilizes effectively and on program
- Approve and review the output specification and KPIs at regular intervals
- Establish ethos for sustainable relationships with the Private Party and other related parties
- Ensure that service standards are provided, maintained and monitored on day to day basis
- Monitor the service provider's ongoing performance and service delivery
- Ensure best value is obtained
- Develop mitigation measures for potential and identified risks and maintain the risk register
- Identify key trends in the service delivery and the service provider's performance
- Ensure remedial measures for improving service delivery are implemented when required, and monitor the service provider's approach to rectifying non-compliance
- Escalate issues to senior management which need urgent attention
- Manage changes in legislation within the contract
- Manage variations and transition from Development Period
- Monitor and manage risk
- Analyze ongoing training requirements of the contract management team
- Manage the responsibility of the Contract management team with clear reporting lines and minimum overlap of work
- Resolve disputes in a timely manner and control defaults
- Ensure the contract remains up-to-date with changes and variations agreed
- Provide quality assurance
- Study and implement the best practices in PPP Project execution of similar nature
- Review exit strategy and hand over procedures

3.4.3.2. Knowledge of:

- Relationship management
- Partnership working
- Managing a team
- Developing a team
- Performance monitoring processes and the information required to do so
- Output specifications, KPIs and performance measurement systems
- End user requirements
- Procurement processes
- Government accounting principles
- Changes and developments in the industry

3.5. The Contract Management Team Structure

For effective governance, transparency and accountability in contract management activities, a broad, all- inclusive team structure is an essential. For this, a well- defined contract management team which defines roles & responsibilities establishes the flow of communication as well as internal and external authority level protocols should be designed. The framework would be designed as a two- tier structure as follows:

- I. **Authority Level Team** - Exists within the Authority
- II. **External Links** - Develops an interface between the Authority and the Central Ministry/ State Govt./Statutory Entity or a competent Authority above it.

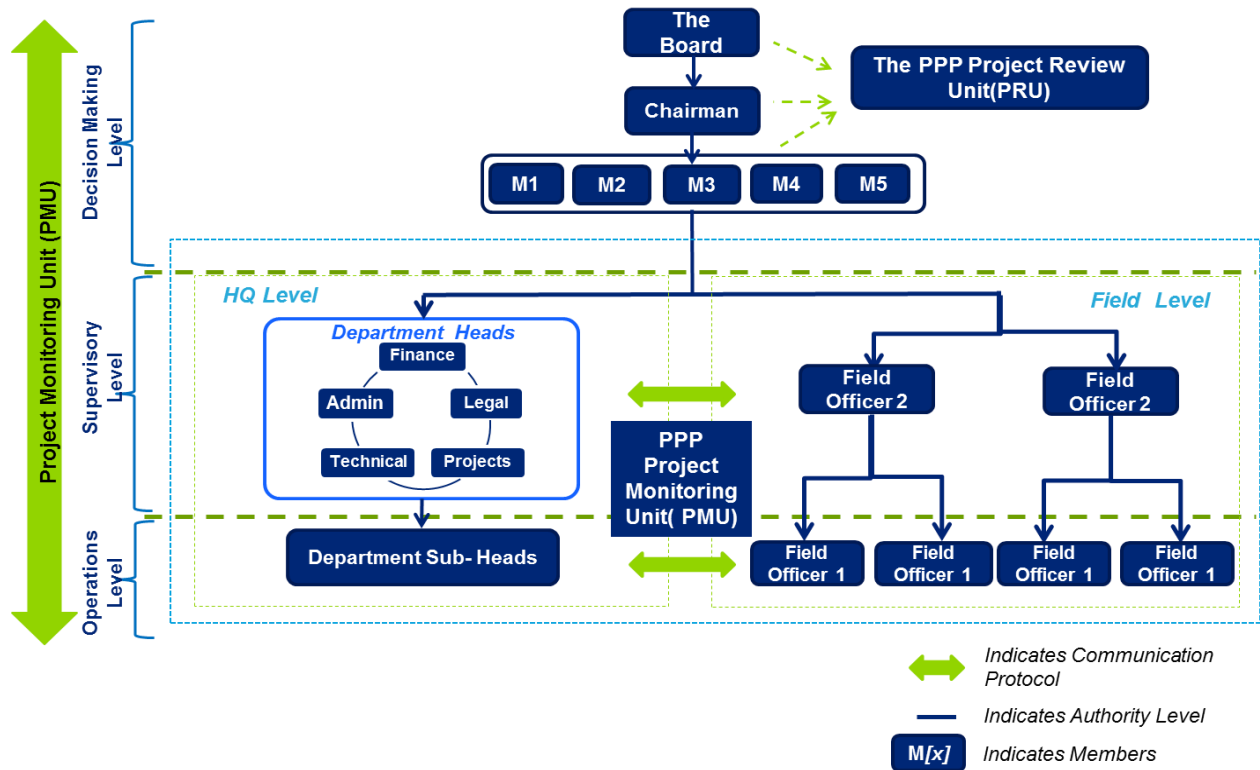
3.5.1. Authority Level Team Structure

For efficient contract management, the Authority must establish a three-level structure to integrate field officers, regional officers, headquarters and the Decision Making Level. This structure plays a critical role during mapping of roles, responsibilities and communication channels between the Authority and the Private Party. It may be noted that the structure presented in this section primarily focuses on roles & responsibilities and thus it need to be mapped according to the needs and requirements of a specific organization and its unique organization structure. The major constitution of the institutional structure is:

Authority Level	Purpose	Constitution
Project Operations Level	Contract management / On-site office	Concession Agreement Manager/ Project Director/ Field Officer & Headquarter level department wise sub- heads (General Managers)
Project Supervisory Level	Central Coordination Unit for all PPP projects	Senior level Managers representing Technical, Financial, Admin and Legal wings & Regional Office Managers handling number of projects
Decision Making Level	Highest Authority for approvals & dispute resolution	Government Representatives/ Members/ Chairman and Board comprising of Ministry level executives as well

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The structure is illustrated below. Subsequently, each level has been explained in detail along with its roles and responsibilities.



3.5.1.1. Operations Level Authority

The Operations Level officers should meet on at least monthly basis and as such act as the main interface between the Authority and the personnel responsible for providing the service on behalf of the Private Party, and also often, when appropriate, the end users who are receiving the services. Major responsibilities of Operations Level include:

- Complete project responsibilities contractually allocated to the Government Authority
- Collect, analyze and report project performance data
- Manage payments for regular activities under authority obligations
- Discuss and, whenever possible, resolve minor operational issues
- Play instrumental role in identification of issues at a nascent stage and prevent them from escalating to higher levels to avoid delays
- Seek information and opinion from related parties time and again and act accordingly
- Conduct day to day meetings and interactions with both the end users and Private Party representatives to manage communications
- Ensure clarity of service and other obligations to all parties involved
- Hold feedback and contractual health update sessions with all stakeholders on regular basis

Thus, the main questions to be answered by the Authority officials at Operations Level are:

- Are the stage-wise contract management activities progressing smoothly on time and expected to meet their expected completion deadlines?

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- Have all possible minor issues with the Concessionaire, other related parties or users been resolved to ensure hitch free project progress?
- Are the performance monitoring and reporting activities to senior levels being done on time to avoid any delays?
- Have all major issues and disputes been escalated to the Supervisory level in time to ensure timely action on same?

This level can be categorized into two parts:

- **Field Officers** responsible for regular monitoring of each project and oversee the physical progress of the project
- **Headquarter Officers** which are responsible for handling the commercial impact and administer projects for periodic and rare events which might hamper the project's financial health.

Even though the officers comprise of representatives from both, the Field Office as well as the Headquarter Office, their hierarchy level remains same and roles and responsibilities should be clearly defined. Also, a communication protocol should be surely set up between the two, the field officers and the headquarter officers for regular review of the overall project progress.

Depending upon the number and size of projects of the Authority, regional offices can be set up to manage multiple projects in its region and act as an interface between the field offices and the headquarters.

3.5.1.2. Supervisory Level Authority

A Supervisory Level is set-up with senior representatives from the Finance, Technical and Legal departments from the Headquarter and regional heads representing the field office. This unit meets on a monthly basis and is responsible to review and ensure all projects of the Authority are on track. The Regional officer will form part of the Supervisory Level for his particular projects. Among others, the Unit has the following responsibilities:

- Support the Operations Level in discharging duties contractually allocated to the Authority
- Review project performance & progress and take actions as necessary
- Report project progress to Decision Making Level and implement their suggestions
- Coordinate with and manage formal communications with the Private Party
- Coordinate with the independent engineer for issues and dispute management
- Approve variations, scope changes, time extension up to defined limits

Thus, the main questions to be answered by the Authority officials at Supervisory Level are:

- Have all the project progress reports been reviewed on time to analyze and identify any possible issues and disputes and has timely action been taken on the same?
- Have all approvals soliciting consent from the Supervisory Level been given for Change of Scope, Time extension or other important activities?
- Has the communication with other project stakeholders such as the Concessionaire and the Independent Engineer
- Have all serious issues been escalated to the Decision Making Level Authority for appropriate action?

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While the regional officers are supposed to supervise all projects belonging to a particular region and evaluate their physical progress on the set output standards, the overall viability of projects from different functional dimensions like Finance, Legal, etc. are overseen by the Headquarter Level officers. Their roles are segregated but a communication code of behavior does exist between the two levels.

Ideally, all decisions and tasks that benefit from supervising & centralization should be assigned to the Supervisory Level. This will ensure maximum process efficiency.

3.5.1.3. Decision Making Level Authority

The Decision Making Level would meet on a quarterly basis and look at issues that have strategic impact on the project and in case of contingencies. It consists of Managers or Members holding apex offices at the Authority, the Chairman and the Board comprising of Chairman and representatives from the industry and Ministry. Main responsibilities of the Body include –

- Ensure that the project is aligned with both parties' plans
- Provide a strategic overview to ensure long-term issues are properly considered
- Ensure that the objectives of the contract are met over the full term of the contract
- Ensure an ethos of working in partnership is developed and maintained
- Consider and approve variations, scope changes, time extension having substantial impact on the project
- Set year-on-year improvement targets, if appropriate

Thus, the main questions to be answered by the Authority officials at Decision Making Level are:

- Have all major issues which are cause of delays in the project been resolved/ action being taken on them?
- Have all milestones for the project been met/ are being met satisfactorily?
- Are their good working relationships between the Concessionaire, other related parties and the Authority?

Depending upon the need, the Decision Making Level Authority can be further divided into:

- Executive Body comprising of the Members and the Chairman
- The Board

Care must be taken that the roles and responsibilities of both the split levels are clearly demarcated and there is little ambiguity & overlap in it.

The Contract Management team, thus, must consist of representatives from all these three levels of Authority where the **Project Director/ Field Officer** should assume the role of Contract Manager and coordinate all tasks, issues and disputes pertaining to a project. He / She is responsible for managing communication and relationships among various stakeholders and regular reporting to the competent Authority above him.

Adopting the Team Structure within existing levels in an Authority

The proposed contract management team structure discussed above shall be adopted by an organization as per its organization structure and prevailing hierarchy. However, due emphasis must be given on clear and documented segregation of roles, responsibilities and powers. Even

if organization is divided into more or fewer levels, its constituents shall be mapped with each of the Authority levels, namely, Operations Level, Supervisory Level & Decision Making Level so that provisions of the guidelines and manual for contract management can be optimally applied.

3.5.2. External Links

As the PPP program develops across sectors, a mechanism to monitor and enforce implementation of the agreed terms and delivery of services needs to be institutionalized. The mechanism should be capable of ensuring that the Authority and the concessionaire carry out their obligations in accordance with the respective concession agreement with a view to safeguarding the user interests and the public exchequer. It should also be ensured that the medium and long-term objectives are clearly identified and pursued and a clear channel of reporting between the Authority and the government is established.

A two- level mechanism for monitoring the performance of PPP projects has been proposed for adoption in the GOI Guidelines as under:

- i. **PPP Projects Monitoring Unit (PPP PMU)** at the project Authority level; and
- ii. **PPP Performance Review Unit (PPP PRU)** at the Ministry or State Government level, as the case may be.

3.5.2.1. PPP Project Monitoring Unit (PPP PMU)

The PPP Project Monitoring Unit (PPP PMU) is proposed to be created at the project level for monitoring each PPP project. The PPP PMU is created at the level of the project Authority or the government body which has authorized the agreement. It is defined that the PPP PMU should have sufficient capacity, resources and skills to oversee and monitor implementation of the PPP contract assigned to it. The salient features of the PPP PMU are:

- i. Each PPP PMU is authorized to supervise two or three PPP projects with an aggregate project cost not exceeding Rs.2, 500 crore or as per the GOI amendments. In case of a large project, the PPP PMU should only look after a single project as per the Guidelines.
- ii. The norms for PPP PMU set up may be modified as per the requirements of different ministries and sectors based on the size and complexity of the project.
- iii. PPP PMU needs to plan the structure of the team as per the needs and requirements of the project. The structure has been covered further in detail in this section.
- iv. PPP PMU also needs to submit a regular monitoring report monthly in the form of a PPP Project Monitoring Report. The key elements of this report have been highlighted further in this section.

PPP PMU Structure & Activities

The main structural features of the PPP PMU are:

- It is permitted that the PPP PMU can recruit external consultants to seek necessary assistance in the monitoring activity but a prior sanction for the same needs to be sought.
- The PPP PMU is defined to be composed of at least three officers, of which, at least one should be from the finance discipline. Also, head of the PPP PMU should be an officer

of, at least, the rank of a Director/Deputy Secretary/Superintendent Engineer while others can be either officers or consultants.

- It must be ensured that the PPP PMU officers spend at least two days at the project site every two months and must interact with general public representatives during such visits.

PPP PMU Project Monitoring Report

A monthly PPP Project Monitoring Report is to be submitted by the PPP PMU to the PPP PRU within 15 days of the close of the relevant month. This report condenses all the regular monitoring aspects of a PPP Project.

The PPP PMU with approval from the PPP PRU sets a format for reporting in the monitoring report right at the beginning of the year. The format should include provision to capture the fulfillment of all obligations by the Authority as well as the Private Party as per the Concession Agreement and a foundation for strong working ethos in the partnership.

The report should cover the following aspects:

- i. Compliance of the conditions precedent and achievement of financial close within the period specified in the concession agreement;
- ii. Adherence to the time lines and other obligations specified in the concession agreement;
- iii. Streamlining of, and adherence to, the reporting procedures between the concessionaire and the project Authority, which may also include an MIS;
- iv. Assessment of performance against laid down standards;
- v. Remedial measures and action plan for curing defaults, especially when performance standards are not fulfilled ;
- vi. Imposition of penalties in the event of default;
- vii. Levy and collection of user charges based on approved principles;
- viii. Progress of on-going disputes and arbitration proceedings, if any; and
- ix. Compliance with the instructions of the project Authority or Independent Engineer, as the case may be.

An exception report highlighting all major defaults and actions on it needs to be submitted to the PPP PRU for review and guidance.

Sample format of the PPP PMU Project Monitoring Report is provided in the GOI Guidelines as *Annexure 1, Statement I*. This reporting format has been reproduced here on **Page 105 as Appendix G**. This must be modified as per the project requirements and used.

3.5.2.2. PPP Performance Review Unit (PPP PRU)

The PPP Performance Review Unit (PPP PRU) is defined to be set up at the level of the Central Ministry / State Government/ statutory entity for reviewing the monitoring of all PPP projects within its jurisdiction. The key duties and responsibilities of the PPP PRU are:

- i. The Performance Review Unit should cause to be conducted an evaluation of the project performance including a social audit, wherever applicable, once every two years.

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- ii. PPP PRU should review the PPP Projects Monitoring Report submitted by the different PPP PMUs and oversee or initiate action for rectifying any defaults or lapses. The PPP PRU should also prepare quarterly reports on the status of the PPPs.
- iii. The PPP PRU needs to send a quarterly compliance report to the Government of India with a copy to the Ministry of Finance. The Government, in consultation with the Ministry of Finance, will prepare a summary of these reports, along with the recommendations relating to further action/ improvements, which would be placed before the Cabinet Committee on Infrastructure (CCI) once every quarter. This was proposed to be continued for the next two years.

PPP PRU Structure & Activities

The PPP PRU is to be headed by an officer at least of the rank of Joint Secretary. In situation of existence of a PPP cell already in the respective Ministry/Department, it can be suitably strengthened for serving as the PPP PRU. In case the PPP PRU is to review a number of PPP projects, it should preferably have a dedicated team with no other functions. The PPP PRU may also hire consultants as necessary but prior approval might be sought for the same.

PPP PRU Quarterly Reports

The PPP PRU needs to prepare quarterly reports on the status of the PPPs. These reports should:

- Have particular focus on any non-compliance relating to the provisions of the relevant agreement, especially in terms of the standards of performance or loss to the public exchequer and the users
- Clearly indicate the steps taken or required to be taken by the project Authority in accordance with the provisions of the relevant agreement
- Possess an 'Exception Report' highlighting issues where remedial action is to be taken for enforcing the provisions of the respective agreements
- Comprise of a review of the grievances of users and the manner and extent of their redressal
- Develop a financial plan affecting the interests of the public exchequer in relation to the expenditures and revenues arising from the PPP project

A sample format for the PPP PRU Exception Report to the Competent Authority is given in the GOI Guidelines in *Annexure II*. This format has been reproduced here for reference as **Appendix- I on Page 113**. This format must be customized as per the project requirements and then used.

Role of PPP PMU and PRU in the Authority Framework

Thus, after the entire Authority level structure is defined, it can be observed that as per the GOI Guidelines for monitoring of PPP Projects, the roles and responsibilities of the PPP PMU consists of the Operations Level and Supervisory Level officials within the Authority while PPP PRU is chartered to the Decision Making Level equivalent officials within the Authority. However, given that the PPP PRU is set up at the Central Ministry/ State/ Statutory Entity level, the reporting to the PPP PRU should only be for exceptions, defaults and cases of non- adherence

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to set contract obligations which need immediate attention and escalation to the highest level from. The PPP PRU will work independent of the Decision Making Level officials though some overlap might be observed in the officers both employ. This should be done by only a Decision Making Level Authority after reviewing all cases. Hence, while the Operations Level Authority takes up the task of conducting regular monitoring at project level and the Supervisory Level assumes the responsibilities of supervising them, it is the Decision Making Level Authority which assumes the duty of escalating exceptions to the PPP PRU.

3.6. Identifying the Initial and Ongoing Training Requirements

Although the Authority officials might already possess some amount of the required proficiency and talent, there are some difficulties usually experienced by them which leave them in a tight spot. Authorities must therefore ensure that appropriate training is provided, both 'on-the-job' as well as the more formal training that will aid them in the contract management process.

Training falls into two categories: general, which can often be offered in-house; and specific, which will probably need to be sourced externally.

3.6.1. General Training in Contract Management

- Fundamentals of Contract management
- Project management
- Negotiation skills
- General commercial & financial skills
- Partnership working

3.6.2. Technical & specific trainings

- Mobilization and handover
- Communication with stakeholders & users
- Change management
- Knowledge Management & Information Dissemination
- Helpdesk function and performance monitoring
- Issue Management & Dispute Resolution
- Contingency Planning & Management

A checklist to see if the process followed to set up the contract management team is apt and inclusive of all major considerations, is present in **Appendix A, Page 86**.

