

Public Private Partnerships in Water - Contracts

Senegal, Dakar Training session
5 June, 2012

Victoria Delmon
Senior Counsel
World Bank



World Bank

Presentation will cover:



- Types of contracts being used in water sector in Africa and elsewhere (common and civil law countries)
 - Key features
 - Advantages and disadvantages
- Key differences between common and civil law
- Rural and small town operator review – provisional findings
- Key resources



Typical Contract Structures



See World Bank PPP in Infrastructure Resource Center for Contracts, Laws and Regulation (PPPIRC) at www.worldbank.org/ppp

Typical types of contract (1)

Service Contract

Utilities/ municipalities commonly source goods and services from private sector third parties, whether to purchase spare parts or stationery, or to procure civil works such as laying pipes or cables or to install meters. Utilities may also contract out a particular service, such as customer service.

Typical features:

- Good or service specified focused on inputs
- For fixed fee or bill of quantities

Pros – Straightforward and relatively simple to manage - can be attractive to private sector as little end user risk

Cons – Not typically considered as a PPP but more of a traditional public procurement. Very little transfer of risk



Typical types of contract (2)

Management Contract

- Operator required to perform specific task such as manage an asset or a network (input rather than output focused)
- Operator paid a fixed fee
- For short time period (typically 2 – 5 years)
- Operator with no or little risk in asset condition or investments
- Operator with no or little end user risk (can tie performance to collection)

Pros - Often seen as way of introducing private sector/ improving operating practices without giving private sector control of assets

Cons – Little opportunity for improving quality of service or efficiencies.

Operation & Maintenance

- Operator required to operate and maintain network or asset
- Operator typically paid a fixed fee + a performance based fee
- Longer term (typically 5 – 10 years)
- Operator with some risk in asset condition and investments
- Operator with no or little end user risk (can tie performance to collection)
- Staff seconded or transferred to operator

Pros – Greater scope for improved service and efficiency than management contract and can be attractive to private sector as little end user risk

Cons – Less scope for efficiency than next forms of contract



Typical types of contract (3)

Affermage/ Lease

- Operator required to operate and maintain business and takes some end user risk
 - Operator pays a portion of receipts to grantor to go to rehab and extension
 - For short time period (typically 3 – 5 years)
 - Operator with no responsibility for financing investment
 - Affermages extensively used in Francophone West Africa
- Pros** - Often seen as way of improving operating practices without giving private sector control of assets + cost recovery
- Cons** – Little room for improving efficiencies

Concession Agreement

- Operator given long term right (often exclusive) to provide a service to end users and to charge them for that service
 - Operator typically pays a concession fee to grantor
 - Longer term (typically 20– 30 years)
 - Operator with responsibility for operation and investment
 - Operator takes end user risk
 - Staff seconded or transferred to operator
- Pros** – Greater scope for improved service and efficiencies. In practice operators have invested less than had been expected. Cost recovery
- Cons** – Extensive risk accepted by operator – data needs to be good and certainty as to revenues – effective takeover by private sector



Typical types of contract (4)

BOT – Build Operate Transfer

- Operator required to build, finance, operate and maintain asset for the contract term
- Operator receives a fee for this or enters into an off-take agreement to ensure revenue stream
- For long time period (typically 15 – 30 years)
- Operator with full responsibility for financing investment
- Typically new build – “green field” or extensive rebuild

Pros – Where Government is looking to private sector to provide technical solution for a given output and for private financing

Cons – Complicated projects – set up costs are high + Government needs to consider balance sheet issues

Joint Ventures/ part divestiture

- Existing asset or new venture
- Government transfers part of interest in SOE or a new vehicle is established with shareholding shared between government and private sector
- Can also be a joint venture established by contract
- Private sector and government parties each have specific role to play
- Government may have management control or right of veto
- Private sector usually has day to day management role



Small scale rural projects in Africa – main types of contract

- **Management contract** – contract to operate and maintain, minimum investment obligations (for small repairs and routine maintenance) for fee
- **Affermage** – contract to operate and maintain, minimum maintenance, operator takes revenue risk + lease fee to be paid to grantor (to go towards rehab and expansion) (Francophone Africa)
- also, hybrid affermages, with some investment obligations

Common law versus civil law

Civil Law Systems

Common Law Systems

Where used?

