



European PPP Expertise Centre • European PPP Expertise Centre

Role and Use of Advisers

in preparing and implementing PPP projects



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1. Introduction

For public procuring authorities (Authorities), the **expertise required to undertake PPP projects is both diverse and specific**. The expertise commonly needed spreads over various fields such as technical, finance, legal, market/demand, tax, accounting and insurance. The “theoretical” knowledge required also needs to be complemented with practical deal-making experience in areas such as project management or contract negotiation.

It is unlikely that an Authority not frequently exposed to PPP transactions will have available and maintain the required range of competencies in-house. In addition, **the required skills need to be regularly refreshed** to capitalise on recent experience, developments in market standards and innovation.

In this context, hiring advisers is **often indispensable** to an Authority undertaking a PPP project. Advisers will not only bring skills and practical experience to the Authority but also **additional capacity** to face the unusual, intensive and non-recurrent workload that inevitably arises from implementing complex projects such as PPPs. The Authority may otherwise be exposed to significant risks in delivering the right project on the right terms.

If they are managed efficiently, advisers will work **shoulder-to-shoulder with the Authority**, to enable, foster and implement the best outcome for the project.

Finally, by appointing experienced and reputable advisers, the Authority will send a **positive signal to PPP market stakeholders** that its project is well-resourced and deliverable effectively.

The overall objective of this document is to help public contracting authorities, especially less experienced ones, to understand what they can reasonably expect from their advisers and how they can obtain the best advice from them.

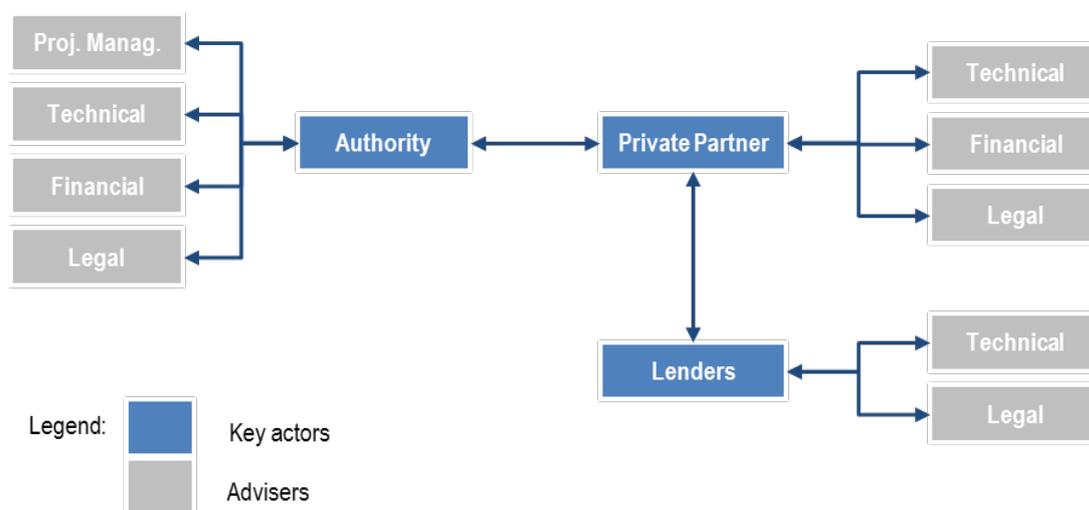
The report starts by explaining the advisers typically involved in PPP projects (§1) and the main tasks they usually perform within the project cycle (§2). It then discusses the contractual options that are available to hire advisers (§3) before, finally, setting out a range of good practice aimed at fostering the commitment of hired advisers working alongside the Authority (§4).

2. Who are advisers?

Numerous private sector companies across Europe have now acquired a high level of recognition and competence as advisers in preparing, implementing and managing PPP projects. Most of them advise public sector clients as well as private sector clients. A few companies only work for public entities, for example, to avoid conflicts of interest.

Figure 1 below shows the advisers that the main parties to a PPP project typically use.

Figure 1 - The advisory “galaxy” in a PPP project



The entities providing PPP advisory services typically are:

- **law firms** usually experienced in public/administrative law matters as well as business, financing and tax issues;
- **financial advisory companies** that may be (i) part of an international accounting and advisory group/network, (ii) investment banks or (iii) smaller entities specialising in PPP or public service management;
- **technical¹ firms** that are often specialised by sector (transport, social infrastructure, etc.); and
- **public entities**, such as national or sectorial PPP units that have been tasked and staffed to advise on projects.