3.7. Procuring & Onboarding Related parties

Authority needs to consider what all services they will need from the related parties post contract signature. It is usually observed that not all services can be provided in-house. An optimal method of ensuring cost effective procurement is to begin consultation with the concessionaire early on, and finalize the requirements and specifications of the peripheral staff. Discounted rates for support should be sought when Authorities are procuring consultants in open market. Even though it will be difficult to forecast far in advance how much external support will be needed, rough work estimates need to be worked out. Estimated costs for related parties should be factored into the Authority's forecast contract management estimates. Usually, these are the instances when the main related party like the Independent Engineer will

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be given the onus to decide what the broad scope of services needed outdoor is. The cost of these advisors also needs to be included in the main procurement cost itself. Also as according to the scope of the project, the number and the expertise of the consultants required will vary. The duty of care and management responsibility for such jointly appointed personnel should be carefully drafted. Key related parties that are generally required and their scope of work are delineated below:

Related party	Scope of Work
Escrow agent	<ul style="list-style-type: none"> ▪ Segregation of funds ▪ Notification of balances ▪ Communications and notices ▪ Regulatory Approvals
Independent Engineer	<ul style="list-style-type: none"> ▪ Review of the Drawings and Documents; ▪ Review, inspection and monitoring of Construction Works ▪ Conducting Tests on construction completion & issuing Completion/ Provisional Certificate ▪ Review, inspection and monitoring of O&M ▪ Review, inspection and monitoring of Divestment Requirements determining the costs of any works or services and/or their reasonableness; ▪ Determining, the period or any extension for performing any duty or obligation; ▪ Assisting the Parties in resolution of disputes
Safety Consultant	<ul style="list-style-type: none"> ▪ Carry out safety audit of the Project in accordance with the Safety Requirements ▪ Collect, analyze and review data on all fatal accidents which occurred in the Project ▪ Make recommendations to IE and Authority on Project design and improvements in the Project from safety perspective
Senior Lenders	<ul style="list-style-type: none"> ▪ Novation (changes to funding arrangements). ▪ Approve disbursement of loan to Concessionaire ▪ Approve Termination in case of financial default by Concessionaire ▪ Submit project progress report to Govt. body ▪ Provide consent on loan agreement between concessionaire and authority ▪ Refinancing/ restructuring

Success Story- What to do...

A robust partnership structure helped a Highway PPP in Australia achieve quicker and effective decision making

```

graph TD
    A[Principal (Minister for Transport)] --> B[Government Authority Executive Team]
    B --> C[Joint Leadership Team]
    C --> D[Joint Management Team]
    
    subgraph Reference_Groups [Reference Groups]
    E[Government Steering Group]
    F[Government Reference Group]
    G[Stakeholder Reference Group]
    end
            
```

The Government and Stakeholder reference groups provided forums for other key stakeholders to represent their interests and concerns. An Executive Team were responsible for delivering the project to budget and within timeframes. A Joint Leadership Team comprising the Government's Project Director and Manager, Contracts and Standards, the General Managers of the construction contractors, the General Managers of the design contractors and the Concessionaire's Project Manager was the primary governance body at the project management and contract management level. The Joint Management Team responsible for project management included members of the Government, the design and construction joint venture and the independent verifier.

Source: Best Practice Case studies, Dec 2010 (Department of Infrastructure and Transport, Australian Government)

Part III: Preparing for Transition to Post- Award Stages

This section details out the preparation of the project prior to commencement of construction and various appointment, duties and documentation needed for smooth transition from the Award to the execution stage.

4 Contract Management Planning

Contract Management is a complex activity especially in PPP projects due to their long duration. Planning the Contract Management activity itself can make sure that many issues are avoided regarding the ambiguity in the guidelines and delays. Also, prior to any contract management activity, necessary information and resources need to be acquired for the same along with an effective communication mechanism between the internal as well as external stakeholders. Hence, Contract Management planning acts as an important first step before any implementation is begun. This chapter, talks about how a comprehensive and useful Contract Management Plan can be designed, what all does the portfolio of documents include and how to effectively communicate with users which can aid in Contract Management.

4.1. Preparing Contract Management Plan

Before preparing any Contract Management Plan, it is essential to gain a good understanding of need & purpose for preparing it. For this, a clear understanding of the objective, the process of setting the plan and reviewing it is essential.

4.1.1. Objective of a Contract Management Plan

The contract management plan must have clear defined objectives. This helps in making sure that the exercise remains true to its objectives in the strictest sense. The primary objectives of creating a contract management plan are:

- Provide a clear understanding of how to approach the contract management activity
- Be meticulous and exhaustive for stages throughout the lifecycle
- Develop a comprehensive understanding of in- depth procedures of approaching each contract management activity
- Adopt a pro- active approach to resolution of issues and disputes and define a procedure for the same
- Support the contract management team in reviewing their current contract management activities and planning for future ones

4.1.2. Designing the Plan

Developing and implementing a contract management plan should start at an early stage during the procurement process so that contract management requirements are included in the draft contract developed by the Authority. A sound plan needs to be developed and implemented through a five step approach listed below. Each of these steps – to develop a plan, to develop and implement tools and processes and to establish a system of ongoing contract management review, relies on the essential processes of information management & dissemination.

4.1.2.1. Step 1: Need Assessment for Contract Management

The focus of any contract management plan lies in solving the issues faced by the Authority and other stakeholders currently. Thus, a need assessment is essential for effective problem identification and resolution. This approach follows the ‘first principle’ school of thought, focusing on firstly identifying what is the need that the contract management plan would fulfill or in other words, “why do the stakeholders need a contract management plan”. The contract management

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plan would then be developed focusing on the needs of the stakeholders to give the best experience possible.



4.1.2.2. Step 2: As- is analysis of Contract management practices

The first part of drafting a contract management plan is to undertake an analysis of best contract management practices followed in the organization and outside. This helps the Authority to identify innovative solutions and best SOPs that can be leveraged to help in the PPP project.

Key focus should be on similar PPP projects sector wise in developing countries, due to strong similarities in the issues being faced. A thorough analysis needs to be done including but not limited to document review, management interviews, site visit and others.

5.1.2.3. Step 3: Draft the plan

The development of an effective contract management strategy must be carefully planned. The contract manager can begin the planning process by asking the following questions:

- **What contract management tools and processes may be required for the project?** Manager should list the tools and processes relevant to the particular project.
- **What human, financial and technology resources are available?** The available resources may dictate the form taken by contract management tools and processes.
- **What time constraints should be set for the development of the contract management tools and processes?** The time constraints should be matched to both the available resources and the expected project delivery dates and milestones.

5.1.2.4. Step 4: Develop and implement contract management tools and processes

After obtaining appropriate resources, and collecting and analyzing relevant information, project manager should proceed to develop and implement the necessary contract management tools and processes. The processes and tools developed and implemented for contract management

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purposes should be collated in a Contract management plan. The Contract management plan and the performance reports produced over the life of the contract are key documents for the project. Few contract management tools include:

- *Risk Register*
- *KPI Templates*
- *Issues management review report*
- *Dispute Resolution Tracker*
- *Tool to analyze effect of Traffic variations*
- *Tool to analyze effect of Termination*
- *Tool to analyze effect of Change in Law*

#	Risk Category	Details	Likelihood	Consequences

Dispute	Background of Dispute	Possible consequences	Responsible person / team

More details on each one of them can be found in their respective chapters.

5.1.2.5. Step 5: Establish a system of ongoing contract management & review

In establishing a system of ongoing contract management and review, the project manager relies on the same tools and processes that have been identified earlier. The project manager should also establish a culture of ongoing contract management which includes the systematic review of the contract management strategy and tools and processes during the lifecycle of the project. Senior management needs to support the culture of effective contract management in the relevant government entity.

As part of establishing an effective contract management culture, contract manager and its team should have undertaken training that provides skills and competencies in the contract management of PPP projects

5.1.3. Table of Contents of the Plan

An indicative Table of Contents for the Contract Management Plan is provided below:

- Performance Monitoring, Reporting & Review
- Risk Management
- Relationship Management, Issue Management & Dispute Resolution
- Contingency Planning (Rare Events) & Change Management
- Knowledge Management & Information Dissemination
- Ongoing Review

More details on each of these can be found in **Part IV**, *Key Contract Management Activities*, Page 51.

5.2. Readying Portfolio of Contract Management Documents

5.2.2. Purpose of the portfolio and how it will help

PPP Projects are generally of very long term horizon. The environment conditions might change for the project over the term of the timeline. Therefore, it is essential to have a clearly defined portfolio of documents. These documents help in:

- Keeping a correct track of changes/modifications that happen in the project
- Ensuring that the analysis and management can happen along defined lines
- Serving as a reference for future projects of similar nature
- Aiding the Authorities which join in the later part of the project lifecycle to gain knowledge about the current status of the project and way forward

5.2.3. List of the Portfolio Documents

The portfolio documents include:

Concession/ Partnership agreement

The partnership agreement will lay down the major terms and conditions between the Authority and the Private Party and major specifications in terms of the expected deliverables from the Private Party. It also, lays down the selection mechanism of the related parties like the Independent Engineer. Along with this, it specifies the Authorities obligations for payment/ compensations to Private Party (e.g. Annuity/ Tipping Fees, bonus, penalties etc.) provided all conditions for deliverables are fulfilled satisfactorily by it.

Communications plan

A communications plan chalks out all protocols to be followed by the Authority in managing conversations with the Private Party as well as the user. A well- defined communication plan eliminates the risk of miscommunication and ambiguity in orders and helps in forging better relationships. It establishes accountability and transparency in the project.

For more details on this refer to **Chapters 4, Section 4.3, Page 33 and Chapter 17**, for a detailed plan.

Contract Management Team Structure

All officials in an Authority need to have a clear distinction and demarcation between their roles and responsibilities in the Contract Management process. Also, their association with the government also needs to be clearly described. This makes them liable for the specific tasks allotted to them and speeds up issue and dispute resolution cases if they arise. Hence, a clearly outlined Contract Management Team Structure aids in classifying Authority officials into sub-groups with similar obligations.

A detailed analysis of this can be found in **Chapter 3, Page 16**.

Knowledge management Policy

Once all documents have been prepared, a knowledge management policy needs to be formulated where guidelines on how to manage various resources and knowledge derived from primary or secondary research is present. All the tacit knowledge needs to be available to all stakeholders for reference and information sharing purpose.

An exhaustive direction on this can be found in **Chapter 11, Page 71**.

Risk Register

Risk register allows the contract team to anticipate and assess risks that may affect the service delivery described in the contract. The register should be updated to exclude risks that fall out at contract award and include the risks during the construction and operational phases.

The risk register must identify potential threats to the project, the probability of them occurring, and the impact which they might have. Each potential risk should have a named individual responsible for its management and mitigation. The risk register has to be a live document; new and emerging risks must be added and it must be reviewed regularly to make sure that it is relevant. An assessment of the resources that will be needed to manage these risks should also be made and monitored. Authorities may consider the case for a shared risk register with the Contractor so that both parties can discuss mitigation.

A detailed plan can be found in **Chapter 7, Page 51**.

Contingency Plan

A contingency plan should be developed as part of the contract management manual. This plan covers what happens if the Contractor fails in their duty to deliver the services, whether as a result of an external emergency or due to issues within the Contractor and subcontractor group. The plan should not be over complicated or long because if it does need to be implemented it is likely to be during a period of pressure. The contingency plan should highlight remedies to potential problems. It should further consider how staff and resources could be mobilized at short notice, and the steps needed to return the project to normal monitoring after any event. The plan should also consider any consents which may be needed and from whom.

Please refer to **Chapter 10, Page 66** for more details.

4.3. Planning Communications

4.3.1. Prepare Strategy for Internal Communications

Good communication is essential to effective contract management. A review of successful PPP projects worldwide has shown a positive association between regular communication and satisfaction with the project. The contract may set out the type of meeting that needs to be held and the frequency of structured communication between parties. During the construction phase, there should be regular project meetings to make sure that the construction program is on track to deal with design and development issues and requests by either party for variations. Projects should have a project sponsor at the highest level on both sides – Private Party and Authority to provide strategic vision and point of accountability through the whole life of the contract.

The partnership is intended to be long term and it is therefore important that a strong relationship is built and maintained between all the parties. However it should be considered that personnel on both sides are likely to change during the project's life, so contract managers should not rely on individual relationships.

Key factors of an effective working relationship include:

- Understanding and respect for each party's point of view;
- Shared knowledge and objectives;
- Sound understanding of the contract and contractual documents;
- Good flow of information and open channels of communication;
- A willingness to resolve issues within both organizations;
- Effective decision making processes; and
- Desire for the project to succeed

4.3.2. Prepare Strategy for Communications with Potential Users

All projects have a range of users and stakeholders, consultation and communication with them should continue throughout the project's existence. User satisfaction surveys provide a very useful role in monitoring and developing performance, however the Authority should not solely rely on them. As part of its mobilization for the post procurement phases, the communications strategy should be revisited and revised to reflect the new phases of the project, documented in the Communications Plan.

Since these are public projects, the most effective method of monitoring performance is to ensure that the users or recipients of a service are aware of the service that they are entitled to receive, and know what procedures to follow should the Contractor fail to respond to the service requirements. It is important that the reporting procedures are followed and that all requests for service are routed through the correct channel. But for this to work well as a control mechanism care has to be taken to ensure users are up to date regarding what they can expect from this project and how to go about getting that.

The standard or scope of some services will differ from that, which has previously been provided. Users, who in certain instances may also have managerial roles, may be unaware of the standard of service to which they are entitled. Users will also need to understand the difference between a service specified in terms of inputs for example, the number of times the road must be cleaned each day, and outputs - the facility is clean.

It is important that service users have confidence that their experiences and concerns are brought to the attention of the contract management team. Regular meetings should be held between user representatives, the Private Party and the regulatory Authorities' contract management team in order to maximize the service specified. Regular review forums proposed in Chapter 3 are indicative of these. More details on which can be found in **Chapter 8, Section 8.1, Page 55**. Although the contract is between the Authority and the Private Party, users should not be excluded from inputting into the management of the contract.

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Also, a project summary can be shared with users at the beginning of the project, highlighting the major details of the project and the PPP arrangement. This instills confidence among the users and makes them a participant in the project story informing them about what the project holds from their welfare and other points of view. Also, such disclosure of information should be done at regular intervals as it builds user trust. For instance, a notice or a brief note must be shared with the public whenever there is a any contingency observed such change in scope or change in law and its impact on the project.

A sample template for such a project summary is shown in **Template A, Page 115**.

4.4. Timeline of All Contract Management Activities

Along with the contents of the Contract Management Plan and the Portfolio of Documents, there is also a timeline which needs to be set for each of project lifecycle activities. An indicative timeline for reference of the Authority officials is developed as below:

Activity	Indicative Timeline
Appointment of Contract Manager	Up to 15 Days prior to commencement of Bidding
Appointment of Contract Management Team	Within 7 days of selection of Preferred Bidder
Team Briefing & meeting as per Project Requirements	Within 7 days of formation of Contract Management Team
Development of Contract Management Plan	Within 2 month of Signing of Concession Agreement
Execution of Contract Management Plan	Right after the Approval of Plan from the Authority Chief
Regular Review of Contract Management Plan	Every month in the Contract Management Team Meeting
Regular Public Communication Activities	Every 1-3 months depending upon project progress updates in a project stage
Commencement of Project Exit Plan	5-6 months prior to the Completion Date
Completion of Asset Handover & maintenance of service continuity	Within 1 month of the Completion Date

5 Ongoing Review Plan

5.1. Introduction

Contract management processes must be adaptable to changes throughout the lifecycle of a PPP Project as unexpected changes and issues might crop up at any point of time. A project might be subjected to:

- Contingency and Force Majeure Events like change on law, strikes, war, flood etc.
- Unforeseen issues of expectation & understanding mismatch among various stakeholders involved in the project on their roles and responsibilities
- Transition of project from one stage to another

Hence, it is imperative that regular review of the existing Contract Management guidelines & toolkits is done and updated.

- a. Review & updating the policies
- b. Regular review of projects
- c. Recording & updating the Issues, Risks & Lessons Learnt

5.2. Regular review of projects

Regular review of projects is a significantly important exercise for Contract Management. It helps in keeping both the project information and the issue management activities up-to date. At all points of time, new and more complex challenges surround project managers and hence these new problems might cause severe delays in the project execution and management. Thus, reassessing the risks involved is a necessary foundation for ongoing review of the project's contract management framework.

Knowledge and information gathered through the project lifecycle must be used in conducting regular reviews of the project's risk profile. These reviews must consider the following aspects:

- New risks emerged during the lifecycle and their severity
- Significant change in severity of existing risks
- Effectiveness of current measures to control and mitigate risks
- New risk controls and mitigation mechanisms needed for existing as well as new risks
- Shift observed in the allocation of risks

5.3. Review & updating the Contract Management Policies

Using up-to-date knowledge of the project's risk profile, a regular review and updation of its individual contract management practices and tools must be taken up. It is important to consider all aspects here which were considered prior to creation of the tools. Also, the following aspects need be considered:

- **Are the previous assumptions still valid?**

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Have there been any changes in the underlying assumptions on which the process or tool was based? (For example, while it may be correct to assume that the Private Party has a strong incentive to fulfil its operations & maintenance obligations early in the contract term, there might be shirking on the part of the Private Party towards the project handover deadline.)

▪ **Are information resources still adequate & relevant?**

What resources are required to effectively use the practices or tool should a risk materialize in the future?

▪ **Are the tools & practices used currently still relevant?**

If the toolkits and manuals need review & update from structural point of view, assistance for it needs to be provided. For instance, a new category of risks might emerge all together which along with its respective KPIs should find its place in the new toolkit.

▪ **Have contract management tools and practices been effective?**

If risks have materialized and were managed using the process or tool, how effective was it? If not, then recalibration of the toolkits, KPIs and practices needs to be done to align it with the current requirements.

5.4. Recording & updating the Issues, Risks & Lessons Learnt

By identifying issues that have materialized and their consequences, the Authority may deepen its understanding of the likelihood and severity of the issue. By examining the contract management strategies used to control and mitigate the risk w.r.t. that issue, it can assess the effectiveness of strategy and identify potential improvements.



Success Story- What to do...

Ongoing review of contract performance helped UK hospital PPP achieve several efficiencies

Benefits included –

- Effective management of existing cost/gain share provisions in relation to insurance;
- Reduced energy consumption through increasing energy use awareness and agency energy purchasing discounts
- Subletting a surplus ward to a private healthcare provider
- Standardizing the ward housekeeping specification
- Adjusting response times and shift patterns for portering and security services
- Changing the specification of replacement equipment under the medical equipment contract, to reflect the longer lifecycle of some medical equipment, in order to optimize the use of the contract budget.

Part IV: Key Contract Management Activities

This section prescribes all the contract management activities like performance monitoring, relationship management, dispute resolution and conducting reviews, which can be carried out towards successful handover of the project activities in adherence with the timelines and which forms the main part of a Contract Management Framework.

6. Performance Monitoring, Reporting & Review

Most of the PPP contracts are long term contracts and hence are severely impacted by the dynamic business and regulatory environment in India. With time, businesses have evolving priorities. To avoid and control arousal of such a situation which poses as a threat to the continuity of the project, it is important that the Authority has access to adequate information on the basis of which it can control actions. Hence, monitoring the contract activities is critical to maintain the project life in good health.

The contract management team must ensure that monitoring processes and procedures are in place at the commencement of service, with roles and responsibilities clearly outlined and contractual requirements met, so that performance can be managed from the very beginning. This chapter illustrates the guidelines on how performance monitoring procedures can be designed and implemented by a Contract Managers and put to best use for efficient Contract Management.

6.1. What is Performance Monitoring, Reporting & Review?

Performance Monitoring and Reporting deals with keeping a check on the project progress and its sub- activities throughout the lifecycle so that an appraisal can be done for the same from time to time and necessary corrective actions can be employed to get it back on track.

Along with constant monitoring it is also important that the Authority should report any exceptions and provide feedback to the Private Party from time to time. Also, a review of the existing frameworks and policies for Performance monitoring is important from time to time to improve and incorporate newer challenges and complexities which evolve over time.

