THE USE OF PUBLIC PRIVATE PARTNERSHIPS IN THE DELIVERY OF CAPITAL PROJECTS IN HIGHER EDUCATION IN IRELAND

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The construction industry landscape in Ireland is changing and the traditional method of procurement to deliver exchequer sponsored projects has changed to a public private partnership (PPP) procurement option. This emerging procurement option is posing a number of challenges for capital projects in general in Ireland and in particular the potential to deliver a capital programme in higher education. This research examines how to make the PPP procurement option more accessible for all parties as the PPP programme is advanced in the third level education sector. The barriers and opportunities that exist in using PPP as the delivery option for new buildings in the third level education sector in Ireland are outlined. An examination of risk management processes as part of PPP procurement of new facilities in higher education in Ireland is presented. Some recommendations on how to overcome the challenges that higher education faces in meeting its future needs though the PPP alternative are outlined.

Keywords: barriers and opportunities, higher education, Public Private Partnership, procurement options, risk management.

INTRODUCTION

The history of PPP in Ireland is a tale of mixed fortunes (PPP in Europe Lenny 2006 p. 165), although the potential for PPP in Ireland was enthusiastically embraced when first mooted towards the end of the 1990s and there was a initial flurry of promising activity, the deal flow that was first anticipated has not been uniformly forthcoming (PPP in Europe Lenny 2006 p. 165). Significant progress has been made and success achieved in PPPs across some sectors, in other areas pilot projects have yet to get off the ground.

In 1988, the government commissioned a consultancy report (Department of Finance interdepartmental report 1988) to explore the potential for PPP in Ireland. The report recommended that a number of pilot projects be developed to test out the approach in Ireland and that, at the same time, a dedicated PPP units should be set up in key government departments to oversee the process.

Department of Finance interdepartmental report	**Finance PPP unit**	**Environment and local government PPP unit**	**Education PPP unit**	**Science and public enterprise PPP unit (Now Transport)**
Published 1988	Established 1999	Established 2002	Established 2002	Established 2002

The report and its recommendations were accepted and PPP units were set up in the Departments of Finance, Environment and Local Government, Education and Science

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and Public Enterprise (now Transport) with other units following shortly afterwards in other departments. The announcement of pilot projects in the roads, education, and health sectors followed.

In May 2000, a further government commissioned study (PPP report for environment and Local Government 2000) on the implementation of PPP in Ireland was published. The study represented a significant contribution towards setting the policy framework within which the PPP approach should be developed and contained sectoral guidance for relevant government departments and authorities on implementing PPPs. This report provided clear guidance for interested parties to gain a clearer understanding of this new procurement option.

In November 2001, following a further 2 years of consultation and negotiation with interested parties across government departments, business and industry, the "Framework for PPP in Ireland" ("the Framework") was launched. The Framework sets out the scope, principles and goals of the PPP programme, the identification of key project implementation issues and clear recognition of the critical role of social partnership and stakeholder consultation in underpinning the success of PPPs. A significant number of guidance notes and materials have been produced on a wide range of subjects, all of which are aimed at assisting government departments in the development of PPP procurement

In 2003 the Irish Government established the National Development Finance Agency (NDFA), under the aegis of the National Treasury Management Agency (The National Development Finance Agency Act 2002 allowed for the establishment of the National Development Finance Agency), to assist in providing cost effective finance for priority infrastructure projects as an alternative to up-front Exchequer funding or unsuitable private sector funding. NDFA was established on a statutory basis and staffed by experts with experience of corporate finance, risk assessment and the delivery of major projects.
The role of the NDFA is to advise State authorities on the optimum means of financing public investment projects in order to achieve value for money. State authorities, who are the decision-making bodies in regards to projects undertaken or to be undertaken, are obliged to seek the advice of the NDFA in relation to all capital projects or grouped projects, valued in excess of €20 million. For projects valued under that amount, the advice of the Agency may be sought but is not obligatory. In addition to its advisory role, the NDFA is empowered to advance moneys and to enter into other financial arrangements in respects of projects approved by any State authority.

In July 2005, the role of the NDFA was expanded to facilitate the establishment of a new Centre of Expertise which will be responsible for the procurement of all new PPP projects in the Central Government area (with the exception of roads and rail, where existing arrangements with the National Roads Authority and Rail Procurement Agency will continue).

The Irish Government is harnessing the potential of PPPs to help deliver the conditions needed to sustain output and employment growth in the Irish economy over the medium term.