Some advisers may offer a broader PPP service beyond legal/financial/technical boundaries and may therefore act as multidisciplinary advisers and experts in project management.

¹ In this document, the word “technical” is used in a broad meaning and include, beyond the pure technical issues, issues such as demand/revenue analysis, costs estimation, environmental/social impact assessment, etc.

Table 1 below sets out the skills that each member of a **typical advisory team** would bring to the Authority in a PPP project.

Table 1 - Expertise covered by typical kinds of advisers

| Fields of expertise | Project manager | Technical adviser | Financial adviser | Legal adviser |
|--|-----------------|-------------------|-------------------|---------------|
| Project management | x | | | |
| Environmental impact | | x | | |
| Economic impact and cost/benefit analysis | | x | (x) | |
| Costs and revenues forecasting | | x | (x) | |
| Technical solutions (construction and service provision) | | x | | |
| Risk identification, mitigation and allocation | (x) | x | x | x |
| Administrative procedure | (x) | | | x |
| General legal issues | | | | x |
| Contract drafting and negotiation | | (x) | (x) | x |
| Financing and hedging costs and strategies (interest rate & currency) | | | x | (x) |
| Insurance | | | (x) ² | |
| Tax | | | x | (x) |
| Accounting | | | x | |

Legend: x: main qualification – (x): secondary qualification

² Specialist insurance advisers may be used

3. What are the tasks typically devoted to advisers in the PPP project cycle?

Table 3 at the end of this report sets out the tasks that the Authority will typically devote to advisers throughout the PPP project cycle³ from early preparation to its operational management.

Depending on its internal resources and previous exposure to PPP projects, the Authority may depart from the typical allocation of responsibilities set out in Table 3 and choose to provide some of the tasks, commonly assigned to external advisers, in-house.

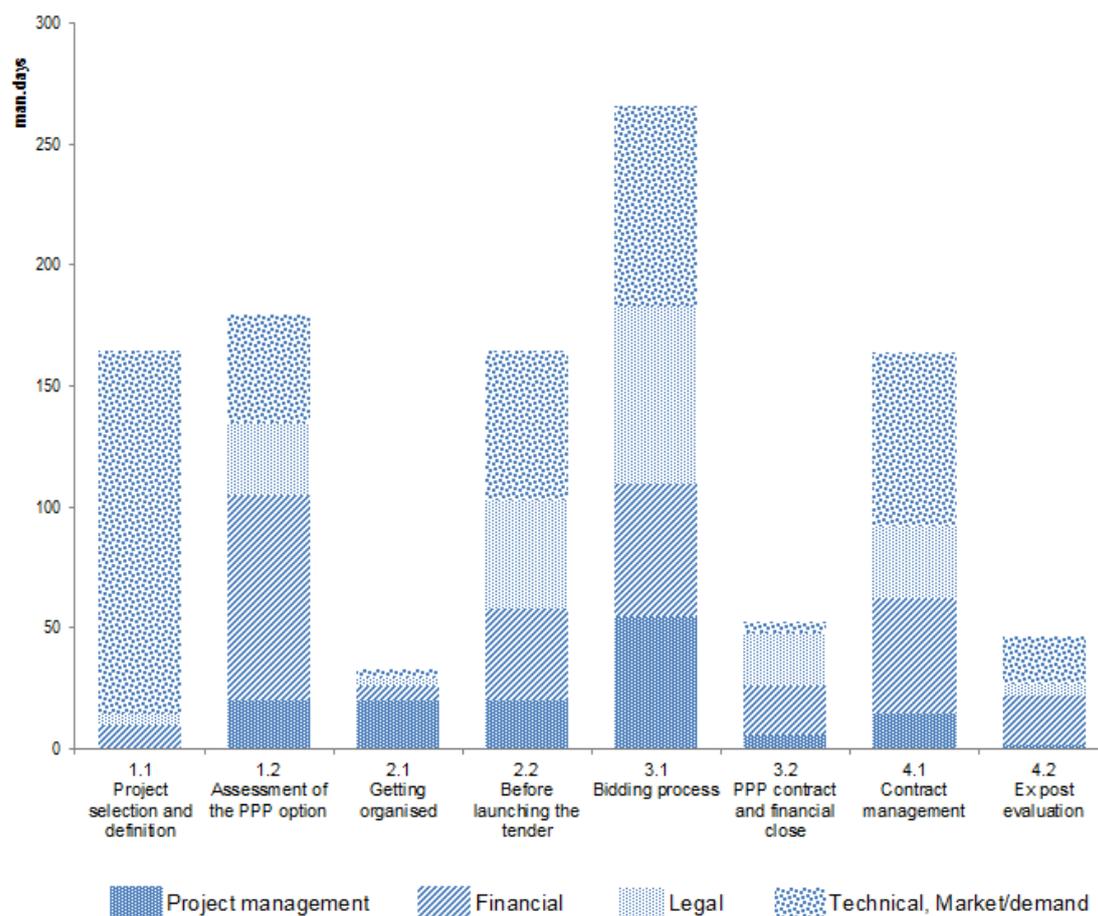
In addition to the tasks they are specifically assigned, it is important that **all advisers have a duty of “general advice” toward the Authority** and act in a pro-active manner to contribute effectively to the success of the project.