6.2. Need for Performance Monitoring & Reporting

The role of performance monitoring and reporting is to:

- Confirm that the Private Party is performing according to the output specifications in the contract and evaluate it on the basis of those specifications;
- Give the Authority an understanding of the sustainability of the contract
- Help so that best project value is realized
- Give the Authority a clear idea on the Project Progress
- Monitor Change
- Manage Risk
- Conduct contingency planning for ensuring continuity of services and potential government step-in under the contract
- Apply remedial measures, improvements is service quality hasn't been met with and check for effectiveness
- Amend the output standards if they are impossible to achieve / have been defaulted on a regular basis by the Private Party because of external factors
- Monitor that meetings are held on a regular basis and in accordance with the contractual requirements
- Ensure obligations for payments of Annuity/ Tipping Fees, bonus etc
- Encourage appraisal of existing practices

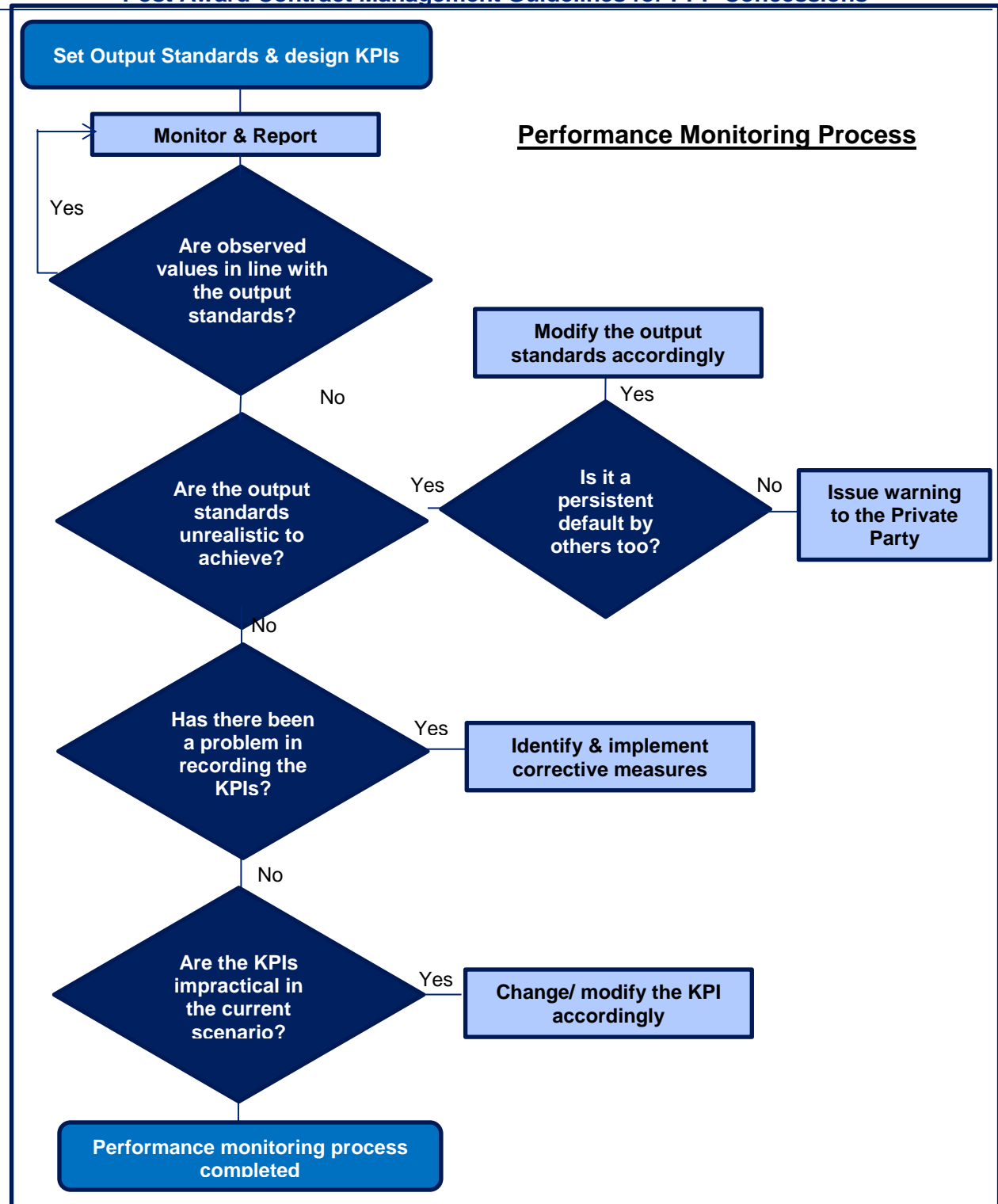
In summary, it ensures that contractual compliance is achieved and can be demonstrated and this is a very critical part of a contract management plan.

6.3. Approach to Performance Monitoring & Reporting

Before any performance monitoring activity is done, a broad framework needs to be designed which finds wide application across most of the PPP Projects. The framework must be designed based on following aspects:

- **Complexity & Nature of Project:** The type of project and any external regulatory controls influence monitoring and reporting requirements. The requirements for a hospital project are different from the requirements for a waste water treatment project. Monitoring requirements also depend on the project delivery structure and project documentation. For example, appropriate financial reporting for a special purpose vehicle may be different from financial reporting where the Private Party is a large publicly listed company carrying out the project on its own balance sheet.
- **Lifecycle of a Project:** The Authority must consider how its monitoring and reporting activities would change over time. In a PPP project, the level and type of monitoring and reporting required during the construction period is likely to be quite different from that required during the subsequent operating period.
- **Responsibility Allocation & Actions envisioned from them post monitoring & reporting:** There should be a clear indication of the responsible Authority for a particular type of monitoring and the actions solicited from them. A clear link between the actions can help Authorities take necessary corrective actions at the right time to prevent bigger damages. Any sort of discrepancies observed can have direct effect to the payment the Private Party receives which makes it highly accountable.
- **Knowledge of Supervisors & Reporters:** Staff which performs these tasks should understand the Private Party's business and have experience in performance monitoring of the particular projects. Also, required training should be provided in all tools and processes used for performance monitoring.

A well- defined framework contains all these elements and also takes care of contingencies that might arise out of unexpected activities and failures. A flowchart for how a typical performance monitoring process should function is given below:



6.4. Performance Monitoring, Reporting & Review Framework

After developing a sound understanding of the functioning of a performance monitoring process, a framework for implementing the same needs to be developed. Any framework should be comprehensive taking care of all issues that might arise in the project lifecycle with due provision of a review and update at any point of time. An ideal framework should consist of:

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Step I: Collection & Analysis of Information Needed

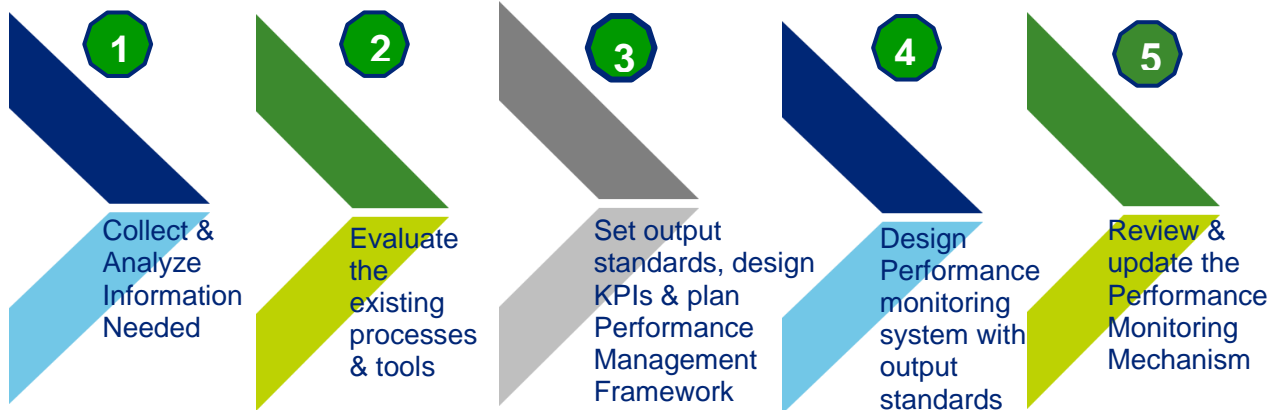
Step II: Analyzing existing processes and tools for Project Quality Measurement throughout the project lifecycle

Step III: Setting the output requirements based on the terms agreed in the Concession Agreement

Step IV: Designing the Performance review mechanism against the output requirements including the KPIs

Step V: Reviewing the Performance Monitoring Mechanism and updating the same

Performance Monitoring, Reporting & Review Framework



6.4.1. Step I: Collect & Analyze of Information Needed

Information collection and analysis is the first step in Performance monitoring. For the entire project lifecycle, the Authority needs to determine all parameters on which the Private Party will be evaluated for the quality of the project. Both qualitative and quantitative research will be needed for this.

Reviewing the Concession Agreement is just a preliminary step. The contract management team needs to review other primary and secondary sources before the performance parameters are laid down.

The contract management team needs to consider the following things before any data is collected:

- Which all sources are present and can be used to the best advantage of the team for Performance monitoring
- Which all data sources, currently not in place need to be accessed/ obtain access to for Performance monitoring
- Where from can the non- available resources be accessed
- What all information needs to be sourced from private parties and other related parties

The Contract Management team needs to make sure that even though the Private Party is liable to provide and cooperate with giving certain amount of information, there may be other aspects to on which information might be needed which are not quantifiable. Such data is vital, and needs to be collected and analyzed. Also, based on whatever data is received from the private party in the form of reports and documents submitted, an appropriate action needs to be taken.

Once the data is collected, a comprehensive analysis needs to be run for it so that all important interpretations and key findings can be determined.

6.4.2. Step II: Evaluate existing processes and tools

An analysis of the existing tools and processes (if any), and benchmarking them with the ideal tools is essential to understand the loop holes in these systems and improvise on them.

After the information is collected from the respective stakeholders and analyzed, it needs to be observed which all data points are already being captured by the current performance monitoring systems and identify the missing ones. This helps in probing deep into the existing system and evaluating it on the basis of how well it serves the current service requirements for the entire project lifecycle.

6.4.3. Step III: Set the output requirements, design KPIs & plan Performance Management Framework

After the entire information collection, examination and current status evaluation is done, the output standards need to be set so that the performance monitoring framework can be set up. The project needs to be monitored majorly for:

- Service Performance
- Quality of governance
- Financial Health of the Project
- Relationships among the project stakeholders
- Progress on pending issues and disputes

Based on each of these parameters, model Key Performing Indicators (KPI) are set to a suitable level of depth. Care needs to be taken that the output standards defined against each KPI is set as per the conditions agreed in the Concession Agreement because only on the basis of this, the Private Party can be held responsible in case of a default.

For further details Government of India guidelines on Institutional Mechanism for Monitoring PPP Projects may be referred. GOI Guidelines illustrate model KPI templates for the Highway Sector present here in **Appendix H, Page 107**. This template has been taken from the GOI Guidelines- *Annexure I, Statement VI, Key Performance Indicators (KPI)/ Performance Standards*. They may be used for reference and modified as per the requirements of the PPP project and the sector.

6.4.4. Step IV: Design the Performance monitoring mechanism against the output requirements

After the output standards are set, a performance review mechanism is designed where a clear demarcation of who is responsible for which role in the performance monitoring activity is clearly defined. This mechanism along with the timelines and reporting formats provides clarity to the officials in the Contract Management Team as well other Authority officials.

A bi- monthly, monthly, quarterly and yearly report is submitted to suitable level of Authorities under the performance monitoring mechanism for reviewing the status of the health of project.

Also, regular meetings of all concerned officials at Field level as well as at Headquarter level must be conducted to discuss any performance related issues. These meetings must also include representatives from the Private Party as well as related parties sometimes to discuss the situation with them and seek their opinion.

6.4.5. Step V: Review & update the Performance Monitoring System

Once, the entire process has been designed over the lifecycle, it is tested for its robustness, i.e. whether it is able to capture the required information needed for monitoring the current state of the project.

Also, in consultation with other stakeholders and Authority officials, it is made user- friendly and easy to comprehend. Training for the same may also be organized if the system needs teaching a highly advanced technology or technical expertise.

A regular meeting on updating this system is to be ensured so that the performance monitoring system always stays reasonably in line with the current project requirements.

After the entire system is set out, during the first review stage, a sample checklist given in **Appendix B, Page 88** can be used to assess and validate the strength of the system further.

6.5. Performance monitoring for large and complex projects

In large and complex projects, monitoring performance may necessarily involve the analysis of large quantities of data to distil relevant performance information. Various mechanisms can assist the parties to manage this task. For example:

- It may be in both parties' interests for the Authority to be provided with an electronic feed of relevant performance data from the Private Party's management information systems, avoiding the need for the Private Party to manually provide this data.
- During the construction stage, the parties may jointly appoint and fund an independent reviewer with construction expertise to monitor construction performance.
- During the service delivery stage, the parties may jointly appoint and fund an independent reviewer with service performance expertise so that the Authority is provided with relevant exception reports by the independent reviewer, and is relieved of the task of detailed review of the raw performance data.

These mechanisms need to be identified at an early stage in the procurement process so that necessary provisions can be included in the Concession Agreement, and bidders can consider the technology requirements for their information and reporting systems.

6.6. Reporting to Senior Management

Depending on the nature of the project, the Contract Manager may receive a number of reports from the Private Party, and produce considerable additional information through other monitoring mechanisms. The Contract Manager therefore needs to carefully consider what information should be communicated to senior management of the Authority. It is expected that regular reporting, at least monthly, to senior management will take place in an 'exceptions' format, identifying benchmarks or requirements not met and any issues of significance.

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Best practice entails that such regular reports, at least monthly in an 'exceptions' format, will be produced and signed-off by the Contract Manager regardless of whether a reportable event has taken place or is emerging. Templates for same have been provided in the GOI Guidelines. Such regular reports are important to maintain ongoing accountability and focus on scanning the contract management environment.

In developing the reporting regime for the project, the Contract Manager should identify:

- Trigger points at which exceptions should be reported to senior management outside the regular reporting cycle and the appropriate format for those reports;
- What constitutes a reportable 'exception' in respect of information collected outside the contract and other issues monitored by the contract manager

In particularly large and complex projects, consideration should be given during the procurement process to appointing a specialist individual or body, such as an independent reviewer or a project coordination group, to monitor performance, support the Contract Manager and report to senior management of the Authority.



Success Story- What to Do...

Successful Regular Performance Monitoring at German Education PPP Concession

In a Germany PPP in the education sector, the Government Authority guaranteed a fixed monthly payment in return of the services provided. The Service Level Agreements had clearly specified performance parameters which were output based to ensure quality service. A penalty in monthly payments was charged if any defect or failure was observed. The failures had to be reported to a centralized IT Help Desk and it had to be resolved within 48 hours. Failure would invite strict action against the concessionaire with severe penalties. Also, a ratchet mechanism for repeat encounters of such defects was employed leading to final termination.

The Department also considered stakeholder viewpoints and user requirements while designing performance standards. Since a single concessionaire was awarded the contract for the entire project lifecycle, the Department made it more accountable and generated more interest for a repeat contract.

7. Risk Management

Risk is “the chance of an event occurring which would cause actual project circumstances to differ from those assumed while forecasting project benefit and costs.” Management of risks holds the key to project success or failure. The Contract Management process must thus, identify, mitigate and monitor the key potential risks over the life of the project to achieve targeted project outcomes. This includes:



- **Identify:** Quantifying actual and potential risks and their associated losses (or benefits) to identify those risks that must be managed over the contract lifecycle
- **Mitigate:** Reducing, to the extent possible, the likelihood of occurrence of the risk and / or its consequences if and when it materializes
- **Monitor:** Developing management strategies to track, review and proactively manage the remaining risks

This chapter talks about the process by which major potential risks to a project can be identified and how they can be mitigated to avoid dire circumstances.

7.1. Step 1: Identify Risks

Risks in a PPP contract may be identified with reference to generic risk categories such as site risk, design risk, construction risk, interest rate risk, demand risk, price risk, market risks, liquidity risk, currency risk, environmental/social risks, force majeure risks, legal or political risk, technology risk etc. Risks can also be classified based on phases of the project, i.e. procurement, development period, construction, operations and handover.

From a contract management perspective, risks that an Authority is likely to face can be typically categorized into the following:

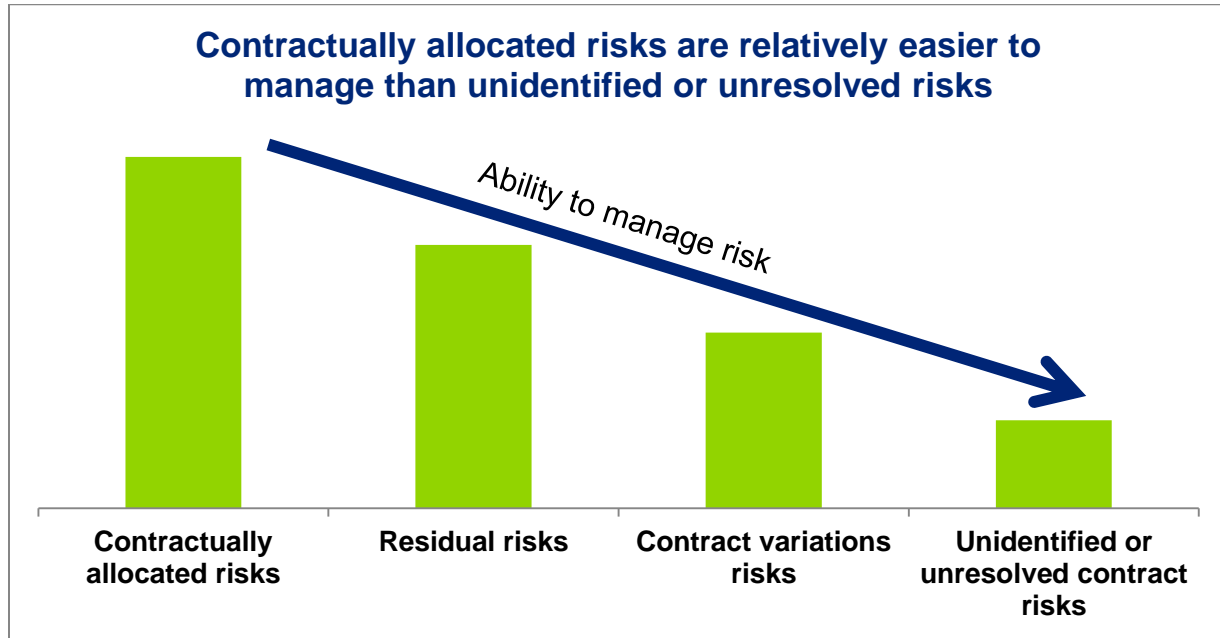


Holding a brainstorming session to identify, list and categorize each likely risk is helpful. Each of these risks is explained below.

1. Contractually allocated risks

Certain risks are assumed by the Authority through the contract itself. For example, under highway BOT annuity contracts, it must bear the risk of traffic falling short of forecasts. Additionally, there are risks that are implied to be borne by the Government under general law. Land acquisition for instance is a Government responsibility and consequences of delays in land acquisition must be accordingly borne by it.

Since, Government is aware of these risks, they are relatively easy to monitor and manage.



2. Residual risks

Sometimes, government may have to assume residual responsibility in case the Private Party fails to deliver on the risks allocated to it. This is known as “take back” risk. For example, if the Private Party does not meet quality of construction standards, then the Government may be entitled to financial compensation. However, money alone will be insufficient to fulfill Government’s obligations to users and society.

3. Contract Variations risks

Often there are changes to contractual terms due to new requirements or change in business environment. The change process, if not managed effectively, may result in consequences for the Government and may affect the continuity of the project. For example, contract may be modified to allow for an unanticipated competing facility. Mismanagement of such a change may result in disputes and affect the project gravely.

