



MENA SHARES GLOBAL KNOWLEDGE ON PROCUREMENT UNDER PUBLIC PRIVATE PARTNERSHIPS

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Introduction: This MENA K&L Quick Note highlights the key lessons learned from the workshop entitled: *“Procurement Under Public private Partnerships (PPP): A Learning Event for the Water and Energy Sectors,”* held in Beirut, Lebanon on October 13-15, 2014. The event was organized by the Governance Global Practice Team at the World Bank Office in Beirut in coordination with the Public-Private Partnership Cross Cutting Solutions Area (GPCDR-PPP-CCSA). The event provided a platform to expose clients to best practices on PPP procurement, particularly in projects, sectors, and countries with upcoming PPP operations, as well as in countries that are exploring the possibility of utilizing PPP arrangements and are interested to learn more about the approach and the legal framework to support it.

Responding to client needs: The workshop had its roots in the efforts of the Kurdistan Regional Government (KRG) of Iraq to modernize its legal framework for procurement. This has been a long-

term engagement between the KRG and the World Bank, as part of the Iraq Technical Assistance and Capacity Building Fund (TACBF). The program aims to build capacity and develop practices to bring about more efficient and effective management and use of Iraq’s public resources. Over the course of this dialogue, PPPs emerged as an area of particular interest and importance for the KRG. The government viewed PPPs as a critical opportunity to close both funding and capacity gaps by collaborating with the private sector to deliver needed public services and infrastructure.



A Successful PPP - The Concentrated Solar Power Project in Ouarzazate Morocco (World Bank Photo).

However, the KRG’s current legal framework does not provide an adequate foundation to establish

¹ The authors are staff of the Governance Global Practice, Public Integrity and Openness Department, headed by GGODR Director Robert Hunja. This note was prepared under the leadership of Yolanda Tayler, Practice Manager, who provided guidance and valuable inputs. This event was the result of the hard work of a dedicated and experienced World Bank team. In addition to staff mentioned in the text, Jocelyne Jabbour and Nada Abou-Rizk from the World Bank’s Beirut office provided excellent support to preparing the program and worked hard to make this a successful event. A special thanks goes out to Ghassan Al-Khoja from the Social Protection Global Practice and the Iraq Technical Assistance Capacity Building Fund (TACBF) team for their support and leadership of the Trust Fund program.

these kinds of long-term partnerships and contracts. Understanding the complexity of the subject and task, the KRG Ministry of Planning made a formal request to the World Bank for support on this important topic. The KRG government was interested in learning from international examples of legal provisions for PPP procurement. They also requested support on capacity building for public officials in various KRG ministries who would be responsible both for writing the KRG's new procurement law and regulations and for implementing future PPP projects - particularly in the water and energy sectors.

In responding to this request, the World Bank Team surmised that the KRG was likely not the only client facing challenges in designing or updating their procurement system to facilitate PPPs. Recognizing that other clients and staff could benefit from this event, the team decided to extend the invitation to a global audience. Within just a few weeks, the workshop organizers mobilized a diverse team from across the Bank and the world to convene in Beirut. The workshop featured participants and presenters from India, Indonesia Lebanon, Pakistan, Sri Lanka, the United Arab Emirates, staff from Washington D.C., and included government officials currently working on PPP tenders and legislation from Yemen, Lebanon, and Iraq, including from both Baghdad and Erbil.

A "One World Bank Group" Event: Given the crucial role that governance arrangements play in the successful execution of PPPs, the team brought in expertise to facilitate collaboration across different parts of the World Bank Group. Nazaneen Ismail Ali, Senior Procurement Specialist in the Public Integrity and Openness (PIO) Department of the Governance Global Practice (GGP) led the preparation and delivery of the workshop from Beirut, in close coordination with Mark Moseley, Lead Counsel of the Public-Private Partnership CCSA. The International Finance Corporation (IFC) also played a major role through their PPP Advisory Services Division, represented in Beirut by Carrie Farley, Senior Investment Officer.

Each collaborating group brought diverse and valuable perspectives to the discussion. The GGP-PIO staff shared their expert technical knowledge on good procurement practices, as well as lessons from their real-life experience with implementing challenging legal frameworks and complex procurements. The IFC brought a keen understanding of the market, what attracts investors, and extensive client-facing experience. Sameh Mobarek, Senior Counsel in the Energy & Extractives Global Practice added a unique view that integrated his PPP experience (including in the Morocco Noor solar project) and combined legal and power engineering training. The PPP CCSA contributed a broad international knowledge of PPP and sector legislation and regulation. The CCSA also shared valuable resources with participants, including their PPP Infrastructure Resource Center (IRC) data base which features sample public-private partnership (PPP) agreements and concessions, checklists, sample clauses, terms of references, risk matrices, standard bidding documents developed by government agencies and sample PPP legislation. Finally, the staff of the MENA region hosted the event, and provided important regional knowledge and information to make the learning more concrete for the participants.