Even if it has appointed good quality advisers, the Authority must retain the ability to make choices itself. The Authority should expect its advisers to propose solutions or make recommendations but **the ultimate decision-making role must remain with the Authority.**

Hiring a project manager from outside the Authority is not common practice but may be recommended for large or particularly complex projects. Where this is not the case, the project management tasks set out in Table 3 are typically carried out by the Authority’s project team and/or by the financial, legal or technical advisers whose roles are extended to these responsibilities.

To illustrate the resource intensity of the tasks set out in Table 3, Figure 2 / Table 2 provides **an indicative overview of the workload each member of the advisory team** would typically face in a medium-size PPP project (investment cost of EUR 100 to 300 million).

³ The PPP project cycle used to illustrate the role of advisers in this report is that of EPEC’s “Guide to Guidance” (www.eib.org/epec/resources/guide-to-guidance-en.pdf). Note that this report uses competitive dialogue as the reference procedure for the procurement of the PPP project.

Figure 2 / Table 2 - Illustrative advisory workload for a medium-size PPP

| Stages of the project | Roles of advisers (input days) | | | | Total inputs (days) |
|--------------------------------------|--------------------------------|--------------------------|------------|------------|---------------------|
| | Project management | Technical, market/demand | Financial | Legal | |
| 1.1 Project selection and definition | 0 | 150 | 10 | 5 | 165 |
| 1.2 Assessment of the PPP option | 20 | 45 | 85 | 30 | 180 |
| 2.1 Getting organised | 20 | 3 | 6 | 4 | 33 |
| 2.2 Before launching the tender | 20 | 62 | 38 | 45 | 165 |
| 3.1 Bidding process | 55 | 83 | 55 | 73 | 266 |
| 3.2 PPP contract and financial close | 6 | 5 | 20 | 22 | 53 |
| 4.1 Contract management | 15 | 72 | 47 | 30 | 164 |
| 4.2 Ex post evaluation | 2 | 20 | 20 | 5 | 47 |
| Total inputs (days) | 138 | 440 | 281 | 214 | 1073 |

Source: EPEC estimates

4. How to select and structure an effective team of advisers

A recurring issue for the Authority is to decide on the number of advisory contracts it will award. This choice should take account of three aspects: (i) how to set up a coherent multidisciplinary team, (ii) how to avoid biased advice arising from conflicts of interest for the advisers and (iii) how to contain the cost of procuring and managing a number of advisory contracts.

4.1. How to set-up a multidisciplinary team

For an Authority, two main approaches exist for contracting advisers:

- The **integrated contract** – The Authority launches a single procurement procedure to appoint a consortium of advisers. The main advantages of this approach for the Authority are: (i) a lighter process, (ii) less involvement in coordinating the team of advisers during the assignment, thereby limiting, for the Authority, the interface risk between the various advisers and (iii) more assurance that it will benefit from balanced advice. The main disadvantages are: (i) less competitive pressure among advisers because of the difficulties of setting up consortia and (ii) the risk of having to compromise on quality to obtain a comprehensive team of advisers at the expense of not getting the best in each field; and
- **Separate contracts** – The Authority launches a procurement procedure for appointing each adviser.

In between these two approaches, many **mixed solutions** are possible, such as mandating the technical adviser under a separate contract and appointing the legal and financial advisers as a consortium. The ultimate decision must be taken case by case considering (i) the local advisory market (e.g. the number of advisers, their experience), (ii) the resources available within the Authority (both in terms of quantity and quality) and (iii) the features of the project.