- France, Spain, Continental Europe
- United Kingdom, Former UK colonies, USA

Public Private Partnerships

- Often separate administrative law governs PPP contracts
- Standard PPP contract approaches developed
- The administrative rules can be repeated in the contract for clarity
- No legal distinction between contracts involving public or private firms.
- PPP contracts governed by the same laws that govern business
- Common law contracts flexible & most agreements can be put into an enforceable contract



Rural and small scale operator review

- WSP and other supported contracts in Africa and elsewhere
- December 2011 to June 2012
- Summaries and links to published contracts on PPP on Infrastructure Resource Center
www.worldbank.org/ppp

Provisional Findings

General

- Overall well drafted
- Especially affermages + Kenya

Short term

- 1 – 3 years
- Little investment
- (other than DBO in Asia)

- Longer?
- Additional obligations?

Performance Requirements

- Clear – especially affermages and Kenya
- Few performance targets

Increase performance targets?



Provisional Findings (2)

maintenance and repair

- affermages + Kenya with clear definition of what was minor repair and maintenance

Monitoring

- Affermages - communes
- Kenya – third party
- Uganda – minister
- Bangladesh and Vietnam – project manager

What works in context

Cost recovery

- Affermages (costs, operator revenue and rehab)
- Not clear that cost recovery is principle of other contracts

Cost recovery?



Provisional Findings (3)

Tariff setting

- Methodology for setting and review? Eg Kenya (from regulations) and affermages, Peru

Who responsible for tariff setting

- Community council (Mali and Benin)
- Entity above grantor (Kenya)
- Grantor

What works in context

Rehab and renewal fund

- Affermages

Can other contracts learn from this?



Provisional Findings (4)

New connections

- Not specified
- Affermages have incentive for new connections

Add?

Bonus/ penalty system

- Some contracts specific – Benin, Uganda and Kenya

Good practice

Accounts and reporting

- All contracts clear
- Some required copy to third party agency



Provisional Findings (5)

Cut off right

- Not specified
- Affermages have incentive for new connections

Add?

Asset ownership

- Management and affermages - remain with grantor
- Lease – in one case of DBO the asset remained with operator until end of contract

Dispute resolution

- Most contracts included a local form of mediation/ arbitration

Has this been exercised?

Customer complaint mechanism

- Not specified



Resources

- World Bank Toolkit for Approaches to Private Participation in Water - <http://siteresources.worldbank.org/INTINFNETWORK/Resources/ApproachesToPrivateParticipationWaterServices.pdf>
- PPP in Infrastructure Resource Center for Contracts, Laws and Regulations – www.worldbank.org/ppp

- Maharashtra – Urban Water Toolkit - <http://www.adb.org/publications/toolkit-public-private-partnerships-urban-water-supply-state-maharashtra-india>
- ADB – Developing Best Practices in Private Sector Investment in Infrastructure - <http://www.adb.org/publications/developing-best-practices-promoting-private-sector-investment-infrastructure-water-supply>



PPP in Infrastructure Resource Center

for Contracts, Laws and Regulation

www.worldbank.org/pp

-  [PPP OVERVIEW](#)
- [LEGISLATION AND REGULATION](#)
- [AGREEMENTS](#)
- [PPP BY SECTOR](#)
- [FINANCING](#)
- [LIBRARY](#)



Water

Highlights

- NEW - PPPs in Irrigation
- Basics of PPP Financing
- PPP Insights
(Expert Analysis on PPP Topics)
- African Rural Electrification Initiative (AEI)

- [About PPIRC](#)
- [Energy & Power](#)
- [Transportation](#)
- [Clean Technology PPPs](#)
- [Solid Waste](#)
- [Telecom & ITC](#)
- [Water & Sanitation](#)

A World Bank Resource for PPPs in Infrastructure

Financing or structuring public private partnerships in infrastructure?

The PPP in Infrastructure Resource Center for Contracts, Laws and Regulation (PPIRC) contains sample public-private partnership (PPP) [agreements and concessions](#), [checklists and sample clauses](#), [terms of reference](#), [risk matrices](#), [standard bidding documents](#) developed by government agencies and [sample ppp and sector legislation and regulation](#). It is designed for government officials, project managers and lawyers involved in PPP infrastructure projects and will help you address contractual and legal issues related to [infrastructure legal reform and PPP projects](#), with reference materials in English, French, Spanish, Portuguese, Arabic and more recently Mandarin Chinese, drawn from reform initiatives around the world.

Sign up for updates

Email:

Related PPP Resources

- [Hiring Advisors - Sample Terms of Reference \(TORs\) for PPP](#)

Almost fifty percent of the developing world's population – 2.5 billion people – lack improved sanitation facilities, and over 884 million people still use unsafe drinking water sources. Public-private partnerships can help improve access to safe water and sanitation services by providing a number of services such as delivering service to households, building new infrastructure, improving technology or using clean technology to better meet the needs of the community.