The Importance of PPP for the MENA Region: This workshop came at an important time for MENA countries. Meeting the exponentially growing demands for infrastructure will continue to strain the pocketbooks of MENA governments in the coming years.² In the Mashreq countries,³ the required infrastructure investment for electricity alone is estimated at US\$ 130 billion by 2020⁴. Quite simply, the public budget will not be able to meet these needs by itself. Therefore, PPP is becoming an important project financing option for governments

² <http://www.worldbank.org/en/news/press-release/2014/10/09/world-bank-group-launches-new-global-infrastructure-facility>

³ The Mashreq countries include Iraq, Jordan, Lebanon, and Syria.

⁴ *Over the Horizon: A New Levant.*

<http://beta.cmimarseille.org/highlights/report-over-horizon-new-levant>

in MENA to respond to the large financing needs to improve infrastructure and service delivery in water, energy, transport, solid waste management and others. In some cases, the public sector budgetary constraints can mean that the only alternative to a PPP project is no project at all.

However, the infrastructure financing gap is not the only reason why governments in MENA have started to think more seriously about PPPs. PPPs are often more effective than traditional projects in delivering on-time and on-budget project implementation. A European Investment Bank study found that only three of ten PPP projects financed by the Bank experienced time delay and cost overruns (which were borne by private contractor). In comparison, 60% of the 50 public infrastructure projects under conventional procurement were more than one year late.⁵ Similarly, a study of 50 large public procurements in the UK found that capital expenditure for the PPPs in the sample was only 1% over budget, on average, compared to an average cost overrun of 47% for traditional procurement.⁶ Given this context, it's not surprising that MENA countries like Jordan, Morocco, Oman, and Saudi Arabia have embarked on, and in many cases, successfully implemented PPP projects. Today we see other countries like Egypt, Iran, Iraq and Lebanon actively pursuing private sector investment in infrastructure.

Unfortunately, though, many governments in MENA have faced obstacles to successfully procuring PPPs, including a lack of technical know-how to implement these complex, long-term arrangements, and outdated legal and regulatory frameworks. Systemic governance challenges are also prevalent, and lack of transparency can open doors to corruption as well as major delays and inefficiencies. When the private sector perceives that the system is not open and fair, they are less likely to participate in the bidding process. In 2010

⁵ http://www.eib.org/attachments/ev/ev_ppp_en.pdf

⁶ http://www.parliament.vic.gov.au/images/stories/committees/paec/2010-11_Budget_Estimates/Extra_bits/Mott_McDonald_Flyvber_g_Blake_Dawson_Waldron_studies.pdf

an IFC Survey of PPP investors in Africa found that the “*appropriate legal framework for investment*” was **the** primary factor affecting the decision to pursue investment opportunities in a particular country, ranking above even the political and economic stability of the country.⁷

Tailoring the Workshop to Realities on the Ground: The Arab Spring provided the possibility of revamping the traditional ties between the state and businesses and establish a level playing field⁸. So far, however, the current political and economic environment has not been conducive to attracting private investors to MENA. The uncertainty and insecurity in the region makes it more difficult to establish adequate risk management frameworks and secure the long-term commitments necessary to engage in PPPs. This is particularly true in a country like Iraq, which made it especially crucial that the workshop in Beirut was tailored and responsive to these unique circumstances.

Since the event focused on procurement arrangements under Public-Private Partnerships (PPP), the sessions aimed to help participants better understand PPP as a public procurement method and explain how to create a competitive and fair process. As requested by the KRG Government, the workshop included comparative examples of different legislative, institutional and regulatory arrangements for procurement, as well as commentary on the differences between PPP procurement and conventional public infrastructure projects. Thanks to Sepehr Fotovat (Senior Procurement Specialist - GGODR), participants also learned about the different private sector arrangements for infrastructure projects such as Build, Own and Operate (BOO), Build, Own and Transfer (BOT); and Build, Own, Operate and Transfer (BOOT). Other sessions focused on a

⁷ http://www.pidg.org/resource-library/other-documents/evaluation-of-the-demonstration-effect-of-ifc2019s-involvement-in-infrastructure-in-africa/at_download/file

⁸ See: http://www.wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2014/03/25/000158349_20140325092905/Rendered/PDF/WPS6810.pdf

general approach to preparing and tendering PPP transactions, as well as on prioritizing different infrastructure projects and how to determine which ones might be suitable for PPP.

To illustrate these practices, a number of different case studies were presented from the World Bank's portfolio in the MENA region and beyond, as well as external examples. These included both PPP "Success Stories," plus instances in which PPP arrangements had failed to bring about the desired results. The two principal cases featured were Morocco's -Noor-Ouarzazate Concentrated Solar Power Plant and the New Cairo Waste Water Plant. Anand Kumar Srivastava, PPP Nodal Point on the Procurement Team in Delhi, India, also shared India's mixed experience with PPPs in water and energy over the past decade and a half, including both operations financed by the Bank as well as projects funded through other means.

The Road Ahead: This workshop was only the beginning of a long work plan ahead for the KRG. Implementation of PPP procurement will have to be systematic and gradual, starting with the current commitment to promulgate a proper legal framework. To ensure success, public officials will need to recognize the potential need for private participation, familiarize themselves with other countries' experience and establish a national capacity building program on how to plan and implement PPP agreements. All of this would have to take place with a keen focus on transparency and accountability. This is crucial to ensure that the expansion of the role of the private sector in delivering needed infrastructure and public services is successful and sustainable.

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