

VIABILITY OF APPLYING THE PUBLIC PRIVATE PARTNERSHIP (PPP) STRATEGY TO THE LIBYAN CONSTRUCTION INDUSTRY

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The Public Private Partnership (PPP) strategy has not yet been introduced to the Libyan public sector or construction industry. However, recent radical changes in Libyan government policy toward openness on foreign investment and a bigger role for the private sector suggest that PPP type schemes could be a strong alternative to the traditional way the country procures its projects. The main objectives of this research are to examine the readiness of leading Libyan contractors to embrace PPP, their willingness to be a reliable partner if the strategy is adopted by the Libyan government, and what steps they are expecting from the public sector in order to make PPP successful in practice in Libya. Seventeen companies participated in this research through a questionnaire survey divided into three main categories representing the main objectives of the research. The research concludes that there is a potentially bright future for PPP practice in Libya, for both the public sector and private investors (Local or Foreign), based on the positive responses from the sample. Following years of devastating sanctions, the Libyan public sector is in real need of the management skills that the private sector can provide, and the financial resources of the country make it an attractive target for any investor

Keywords: Procurement system, Public Private Partnership, Public sector projects, infrastructure, Libya.

INTRODUCTION

During the last three decades Libya has witnessed a noticeable increase in the demand for public services as a result of the increase in the population growth rate and the growth of the industrial and commercial domains. The large size of the country and the significant distances of its cities from each other have placed an added load on the government to fulfil its obligations towards its people. This is further compounded by the devastating effect of the period of economic sanctions (1992-1999). It is thus urgent to seek new strategies that will help to create a new infrastructure and service projects using external funds as it is becoming increasingly difficult to continue to depend solely on the use of traditional financial and procurement methods to pay for these projects.

Although the PPP strategy in its current shape and form has not yet been introduced either to the Libyan public sector or to the construction market in Libya, recent radical changes in Libyan government policy have given a bigger role to the private sector and there has been more openness with regard to foreign investment. Thus, PPP, as a new procurement strategy, could be a strong alternative that would provide the desired opportunities for the Libyan government to deliver and accomplish its ambitious plans

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to improve the quality of public services. This is the case as the government would provide extra financial sources to fund these services and the required management skills to operate them at a high level of quality.

WHAT IS PPP

Although PPP is well known in the West and to many of the readers of this journal, it is still relatively new in Libya. As this article is aimed at both audiences, a brief description of PPP is given in this section. Those familiar with PPP should proceed to the next section.

Public Private Partnerships (PPP) is the name given to a range of initiatives which involve the private sector in the operation of public services. The Private Finance Initiative (PFI) is the most recent version of the UK response to this strategy (ICE, 2003). The principle drive of these initiatives was to attempt to establish how to encourage the private sector to participate in the provision of public services and infrastructure projects in order to provide more financial sources for these services, and consequently relieve some of the financial burden off the public sector's shoulders.

There is no one fixed definition of PPP or PFI projects and the idea is built on a set of principles rather than rules. These principles are aimed in the first place at how to make the best use of the private sector resources and management skills and in the second place at how to transfer genuine risk away from the public sector to the private sector. The set of PPP principles can be formed or applied in different ways in order to meet the project targets (Renshaw *et al*, 1997). This flexibility is one of the successful factors that enhance the strength of PPP and make it suitable for use in different situations.

The idea is built upon the concept of giving the responsibilities for financing, construction, operation, and maintenance of the facility to the private sector for an agreed period; called the concession period. At the end of this period the ownership of the facility is transferred to the government or to the investor, depending on the terms of the contract.

Recently, a growing number of countries have started to implement various guises of PPP projects, such as 'Build-Operate-Transfer', 'Build-Operate-Own', 'Build-Own-Operate', 'Build-Lease-Transfer', or 'Build-Transfer-Operate'. Despite some differences in the procurement methods of these projects, they all share one main target; the participation of the private sector in the funding and managing of these projects.

THE LIBYAN ECONOMY, PAST AND PRESENT:

In order to understand the nature of the Libyan economy it is necessary to highlight some of its main development stages and the key factors that have had their influence on this economy, whether positive or negative.

Before the discovery of oil and the start of crude oil exports in 1963, Libya was described as one of the poorest countries in the world. Most studies prior to the discovery of oil failed to identify any other resources that could be relied on to build a strong economy (Glavanis 1981). It is clear that it was the discovery of oil and gas

reserves that has formed the backbone of the Libyan economy and fuelled its growth for the last four decades.