It is however advisable that **inexperienced Authorities select more integrated approaches as these may limit interface and management risks for the Authority.**

4.2. What is the optimal length of advisory contracts

For an Authority, two main approaches can be taken:

- **Medium-term contracts** – The Authority hires an adviser who may be involved in the project throughout the project cycle (i.e. from the early preparation stage to, potentially, the operational phase). The advisory contract would typically include: (i) a binding phase covering the feasibility studies and assessment of the PPP option, as well as (ii) conditional phases that may be firmed up according to project developments. The advantages of this approach include: (i) a contract size that may foster competition at the procurement stage, (ii) a better overall service as the adviser will know the project from the outset, (iii) a long-term collaboration between the Authority's project team and the adviser, which may lead to a stronger partnership (e.g.

work approach, trust). However, long-term contracts can have disadvantages such as: (i) the risk of getting biased advice because of the adviser's desire to see the project continuing and ultimately procured as a PPP and (ii) the difficulty of changing adviser if performance is not satisfactory; and

- **Short-term contracts** – The Authority hires advisers for each main phase of the project cycle. For example, this may lead to separate contracts for feasibility studies, procurement support and operational management.

It may often be advisable to adopt a mixed approach that combines (i) an initial short-term contract for activities related to the assessment of the PPP option and subsequently (ii) a medium-term contract using conditional phases covering the project procurement phase and the initial period of the operational phase. In any case, the Authority must bear in mind that a contract may not be extended indefinitely due to the legal obligation for periodic re-tendering of its advisory services.

4.3. Which procurement procedure to follow?

To select advisers, Authorities must follow a fair and transparent process. EU legislation allows four procurement options: open procedure, restricted procedure, negotiated procedure and competitive dialogue.

In practice, given the typical scope and size of advisory assignments for PPP projects and the conditions required to use the negotiated procedure and competitive dialogue, Authorities will normally choose between the open and restricted procedures.

The **restricted procedure** allows for an early selection of credible bidders and may be recommended where possible. It limits the cost of analysing a potentially high number of proposals and allows the Authority to focus on offers submitted by those firms more likely to perform the services satisfactorily.

4.4. Key issues to consider when selecting advisers

When establishing selection criteria and a scoring system for assessing advisers' bids, the Authority will need to pay particular attention to the following issues:

- **Focus on the skills of individuals** rather than those of the company. To a large extent, the quality of an assignment depends on the quality of the people who are involved in delivering it. Even with a company presenting a sound reputation and track-record of relevant mandates, the Authority should assess the credentials of the individuals proposed and ensure that key individuals are involved as scheduled;
- **Consider carefully how each adviser proposes to structure its team** to guarantee high-quality deliverables and meeting of deadlines. When appointing a multidisciplinary team under an integrated contract, common past experience of team members may be valuable evidence of their capacity to work together effectively;
- **Assess the advisers' exposure to conflicts of interest.** An adviser may, for example, have a close working relationship with companies that could

potentially be involved in the project. As a result, there may be a risk that the adviser may not necessarily act in the best interests of the Authority;

- **Make sure the advisers have the relevant set of skills required for the assignment** rather than a mere general understanding of PPPs. For example, the financial adviser's team should have experience in advanced financial modeling, financing structuring, public budget management, risk valuation, accounting treatment of PPPs, complex negotiations;
- **Make sure the adviser's team is large** enough to absorb the heavy and changing workload that is typically observed, in particular, during the procurement phase of a PPP; and
- **Understand the pricing strategy of the bidders and make sure it is sustainable.** When procuring advisory services, the "most economically advantageous" criterion should be favoured over the lowest price. The overall fees proposed will often appear high but should be considered in relation to the size of the future PPP project. It is good practice to ask the advisers bidding for a mandate to provide the Authority with a detailed breakdown of workload planned by phase, task and type of consultant (seniority, expertise, etc.).

5. How to incentivise advisers to work effectively alongside the Authority

Buying advisory services is significantly different to most public purchases. Accordingly, the procurement and management of advisory services should be adapted to reflect these differences:

- **Quality advice is a matter of judgment that cannot be evaluated in simple output terms** - Even if provided by a competent and experienced professional, the quality of advice depends on the intellectual know-how and commitment of the individual and the way s/he endeavors to meet project requirements;
- **There is an intrinsic asymmetry of knowledge between the buyer and the provider** of advisory services – To a certain extent, the adviser is the only one who can assess its own performance because, by definition, its expertise is being procured as the Authority does not possess it; and
- **What is the value for money of a piece of advice encompassed in an overall project preparation and implementation process?** – Its relevance may depend on the time when it is given (i.e. not too late), coordination with other related advice given by other advisers, its relevance to the current situation of the PPP market, etc. In the end, the right piece of advice is that which contributes significantly to achieving a successful transaction.