PPPs potentially offer accelerated delivery of priority economic infrastructure projects under the National Development Plan, improved value for money for the state and the provision of quality public services. Under the NDP 2000-06 the minimum indicative target was €2.35 bn for the term.

A Public Private Partnership is an arrangement between the public and private sectors to provide public services or infrastructure. It is recognized that both the public sector and the private sector have experience and skills in dealing with particular situations and PPPs aims to tap into each of these sources and to allocate project risks to the party best able to manage them.

The State Authorities (Public Private Partnership Arrangements Act 2002) provides vires or certainty for State Authorities to enter into PPPs, including joint ventures.

PPP in Ireland is led, driven and co-ordinated by the Central Public Private Partnership Unit in the Department of Finance. This unit is responsible for the development of Irish PPP policy and for the issuing of guidance material for Ireland's PPP process. Project implementation and specific sectoral policy is developed by the sectoral PPP Units. (www.finance.gov.ie accessed May 2007).

Definition

To fully understand the PPP process it is necessary to define the concept. This can be summarized by the description given by the European Commission in its "Green Paper on PPPs and Community Law on Public Contracts and Concessions" published in 2004.

"In general, the term refers to forms of cooperation between public authorities and the world of business which aim to ensure the funding, construction, renovation, management, or maintenance of an infrastructure or the provision of a service"

The commission further qualifies this definition by putting forward four key characteristics for PPPs:

1. The relatively long duration of the relationship, involving cooperation between the public partner and the private partner on different aspects of a planned project
2. The method of funding the project, in part from the private sector, sometimes by means of complex arrangements between the various players. Nonetheless, public funds in some cases rather substantial may be added to the private funds.
3. The important role of the economic operator who participates at different stages in the project (design, completion, implementation, funding). The public partner concentrates primarily on defining the objectives to be attained in terms of public interest, quality of services provided and pricing policy, and it takes responsibility for monitoring compliance with these objectives.
4. The distribution of risks between the public partner and the private partner, to whom the risks generally borne by the public sector are transferred. However, a PPP does not necessarily mean that the private partner assumes all the risks, or even the major share of the risks linked to the project. The precise distribution of risks is determined case by case, according to the respective ability of the parties concerned to assess, control and cope with the risk".

While the above is helpful as a general description, it does not give a precise enough definition for the full evaluation of PPP as a procurement option for advancing education projects.

The private sector

The first pilot projects were approved in 1999. This approval followed the recommendations of a 1998 study on PPPs commissioned by the Department of Finance and the conclusions drawn by an advisory group including relevant social partners (including business, construction and trade union representatives) which considered the potential benefits of PPP as a means of addressing an infrastructure deficit in Ireland. For the private sector the introduction of PPP projects provides new opportunities but also requires new skills to be developed. It has been identified that the Irish contractors did not have the necessary skills to provide the long term facilities management required for the projects (Public private partnership policy forum 2006, Rice FGS paper

The challenge for the private sector is to identify the new risks that it faces in a PPP project and to manage them appropriately (Public Private Partnerships UK's expertise for international markets 2003)

There is a greater need to co-ordinate the input of different parties. Instead of only being responsible for one aspect of the project the design, or the construction, the private sector needs to provide a 'complete' solution. Separate companies will typically form a consortium to pursue the PPP project. In the medium to long term companies will need to assess what role they are playing in PPP projects and whether this is sufficient. In the UK market a number of construction companies have developed complimentary facilities management businesses through participation in PPP projects (British Consultants and Construction Bureau 2005). In contrast other companies have decided to concentrate on construction and leave the facilities management aspects of PPP projects to other consortium members (British Consultants and Construction Bureau 2005).

National approach

In January 1999 the Government established a Central PPP unit in the Department of Finance to coordinate the use of PPPs at a national level. The key function of the central PPP unit is to develop the legislative framework, technical and policy guidance to support the PPP process and to disseminate best practice in PPPs. At the same time a PPP unit was established in the Department of Environment, Heritage and Local Government with responsibility for promoting the use of PPPs within the local government sector. Individual PPP units were subsequently established in the Department of Health and Children, the department of Education and Science, the National Roads Authority and the Railway Procurement Agency.

The Central PPP Unit chairs two groups that assist in managing the PPP process. The inter-Departmental Group on PPPs liaises with key decision makers across all public service sectors to ensure consistency in the development of PPPs.