Concerning the social issues and public services prior to the discovery of oil, a number of studies show that in 1951 the population was approximately 1.5 million. Of this 1.5 million only 15 individuals were able to finish university. In terms of services and infrastructure there were only two working hospitals in the whole country, and electrical power was found only in major cities, and water and sanitary facilities were also limited (LFBI, TPUK & BACB 2001).

Since the discovery of oil the country has adopted a series of development plans aimed in the first place at raising the level of the individual's life and the quality of public services. All aspects of life have witnessed radical progress towards better standards. This has included education, health, industry, agriculture, housing, trade, communications and other areas. This revolution entailed the import of expertise and technologies, mostly from Western countries. Joeffe and McLachlan broached this point by saying "it is commonly agreed that the oil sector can be seen to constitute the very foundation on which the economy of Libya has been dramatically transformed during the last decades. A fact, of course which places Libya in a situation where she has to rely heavily not only on foreign technology, but also on foreign skilled labour and internationally generated demand for its natural resources policy." (Joeffe & McLachlan 1982).

However, although this dependency on foreign technologies contributed to the swift revival of the country in a certain period, it also contributed to the problems which resulted from the paucity of these technologies during the period of the UN sanctions on Libya (1992-1999), where most public services sectors experienced substantial problems. Terterov comments on this period by saying "Lack of investment outside the hydrocarbons sector was further undermined by seven years of UN sanctions, which led to a periodic shortages of basic goods and food inside the country" (Terterov 2002). Today, and after the lifting of these sanctions, although most aspects of life are witnessing recovery, it is obvious that the effects of the sanction period can not easily be removed if the state continues with the same traditional system in procuring its schemes.

WHY PPP IN LIBYA COULD BE A VENTURE OF SECURED SUCCESS

This section is divided into two parts, one related to the Libyan government and the other related to the private sector investor. The following description is an attempt to predict the potential merits for both sides if a PPP strategy is to be adopted.

1. For the Libyan Government:

It is clear that one of the main sectors that were harmed during the sanctions period was the infrastructure and public services sector. In addition to the latest indicators about Libya showing a population growth rate of about 3.5%, about 50% of the population are under 20 years old and about 86% are urban-based; this is considered to be one of the highest urbanisation rates in the world. According to the UNDP's 1995 Human development reports, Libya's urban population grew by 4.2 percent, on average, annually between 1960 and 1992. (LFBI, TPUK & BACB 2001).

According to international standards, this high growth rate is putting substantial pressure on the government to meet the increase in the demand for public services.

Indeed some recent studies have revealed an obvious shortage in the public sector's capability to cope with the existing demand in many fields, especially in the health and education service sectors. In order to reverse this decline in the public services, the government is in need of a sizeable capital expenditure to enable new infrastructures and public services projects to be brought into place quickly, or to enhance and maintain the existing ones. It is believed that these targets can not be achieved easily and successfully without private sector (either domestic or foreign) participation and investment.

As the reader will have realised, the main problem in Libya is not scarcity of resources, as the country is considered to be one of the richest countries in the world, according to its annual income/population. Instead the problem is mainly one of mismanagement of the available resources. This is exactly what has been noted recently by the Libyan Prime Minister Dr. Shukri Ghanim, when he replied to a question in this domain by saying; "one of our economy's weaknesses is the lack of efficiency in the management of some enterprises. Then we have the problem of a small market and the lack of a highly trained labour force of specialisation. The main problem for us is that we have the resources but we don't have the know how, the managing skills. Bureaucracy and the abundance of laws also confuse the entrepreneurship." (WIN, 2003).World Investment News).

Alsharif and Kaka (2003) note the advantages that can be gained from making use of the private sector management skills in developing the construction industry through adopting the PFI/PPP strategy; "PFI as a procurement system was introduced to benefit from the efficient management of the private sector in a commercial way regarding dealing with assets. Therefore, efficiency of facilities and value for money are the foundation of this policy, from programming for the design to the end of the contract. All the characteristics of PFI (such as innovation in design and operation, application of life cycle cost (LCC), sustainability, quality of performance and risk transfer) taken as a whole make PFI not only a procurement system, but also a tool for developing the construction industry through innovation and perfecting process." (Alsharif 2003). By comparing this with the needs of the Libyan system, needs that have been described by the Libyan Prime Minister, the potentially significant role that PPP strategy can play in the Libyan situation is clear.