See below documents and links relating to Water and Sanitation sector reform, regulation and PPP projects:

- ▣ **Water and Sanitation Laws and Regulation**
- ▣ **Water and Sanitation Utility Reform**
 - ▣ **Empresas Mixtas / Joint Ventures**
- ▣ **Water and Sanitation Agreements**
 - ▣ **Water Management, Operation, Maintenance Contracts**
 - ▣ **Water Concessions and Build-Own-Transfer**
 - ▣ **Lease and Affermage Contracts**
 - ▣ **Water and Sewerage/Wastewater Bulk Supply Agreements**
- ▣ **Small Water Providers: Rural and Peri-urban**
- ▣ **PPPs in Irrigation**
- ▣ **Toolkits - Water and Sanitation**
- ▣ **Further Reading**



Small Water Providers - Rural and Peri-Urban

- ▣ Introduction to Rural Water Supply Issues
- ▣ Affermage Contracts and Variations
 - ▣ Benin
 - ▣ Mali
 - ▣ Niger
- ▣ Management Contracts Under Common Law
 - ▣ Uganda
 - ▣ Kenya
- ▣ Water PPP Rural - Further Reading



Introduction

A key challenge faced by water authorities in developing countries is how to manage their service delivery obligations to rural communities. Even in decentralized sectors the water authorities may find it hard to provide services to remote rural communities. It is recognized that water user associations and/ or local private operators may be the best placed to provide services as they are close to the users. This page looks at some jurisdictions in Sub-Saharan Africa where private operators are being used to meet some of this demand and the forms and models of simplified agreements that they have developed for this purpose. The majority of the agreements currently in place are short term (1 to 3 years) management or operation and maintenance contracts for existing systems that involve minimal investment from the private sector. There are a number of countries in French West Africa which have developed affermage arrangements that are based on the operator being able to achieve cost recovery + an amount to go towards rehabilitation and expansion of the system.

One key issue that arises repeatedly is how to regulate and monitor performance under these contracts. The local government may not find themselves in a dispute between residents and the operator and the operator may not trust local government to be objective. A number of solutions are emerging. In the affermage arrangements typically it is the "communes" that monitor performance and set tariffs.

The [Water and Sanitation Program \(WSP\)](#) has been involved in a number of the initiatives highlighted on this page. WSP has also developed a survey of 7 African countries to see how they have approached involvement of the private sector, the contractual frameworks for a number of which are featured on this page. You can find the paper entitled [Public-Private Partnerships for Small](#)

Mali - operation contract for water supply to peri-urban and rural areas

Region:	Africa
Country:	Mali
Document Link:	Mali - cahier des charges delegation de gestion semi-urbains et ruraux Mali - convention delegation de gestion semi-urbains et ruraux
Document:	Delegation_gestion_-_Cahier_Charges_AEP.pdf Delegation_gestion_-_Convention_AEP.pdf

This is a document (the general conditions and the special conditions) that is simple and well-drafted. It has a number of features that could be used elsewhere, even in common law countries, and it would be beneficial to translate the general conditions into English and Spanish so that a greater audience can benefit from them. There is for instance a useful provision requiring that the contract with end users contain a substitution provision in favor of the Community (so that it is not necessary to novate the user contracts in the event that the operation contract is terminated). The provider is also required to provide performance security equal to 20% of the estimated annual revenue. The contract could benefit from some more specific performance requirements.

Title	Delegation de Gestion des Adductions d'Eau Potable dans les Centres Semi-Urbains et Ruraux (2004 version)
Parties	The local authority and the provider
Date	Not specified
Duration	N/A, but renewable (article 5)
Service being provided	Exclusive service of production, transportation and distribution of water to the public within the specified service area (article 1 and 2) Clear delineation of where responsibility starts and stops
Investment obligations	Provider is responsible for the cost of maintenance and repairs (art 17) and extensions and strengthening are new works are the responsibility of the local authority (article 21). Provider is responsible for operating the meters.
Funding source	Revenue. The tariff consists of the operator charge, a renewal fund and a community charge (art 23 to 26)
Maintenance and rehabilitation requirements	Article 18 and Annex A1. The water tariff is to cover renewal of equipment (on the basis of 20 year amortization, other than the periods listed in art 18).
Service levels specified	Article 8 requires that service specifications are to be part of the agreement and are to be agreed between the parties. Water quality is to meet the applicable regulations (art 14) and quantity to meet the requirements of the users. There is a minimum level of pressure specified (art 14).
Performance targets	N/A
New connections	Article 19. The cost of a new connection is for the user.
Bonus/penalty system	The provider should establish a guarantee to the local authority before the commencement of its activities. The deposit should be made to the



Thank you

Merci

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