The Irish Government is committed to using PPPs in the procurement of public infrastructure and services, as outlined in the National Development Plan 2000-2006 ("NDP"), which envisages significant investment in health services, social housing, education, roads, public transport, rural development and industry, water and waste services. The stated objectives of the government are to achieve maximum usage of PPP structures consistent with the principles of efficiency and value for money.

In September 2005 the Minster for Education and Science, Mary Hannifin, announced that 27 new schools would be delivered under a four year PPP arrangement. This announcement was viewed as evidence of a renewed Government commitment to PPPs (www.education.ie accessed May 2007).

Types of public private partnership

A PPP is a contractual arrangement between the public and private sectors, with clear agreement on shared objectives, for the delivery of an asset or service that would otherwise have been provided through traditional public sector procurement. (www.finance.gov.ie accessed May 2007).

The essence of a PPP project is that the private sector will do one or more of the following:

- provide private finance to fund the project;
- enter into a long term [greater than 5 years] service contract;
- undertake the design and construction of an asset on the basis of an output specification prepared by the public sector and designed to meet broad performance targets;
- enter into a joint venture arrangement with the public sector to provide a service or asset.

PPPs can come in different forms but to be successful must provide long term ‘value for money’ for the exchequer; ensure that environmental and public health and safety standards are maintained; and that the public interest is fully protected. PPPs also allow for the best of public and private sector management skills to work together in the delivery of services for the benefit of the public.

In an Irish context, PPPs are seen as an important element in delivering the capital investment programmes as set out in the *The New National Development Plan 2000 – 2013* (www.finance.gov.ie accessed May 2007).

There are four main types of PPPs which are being advocated for use in the Irish context as follows:

1. **Design, Build and Operate (DBO)**
   DBO contracts are contractual relationships between public sector bodies and private sector contractors for the design, construction and operation of public facilities or infrastructure. The private sector contractor designs and builds and operates the facility to meet public sector performance requirements (output specifications) over the lifetime of the project. They are also responsible for maintaining the facility and replacing the assets whose life has expired during the term of the contract, at the end of which time the asset is transferred back to the Public Sector. The construction and maintenance of the facility is financed by the public sector and it remains in public ownership throughout the term of the contract.

2. **Design, Build, Operate and Finance (DBOF)**
   DBOF contracts are contractual relationships between the public sector and private sector contractors for the design, construction, operation and financing of public facilities or infrastructure. The private sector contractor is responsible for designing, building, operating and financing the facility and recovers its costs solely out of payments from the public sector, which is

dependant on their ability to meet the pre-approved output specifications as part of the performance mechanism. At the end of the term of the contract, ownership of the facility transfers to the public sector.

3. **Design, Build, Operate , Finance and Maintain (DBOFM)**
DBOF contracts are contractual relationships between the public sector and private sector contractors for the design, construction, operation, maintenance and financing of public facilities or infrastructure. The private sector contractor is responsible for designing, building, operating and financing the facility and recovers its costs solely out of payments from the public sector, which is dependant on their ability to meet the pre-approved output specifications as part of the performance mechanism. At the end of the term of the contract, ownership of the facility transfers to the public sector.

4. **Concession**
Concession contracts are similar to Design, Build, Operate and Finance arrangements, except that the private sector contractor recovers its costs either through direct user charges or through a mixture of user charging and public subventions.

Suitable models of public private partnership for education.

The Department of Education and Science has successfully completed three PPP school projects: the pilot Cork school of Music (under construction), schools bundle project and the National Maritime College, (www.education.ie accessed May 2007), which has given them a certain level of knowledge to continue to advance a number of new projects.

In September 2005 the Minster for Education and Science, Mary Hannifin, announced that €1.2bn is to be expended on PPP education projects over the next 5 years (www.education.ie accessed May 2007). This announcement represents a significant opportunity for the private sector to become involved in a number of large scale PPP education projects over the next five years.

The NDFA will have overall responsibility for the delivery of the procurement of projects, decisions on the timing and the grouping of projects into bundles will be determined by the Department of Education and Science in consultation with the NDFA.