4. Unidentified or unresolved contract risks

In certain cases, risks may not have been identified and allocated at the time of contract formation. The long term nature of a PPP contract does not allow for all risks to be identified at the contract stage itself. Some of them need to be managed as they manifest. This also

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includes Force Majeure events. In other cases, risks may have been identified, but intentionally or unintentionally left unresolved. These risks may subsequently compromise the parties' ability to meet project objectives.

These risks are not planned for and may manifest at any stage of the contract. This unpredictable nature of these risks makes them relatively difficult to manage.

All major risks a PPP project undergoes are listed as below:

Category	Risk	Definition
Contractually allocated risks	Site risk	<ul style="list-style-type: none"> • Site subsequently proves to be an inefficient / unsuitable location for delivery of the services • Any existing infrastructure on the site proves to be unsuitable for the project proposed
	Land acquisition risk	<ul style="list-style-type: none"> • Unanticipated land acquisition costs and delays in acquisition • Costs and delays associated with archaeological and cultural heritage discoveries
	Statutory clearances risk	<ul style="list-style-type: none"> • Delays and costs in obtaining approvals and clearances • Unanticipated Issues in shifting utilities
	Environmental risks	<ul style="list-style-type: none"> • Delays and costs arising from environmental impact assessments, including requirements for route-diversion and special measures to protect environment • Contamination risks and liability for clean-up • Contamination of adjacent land
	Traffic risk	Fall in traffic from initially projected levels
Residual risks	Design and Engineering risk	Defects in design impacting project costs and schedules or user safety levels
	Construction risk	<ul style="list-style-type: none"> • Defects in construction • Delays in construction • Increase in costs or unavailability of material or labour • Inefficient monitoring practices
	Operation & Maintenance risk	<ul style="list-style-type: none"> • Increase in operating or maintenance costs • Delays in maintenance activities • Fall in service standards • Fall in safety standards
	Financial risk	<ul style="list-style-type: none"> • Financiers (debt and equity) will not provide or continue to provide funding • Financial structure is not sufficiently robust to

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Category	Risk	Definition
		provide fair returns to debt and equity over the life of the project <ul style="list-style-type: none"> • Deteriorating financial health of SPV
	Concessionaire Managerial risk	<ul style="list-style-type: none"> • Change in managerial personnel • Change in ownership
	Take back risk	Administrative delays by the Authority leading to transfer of risk to the Government
Contract variations risks	Change in scope	Changes in construction or service specifications
	Change in law or policy	Leading to increase in costs, reduction in revenue or complexity in processes
Unidentified or unresolved risks	Force Majeure	External natural or man-made events which negatively impact project execution
	Social risks	<ul style="list-style-type: none"> • Opposition from public or community-interest groups • Unwillingness to pay user fees

7.2. Step 2: Mitigate Risks

Risk mitigation includes action taken to reduce:

- The likelihood of a risk materializing, and / or
- Consequences of the risk, if it materializes

It is the attempt to reduce a party's exposure to the risk and resultant loss.

The Authority can mitigate risks to the extent possible by one or more of the following steps:

- Insurance, for example insuring force majeure risks;
- Financial market instruments to hedge risks such as interest rate risks and currency risks;
- Diversifying project portfolios; and
- Passing on financial impact of risks in form of higher costs to users or on exchequer in case of political decisions against it.

Additionally, certain good practices that are advisable to follow for the Authority include:

- Strategic planning and, where appropriate, development of an independent regulatory framework,
- Obtaining best legal, commercial and technical advice,
- Reducing scope for agencies to "take back" risk unintentionally,
- Developing a contingency plan in case of default and
- Best practice control monitoring and management.

A sample table indicating the mitigation strategy and responsible Authority officer is given below:

Post Award Contract Management Guidelines for PPP Concessions

Category	Risk	Definition	Consequence	Mitigation	Responsible Authority
Contractually allocated risks	Site risk	<ul style="list-style-type: none"> Site subsequently proves to be an inefficient / unsuitable location for delivery of the services Any existing infrastructure on the site proves to be unsuitable for the project proposed 	Time & cost overruns Risk premium quoted by Concessionaire	Detailed investigative studies through expert technical consultants at the pre-award stage	Operations Level
	Land acquisition risk	<ul style="list-style-type: none"> Unanticipated land acquisition costs and delays in acquisition Costs and delays associated with archaeological and cultural heritage discoveries 	Time & cost overruns Risk premium quoted by Concessionaire	Detailed title searches and investigation of land records at the pre-award stage Greater public involvement and transparency in procedures	Operations Level
	Statutory clearances risk	<ul style="list-style-type: none"> Delays and costs in obtaining approvals and clearances Unanticipated Issues in shifting utilities 	Time overruns Risk premium quoted by Concessionaire	Advanced planning and better coordination between Government entities	Supervisory Level
	Environmental risks	<ul style="list-style-type: none"> Delays and costs arising from environmental impact assessments, including requirements for route-diversion and special measures to protect environment Contamination risks and liability for clean-up Contamination of 	Time & cost overruns Risk premium quoted by Concessionaire	Detailed studies into site contamination at the pre-award stage, regular environment audits	Supervisory Level

Post Award Contract Management Guidelines for PPP Concessions

Category	Risk	Definition	Consequence	Mitigation	Responsible Authority
		adjacent land			
	Traffic risk	Fall in traffic from initially projected levels	Fall in revenues	Allocating risk to private party through Toll contracts as opposed to Annuity contracts Developing alternative revenue sources	Operations Level
Residual risks	Design and Engineering risk	Defects in design impacting project costs and schedules or user safety levels	Time & cost overruns Fall in service or safety standards	Stricter inspections by independent engineer, performance guarantees, provisions for penalties	Operations Level
	Construction risk	<ul style="list-style-type: none"> • Defects in construction • Delays in construction • Increase in costs or unavailability of material or labour • Inefficient monitoring practices 	Time & cost overruns Fall in service or safety standards	Stricter inspections by independent engineer, performance guarantees, provisions for penalties & liquidated damages	Operations Level
	Operation & Maintenance risk	<ul style="list-style-type: none"> • Increase in operating or maintenance costs • Delays in maintenance activities • Fall in service standards • Fall in safety standards 	Time & cost overruns Fall in service or safety standards	Stricter inspections by independent engineer, performance guarantees, provisions for penalties & liquidated damages	Operations Level
	Financial risk	• Financiers (debt and equity) will not	Restructuring, refinancing,	Higher eligibility requirements at	Supervisory

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Category	Risk	Definition	Consequence	Mitigation	Responsible Authority
		provide or continue to provide funding <ul style="list-style-type: none"> Financial structure is not sufficiently robust to provide fair returns to debt and equity over the life of the project Deteriorating financial health of SPV 	renegotiation, termination	the time of bidding, financial covenants, collaterals, guarantees Hedging through financial products	Level
	Concessionaire Managerial risk	<ul style="list-style-type: none"> Change in managerial personnel Change in ownership 	Restructuring, renegotiation, termination	Higher eligibility requirements at the time of bidding, lock-in requirements for a certain time period	Supervisory Level
	Take back risk	Administrative delays by the Authority leading to transfer of risk to the Government	Time overruns, penalties	Robust processes, competent contract management team and strict adherence to timelines	Supervisory Level
Contract variations risks	Change in scope	Changes in construction or service specifications	Time & cost overruns Restructuring, renegotiation, termination	Detailed market studies at the pre-award stage through expert consultants	Supervisory Level
	Change in law or policy	Leading to increase in costs, reduction in revenue or complexity in processes	Time & cost overruns, revenue reduction Additional approvals required	Increasing awareness of possible changes and planning ahead for responding to changes, if they occur	Supervisory Level
Unidentified or	Force Majeure	External natural or man-made events	Multiple (depending on	Insurance Having disaster	Supervisory Level

Post Award Contract Management Guidelines for PPP Concessions

Category	Risk	Definition	Consequence	Mitigation	Responsible Authority
unresolved risks		which negatively impact project execution	(type of event)	recovery and business continuity plans in place	
	Social risks	<ul style="list-style-type: none"> • Opposition from public or community-interest groups • Unwillingness to pay user fees 	Time & cost overruns Restructuring, renegotiation, termination	Wider public communications, greater transparency, more user surveys at the development stage	Operations Level

7.3. Step 3: Monitor Risks

Each risk must be tracked and controlled to ensure that the project objectives are achieved. There is a certain degree of overlap between the steps of risk mitigation and risk monitoring, since effective risk monitoring is itself one of the ways in which risk can be mitigated.

A Risk Register should be maintained which apart from listing each issue, describes the tracking strategy and the review strategy.

- The **tracking strategy** should have a quantitative or qualitative indicator to along with a threshold level for the indicator. It should also identify the person responsible for tracking the risk.
- The **review strategy** should identify the person responsible for review of risk management and the frequency and form of reporting to the reviewer. The reviewer is not only responsible to analyze past performance, but also to appreciate change in circumstances, if any, which are likely to impact the project in the future and develop appropriate strategies to manage such changes.

The register should also identify requisite action to mitigate the potential risk in case the threshold level is crossed.

An illustrative template of the Risk register along with a detailed description is provided in **Template B, Page 117**. It covers all major risks described above in a PPP Project. It should be modified as per the Sector and the project specific risks.

Additionally, risk review meetings must be held to ensure that:

- The risk management process adopted for each risk is effective
- Necessary resources are available at all times to deal with risks
- New risks are identified timely and appropriate plans are drafted to mitigate and monitor them

The meetings must be organized by a central contract management cell and attended also by persons responsible for tracking and reviewing risks. The scope and frequency of these meetings would depend on size, stage and complexity of the project.

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Risk Management is a continuous process. Risks need to be identified, mitigated and monitored on a regular basis at every stage of the PPP project. Effective risk management will ensure that project execution remains on track, unforeseen circumstances are controlled and disputes are minimized. This will ultimately lead to realizing intended project outcomes being achieved in a proactive manner.



Success Story- What to do...

An Australian Highway PPP anticipated risks & prepared a detailed risk management plan

The initial risk assessment along with the mitigation strategies that were adopted are summarized below:

Risk	Mitigation Strategy
Delays in State and Commonwealth (Central) approvals	A mitigation strategy of setting realistic timeframes in the project plan, effective communication with key decision makers and having approval contingencies was in place.
Shortage of experienced technical consultants & labour	A procurement plan was developed and the project delivery timeline accelerated to maximize opportunities. A variety of contract sizes were used to attract both local and national contractors.
Price escalation	Acceleration of construction program & transfer of price escalation for labour and materials to the design and construction contractors
Land acquisition process delays construction activities	Acquisition process commenced as soon as possible with construction activity contingencies in place.
Communities demand more stringent noise criteria	Development of an Environment Authority–endorsed Noise Management Plan and an allowance in the cost estimates for additional noise treatments
Discovery of Aboriginal heritage site	Engage Indigenous heritage stakeholders from day one to ensure transparency of process and develop a Cultural Heritage Management Plan.

Source: Best Practice Case studies, Dec 2010 (Department of Infrastructure and Transport, Australian Government)

8. Relationship Management among Project Stakeholders

8.1. Need for Relationship Management

By their very nature, PPP projects involve long-term relationships between local Authorities, service providers, SPVs where they exist, and end users. The effective management of these relationships is essential to achieve long-term success. The key to this is the establishment of a collaborative working (partnering) relationship, together with systems and communications that actively support and enhance the relationship throughout the life of the project. When 'things go wrong' in a contractual relationship the result is a reduction in efficiency leading to a reduction in project viability; a healthy relationship is characterized by trust, respect, openness, co-operation and working together to solve problems and achieve mutual goals. Good relationships are efficient and achieve best value, as adversarial conflict is avoided.

8.2. Causes of Relationships going wrong

When significant issues arise in a PPP contract, it is usually due to either the materialization of an operational risk or a relationship risk, or possibly the materialization of a defect in the agreed contract. For example, a design defect or a price defect which should have been identified during the due diligence process. Systems and methodologies should be in place to mitigate operational risks and to deal with them if they occur. Relationship risk is more complicated, and it can be the result of poor or unsatisfactory communication and co-operation and usually follows, and exacerbates, a reduction in mutual trust. Some examples of common perceptions and misconceptions that can affect a relationship are:

- There is no such thing as the perfect individual and the perfect team; people often promise to do more than they can actually achieve, and people make genuine mistakes
- Local Authorities may perceive that poor reaction times from a service provider are due to cost-reduction strategies, when in fact the reaction times originally specified were inappropriate
- Service providers might blame slowness in decision-making by the Authority on unwillingness to spend money, when in fact they do not understand the Authority's sign-off procedures
- Concerns about performance reporting may result from misunderstandings, or lack of understanding of the performance regime and the payment mechanism, in case of annuities.
- Relationships and/or service delivery and/or performance measurement is not based on a robust understanding and deployment of the contract
- Partnership ethos in the relationship is not embraced.

Such perceptions and misconceptions can be avoided through the generation of trust and transparency within the team, which can be achieved through the adoption of a partnering and collaborative working relationship.

8.3. Development of partnership protocols and behaviors

The four cornerstones of partnering are:

- The development of agreed and easily understood mutual objectives
- The adoption of a collaborative, 'win: win' approach to problem solving
- The development of a quick and co-operative problem resolution strategy
- A commitment towards continuous, measured improvement

A partnering style of working is a commitment by the parties within a PPP contract to collaborate to achieve mutual goals. Incentivizing service providers comes from the payment mechanism and the possibility of maximizing returns through the provision of a good service. Service providers appreciate a supportive client who has an awareness of their key drivers, and recognizes the needs of the service provider to make a reasonable profit and develop new business. The overall goals for the Authority are customer satisfaction and best value. Goals can therefore be aligned to become mutual goals, which are then achieved through inter-partner collaboration and joint problem solving. The result is less conflict, and improved performance in terms of quality, time and cost. Over the life of the contract, further benefits accrue as the whole team builds on lessons learnt and continually improves.

The development of a project statement prior to service commencement which describes the ethos and principles which all parties will ascribe to should be considered, as it will give a positive start to the relationship.

8.4. Defining communication protocols, routes and systems

To a large extent, successful partnering relationships are between people rather than organizations. There are many instances of such relationships breaking down when new or replacement teams takeover relationship management responsibilities. People's attitudes towards one another contain beliefs about trustworthiness based on either past experience or current information available. Hence individual attitudes are an important aspect in the building of trust and the development of relationships. Trust generation formed through the adoption of the right attitude leads to interpersonal co-operation and synergistic relationships which in turn helps to optimize efficiency and achieve desired project outcomes.

When developing collaborative working arrangements, all parties need to approach the project with a collaborative, rather than an adversarial attitude. To establish good collaborative working, externally facilitated team-building workshops should be undertaken throughout the life of the project, to help foster the relationships and the development of a team 'culture'.

If roles and responsibilities are clearly defined and understood by all individuals within the partnering team then this will help to minimize conflict. This includes defining governance structures and establishing procedures for monitoring and reporting. It also includes understanding risk allocation and who is responsible for managing the risk. Open communication is another key trait of successful partnering relationships, and good lines of communication should be established at the outset of the relationship. However, formalized communication lines should not preclude informal communications which often enables problem resolution to be expedited in a more efficient way. Co-location of teams in one building or office area may aid openness of communication, trust generation and relationship building and this should be considered when the collaborative working relationship is formed.

8.5. Overcoming relationship difficulties

There is a probability that during the life of a project there will be a time where the relationship between the parties, for many reasons, may become strained. Work will be required to get the relationship back on track and it is recommended that an independent facilitator is brought in to help determine the underlying problems and assist with the relationship building. The type and amount of work required will vary, but with a positive and open attitude and a determination to succeed, the issues should get resolved.

8.6. Developing successful relationships

There are many good examples of partnerships nationally and globally where successful partnering relationships are helping service providers to function efficiently, provide user satisfaction and deliver high value. All these have the following key characteristics:

- The team taking the project through the procurement stage went on to have representation in the operational team, i.e. there was continuity of staff, and trust was established before the operational stage began
- There is a focus on the relationship first, and an adoption of a no-blame culture, consequently issues are resolved quickly and efficiently
- Both parties look for opportunities for joint training and development. Working together in this way fosters and maintains trust
- If problems do occur, an external facilitator is brought in immediately to help resolve them
- The wider Authority recognizes the partnership

8.6.1. Regular Review Forums

Also, it has been observed in few project experiences that regular review forums are set up where all the stakeholders namely, the Authority, the Private Party and the related parties were all brought together at a common platform to discuss all issues related to the project sort them out with mutual agreement. Such a practice should be adopted in on a mass scale (depending on the need, size and complexity of project) at all levels of Authority defined, i.e. throughout the institution in the following manner:

The **Operations Level Authority** should conduct meetings with all related parties on a monthly basis at least to gather updates, conduct discussions on way forward and resolve minor problems

The **Supervisory Level Authority** should conduct meetings/ review forums with all stakeholders which are facing multiple issues at least quarterly to determine the major pain points and seek opinions from all parties to their resolution

The **Decision Making Level Authority** should also be a part of the project forums with a bi-annually frequency at least to understand the issues of the parties, how they are being resolved and steps being undertaken for the same. They should be able to understand how the supervisory and the operations unit have been performing and implement corrective actions if needed.

8.7. Monitoring the Relationship

Apart from measuring performance against financial and service performance measures, the Authority should put in place a means of assessing the quality of the working relationship and management processes also. For example, attendance by the Private Party's representatives at steering committee meetings can easily be monitored, as attendance should be recorded in the minutes of meetings. If attendance by the Private Party's representatives falls away, the Contract Manager should consider whether this indicates that the relationship between the parties is losing strength, or that the committee is not an effective communication and management forum.

Monitoring the parties' working relationship and management processes is valuable in highlighting aspects of the relationship that are perceived to be working well and those that require greater attention.

Once, the entire relationship management process is set, a sample checklist given in **Appendix C, Page 91** can be used to review it.



Success Story- What to do...

Creation of Project Forum in a UK Highway PPP laid strong foundations for effective relationship management between stakeholders

UK Highway PPP saw the creation of "Project Forum" to help out in contract management. Project forum was an important tool in aligning everyone's interests and later become a standard practice for all PPP projects. Project Forum included senior representatives of the sponsoring agency and the key companies comprising the project delivery force. It was also supported by several Technical Forums that addressed more specialized areas. It acted as a meeting of minds and the apex decision-making body. Due to representation from all agencies/contractors, problems could be foreseen and resolutions discussed/frozen. It also helped in increasing co-ordination between agencies as all parties were aware of initiatives being taken and the reason for taking them. The project forum also had assistance from various technical agencies and subject matter experts. These were routinely called upon to represent to the council the merits/demerits of adopting any one particular stance.

9. Management of Issues & Disputes

9.1. Issue Management

Issues involve an interruption or disturbance to service delivery and often lead to the Government Authority or users demanding financial or non-financial remedies.

However sound the relationship between the Authority and the Private Party, service delivery problems will arise. Clear procedures for raising these issues and handling problems should be established. This will ensure that issues are dealt with at the earliest possible stage and at the appropriate level in each organization. The primary objective is to ensure that problems are recognized and then resolved quickly and effectively. As a rule, issue management procedures should be in the Concession Agreement (and hence should be incorporated in the Contract Management Plan). If they are not contained in the contract, or are inadequate, the Contract Manager and the Private Party should work together to establish and agree on issue management procedures acceptable to both, shortly after contract execution.

Issue management procedures should incorporate the following requirements:

- Service delivery issues are recorded as they occur, in order to highlight any trends and to help in assessing overall contract performance and financial viability. It is recommended that the Private Party maintains an Issue Register and that all new and outstanding issues be jointly reviewed on a regular basis by the parties. This can be modified to suit a particular project.
- Also, any discrepancies/ concerns out of the documents and reports received from the Concessionaire, need to be highlighted and escalated to the responsible Authority official within the timelines
- Where the Authority or other end users of the services identify issues, the Private Party should be notified of the issue through an appropriate path and at an appropriate level.
- Where the Private Party identifies issues that may affect service delivery, the Contract Manager should be promptly notified of the issue through an appropriate path.
- Approaches and efforts taken to resolve problems should be documented clearly and precisely.
- Escalation procedures should be followed where escalation is appropriate to resolve the issue. A sample decision and issue escalation procedure is set out in **Template C, Page 118**. This can be modified to suit a particular project.