Nevertheless, it should be stressed that the country's wealth does not solely and categorically limit the problem within the area of mismanagement. Nor does it negate by some means or other its need for extra financial resources to fund its infrastructure projects, where the size of the required projects entails the seeking of instalment plans in order to lighten the burden of establishing a large number of projects at the same time. Despite the tentative revival in most public services sectors after the lifting of UN sanction, it is clear that these sectors are still in need of sizeable investment, whether by establishing new schemes, or by giving large operational management support to existing ones. However the country's financial capability remains a key factor in attracting PPP/PFI-type scheme investors, due to the sureties and guarantees it can provide them with over a long period of time.

To summarise this part, the previously mentioned indicators and factors that are controlling the existing Libyan construction market necessitate the search for other options; options that are different to the known conventional means of procurement, and ones that can provide the state with the required financial funds with more efficiency, less capital expenditure and less risk. These characteristics of the needed procurement option place the PPP/PFI solution clearly to the forefront.

2. For the Private Sector Investor:

Even during the period of UN sanctions Libya was an encouraging environment for many businesses. Foreign enterprises which continued to operate in Libya during this period reveal that they achieved success higher than that expected from even the most optimistic analysts (LFBI, TPUK & BACB 2001). Today, and after the lifting of the UN sanctions it is believed that Libya, with its huge available resources and its need for investment in most of its sectors, could be a centre of attraction to many investors from all over the world.

Terterov (2002) notes that “It is becoming evident that following the suspension of the UN sanctions in 1999 and the sustained recovery in oil prices, Libya is emerging as a market of immense potential and is generating reward interest among investor circles.” This is evidenced, for instance, by the ambitious new Libyan five-year development plan of US\$35 billion, aimed at developing the infrastructure sector and offering significant opportunities in the recession of today’s construction market for investors in this domain.

In addition, since the lifting of the UN sanctions, it is clear that the Libyan economic policy is moving towards more openness to the private sector, whether local or foreign. This trend was apparent in 2003 with the selling of a considerable amount of the state assets to private sector investors (Libyan government announcement 2004). This step has been deemed by many economic observers as indicative of a real desire towards developing and supporting the private sector’s role in Libya.

Also, further steps towards encouraging foreign investment have been taken. For example, the reforming of several banking and financial regulations such as the fixing of the exchange rate, the issuing of new banking regulations providing more protection for the investor, or the commencement of studies and preparations to bring the idea of a tax free zone in the city of Misurata into being.

In addition to this, Libyan Foreign Investment Law can itself be considered as a series of additional exceptional incentives which award foreign investors more security and help to make their businesses successful. The main advantages of this law for the foreign companies have been described by Eversheds and Mukhtar, Kelbash & Elgharabli (Mukhtar, Kelbash & Elgharabli) as follows:

1. Exemption from customs duties, fees or taxes on the importation of everything required for the project including machinery, instruments, materials, spare parts and raw materials.
2. Free export of all products involved with the projects.
3. Exemption from stamp duty on all commercial documents.
4. A five year exemption from income tax.
5. Repatriation of profits.
6. Ownership and/or leasing of real estate as required for the construction and operation of the project.
7. Repatriation of the invested capital upon expiry of the project’s period, its liquidation, the sale of the project, or after a lapse of at least five years from the date of the granting of the licence.
8. Repatriation of the uninvested capital after a lapse of at least six months from the date of transfer if the investor can prove that he/she was unable to attain a

licence, or where circumstances beyond his or her control prevented the investment.

9. If the investment involves the establishment of a company in Libya, the company is exempt from the usual requirements regarding registration with the Commercial Register and the Ministry of Economy and Commerce.
10. The investor is entitled to employ and import the foreign manpower and technical expertise necessary for the establishment and operation of the project.

Although this Law may appear as a set of general regulations to encourage foreign investment and does not deal with any specific issues related to the PPP projects, it is believed that most of its clauses are useful to a significant extent if the investor requested to apply any part of the law to the conditions of any PPP contacts.

METHODOLOGY AND OUTCOME

The questionnaire was designed taking into account the main research objectives and the nature of the Libyan construction industry. The questionnaire was in the main compiled to survey the readiness of leading contractors in the Libyan construction industry (Local & International) to the idea of PPP strategy and their willingness to take part in it if the strategy is to be adopted by the government.