To date with the pilots projects they have been completed using the DBOFM form of PPP procurement and it is further proposed to complete new projects under this form of procurement (www.finance.gov.ie accessed May 2007).The following extract from the 2006/7 work programme confirms the proposed procurement option under consideration for Education:

Department of Education and Science	Schools Bundle PPP	Design build finance and operate five new post-primary schools	David Gordon/Brendan Kinsella. Dept. Education and Science Marlborough St, Dublin 1. Tel: 8892353/8896515. Fax 8896536	DBFOM (Complete)
Department of Education and Science	National Maritime College of Ireland (NMCI)	Design build finance and operate college for nautical training at Ringaskiddy, Co. Cork	David Gordon/Brendan Kinsella. Dept. Education and Science Marlborough St, Dublin 1. Tel: 8892353/8896515. Fax 8896536	DBFOM (Complete)
Department of Education and Science	Cork School of Music (CSM)	Design build finance and operate school of music in Cork City	David Gordon/Brendan Kinsella. Dept. Education and Science Marlborough St, Dublin 1. Tel: 8892353/8896515. Fax 8896536	DBFOM (Build stage)

Department of Education and Science	New Post-Primary Schools and Primary Schools	23 new post-primary schools and 4 new primary schools	David Gordon/Brendan Kinsella. Dept. Education and Science Marlborough St, Dublin 1. Tel: 8892353/8896515. Fax 8896536	To be finalized
Department of Education and Science	New Post-Primary Schools and Primary Schools	4 new post-primary schools	David Gordon/Brendan Kinsella. Dept. Education and Science Marlborough St, Dublin 1. Tel: 8892353/8896515. Fax 8896536	DBFOM
Department of Education and Science	Third Level projects	17 Projects at third level	David Gordon/Brendan Kinsella. Dept. Education and Science Marlborough St, Dublin 1. Tel: 8892353/8896515. Fax 8896536	DBFOM
Department of Education and Science	New Post-Primary Schools and Primary Schools	5 new post-primary schools and 1 new primary school	David Gordon/Brendan Kinsella. Dept. Education and Science Marlborough St, Dublin 1. Tel: 8892353/8896515. Fax 8896536	DBFOM

Table extracted from www.ppp.gov.ie/projects/ppp

Risk Management, political and legal issues

The primary reason given by governments for utilizing the PPP approach is value for money. UK Government Accounting (HM Treasury 2000) defines value for money as "the optimum combination of whole life cost and quality (for fitness of purpose) to meet user's requirements", a definition that is broadly similar to those used by other governments in Europe.

Key determinants of value for money include: appropriate risk allocation between the public and private sector, optimization of whole life costs over the life of a project, effective due diligence by lending institutions or external experts, use of output based specifications to encourage bidders to develop innovative solutions to user requirements, building flexibility into contractual arrangements, providing appropriate incentives to the private sector partner and the quality of competition in the procurement process.

Imposed budgetary pressures (such as the Maastricht criteria) are clearly also a major factor underpinning the adoption of PPP as this route enables European governments to deliver much needed infrastructure by utilizing private sources of finance via off balance sheet structures. Under Eurostat rules, projects do not have to be included in the national accounts so long as the private sector assumes the construction risk and one of availability and demand risk. Many transactions are structured to satisfy this requirement, although this does not always fit easily with the value for money objective. Other drivers include a more fundamental desire for reform in the way public services are procured and delivered, and wanting to develop contestability between different procurement options.

The debate about the sanctity of the public sector's role as sole deliverer of public services sits alongside a whole range of other possible impediments facing countries trying to introduce a PPP programme. These include resistance from civil servants that are opposed to change, public mistrust based on the misconception that PPPs are synonymous with privatization, negative campaigning from parts of the private sector that believe PPPs will work against their vested interests and a legal system that renders PPPs either impracticable or too complex to be cost effective. Overcoming these problems require a significant degree of political commitment to the PPP concept.

Legislation

Ireland like the United Kingdom is a common law jurisdiction with the added feature of having a written constitution (PPP in Europe Lenny 2006 p. 169). Therefore, in the context of dealing with statutory bodies (e.g., state agencies or local authorities), similar concerns would arise as have been tested in the UK with regard to the power of a state authority to enter into particular contracting arrangements. While judgements of UK courts do not have binding effect in Ireland, they are generally considered by Irish courts when similar matters come before them (PPP in Europe Lenny 2006 p. 169).

Irish Constitution provides that the Irish legislature enjoys exclusive power to legislate. This has been interpreted to mean that any exercise of power by a statutory body must be justified by reference to a principle or provision of the relevant empowering legislation.

To remove any uncertainty the Irish Government passed the State Authorities (Public Private Partnership Arrangements) Act, 2002 (the “PPP Act”). The PPP Act is the only specific legislation solely aimed at PPP currently in force in Ireland. The purpose of the PPP act is to confirm that the Irish government departments, state agencies and semi state bodies listed in the PPP Act have the necessary statutory power to enter into PPPs.