9.1.1. Escalation Mechanisms & Response Timelines

A clear escalation path for the resolution of problems ensures that responsibility is directed to the appropriate level of management. In case one level of Authority isn't able to provide a satisfactory resolution to an issue, a well- defined mechanism aids in escalating it to the right set of Authority which might be able to help and guide a Private Party or stakeholder best in such a situation. It also helps in establishing trust between the Authority and the Private Party and ensures professional behavior from both parties.

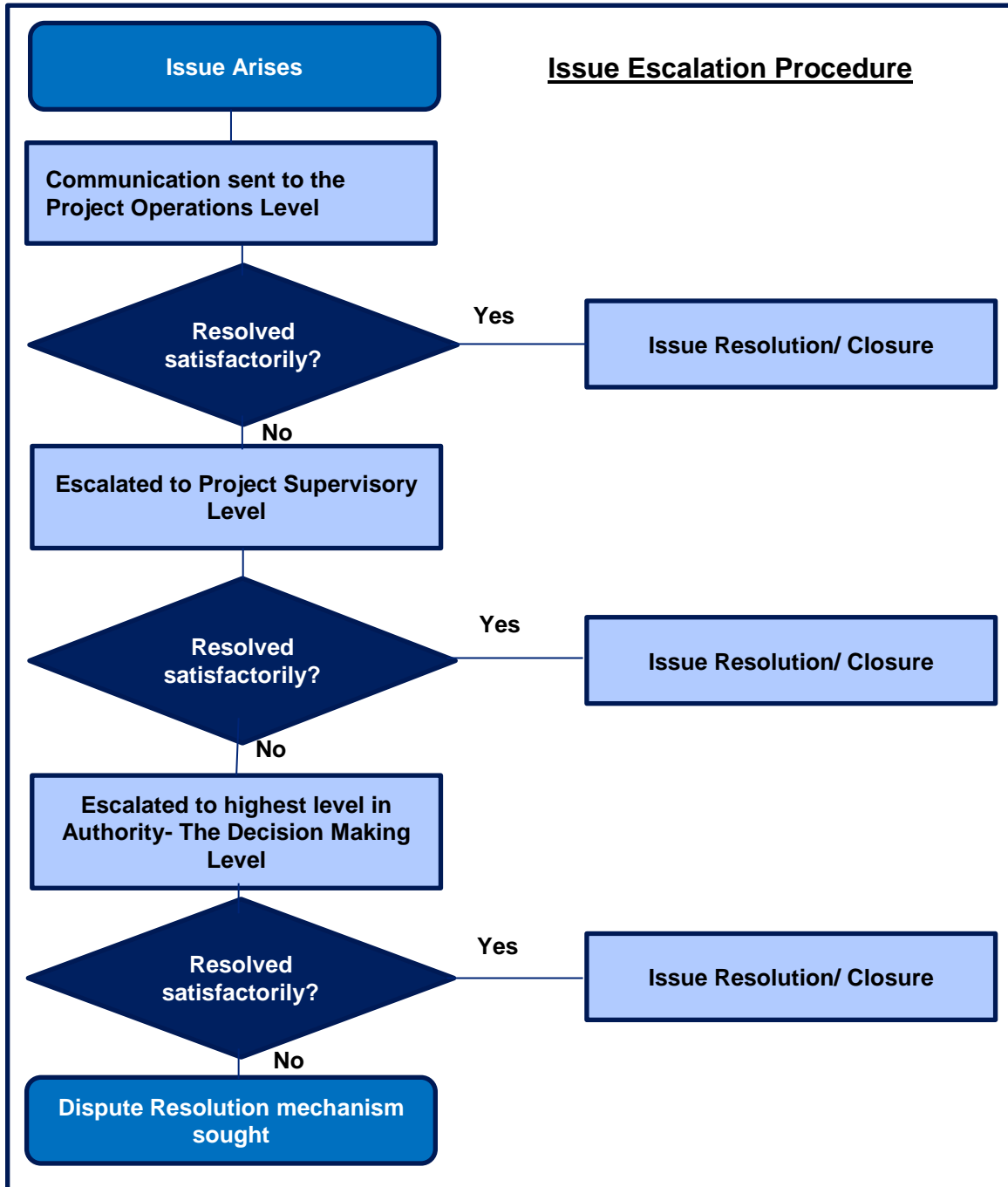
Escalation issues might arise in the following situations:

1. Default on part of the Concessionaire to meet service obligations in the specified timeline

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2. Default by Authority in meeting the stated terms & conditions in the Concession Agreement
3. Issue raised by Related parties with respect to default by Authority or Private Party

The Contract Manager should collate information on the number and severity of problems, as well as the way they were resolved, during the life of the contract. This information should be used to cross-check the accuracy and flavor of service delivery performance reports. In addition, trends in the frequency with which service delivery issues arise and the speed and effectiveness of their resolution are a useful indicator of Private Party performance. Serious or persistent service delivery issues may trigger a right for government to terminate the contract. An ideal issue escalation procedure should function as below:



9.2. Dispute resolution

Disputes involve a difference of opinion or position between parties under contract, but they need not necessarily cause interruption to service delivery.

In a well-planned and well-managed PPP, disputes between the parties should be infrequent, but may occur because of unforeseen outcomes or circumstances. There are a number of operational situations which can potentially lead to disputes between the service provider and the Authority, and these situations are mainly related to payment and processes. In the event

that a dispute does arise, the process for dealing with it will be outlined in the contract and this should be followed. The contract manager should, however, as part of their role, endeavor to ensure that formal disputes do not arise, as they are time-consuming for all parties and can divert effort away from the running of the contract and the delivery of services. Effective performance monitoring, clear methods for recording and discussing monitoring outcomes, and liaison with the service provider at regular monthly meetings, can help to resolve issues and stop them from taking a form of a dispute.

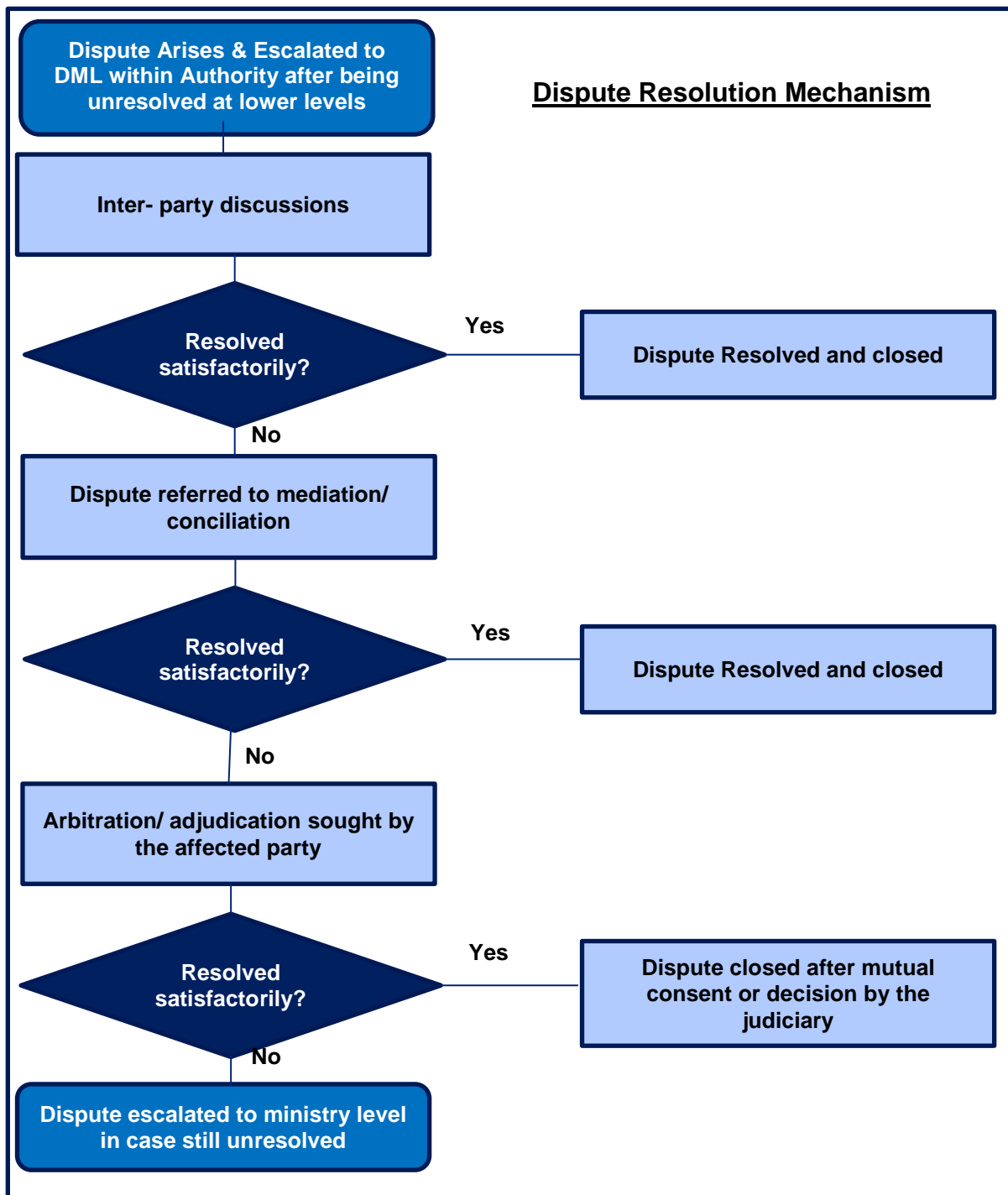
9.2.1. Resolving Disputes

A crucial role for the Contract Manager is to try to ensure through prompt efforts that formal protracted disputes are avoided. If a dispute cannot be speedily resolved informally, it is important that it is promptly dealt with through a formal dispute resolution process set out in the contract management plan for the project. The parties should not allow disputes to unnecessarily drag on unresolved, as this will further damage the relationship.

In seeking to resolve disputes through informal means, the Contract Manager should consider the commercial context of the dispute as well as the contractual context, as both are important in the early stages of a dispute.

If a party resorts to an inappropriate dispute resolution process, the process can worsen the damage to the relationship resulting from the dispute. For this reason, it is vital that an appropriate dispute resolution process is set out in the contract management guidebook for the project.

The dispute resolution procedure adopted by the parties is likely to vary between projects in line with the parties' preferences, usually based on previous experience and also with regards to the provisions laid down in the Concession Agreement. It may involve any one or more of several possible methods as listed in the Agreement, each of which can be made available to the parties in turn. If a particular method fails to resolve the dispute within a certain time, either party or sometimes the relevant resolution body may (or must) refer the dispute to the next stage of the process. An ideal dispute resolution mechanism can be designed as:



After a mechanism has been formed, a template should be designed by the Authority for recording all disputes handled. Such templates can be filled by any concerned stakeholder and submitted with the Authority to take the necessary action post which methods of dispute resolution will be adopted by the Authority.

Following are different methods generally followed for dispute resolution, listed in the order in which they are generally undertaken:

a) Inter-party discussions

Representatives of each party first need to meet and attempt to resolve the dispute, in good faith.

b) Mediation or Conciliation

Representatives of the parties should appear before a mediator or a conciliator and attempt to resolve the dispute. The mediator or conciliator is agreed by the parties or selected by an independent third party agreed to by the parties and specified in the contract. Procedures to be followed during mediation or conciliation may be set out in the contract, agreed by the parties at the time of the dispute or selected by an independent third party (which may be the mediator or conciliator or another person specified in the contract).

Mediation is a consensual process in which the parties are helped by the mediator (a neutral third party) to reach an agreed resolution. The role of the mediator is to facilitate negotiations of the parties by assisting them in their discussions and in identifying their respective issues and differences. The mediator's role is to facilitate only and the mediator makes no binding determination.

Conciliation is similar to mediation in that the neutral third party makes no binding determination. However, the conciliator plays a slightly more involved role in the resolution process than the mediator, making positive suggestions and recommendations, although it is still for the parties to decide whether these recommendations will be adopted.

c) Arbitration

The dispute must be referred to and determined by a Board of arbitrators to whom the parties make submissions. The Board's determination is binding. The process of arbitration must be supported by and should be carried out in accordance with the Indian Arbitration & Conciliation Act, 1996.

The Board should ideally consist of three members. Two arbitrators will be appointed by each of the respective parties and then the arbitrators will jointly elect the third arbitrator. In the event of a disagreement between the two arbitrators, the appointment will be made as per the rules specified in the Act.

d) Adjudication

In case a statutory Regulatory Authority or Commission has been setup, disputes might be settled as per its adjudication instead of Arbitration. These will not be binding until an appeal against such adjudication has been decided by a court.

e) Accelerated Dispute Resolution Committee

The dispute must be referred to a committee comprising one or more representatives of each party if it takes too much time for resolution in Arbitration. The committee, in accordance with the procedures should set out in the contract or decided by the committee itself, attempts to resolve the dispute. Any decision of the committee is usually binding on the parties.

A sample template on the dispute resolution procedure making use of these methods as and when the need arises is illustrated in **Template D, Page 119**.

9.2.2. Other Considerations

- **Resolving Disputes with Recurring Defaults:** Where the Private Party fails to achieve standards on a regular basis the Authority should consider requiring that the Private Party produce an action plan that identifies measures to improve service delivery. It may even include the potential for the Government Authority to step-in and manage the service, and eventual termination of a contract.
- **Resort to the courts:** As the intent of a dispute resolution procedure is to avoid the usual consequences of litigation such as delay, cost and publicity, parties should not be encouraged from beginning court action in relation to a dispute until some or all of the alternative dispute resolution procedure has been followed.

Once the entire dispute resolution procedure is set, a sample checklist given in **Appendix D, Page 93** can be used to check if the Contract Management team has been on the right path.

9.2.3. Resolving Disputes with Recurring Defaults

To deal with default by the service provider, there are number of ways ranging increased monitoring, to the service provider being penalized for the same. More formal methods for dealing with persistent default include the potential for the Authority to step-in and manage the service, and eventual termination of a contract.

Where a service provider is failing to achieve standards on a regular basis the Authority should consider requiring their service provider to produce an action plan that identifies measures to improve service delivery. External facilitation can also be used to assist all parties to discuss issues around a table & identify a way forward outside the formal dispute resolution procedure.

All of the formal processes for dealing with default should be seen as the last resort to be taken. Contract managers must use informal methods to resolve disputes and ensure that regular communication is in place.

Encouraging negotiation between the parties and providing incentives for the parties to discover a solution themselves can be a good resolution. External/court based resolution process should be treated as last solution, as formal court or arbitration proceedings may not lend them to an early or negotiated outcome.

10. Contingency (Rare event) Planning

PPP projects are generally spread over a long project life typically of over 15- 20 years. As such, there is significant probability for the project to face financial, political, physical contingencies. These contingencies will affect the risk-return ratio of the Private Party and in extreme cases might even lead to failure to meet agreed upon terms. Such a failure by the Private Party could lead to severe reputational damage to the Authority and possible delays/extension in the operationalizing the PPP project.

As such, it's a good practice for the Authority to identify and detail major contingencies and the response to the same. This would also provide an exhaustive list of key stakeholders/paradigms to be considered while drafting a solution. This Chapter aids in drafting Contingency Plans and defining the plan of action in each situation.

10.1. Commonly seen Contingencies & their Management Practices

It is tough to draw up an exhaustive list of contingencies given their precarious nature. But contingencies can be majorly broken into 3 categories:

- **Contingencies that involve default by Private Party but cause no interruption of service delivery.** For example, When the Private party defaults on its insurance payments, there is no loss to the service obligations but the Authority has the right to recover the premium payments from the Concessionaire.
- **Contingencies that interrupt service delivery but do not involve default by Private Party.** For example, Change of Scope, Force Majeure events, etc.
- **Contingencies that interrupt service delivery and involve default by Private Party.** For example, Non-adherence of private party to meet the service obligations as per the Concession Agreement, inability to finish project in time and request for extension, request for refinancing/ restructuring of project costs, etc.

Based on this, major contingencies and rare events can be listed as:

1. Change In Scope
2. Change In Law
3. Renegotiation
4. Force Majeure
5. Termination

The Model Concession Agreement by NHA has a detailed list of all major contingency and force majeure events. The document should be referred to have a complete understanding.

10.2. Contingency Handling Process & Timelines

In response to the above 3 possible contingency situations the Authority needs to follow processes ready:

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1. **Business continuity and disaster recovery planning** – The objective of this process is to ensure that the project doesn't suffer any delays/extension in operationalization. These steps will be executed in case of foreseeable threat in service delivery.
2. **Step-in planning** – A step-by-step process map regarding how the Authority would acquire control of the project in response to a failure in service delivery or a Private Party default or both.
3. **Default planning** – A go-to-plan for the Authority in case of a default by the Private Party.
4. **Fast Tracked planning**- An approach to solution of contingencies like change of scope, renegotiations, etc. where the contingent issue will be escalated to the Decision Making Level for immediate resolution.

The contract management plan must incorporate detailed guidelines regarding the above. Also, if required, legality of any measure should be ensured by inserting it into the Private Party agreement executed between the Concessionaire and the Authority.

Appendix E, Pages 94-103 includes checklists to handle all the major contingency events listed above and checking exhaustiveness of all considerations taken up at the time of handling these contingency events.

10.2.1. Business continuity and disaster recovery planning

Government must ensure that both the Private Party and the Authority have exacted business continuity plans. Given the long term nature of PPP projects and therefore the significant probability of adverse circumstances, this ensures both parties are clear on the path in unforeseen circumstances. The Authority/government must have a disaster recovery plan. Due to a larger resource base and emergency capabilities, the government must take the pivotal role in responding to disasters. The key split of responsibilities may be:

BUSINESS CONTINUITY PLAN

- Prevent interruptions in day-to-day operations on service delivery even in adverse circumstances
- Is highly intensive in development phase of project due to high involvement of elements for construction
- Should have annual review/drills to ensure efficiency

DISASTER RECOVERY PLAN

- To provide response after catastrophic events
- Have provision for emergency services at all times in all circumstances
- Primarily driven through government due to various resource base
- Can only be planned

10.2.1.1. Business Continuity Plan

This plan will be activated in adverse circumstances which disrupt the normal day-to-day operations of the PPP project. This should be called in through a joint agreement between the Private Party and the Authority. Key questions that should be answered in the business continuity document are:

- **Operations**
 - What components of services will be provided under the business continuity plan?
 - What are the time targets for the checkpoints in the plan?
 - What resources need to be maintained for efficient execution of the plan?
- **Communications**
 - What communications are required to implement and activate the plan?
 - What communication policy to stakeholders should be followed?
 - How will the business continuity plan be exited?
- **Stakeholders**
 - Is line of command clear in emergency situations?
 - Are different stakeholders apprised of their responsibilities in the plan?
 - How will the business continuity plan be tested/modified?

10.2.1.2. Disaster Recovery Plan

Disaster recovery plan requires a leading role by the Government. This is especially true in the Indian context, where Private Party might not have sufficient resource base to mobilize in case of disasters. Also, key objective of disaster recovery is different from business continuity in the context of that this is a recovery.

The Private Party must also maintain its own disaster recovery plan and where its expertise could be used to better the overall response. Co-ordination among the parties in case of disasters must be clearly defined and managed.

10.2.2. Step-in Planning

In highly adverse scenarios, the Private Party might not have the capacity or resources or in some cases the willingness to execute its agreed upon terms. As such this would lead to a default in service delivery in the PPP project. Therefore Authority needs to step-in to ensure a continuous user experience to the general public.