The questionnaire was divided into three main parts:

Part A: aimed at collecting general information about the company related to its experience, its financial situation, its projects turnover, and the scale of its work in general.

Part B: aimed at exploring the experience of the organisation in the field of PPP schemes and its readiness and/or willingness to take part in them.

Part C: an exploratory part aimed at investigating the abilities and capabilities of the existing construction private sector in Libya and the requirements that if met will make it an effective partner in the PPP operation.

In order to encourage the participants to give a positive response both quantitatively and qualitatively the questionnaire questions were mostly designed in a way that would require only a tick response. However, a section for general comments was added to each part to allow more scope for those wishing to give more details where they felt necessary.

The main results of this survey can be categorised as follows:

1. The primary survey list comprised 27 names representing what are considered today to be leading contractors in the Libyan construction industry. Unfortunately, of only 16 questionnaires answered and returned, seventy five percent were answered by foreign companies.
2. In their reply to a question about the type of contracts which the participants in this survey have dealt with within the last ten years, PPP type contracts were chosen by only one company.
3. The maximum number of PPP contracts that had been heard of in Libya by one of the participants in this survey was only three. Even though this figure reveals the rarity of this type of contract in the country, it also notably reveals that there were some trials in the past to adopt this kind of procurement.

Unfortunately though, the individuals questioned failed to state in which field exactly these contracts were, they only noted that these projects were in the sector of public services.

- The participants were asked to give their opinion on what should be the role of the private sector in providing public services. The answers were as shown in Fig.1 below.

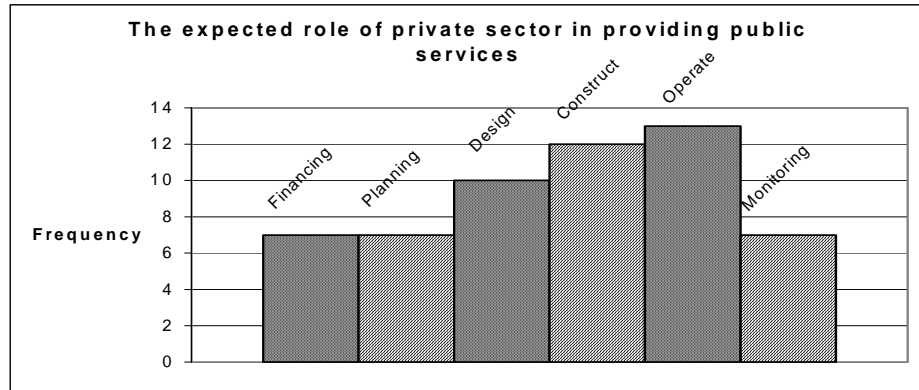


Fig.1

- In their reply to a question about if they thought the construction sector, in its current state, is able to finance public services projects. The participants' answers were as shown in Fig.2.

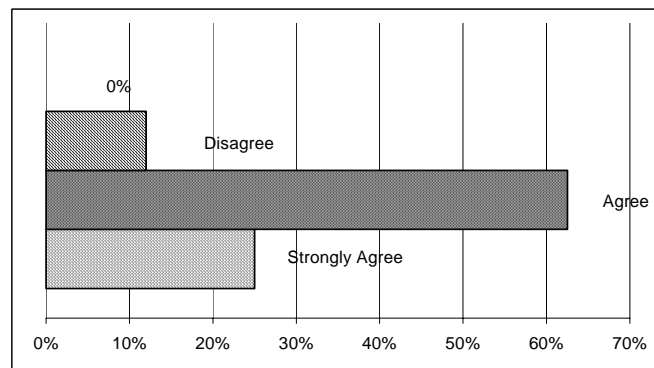


Fig.2

- The main difficulties and obstacles that the private sector may face during operating long term projects were perceived by the respondents as shown in Fig.3.