In determining the legislative framework which facilitates PPPs in any particular sector, the specific provisions of the applicable legislation should be considered in conjunction with the general provisions of the PPP Act.

Standardization of procurement

PPP as a method of public procurement are subject to an open and transparent tendering process in accordance with national and EU procurement rules

In July 2004, the National Public Procurement Policy Unit of the department of Finance produced revised guidelines to address the introduction of the new EU procurement Directives (EU Directives 2004/18/EC and EU Directive 2004/17/EC) and to promote new and innovative purchasing strategies, while emphasing the need for best practice and value for money. Since the majority of all PPP projects will exceed the EU thresholds, the procurement procedures adopted must adhere to the EU procurement Directives.

The assessment of a PPP project begins with a preliminary appraisal of the business need for the project, the options for delivery of the asset or service and an assessment of the costs and benefits of the project. The advice of the NDFA will be sought on the best financing approach. The most appropriate procurement mechanism will be determined, having regard to issues such as Vires of the procuring authority to enter into a PPP arrangement, value for money, potential for third party income and the form of PPP which provides the greatest potential value for money. If the assessment indicates that it is appropriate for the project to be procured by way of PPP, the body that sanctions expenditure will give its approval to proceed, taking into account the priority of the project in the context of the procuring authority’s overall programme of expenditure.

If it is decided that the project no longer offers value for money, the project may be abandoned or the procuring authority may be referred to a non PPP option (Department of Finance, “Central guidance 2, interim Guidelines for the Provision of Infrastructure and Capital Investments through Public Private Partnerships).

In conjunction with the NDFA, independent financial advisers will be appointed to assist in preparing the public sector benchmark (“PSB”), the PSB represents a risk adjusted estimate of the cost of the project were it to be procured by traditional means. The procuring authority will compare the PSB with the preliminary assessment to satisfy itself that the benefits of the project outweigh the costs.

Ireland –v- United Kingdom differences

In coordinating the early development of PPPs in Ireland, the focus tended to be on ensuring the adequacy of the contracting authorities, internal administrative structures and systems required to deliver PPPs such that there would be a consistency of approach and uniformity of delivery by accounting offices across all government departments. A plethora of internal guidance notes and materials was produced (www.finance.gov.ie accessed May 2007), for the public sector on a wide range of subjects aimed at achieving these objectives such as, procurement methodology, tax treatment and stakeholder consultation, there was no comprehensive guidance or form of contract to standardize the delivery by the private sector of PPP projects, such as in the UK.

There was no local standard PPP model as such, practice tended to develop around the most established contract form, namely that used by the National Roads Authority. The roads sector has demonstrated the most cohesive approach to delivery of PPPs in Ireland to date. PPP projects in other sectors tended to be based on a hybrid of the NRA model and the UK Standardization of PFI contracts version 3 (“SoPC”). While this is not mandatory in Ireland, SoPC is increasingly the benchmark against which contracts are assessed (PPP in Europe Lenny 2006 p. 174). This adoption of this as a standard for of contract will assist in attracting greater participation into this procurement option by the private sector.

The NDFA has undertaken to produce a standard form contract for use on accommodation projects, particularly in the Health, Education and Justice Sectors (PPP in Europe Lenny 2006 p. 175). The first projects to use this form are in the early stages of procurement which include the proposed Education projects. During an initial period of approximately 12 months, the market will be encouraged to comment on the contract. The form of contract has been specifically developed to be acceptable in the market, reflecting best practice in the UK and Ireland; it is likely that they will be acceptable to the market.

CONCLUSIONS

The potential of PPPs as a procurement option to deliver a building program in third level education has not been fully utilized in Ireland. The completion of the 2 pilot projects, 1 completed and 1 under construction has not delivered the necessary body of knowledge to convince me that it is the preferred procurement option going forward.

However the NDFA has identified this area of weakness and has undertaken to provide detailed information to all interested stakeholders and it is developing a standard form of contract which will assist the private sector.

The lessons of the United Kingdom where they have a mature PPP market should be taken on board in Ireland as we continue to bring new projects to the market.

In researching the potential of PPP to deliver a third level building program I have determined it will be possible provided the Irish Government continues to support the initiative, develops the necessary standard forms of contract and most important for the private sector, delivers project to the market.

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