To have the same done in a methodical way, there's a need to have a clear step-in plan that defines when and how would the Authority step in. Following salient points need to be thought of while developing the step-in plan:

- **Approvals**
 - What events trigger government step-in rights?
 - What contractual conditions/approvals need to be executed for a lawful step-in?
 - What internal approvals are necessary for step up?
 - How would the government come to know about these circumstances?
- **Operations**
 - What will be the checkpoints/phases for the step-in plan?

- What are the time targets for the checkpoints in the plan?
 - Would all services be provided in the plan?
 - What resources need to be maintained for efficient execution of the plan?
- **Continuance**
 - What should be the communication policy for stakeholders?
 - Will the step-in be exited? If yes, how?
 - Does the Private Party have any redressal mechanism for future of project?

10.2.3. Default Planning

The concession agreement identifies clear conditions under which the Private Party will be in default of contractual terms. These are related to material deviation from private party's agreed upon service delivery levels. But all contractual defaults need not be met with the same level of response from the government. In case of a strong relationship between the Private Party and the Authority and in a case where the Private Party makes a strong case for correcting the material difference, the Authority might decide to waive off default penalization. Therefore, as such the Authority needs to have plans finalized for both actions. Below are salient points the Authority has to factor in while creating responses in both situations:

10.2.3.1. Default Plan

- **Approval**
 - What are potential default events?
 - The severity of each default event in the short and long run?
 - How much cure period to be given to Private Party?
 - What contractual conditions/approvals need to be met/ secured for a lawful step-in?
 - What internal authorizations are necessary for step up?
- **Operations**
 - What will be the checkpoints/phases for the default?
 - What are the time targets for the checkpoints in the plan?
 - What resources need to be maintained for efficient execution of the plan?
- **Continuance**
 - What communication policy to stakeholders should be followed?
 - What recourses does the government have legally? Can it engage a third party?
 - Does the Private Party have any redressal mechanism?

10.2.3.2. Waiver Default Plan

In special cases, the Authority might not want to seek the full remedies as per its right even after material deviation in contract terms. As such the Authority may choose to provide a special waiver to the Private Party regarding that specific default. Key aspects for the Authority to consider while deciding the path forward include:

- **Identification**
 - The severity of the default event in the short and long run?
 - Measures and timelines proposed by Private Party for such cure?
 - Is deviation willful or because of unforeseen events?

▪ **Waiver**

- Will the waiver restrict any Government rights in the future?
- Binding nature of agreed upon steps for cure
- Monetary penalties/support to the Private Party for its cure plan?

10.2.4. Fast Tracked Planning

For a resolution to issues like Change of Scope or Renegotiations, an immediate escalation to the Authority at Decision Making Level needs to be done so that they can be resolved in a fast manner and addressed with priority. These issues need immediate in any project and cannot be resolved without consultancy from the Authority. Hence, for such events immediate escalation is done to avoid/ minimize delays in project execution.



What to do- Rare Event Management Toolkit

This model illustrates how during early termination event, either because of the Concessionaire or the Authority, the payment to be made to the Concessionaire will be calculated. It can be tweaked as per the laws in prevailing in the sector.

Dashboard All amounts in the model are in Rs Cr

Financial Structuring

Means of Finance		Adjusted Equity		WPI details	
Equity Infused	100.00	Base Adjusted Equity at COD	115	WPI at the Time of Appointed Date	100
Debt Due	200.00	% Reduction per Month	0.28%	WPI at the Time of Termination	156
Insurance Cover	100.00	No. of months from 4th Anniversary of COD	0	WPI at the Time of COD	130
Insurance Claims (not admitted and paid)	90.00	Adjusted Equity	138.00		

Project Particulars

Project Particulars		Key Dates		Key Information	
Concession Period (yrs)	30	Appointed Date	1-Sep-17	Termination Period	COD and 4th Anniver
Construction Period (months)	30	Date of Construction Completion	30-Sep-17		
Last Capex Payment month	30	COD	1-Oct-17		
		Termination Date	31-Mar-18		
		WPI starts from COD	30-Sep-21		
First FY Ending	31-Mar-18	Construction Ending FY	31-Mar-18	Last FY Ending	31-Mar-18
FY No.	12	FY No.	3	FY No.	3
No. of months in first FY	12	No. of operational months in Construction Ending FY	6	No. of months in last FY	12

Termination Payment

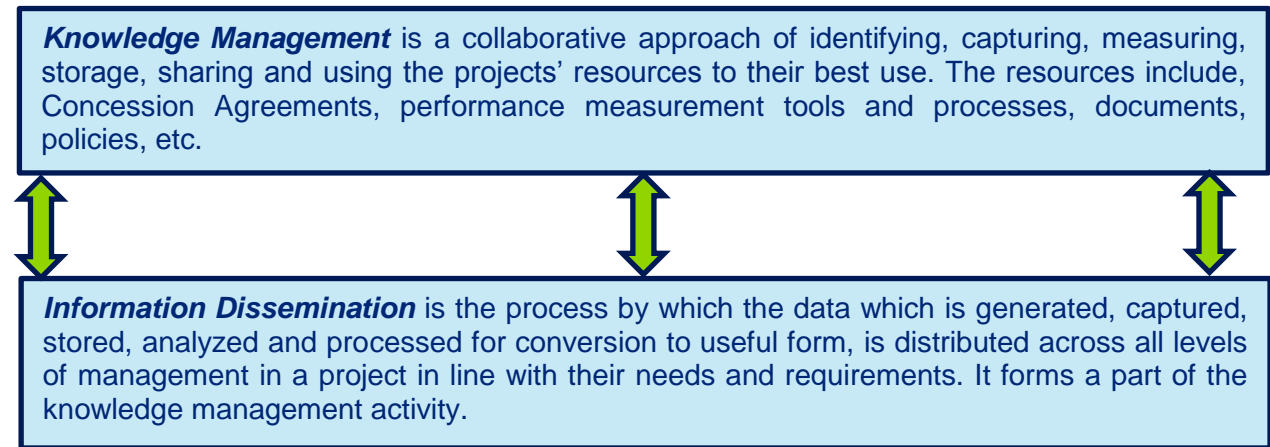
Termination Type	Reason	% of Debt Due of Adjusted Equity
Concessionaire Default	Non-political FM Event	90%
Adjusted Equity	Indirect Political FM Event	100%
Debt Due	Political FM Event	150%
Insurance Cover	Authority Default	100%
Insurance Claims	Concessionaire Default	90%
Termination Payment		128.00

SAMPLE TERMINATION PAYMENT TOOLKIT

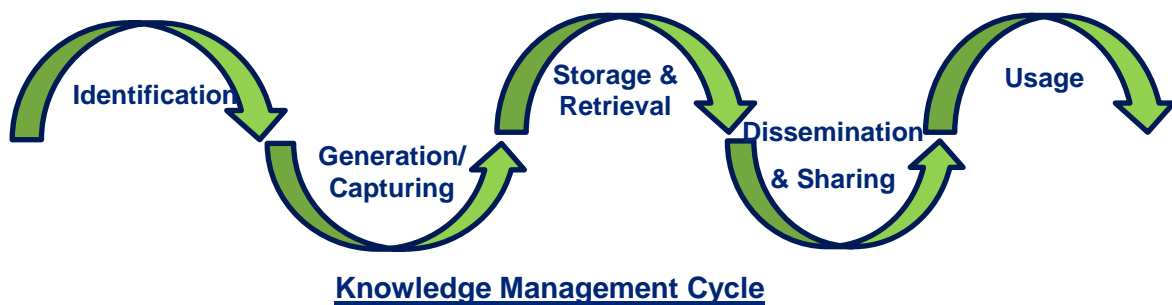
11. Knowledge Management & Information Dissemination

After the project operations have been set up, monitored & controlled successfully, it is also important that a record for the same throughout the lifecycle is also maintained. This helps in the entire project knowledge being available as the project moves ahead for the contract management teams' and all stakeholders' future reference. Knowledge Management & information play a very important role in this regard. This chapter provides guidance on how a well- defined and easy to understand Knowledge Management plan can be designed.

11.1. What is Knowledge Management & Information Dissemination?



As the key definitions suggest, knowledge management and information management are closely connected. While, knowledge generation and management is one part, knowledge sharing and distribution to the right set of people is another important activity without which update and regeneration of new data is impossible.



11.2. Need for Knowledge Management Plan

The effective management of knowledge and information dissemination is essential to:

- Meet the legal, legislative, policy and contractual obligations and business rules
- Effective management of all knowledge assets
- Sharing knowledge sources with all stakeholders throughout the lifecycle so that those whose roles become significant in later parts can understand the background of the project well

- Ensuring adherence to service standards set previously and service continuity
- For future references in other projects for similar situations

11.3. Designing an Effective Knowledge Management system

Before any dissemination of information takes place, there are few essentials that need to be present. Effective knowledge management system needs:

Knowledge Resource Management System: There are a wide range of knowledge sources available for a project ranging from the Concession Agreements to the minutes of meeting and organizational expertise. All these resources are different from each other and require a unique management system. Post categorization of similar kinds of resources, technology systems need to be designed on existing platforms indicating requirements for each stage of the project lifecycle. Also, wherever possible, resource sharing should be encouraged to minimize costs.

Guidelines, Policies & Tools: Specific to each stage of a project, i.e. pre- award, award, construction, operations & handover, tools must be developed. For instance, in the Operations stage, a policy on recording, managing and reviewing KPIs information and checklist documents is an effective tool which helps in improving Authorities' contract management practices. Often issues such as non- standardized data management are witnessed which lead to greater challenges. If Authority's existing tools and policies are limited, focus must be laid on creation of new tools.

Effective Implementation Mechanism: Facilitating effective management and ensuring right usage of these tools and systems, is of utmost importance without which all these processes and tools serve the purpose in a limited manner. Appropriate training on management of these tools and encouragement/ penalties for non- adherence to them need to be instilled so that this tacit knowledge is spread across all sections of stakeholders in the project. This guarantees service continuity and obedience to set standards.

After all the important pre-requisites are in place, a training plan can be designed. For maximum output the training plan should be developed for all the stakeholders to ensure maximum reach.

For developing an understanding of how information will be managed and distributed through the various systems, policies, tools and implementation mechanisms designed, the Authority needs to take into account the following aspects through the knowledge management cycle:

I. Generation and receipt of information

- Who creates the information?
- What information will be collected?
- What types of documents and information are there, and what are their attributes and relationship with other information?
- Who owns and controls the information?
- What specific provisions must be included into the Concession Agreements to ensure that the knowledge and information dissemination requirements are legally enforceable between the parties?
- How will information that may be difficult to collect—such as emails, minutes of conversations or meetings—be captured?

II. Capture and storage of information

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- How will knowledge and information be stored and maintained (both electronically and physically)?
- What metadata will be attached to the information to assist with its retrieval?
- What are the security requirements for the information?
- How should the information be classified when it is stored?
- Will different types of documents and information have specific storage requirements? For example, copies of disaster recovery plans, and copies of difficult to replace documents (such as land deeds, technical plan and certificates of insurance) should be stored on-site and in other locations off-site.

III. Demonstration, distribution and sharing of information

- What are the purposes for which this information is likely to be used by the contract management team or by others during the various phases of the project (procurement, construction, service delivery, and contract expiry or termination stages)?
- Are there common tasks (such as document, communication and version control) for all phases of the project?
- How will the information be accessed and by whom?
- Are there types of information maintained by the Private Party (for example, operating and maintenance manuals, design, engineering and survey plans) that the Authority will need to access? If so, in what stages during the project? In what form?
- How will the information be transmitted between team members, stakeholders and contractors, and in what form?
- What internal records, document and information management policies, procedures and guidelines should be adhered to?
- What information or documents will the Authority need to share regularly with stakeholders (for example, contact lists and organizational charts)? In what format? How will the information or documents be transmitted?
- Are stakeholders clear on their information provision responsibilities?
- What information does the Authority need to satisfy stakeholders' performance reporting requirements?
- In what electronic and/or hard-copy format is this information required? How will the information be transmitted?
- What agreed information formats should be established between parties to reduce double handling of information and resource duplication?

IV. Review, maintenance and disposal of information

- How will the quality of the information be monitored over the life of the project (for accuracy, consistency and currency) and during the various stages of the project and transitions between stages?
- Who will be responsible for the various processes of information management? How will they know the scope of their responsibilities?
- How can the relationship between electronic and physical records be maintained effectively?
- How will the information be disposed of? Under whose Authority?

- What knowledge, information, tools and processes need to be delivered to the Authority on termination, step-in or expiry of the project?
- What access restrictions (internally and between the parties) are appropriate?
- How can the Authority best comply with its governance, compliance and legislative responsibilities (for example, obligations under Freedom of Information legislation)?

11.4. Review of Knowledge Management System

With an effective Knowledge management system in place a good execution of the plan is essential to the success of the plan. A tool that helps in effective execution is reviewing all progress and adjusting accordingly.

The Authority can measure the success of its information and knowledge management plan by evaluating whether:

- Relevant personnel have ready access to information and documents are easy to identify and retrieve
- Information or knowledge is fully exploited by mechanisms for knowledge and information sharing
- The quality of information is accurate and current
- The information satisfies legislative and policy requirements
- Double handling of information is effectively minimized
- The tools and processes for managing knowledge and information have been designed to fit a particular stage of the project while also catering for common tasks for all stages.
- Information and documents are submitted and transferred between stakeholders in the appropriate form and at the appropriate time
- The Concession Agreement enshrines into legally enforceable rights those components of the knowledge and information management strategy that require the cooperation of the Private Party throughout each stage of the project

11.5. Regulatory & Compliance Requirements

All projects need to respect the regulations and compliance requirements in order to be successful. To ensure compliances, the Authority must:

- Create and maintain authentic, reliable and useable records of knowledge and information created, received, retrieved and used in conducting contract management activities; and
- Protect the integrity of those records for as long as they are required.

This will support the ongoing management of the contract and enable the Authority to comply with regulatory requirements for retaining records. The Authority must integrate the records management requirements into its contract management knowledge and information management plan. The Contract Manager must ensure that these processes, however they are documented, are included in the Contract management plan.

11.5.1. Record-keeping obligations

- **Contract records** document the process of establishing and managing a contract.
- **Contractors' records** are those which are generated by the Private Party while performing the contract

In any record management system, project records must be divided between contract records and contractors' records.

Adequate and accurate contract records are required for scrutiny of the contracting process. They support effective contract management, including appropriate performance monitoring. Relevant records include:

- Records of contract negotiations
- Changes to the agreements
- Agreed performance measures
- Ongoing performance/management reports
- Complaints or dispute documents

The Authority should require the Private Party to keep, make available necessary records and maintain separate back-up copies of essential documents such as Concession Agreement, the Maintenance Manual, the Maintenance Program and others so that the Authority can meet its accountability requirements to competent Government body above it and the users at large. These documents must be provided at no-profit-no-loss basis to all users. Also, these requirements must be identified early in the procurement process to enable the Authority to include any relevant clauses in the draft concession agreement provided to bidders.

However, the Authority must be entitled to direct the Private Party, from time to time, to withhold the handover of certain specified documents, as per the provisions listed under the Right to Information Act (RTI), 2005.

11.5.2. Protocols for creating documents

As part of its records management plan, the Authority must establish internal protocols for creating documents. Protocols should include guidance on:

- The prospect that documents may be subject to a court or Freedom of Information discovery process
- Potential project concerns, which should be noted and actioned – unwarranted or unsubstantiated conclusions should be avoided
- Taking care with the preparation of official documentation
- Using concise language
- Ensuring the documents accurately reflect discussions etc. and, where the document is not a final document, its stage in the process (for example, drafts)
- Ensuring that documents that record confidential discussions or information obtained in confidence are appropriately identified as such

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- Ensuring that documents subject to Cabinet in Confidence or legal professional privilege are appropriately identified as such and that separate protocols for dealing with such documents are adhered to



What to do- Knowledge Management Register

Along with all this, a Knowledge Management Register also needs to be maintained where all key details regarding all knowledge databases and systems are present.

Sl. No	Knowledge Data Source/ Application	Brief description on usability	Authorities and access to	Contact Person in case of issues faced

SAMPLE KNOWLEDGE MANAGEMENT REGISTER

Part V: The Exit Plan

This section lays down the exit strategy for the project to maintain business continuity and the exodus of the Private Party is successfully done after due inspections and clearances.

12. General Considerations

PPP projects generally have an operational life of 15-20 years, post which the project closes with the Private Party free from all responsibilities. Due to the large public impact of such projects, it is important for the regulatory Authority to create an exit strategy for the PPP project to minimize public inconvenience. While creating strategy, the Authority needs to consider following points:

- Post-completion of project how would the current authority staff dedicated for project monitoring/ management be placed? Are there any rights/duties specific to them?
- What are the negotiated exit strategy provisions that exist in Concession Agreement? Is there any special requirement to execute such provisions?
- What all does the regulatory Authority need to execute by managing the contract through exit process.

It is imperative for the regulatory Authority to do a detailed study of the Agreement terms. The Agreement generally has agreed upon provisions which detail out the behavior expected from the Private Party and the regulatory Authority during the exit phase. These include expected behavior from the Private Party to cooperate with Authority and work jointly towards minimal disruption of service or public inconvenience. It contains contractual obligations to ensure full and final transfer of assets and IPR. Apart from this, some contracts also put an obligation on the Private Party to provide social services during and sometimes post exit period e.g. solid waste management projects require post-handover monitoring of sanitary landfills for 5-10 years post expiry of concessions. These can be same or more than their regular services and are aimed at proving a seamless transfer of service delivery responsibilities from Private Party to regulatory Authority.

Exit obligations on the Private Party might include:

- Providing signoff on the final list of assets created for this project along with a technical manual detailing appropriately their workings.
- Handover of all records and documentation relevant to this project. This includes all manuals, technical maintenance records and financial records.
- Transfer of skilled and unskilled workforce if applicable to the regulatory Authority
- Creation of a committee to oversee the transition/exit phase by the Private Party
- Support by Private Party for re-allocating the project to a new PPP partner if required. This will include any knowledge, skills transfer, support during bidding stage and appropriate access to facilities.
- Providing access to an up to date asset register (possibly supported by a technical description of how the assets work together).

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These objectives are generally formalized in the Agreement itself and clearly defined. They are generally split along the following heads:

- Activities/procedures to be followed during the process
- Management and information structures
- Third-party regulators approvals and formal transfer/cessation procedures
- Procedures to resolve any other exit obligation not covered currently in the exit process
- Emergency plans to ensure no public inconvenience/service disruptions at all stages of the exit process
- Any additional payment/concession to the Private Party for the exit process or for executing any additional conditions

In case the agreement contains no pre-negotiated exit phase obligations on Private Party and regulatory Authority, then the Authority must consider as to what extent are all above concerns valid for the PPP project. Good practice would be to initiate discussions with the Private Party at an early date, e.g. 1-2 years prior to scheduled expiry date, to formalize the level of support and obligations due on both the partners (public and private).

While preparing for exit when there are no pre-agreed exit phase procedures, the regulatory Authority should:

- Seek commitment from Private Party to maintain service quality in exit phase till handover to regulatory Authority
- Check which provisions and obligations survive the end of the agreement term, checking if these remain consistent with the regulatory Authority's rights and needs

13. Managing exit obligations of both parties

Exit obligations form a critical part of any project lifecycle. Ranging from attainment of clearances by the Private Party to disbursement of payments, if any by the Authority and preparing for future maintenance of the assets, managing the exit process needs due considerations and thought before being initiated. This chapter talks about all the major aspects which require an Authority's attention before the Private Party departs from the project obligations.

13.1. Clearances/inspections/testing requirements

Before any exit formalities begin, due clearances must be obtained from all supervisors and stakeholders in the project such as the Independent Engineer who is responsible for the overall technical and service quality for the project. All inspections must be completed before the clearances and Completion/ Provisional Certificates are issued as they have a direct effect on the payments to be released to the Private Party.