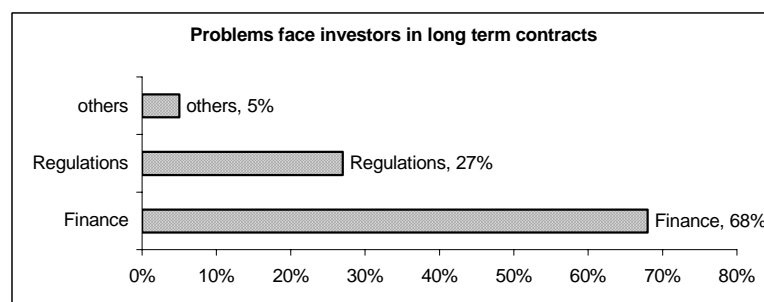


Fig.3

7. Under others, the participants stressed the necessity of political and
8. Economical stability.
9. In a question enquiring about their readiness to bid for PPP projects, fifteen out of sixteen participants replied ‘Yes’ (94%). This high indicator reveals a very considerable willingness from those organisations who replied with ‘yes’ to be a real PPP partner as soon as the strategy was put into an execution phase.
10. In a question related to the type of projects that they would bid for more than others. The companies’ answers were as shown in Fig.4 below.

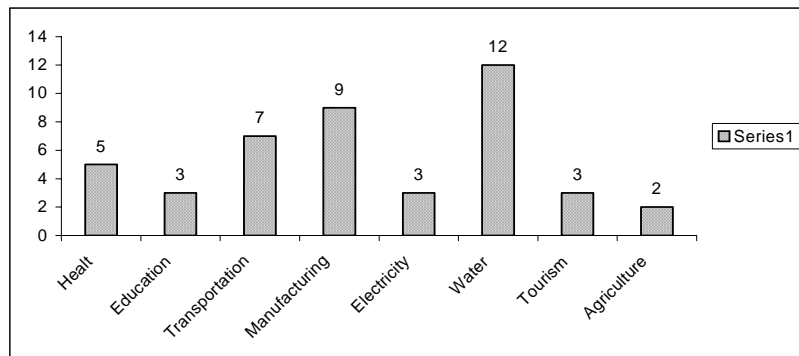


Fig. 4: Preferred Types of PPP Projects

11. It was believed that it would be useful to ask the participants what they expected from the government to do in order to ease the implementation of the PPP-type schemes. The replies to this inquiry were as shown in table 1.

12. Kind of action	13. Frequency
14. Defining service specification	15. 9
16. Preparing Proposals & Designs	17. 0
18. Controlling & Monitoring quality	19. 7
20. Issue PPP regulations	21. 12
22. Updating polices & Legislation	23. 10
24. Others	25. 1

Table 1: Actions expected from government

12. Under 'others', one of the participants highlighted an arguably essential point, the required guarantees that would encourage the private sector to be an active partner for a long period of time, such as the regularity in payment or the necessary stability in regulations and the country's legislation.

CONCLUSION & REMARKS

The summary of what has been found from this study according to the main aims and objectives stated on the first chapter are as follows:

1. PPP can play a vital role in the Libyan infrastructure sector provided the required conditions to make a successful practise are created. The main role will be in the provision of the financial and management resources that are essential to improve this sector.
2. The PPP approach is very suitable to the environment of the Libyan construction industry and very close to what the Libyan government has been calling for a long period of time in that it is not an absolute capitalist system. Rather it is an organised structure that places an emphasis on the mutual benefits and the earnest co-operation between the public and the private sectors.
3. In many circumstances the PPP approach is able to provide the public sector with lower risk and better value for money than can be obtained using traditional procurement methods.
4. In contrast to the privatisation solution, the concession period, despite its length, remains limited within a certain time. This gives governments the opportunity to correct or amend any problems that may arise during this period.
5. In contrast to the privatisation alternative and instead of selling their existing assets in an irrevocable way, PPP can provide the same benefits that can be obtained from the privatisation option but also give governments an opportunity to keep hold of the ownership of their existing assets if they prefer to do so.
6. A PPP strategy generally provides the government with a free feasibility study about projects that are intended to be established, where private sectors, in order to secure their revenue, will not commit to any project before committing to a detailed study of the usefulness of the project.
7. A considerable number of the private organisations that work in the Libyan construction market showed a readiness to the notion of PPP and a great willingness to be an effective and efficient partner in PPPs if their anxieties have been considered.
8. Most of the private sector anxieties were founded on the economical stability, political stability, pay on time guarantees, and finally issuing the required legislation to secure these issues.
9. The research concluded that there is a potentially bright future for the PFI/PPP practise in Libya for both the Libyan government and the private investor. This conclusion is based on two logical hypotheses, that the Libyan government, after years of devastating sanctions, is in real need of the management skills that the private sector (particularly the foreign one) can provide, and that the

capability of the Libyan financial resources make it a main target for any investor, especially in today's recession in the construction industry profit margin.

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