Prior to initiating any exit process, the Authority must consider:

- Whether the Private Party has complied with service quality & maintenance obligations
- Whether the assets are well maintained
- Whether project progress is in line with the set deadlines
- Mobilization status in line with the targets
- Issues pending with the Authority, if any
- Whether safety and environmental considerations have been taken due care of
- Reports of all inspections & tests performed

13.2. Asset verification and handover

The Authority should also re-familiarize itself with the agreement's provisions relating to the ownership and transfer of assets at the end of the agreement term and assess them in the context of its strategy for the provision of services after this date. If there are assets owned by the Private Party, then under the agreement the Authority would normally have the right to purchase sole use assets to continue delivery of the service after the agreement ends. In such cases, the Authority must ensure that the funding required to make the purchase is budgeted for and available.

It is also usual practice for physical assets to be subject to a final condition survey towards the end of the agreement term to ensure that the Private Party continues to maintain them to the requisite quality right to the agreement end. This is particularly important when assets are to be handed back to the Authority. Any work required to raise the assets to the standard required under the agreement may be paid for through a retention fund, which is normally sourced by holding back a percentage of the service charge over the final few service payments. As such starting the analysis early is good practice as it allows any such set-off to be managed over the remaining term of the agreement. The retention amount and period thereof is generally set on a project specific basis, by reference to the amount likely to be needed to rectify defects in the assets. If the Private Party carries out any maintenance as a result of the survey, it can be

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reimbursed from the retention fund or the Authority can use such funds itself to carry out necessary maintenance or rectification. Any shortfall in the fund in meeting required maintenance will need to be recovered from the Private Party. Any balance remaining in the fund belongs to the Private Party and is paid to the Private Party.

Again, the Authority must establish in good time what provisions the agreement contains relating to the condition of assets and a retention fund and either decide if they are to be enacted upon or determine whether alternative arrangements to the same or similar effect are required.

14. Ensuring Service Continuity

14.1. Determining service requirements

The Authority needs to consider the future demand for both the assets and the services bundled with them under the current PPP contract, the risks associated with that future demand, complexities in user needs and knowledge of those most suited to manage these issues. These considerations include:

- **Residual life of the assets at the handover/ substitution date** and whether asset's replacement or refurbishment needs to be taken up at the time of expiry;
- **Nature of maintenance and other services** required for the asset to it being able to meet the output standards set
- **Changing user needs** and alterations and changes needed in the asset to meet the same
- **For assets with significant residual life**, the potential risks and defects needs to be taken care of;
- **Authority's competence and willingness** to take up the responsibility asset care
- In situations where the assets are owned by the Private Party, whether the Authority would require continued use of the assets after transition, and hence would need to purchase them or arrange for their transfer to a replacement supplier

Proper consideration of the risks associated with any future service delivery should indicate what options exist for bundling of future services both in terms of scope and duration.

14.2. Analyzing Options & Identifying Path of Action

Once the future need for services has been established and the relevant issues analyzed, the contracting Authority will need to:

- Identify and analyze the options for delivery in consultation with the relevant stakeholders
- Establish a procurement strategy after the choice of a preferred delivery route
- Set the timelines to prepare for and meet these procurement requirements for service delivery

To determine the best solution for service continuity, the Authority should follow the established process of inviting Expression of Interests for service delivery. The Authority needs to consider fully the strengths and weaknesses of each of the delivery routes in context of succeeding a PPP Contract. The Authority should be mindful of the extent to which current assets need revamp and hence find the best financially viable solution. Options that may need to be considered include:

- **PPP Service Delivery Contract.** This is more likely to be an option where the supporting assets are at the end of their working life (i.e. more likely for equipment-based contracts) or require a significant level of reinvestment in refurbishment or

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redevelopment. Financing is usually the key factor in such delivery mechanisms as whether the government should incentivize the private sector for sole investment, or should finance it jointly is always the major bone of contention here.

- **Service Level Agreements operating on the existing assets.** This is probably the most attractive option in most cases for building and infrastructure projects where the assets have significant further life and without the need for major investment to maintain their availability, with the asset being used for a very similar purpose as previously but the actual services specification being required to be updated for new technology, methods of delivery or standards.
- **Reorganization services** by splitting it up or combining it with other services. It is important for Authorities to consider how different services may best be delivered and procured, and the grouping of services under the original PPP Contract may not make sense any more.

15. Public/User Communications Management

15.1. Prepare public relations strategy

At time of exit, the PPP project is handed over to the Government. This can institute a change in the operating staff, maintenance practices and user charges for the service. As such it is important to communicate this change to the public in a clear manner for smooth asset transfer.

Projects have a range of users and stakeholders. So, consultation and communication with them must be enhanced at time of exit. The Authority must assess and identify that asset transfer would lead to change in service delivery for who all stakeholders and to what extent. Post this, the Authority must create a detailed public relations strategy keeping in mind the uniqueness of each stakeholder.

Key stakeholders typically found in a PPP project are:

- Public
- The Private Party
- Related parties like the IE
- Third-party government agencies
- Maintenance contractors

Post commencement of asset transfer/project expiry stage reached, Authority must ensure that there is regular communication to all the selected stakeholders. Through public announcement and meetings they should be kept abreast about change in the project ownership and how this would affect them.

Once the entire exit plan and project hand over process is planned and about to be carried out, refer to checklist in **Appendix F, Page 104** for an evaluation and review of the same.

Part VI: Appendices & Templates

This section provides all the appendices, checklists and templates to support the usability and application of principles discussed in these guidelines.

Appendix A: Setting up the Contract Management Team – Checklist

Setting up the Contract Management Team- Checklist	Tick (if yes)
1. Identify the extent of contract management resources required during the initial project planning process	<input type="checkbox"/>
<i>Comments (if any):</i>	
2. Quantify and secure funding for the contract management team early in the project planning process	<input type="checkbox"/>
<i>Comments (if any):</i>	
3. Allocate contract management responsibility early in the procurement stage	<input type="checkbox"/>
<i>Comments (if any):</i>	
4. Identify any staff already working in the Authority who have skills, knowledge and abilities that can be transferred to a PPP project	<input type="checkbox"/>
<i>Comments (if any):</i>	
5. If external recruitment is required, then start this process early	<input type="checkbox"/>
<i>Comments (if any):</i>	
6. Involve the Contract Manager in evaluation of bids to ensure thorough understanding of the contract and the project obligations to be served	<input type="checkbox"/>
<i>Comments (if any):</i>	
7. Ensure the contract management team is in place well in advance of service commencement	<input type="checkbox"/>
<i>Comments (if any):</i>	
8. Ensure the partnership code is developed and maintained	<input type="checkbox"/>
<i>Comments (if any):</i>	
9. Identify initial and ongoing team training requirements (If, any)	<input type="checkbox"/>

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Setting up the Contract Management Team- Checklist	Tick (if yes)
<i>Comments (if any):</i>	
10. Ensure the contract manager fully understands the contract, output specification and payment mechanism that are being, or have been agreed	<input type="checkbox"/>
<i>Comments (if any):</i>	
11. Develop guidelines on Handover between the procurement team and contract management team	<input type="checkbox"/>
<i>Comments (if any):</i>	

Appendix B: Managing Performance Monitoring-Checklist

Managing performance monitoring checklist	Tick (if yes)
1. The contract continues to meet the vision for the service, and the aims and objectives of the project	<input type="checkbox"/>
<i>Comments (if any):</i>	
2. The Authority understands the services they are purchasing and the standards these services are to be performed to	<input type="checkbox"/>
<i>Comments (if any):</i>	
3. The Authority, contract management team and end users understand what is not acceptable in terms of service delivery	<input type="checkbox"/>
<i>Comments (if any):</i>	
4. The payment mechanism has been calibrated correctly before contract award	<input type="checkbox"/>
<i>Comments (if any):</i>	
5. The contract management team is in place, has sufficient resources and the team has had suitable training	<input type="checkbox"/>
<i>Comments (if any):</i>	
6. The service provider's performance monitoring procedures are clear, well documented, and understood by the contract management team	<input type="checkbox"/>
<i>Comments (if any):</i>	
7. The service provider's quality management and management information systems are in place and understood by the contract management team	<input type="checkbox"/>
<i>Comments (if any):</i>	
8. The service provider has clear procedures for the management of its subcontractors	<input type="checkbox"/>
<i>Comments (if any):</i>	
9. Systems for recording contract information are in place	<input type="checkbox"/>
<i>Comments (if any):</i>	
10. The service provider and Authority have clear reporting procedures in	<input type="checkbox"/>

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Managing performance monitoring checklist	Tick (if yes)
place that have been agreed between the parties	
<i>Comments (if any):</i>	
11. The Authority has a robust performance monitoring regime that was developed during the procurement phase of the project	<input type="checkbox"/>
<i>Comments (if any):</i>	
12. Deductions for snagging issues are separated from the service performance issues so there is no confusion	<input type="checkbox"/>
<i>Comments (if any):</i>	
13. The users of the services have been trained on the service levels that they should expect and how to carry out their role in monitoring the service, including helpdesks and processes and structures for communication	<input type="checkbox"/>
<i>Comments (if any):</i>	
14. Service performance is assessed against the contract standards	<input type="checkbox"/>
<i>Comments (if any):</i>	
15. Effective remedial measures and service improvements are implemented when service standards are not fulfilled	<input type="checkbox"/>
<i>Comments (if any):</i>	
16. Trends in poor service delivery and poor rectification are identified and monitored	<input type="checkbox"/>
<i>Comments (if any):</i>	
17. The contract manager understands what remedies can be utilized for poor service performance, and when and how to use them	<input type="checkbox"/>
<i>Comments (if any):</i>	
18. Payment is based on satisfactory performance, and is commensurate with the performance achieved	<input type="checkbox"/>
<i>Comments (if any):</i>	
19. Service delivery is consistent with the Authority's Best Value obligation	<input type="checkbox"/>
<i>Comments (if any):</i>	
20. Payment and deductions are agreed and obligations for payment are	<input type="checkbox"/>

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Managing performance monitoring checklist	Tick (if yes)
made on time and in accordance with the contract	
<i>Comments (if any):</i>	
21. A helpdesk is in place and recording service obligations	<input type="checkbox"/>
<i>Comments (if any):</i>	
22. Performance indicators are reviewed by the Authority to ensure they reflect performance of services	<input type="checkbox"/>
<i>Comments (if any):</i>	
23. Regular consultation with stakeholders is arranged	<input type="checkbox"/>
<i>Comments (if any):</i>	
24. Monthly reports are prepared and circulated by the service provider	<input type="checkbox"/>
<i>Comments (if any):</i>	
25. Customer surveys are conducted to assess perception	<input type="checkbox"/>
<i>Comments (if any):</i>	
26. Continuous improvement is encouraged	<input type="checkbox"/>
<i>Comments (if any):</i>	
27. Monitoring meetings are held in accordance with the contract to discuss performance	<input type="checkbox"/>
<i>Comments (if any):</i>	
28. Risks are identified and managed.	<input type="checkbox"/>
<i>Comments (if any):</i>	

Appendix C: Relationship Management Checklist

Managing the relationship checklist	Tick (if, yes)
1. Set up an Contract Management Team Structure with clear reporting lines and procedures	<input type="checkbox"/>
<i>Comments (if any)</i>	
2. Develop the relationship prior to service commencement	<input type="checkbox"/>
<i>Comments (if any)</i>	
3. Have a partnering code at the centre of the relationship	<input type="checkbox"/>
<i>Comments (if any)</i>	
4. Have an agreement to seek win-win solutions, rather than parties to blame	<input type="checkbox"/>
<i>Comments (if any)</i>	
5. Give constant attention to the relationship	<input type="checkbox"/>
<i>Comments (if any)</i>	
6. Ensure the expectations, aspirations and concerns of all stakeholders are identified at an early stage and an effective change management process adopted to deal with these	<input type="checkbox"/>
<i>Comments (if any)</i>	
7. Consider using a third party facilitator to help build the relationship and also help when problems arise	<input type="checkbox"/>
<i>Comments (if any)</i>	
8. Create an open team environment between the parties so that problems can be resolved more readily	<input type="checkbox"/>
<i>Comments (if any)</i>	
9. Seek to fully integrate the parties as one team, and consider co-locating	<input type="checkbox"/>
<i>Comments (if any)</i>	
10. Maintain good, open communications, both formal and informal, particularly with end users to ensure there are no perception gaps	<input type="checkbox"/>
<i>Comments (if any)</i>	

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Managing the relationship checklist	Tick (if, yes)
11. Look for opportunities for joint development and delivery of joint training for staff	<input type="checkbox"/>
<i>Comments (if any)</i>	
12. Ensure all parties understand the contract from day one and clarify any ambiguity	<input type="checkbox"/>
<i>Comments (if any)</i>	
13. Ensure all parties are clear as to the level of service required, inform end users in advance what to expect	<input type="checkbox"/>
<i>Comments (if any)</i>	
14. Make clear the responsibilities that are retained by the Authority, and all parties' roles and responsibilities	<input type="checkbox"/>
<i>Comments (if any)</i>	
15. Understand all parties' goals and try to align these with that of the project	<input type="checkbox"/>
<i>Comments (if any)</i>	
16. Make sure the Private Party is operationally ready when the service is to commence	<input type="checkbox"/>
<i>Comments (if any)</i>	
17. Where possible, ensure continuity of construction and operational teams to facilitate handover	<input type="checkbox"/>
<i>Comments (if any)</i>	
18. Discuss and, whenever possible, resolve minor operational issues	<input type="checkbox"/>
<i>Comments (if any)</i>	
19. Discuss day-to-day service provision with both the end users and Private Party representatives in regular meetings	<input type="checkbox"/>
<i>Comments (if any)</i>	
20. Consideration should be given to the holding of separate meetings to discuss/resolve significant issues prior to any formal partnering or operational board meeting	<input type="checkbox"/>
<i>Comments (if any)</i>	

Appendix D: Dispute Resolution Checklist

Dispute resolution checklist	Tick(if yes)
1. Contract managers should endeavor to ensure that formal disputes do not arise by communicating regularly and discussing issues as they arise	<input type="checkbox"/>
<i>Comments (if any)</i>	
2. The contract manager and the Private Party representative agree that a dispute is a possibility only after all other methods have failed	<input type="checkbox"/>
<i>Comments (if any)</i>	
3. Consider the involvement of an independent facilitator to aid resolution of issues	<input type="checkbox"/>
<i>Comments (if any)</i>	
4. Contract managers have a key role to play in managing the dispute resolution process, and this role should be understood by all parties	<input type="checkbox"/>
<i>Comments (if any)</i>	
5. Adjudication and arbitration is sought when parties fail to agree within the timescales	<input type="checkbox"/>
<i>Comments (if any)</i>	
6. Disputes when they arise should be dealt with in accordance with the contract	<input type="checkbox"/>
<i>Comments (if any)</i>	
7. All parties should be informed of progress with any issues	<input type="checkbox"/>
<i>Comments (if any)</i>	
8. Risks have been reviewed at all stages of the process	<input type="checkbox"/>
<i>Comments (if any)</i>	
9. Consider seeking external professional advice and assistance. Utilize the right people with the right skills at each stage of the process	<input type="checkbox"/>
<i>Comments (if any)</i>	

Appendix E: Managing Special Situations/Contingencies

i. Financial Restructuring

All financial restructuring / re-financing proposals / requests shall be handled at Level 3 in the Contract Management Team Structure as per a checklist. Key items of the checklist can be:

S.no.	Checklist Item	Tick (if, yes)
1.	Clarity on justification of restructuring / refinancing	
	<i>Comments (if any)</i>	<input type="checkbox"/>
2.	New lender, if any, has agreed to all Concession Agreements	
	<i>Comments (if any)</i>	<input type="checkbox"/>
3.	No objection from existing lenders, if being changed	
	<i>Comments (if any)</i>	<input type="checkbox"/>
4.	Concurrence from all promoters having Equity 26% or above in Private Party	
	<i>Comments (if any)</i>	<input type="checkbox"/>
5.	Reviewed by the consultant of Authority	
	<i>Comments (if any)</i>	<input type="checkbox"/>
6.	Is in compliance with Concession Agreement	
	<i>Comments (if any)</i>	<input type="checkbox"/>
7.	Is in compliance with Companies Act and other relevant laws and regulations	
	<i>Comments (if any)</i>	<input type="checkbox"/>
8.	Increase / decrease in funded amount, if any, justified	
	<i>Comments (if any)</i>	<input type="checkbox"/>
9.	No increase in Authority's liability in amount and time	
	<i>Comments (if any)</i>	<input type="checkbox"/>
10.	Funds are to be used for project purposes only	

Post Award Contract Management Guidelines for PPP Concessions

S.no.	Checklist Item	Tick (if, yes)
	<i>Comments (if any)</i>	<input type="checkbox"/>
11.	No objection from Authority issued as a necessary condition	
	<i>Comments (if any)</i>	<input type="checkbox"/>
12.	Draft documents reviewed by Authority for checking compliance with Concession Agreements and Authority policy	
	<i>Comments (if any)</i>	<input type="checkbox"/>
13.	Signed agreements submitted to Authority within 10 days of signing	
	<i>Comments (if any)</i>	<input type="checkbox"/>
14.	Approval received from Level 4 in Authority	
	<i>Comments (if any)</i>	<input type="checkbox"/>

ii. Equity Transfer

All equity transfer proposals / requests shall be handled at Level 3 in the Contract Management Team Structure as per a checklist. Key items of the checklist can be:

S.No.	Checklist Item	Tick (if yes)
1.	Clarity on justification of equity transfer / buy / sale	<input type="checkbox"/>
	<i>Comments (if any)</i>	
2.	Equity buyer, if new and with more than 26% stake, has agreed to all Concession Agreements	<input type="checkbox"/>
	<i>Comments (if any)</i>	
3.	No objection from seller	<input type="checkbox"/>
	<i>Comments (if any)</i>	
4.	Concurrence from all promoters having Equity 26% or above in Private Party	<input type="checkbox"/>
	<i>Comments (if any)</i>	
5.	Reviewed by the consultant of Authority	<input type="checkbox"/>
	<i>Comments (if any)</i>	
6.	Is in compliance with Concession Agreement	<input type="checkbox"/>
	<i>Comments (if any)</i>	
7.	Is in compliance with Companies Act and other relevant laws and regulations	<input type="checkbox"/>
	<i>Comments (if any)</i>	
8.	Increase / decrease in funded amount, if any, justified	<input type="checkbox"/>
	<i>Comments (if any)</i>	
9.	No disproportionate rights to any equity investor	<input type="checkbox"/>
	<i>Comments (if any)</i>	
10.	No increase in Authority's liability in amount and time	<input type="checkbox"/>
	<i>Comments (if any)</i>	
11.	No objection from Authority issued as a necessary condition	<input type="checkbox"/>
	<i>Comments (if any)</i>	
12.	Draft documents reviewed by Authority for checking compliance with Concession Agreements and Authority policy	<input type="checkbox"/>
	<i>Comments (if any)</i>	
13.	Signed agreements submitted to Authority within 10 days of signing	<input type="checkbox"/>
	<i>Comments (if any)</i>	
14.	Approval received from Level 4 in Authority	<input type="checkbox"/>

Post Award Contract Management Guidelines for PPP Concessions

S.No.	Checklist Item	Tick (if yes)
<i>Comments (if any)</i>		

iii. Change in Scope

S.No.	Checklist Item	Tick (if, yes)
1.	Clarity on justification of restructuring / refinancing	<input type="checkbox"/>
	<i>Comments (if any)</i>	
2.	New lender, if any, has agreed to all Concession Agreements	<input type="checkbox"/>
	<i>Comments (if any)</i>	
3.	No objection from existing lenders, if being changed	<input type="checkbox"/>
	<i>Comments (if any)</i>	
4.	Concurrence from all promoters having Equity 26% or above in Private Party	<input type="checkbox"/>
	<i>Comments (if any)</i>	
5.	Reviewed by the consultant of Authority	<input type="checkbox"/>
	<i>Comments (if any)</i>	
6.	Is in compliance with Concession Agreement	<input type="checkbox"/>
	<i>Comments (if any)</i>	
7.	Is in compliance with Companies Act and other relevant laws and regulations	<input type="checkbox"/>
	<i>Comments (if any)</i>	
8.	Increase / decrease in funded amount, if any, justified	<input type="checkbox"/>
	<i>Comments (if any)</i>	
9.	No increase in Authority's liability in amount and time	<input type="checkbox"/>
	<i>Comments (if any)</i>	
10.	Funds are to be used for project purposes only	<input type="checkbox"/>
	<i>Comments (if any)</i>	
11.	No objection from Authority issued as a necessary condition	<input type="checkbox"/>
	<i>Comments (if any)</i>	
12.	Draft documents reviewed by Authority for checking compliance with Concession Agreements and Authority policy	<input type="checkbox"/>

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S.No.	Checklist Item	Tick (if, yes)
	<i>Comments (if any)</i>	
13.	Signed agreements submitted to Authority within 10 days of signing	
	<i>Comments (if any)</i>	
14.	Approval received from Chairman in Authority	
	<i>Comments (if any)</i>	

iv. Change in Law

S.No.	Change in Law- Checklist	Tick, if yes
1.	Clarity on the New Legal Obligations	<input type="checkbox"/>
	<i>Comments (if any)</i>	
2.	Information provided to all stakeholders involved	<input type="checkbox"/>
	<i>Comments (if any)</i>	
3.	Private Party's understanding of the changes in service obligations due to change in law is adequate	<input type="checkbox"/>
	<i>Comments (if any)</i>	
4.	Authority assigned to look after the management of all changes due to change	<input type="checkbox"/>
	<i>Comments (if any)</i>	
5.	Meeting called for all parties to discuss and agree on required changes	<input type="checkbox"/>
	<i>Comments (if any)</i>	
6.	Timelines of project redefined to reflect new legal conditions	<input type="checkbox"/>
	<i>Comments (if any)</i>	
7.	New payment rights defined to protect Private Party project NPV	<input type="checkbox"/>
	<i>Comments (if any)</i>	
8.	Payment mechanism redefined to achieve agreed objective	<input type="checkbox"/>
	<i>Comments (if any)</i>	
9.	Is in compliance with the Concession Agreement	<input type="checkbox"/>
	<i>Comments (if any)</i>	

v. Renegotiation

S.No.	Renegotiation- Checklist	Tick, if yes
1.	Change proposed is agreed to by both parties	<input type="checkbox"/>
	<i>Comments (if any)</i>	
2.	Information provided to all stakeholders involved	<input type="checkbox"/>
	<i>Comments (if any)</i>	
3.	Costing for the renegotiation agreed and understood by both parties	<input type="checkbox"/>
	<i>Comments (if any)</i>	
4.	Contract Management Team considered employing a third party in the renegotiation process	<input type="checkbox"/>
	<i>Comments (if any)</i>	
5.	Reviewed by consultant of the Authority	<input type="checkbox"/>
	<i>Comments (if any)</i>	
6.	Timelines & scope of project redefined	<input type="checkbox"/>
	<i>Comments (if any)</i>	
7.	Increase/ Decrease inn funds justified	<input type="checkbox"/>
	<i>Comments (if any)</i>	
8.	Is in compliance with the Concession Agreement	<input type="checkbox"/>
	<i>Comments (if any)</i>	
9.	Payment mechanism and scheduled restructured as per the renegotiated contract	<input type="checkbox"/>
	<i>Comments (if any)</i>	

vi. Force Majeure

S.No.	Force Majeure- Checklist	Tick, if yes
1.	Afflicted party to give notice to other party to report happenings	<input type="checkbox"/>
	<i>Comments (if any)</i>	
2.	Information provided to all stakeholders involved	<input type="checkbox"/>
	<i>Comments (if any)</i>	
3.	Parties meet to discuss and decide on a collective response	<input type="checkbox"/>
	<i>Comments (if any)</i>	
4.	Correct classification of force majeure event as indirect political event, non-political event or political event	<input type="checkbox"/>
	<i>Comments (if any)</i>	
5.	Continuation/Termination of agreement due to force majeure	<input type="checkbox"/>
	<i>Comments (if any)</i>	
6.	Agreement on effect of Force Majeure on Concession period	<input type="checkbox"/>
	<i>Comments (if any)</i>	
7.	Costs arising due to force majeure allocated	<input type="checkbox"/>
	<i>Comments (if any)</i>	
8.	Termination payment determined and paid, if required	<input type="checkbox"/>
	<i>Comments (if any)</i>	
9.	Formal agreement among all stakeholders regarding proceedings	<input type="checkbox"/>
	<i>Comments (if any)</i>	

vii. Termination

S.No.	Termination- Checklist	Tick, if yes
1.	Afflicted party to give notice to other party issuing termination	<input type="checkbox"/>
	<i>Comments (if any)</i>	
2.	Information provided to all stakeholders involved	<input type="checkbox"/>
	<i>Comments (if any)</i>	
3.	Parties meet to discuss and agree on timelines	<input type="checkbox"/>
	<i>Comments (if any)</i>	
4.	Agreement on termination payment to be made between parties	<input type="checkbox"/>
	<i>Comments (if any)</i>	
5.	Authority to take possession and control of project highway/equipment	<input type="checkbox"/>
	<i>Comments (if any)</i>	
6.	Assume control over access rights and personnel of project	<input type="checkbox"/>
	<i>Comments (if any)</i>	
7.	Handover of agreement by completing payment and other formalities	<input type="checkbox"/>
	<i>Comments (if any)</i>	

Appendix F: Project Hand over & Exit Checklist

S.No.	Project Handover- Checklist	Tick, if yes
1.	Private Party has delivered the project according to timelines <i>Comments (if any)</i>	<input type="checkbox"/>
2.	Private Party has adhered to all service performance parameters <i>Comments (if any)</i>	<input type="checkbox"/>
3.	Private Party has received all clearances <i>Comments (if any)</i>	<input type="checkbox"/>
4.	All inspections have been conducted by the Internal and external team <i>Comments (if any)</i>	<input type="checkbox"/>
5.	Contract Management Team has overseen that all issues and disputes have been resolved <i>Comments (if any)</i>	<input type="checkbox"/>
6.	Independent Engineer report has been received <i>Comments (if any)</i>	<input type="checkbox"/>
7.	Independent engineer has given a green signal to the hand over. <i>Comments (if any)</i>	<input type="checkbox"/>
8.	Residual life of the assets has been calculated and payments have been duly determined on the basis of it. <i>Comments (if any)</i>	<input type="checkbox"/>
9.	Payments have been settled <i>Comments (if any)</i>	<input type="checkbox"/>
10.	All legal formalities and documents have been completed by both parties <i>Comments (if any)</i>	<input type="checkbox"/>
11.	Related parties have been given their dues in time <i>Comments (if any)</i>	<input type="checkbox"/>
12.	Environmental checks have been conducted and found to be in line with set standards <i>Comments (if any)</i>	<input type="checkbox"/>
13.	A new maintenance partner/ in house maintenance has been determined <i>Comments (if any)</i>	<input type="checkbox"/>
14.	Users/ stakeholders have been communicated about the future plan of action for the project <i>Comments (if any)</i>	<input type="checkbox"/>

Appendix G: PPP PMU Report Format, Annexure- I, GOI Guidelines

Statement – I

Summary Sheet of the PPP PMU Report

(Based on MCA of National Highways)

Project:

Period:

Issues requiring action by Project Authority:	Action taken by PMU	Action taken by Authority
<ol style="list-style-type: none"> 1. Timelines not met by the concessionaire <ol style="list-style-type: none"> (i) (ii) 2. Timelines not met by the Authority <ol style="list-style-type: none"> (i) (ii) 3. Performance Standards not met by the concessionaire <ol style="list-style-type: none"> (i) (ii) 4. Default in payments by the concessionaire/Authority <ol style="list-style-type: none"> (i) (ii) 5. Other issues which may lead to default on the part of concessionaire <ol style="list-style-type: none"> (i) (ii) 6. Other issues which may lead to default on the part of Authority <ol style="list-style-type: none"> (i) (ii) 		

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Issues requiring action by Project Authority:	Action taken by PMU	Action taken by Authority
<p>7. Issues under arbitration/litigation (i) (ii)</p> <p>8. Potential issues for arbitration/litigation (i) (ii)</p> <p>9. Brief comment on the progress and performance of the project</p> <p>10. Suggestions, if any:</p>		

Appendix H: Key Performance Indicators (KPIs), Annexure- I, GOI Guidelines

Statement VI

Key Performance Indicators (KPI)/ Performance Standards

(Based on MCA of National Highways)

Sl. No.	Maintenance /Performance Standard	Complied (Yes/No)	If no, details of
	<p>Nature of defect or deficiency</p> <p>Time limit for repair/ rectification</p> <p>ROADS</p> <p>(a) Carriageway and paved shoulders</p> <p>(i) Breach or blockade - Temporary / restoration of traffic within 24 hours; permanent restoration within 15 days</p> <p>(ii) Roughness value exceeding 2,500 mm in a stretch of 1 km (as measured by a Standardized roughometer/bump integrator) - 180 days</p> <p>(iii) Pot holes - 48 hours</p> <p>(iv) Cracking in more than 5% of road surface in - 30 days</p>		

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	<p>a stretch of 1 km</p> <p>(v) Rutting exceeding 10 mm in more than 2% of road surface in a stretch of 1 km (measured with 3 m straight edge) - 30 days</p> <p>(vi) Bleeding/skidding - 7 days</p> <p>(vii) Ravelling/Stripping of bitumen surface exceeding 10 sq m - 15 days</p> <p>(viii) Damage to pavement edges exceeding 10 cm - 15 days</p> <p>(ix) Removal of debris - 6 hours</p> <p>(b) Hard/earth shoulders, side slopes, drains and culverts</p> <p>(i) Variation by more than 2% in the prescribed slope of camber/cross fall - 30 days</p> <p>(ii) Edge drop at shoulders exceeding 40 mm - 7 days</p> <p>(iii) Variation by more than 15% in the prescribed side (embankment) slopes - 30 days</p> <p>(iv) Rain cuts/gullies in slope - 7 days</p> <p>(v) Damage to or silting of culverts and side drains during and immediately preceding the rainy season - 7 days</p>		
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	<ul style="list-style-type: none"> (vi) Desilting of drains in urban/semi-urban areas - 48 hours (c) Road side furniture including road signs and pavement marking (i) Damage to shape or position; poor visibility or loss of retro-reflectivity - 48 hours (d) Street lighting and telecom (ATMS) (i) Any major failure of the system - 24 hours (ii) Faults and minor failures - 8 hours (e) Trees and plantation (i) Obstruction in a minimum head-room of 5 m above carriageway or obstruction in visibility of road signs - 24 hours (ii) Deterioration in health of trees and bushes - Timely watering and treatment (iii) Replacement of trees and bushes - 90 days (iv) Removal of vegetation affecting sight line and road structures - 15 days (f) Rest areas 		
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	<ul style="list-style-type: none"> (i) Cleaning of toilets - Every 4 hours (ii) Defects in electrical, water and sanitary installations - 24 hours (g) Toll plaza[s] (i) Failure of toll collection equipment or lighting - 8 hours (ii) Damage to toll plaza - 7 days (h) Other Project Facilities and Approach roads (i) Damage or deterioration in Approach Roads, - 15 days -[pedestrian facilities, truck lay-bys, bus-bays, bus- shelters, cattle crossings, Traffic Aid Posts, Medical Aid Posts and other works] BRIDGES (a) Superstructure of bridges (i) Cracks <ul style="list-style-type: none"> Temporary measures - within 48 hours Permanent measures - within 45 days (ii) Spalling/scaling - 15 days 		
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	<p>(b) Foundations of bridges</p> <p>(i) Scouring and/or cavitation - 15 days</p> <p>(c) Piers, abutments, return walls and wing walls of bridges</p> <p>(i) Cracks and damages including settlement and tilting - 30 days</p> <p>(d) Bearings (metallic) of bridges</p> <p>(i) Deformation - 15 days</p> <p>(e) Joints in bridges</p> <p>(i) Loosening and malfunctioning of joints - 15 days</p> <p>(f) Other items relating to bridges</p> <p>(i) Deforming of pads in elastomeric bearings - 7 days</p> <p>(ii) Gathering of dirt in bearings and joints; or clogging of spouts, weep holes and vent-holes - 3 days</p> <p>(iii) Damage or deterioration in parapets and handrails - 3 days</p> <p>(iv) Rain-cuts or erosion of banks of the side slopes of approaches - 15 days</p> <p>(v) Damage to wearing coat - 15 days</p>		
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	(vi) Damage or deterioration in approach slabs, pitching, apron, toes, floor or guide bunds	- 30 days		
	(vii) Growth of vegetation affecting the structure or obstructing the waterway	- 15 days		

Appendix I: Exception Report by PRU, Annexure- II, GOI Guidelines

Exception Report by PRU to the Competent Authority

Project:

Period:

Subject	Action taken by PMU/Authority	Action taken by PRU
<p>I. Exception Report on non-compliance</p> <ol style="list-style-type: none"> 1. Timelines not met by the concessionaire <ol style="list-style-type: none"> (a) (b) 2. Timelines not met by the Authority <ol style="list-style-type: none"> (a) (b) 3. Performance Standards/KPI not met by the concessionaire <ol style="list-style-type: none"> (a) (b) 4. Default in payments by the concessionaire/Authority <ol style="list-style-type: none"> (a) (b) 5. Other issues which may lead to default on the part of concessionaire <ol style="list-style-type: none"> (a) (b) 6. Other issues which may lead to default on the part of Authority <ol style="list-style-type: none"> (a) (b) 		

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Subject	Action taken by PMU/Authority	Action taken by PRU
<p>7. Issues under arbitration/litigation and their status (a) (b)</p> <p>8. Potential issues for arbitration/litigation (a) (b)</p> <p>II. Report on matters affecting public exchequer</p> <p>1. Any additional project costs or expenditure affecting the Authority (a) (b)</p> <p>2. Levy or collection of any user charges having adverse impact on Users or Authority (a) (b)</p> <p>3. Any other financial matter having adverse bearing on Authority or Users (a) (b)</p> <p>III. General remarks about the progress and performance of the project</p> <p>IV. Suggestions, if any.</p>		

Template A: Project Summary

Part I: Project overview	
1. Project Name & Brief Description	
2. Rationale for PPP	
3. Tender process	
4. Financial Viability	
5. Environmental & Rehabilitation policies & Measures	
6. Other Public Interest Considerations	
7. Project Timelines	

Part II: Detailed Proposal	
1. Private Parties involved (includes consortium details if present)	
2. Related parties to be employed	
3. PPP Arrangement Details	
4. Major Obligations of the Authority	

Part II: Detailed Proposal	
5. Major Obligations of the Private Party	
6. Major responsibilities of the Related parties	
7. Risks involved and mitigation measures	
8. Costs & Payments	
9. Financing & security arrangements	
10. Performance Monitoring Metrics & Systems	
11. Expiry Terms & Conditions	
12. Procedure for amendments/ modifications by Authority	
13. Appendices & supporting documents	

Template B: Risk Register

S.No.	Risk Category	Details	Likelihood	Consequences	Severity Stage*	Alleviation & control mechanisms proposed

* 1-High, 2- Medium, 3 - Low

Template C: Escalation Procedure

Issue:
Issue Details:
Concerned Authority:
Time lapse since delay:
Triggers to Issue Escalation:
Escalation Level I:
Concerned Authority:
Time lapse since delay:
Triggers to Issue Escalation:
Escalation Level II:
Concerned Authority:
Time lapse since delay:
Triggers to Issue Escalation:

Template D: Dispute Resolution Procedure

Dispute:
Dispute Details:
Concerned Authority:
Concerned Private Party Representative:
Time lapse since delay:
Status after with Operations Level Decision:
Status after with SUPERVISORY LEVEL Decision:
Triggers to Dispute Escalation:
Escalation Level I:
Concerned DML Representative:
Concerned Private Party Representative:
Time lapse since delay:
Triggers to Issue Escalation:
Status after DML Decision:
Escalation Level II:
Concerned Arbitrator:
Concerned Private Party Representative:
Time lapse since delay:
Triggers to Issue Escalation:

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Status after Arbitration:
Escalation Level III:
Concerned Adjudicator:
Concerned Private Party Representative:
Time lapse since delay:
Triggers to Issue Escalation:

Part VII: Important Terms & Definitions

This section serves as a wordlist to supplement the users of these guidelines with the important terms used throughout this document.

Post Award Contract Management Guidelines for PPP Concessions

The following terms have been used throughout this book. This is a glossary to aid understanding and familiarity with these terms.

Annuity refers to those PPP projects where a fixed payment is made by the Government regularly to the Concessionaire in return of the services obligations met by it.

Authority is the government body responsible on the government's behalf to undertake the proceedings of a particular project.

BOT means build, operate and transfer. It is a PPP mode through which the Private Party is contracted for building a project, operating on it and transferring once its payment is recovered.

Contract Manager is the leader of the Contract Management team mainly responsible for all the activities related to managing contract obligations from the Authorities' side, ensuring the Private Party abides to them and presenting the Authorities' case in case of issues and disputes. He/ she is elected right in the bidding phase to help in evaluation of bidders.

Contract Management Team is the team elected especially for handling all contract management related activities throughout a project and managing stakeholder expectations too. It comes into action as early as the procurement phase for pro- active management.

Exit Plan is the strategy of handover of the project at the culmination of the project. This includes, providing all clearances, conducting all inspections and stakeholder communication management.

Contract Management Team Structure is the project structure at the Authority level clearly demarcating the responsibilities of all the officials and the contract management team in the process.

Model Concession Agreement (MCA) is an agreement between the Authority and the Private Party stating all obligations, penalties and agreed terms and conditions of both the parties. It also, mentions selection procedure and roles and responsibilities of other related parties.

Payment mechanism means the method of calculation of the payment to be made to the Private Party for the services provided as specified in the contract.

Performance Monitoring includes regular supervision and scrutiny over the project activities so that the output is in line with the set standards.

Private Party/ Service provider/ Concessionaire/ Contractor means the Authority's private sector partner in the PPP contract and includes all of the sub-contractors, facilities managers and other parties who are responsible for the delivery of the services.

Project means the overall PPP arrangement agreed to by the government body and the Private Party.

Concession Agreement/ Contract means the agreement entered into between the Authority and the Private Party.

Project Lifecycle means all the activities that a project usually undergoes right from the project conceptualization to its handover and hand over.

Public Private Partnership is the legal arrangement between the government body and the Private Party to undertake development, operations and maintenance of a project for a pre-decided sum of money and later on hand it over to the government body.

Service means the requirements of the contract which the Private Party has to deliver.

SPV means special purpose vehicle, the separate entities usually established by the Authority and the consortium of private parties for project specific purpose.

Transition Plan is the blueprint of transition of a project from the development period to handing over to the Contract Management Team. It includes development of all possible tools and processes for contract management and stakeholder management.

Bibliography

For development of these guidelines a number of external sources of literature and references have been referred to. They can be enlisted as follows:

Databases:

- *DEA PPP in India Web Portal*
- *PPIAF PPI Database*
- *DEA Infrastructure Project Database*

PPP guidelines, manuals and toolkits:

Australia

- *Partnership Victoria, Contract Management Policy, 2003*
- *Partnership Victoria, Contract Management Guide, 2003*

South Africa

- *Municipal Service Delivery and PPP Guidelines, 2003*

India

- *Guidelines- Institutional Mechanism for Monitoring of PPP Projects, Government of India*

Risk Management

- *PPP Risk Management, Australian Government, 2003*
- *ADB Handbook for Integrating Risk Analysis in the Economic Analysis of Projects*

Links to Portals of PPP Cells and other PPP supporting agencies

- *India*
- *International*