Therefore, the Authority should consider and, where possible, implement all the means that can contribute to aligning the advisers' interests with those of the project. In particular:

- **terms of reference** should avoid any misunderstanding between the Authority and its advisers during the assignment. In particular, they must set-out clearly the context and goals of the project, how the project will be managed, the role of each adviser, and the required deliverables and deadlines. It is good practice to establish deadlines as a sequence of milestones to be achieved in elapsed calendar days from particular events (e.g. the bid assessment report will be sent within 20 days after bids are received by the advisers) rather than in an absolute and general manner (e.g. the report will be sent within three months after the start of the contract). In the latter, it is always difficult to distinguish between what results from the responsibility of the adviser and what is a consequence of the overall project progress. Where the Authority decides to appoint advisers separately rather than as a comprehensive team, it is particularly important clearly to allocate a lead adviser for each task;
- the Authority should adopt a **payment structure** that provides effective incentives for the adviser to deliver the Authority's objectives. A payment structure typically envisaged for financial and legal advisers may involve a share of the remuneration being paid as a success fee when the project reaches financial close. This can act as an incentive to reach financial close, although caution should be exercised especially where advisory support is required at the earlier project selection and PPP assessment stages. Advisers may also be paid on the basis of delivering pre-defined work packages that cover identifiable phases of the project's development – PPPs are not about 'doing the deal' but about doing the *right* deal. Advisers should not expect to

be paid to agree with their clients; they are paid to offer professional, objective advice within their areas of expertise;

- the Authority should adopt a **flexible contract** that can be easily adapted to the changing requirements of the project. Nothing is more demotivating for an adviser than to work on a deliverable that, due to the course of events, is no longer useful but is required to do so for purely contractual reasons;
- the Authority should seek to build **solid partnerships** on the one hand, between the procurement team members within the Authority and the advisers and, on the other hand, amongst the legal, financial and technical advisers. It is necessary to **make sure that adequate human resources will be available on the Authority's side** to manage/interact/supervise the advisory services, both in terms of quality (skills) and quantity (time estimate of the consultant); and
- **smart project management within the Authority** should anticipate deadlines and realise the value of people working together by holding regular meetings, disseminating all relevant information, including clear clearance processes, etc. Despite the need for strong supervision, advisers will not deliver their best under a regime that tightly constrains their work. It is especially important for the Authority to keep in touch regularly with the key advisers, enable them to account for their activities and discuss any issues arising. It is also important to give advisers **sufficient access** to the Authority's planning, deal development, management and decision-making processes to enable them to understand the project's objectives and constraints and thus provide the best advice.

It is useful to require advisers to provide their **sign-off at key stages** of a project, indicating that the project is ready to proceed to the next stage and that proposals are realistic and deliverable. Is it also helpful if, as a condition of their appointment, advisers are required to transfer skills to the Authority project team (for example by preparing guidance notes or training at the conclusion of an assignment).

Table 3 - Tasks devoted to advisers in a typical PPP project

Legend: Colours are in the table below to indicate the adviser that would typically lead the advisory team for the relevant task i.e. generally the adviser whose skills are the most relevant at the specific stage of the project’s development.

-  Advisers not involved
-  Lead advisers
-  Advisers involved

| Phases of the project | Steps | Roles of advisers | | | |
|--------------------------------------|--|--|--|--|--|
| | | Project management | Technical/market/demand | Financial | Legal |
| 1.1 Project selection and definition | Project identification : requirements and definition of expected outputs to meet requirements | <ul style="list-style-type: none"> ▪ Typically not involved at this early stage | | | |
| | Project pre-feasibility and feasibility studies including supply or demand analysis, cost analysis and preliminary environmental assessment | <ul style="list-style-type: none"> ▪ Typically not involved at this early stage | <ul style="list-style-type: none"> ▪ May contribute to parts or all of the feasibility studies depending on the features of the project and on the Authority’s in-house capacity ▪ Assess the needs the project will address and set out the service | <ul style="list-style-type: none"> ▪ Carry out a preliminary market “sounding” analysis (e.g. appetite of investors, lenders, contractors, operators) | <ul style="list-style-type: none"> ▪ May be required to assess the legal feasibility of the project |

| Phases of the project | Steps | Roles of advisers | | | |
|--|--|---|---|---|---|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | | <p>specifications of the future service and related assets. For transport projects, this step includes a preliminary traffic forecast in projects exposed to traffic risks (market demand analysis).</p> <ul style="list-style-type: none"> ▪ Design a first outline of the technical solutions | | |
| <p>1.2 Assessment of the PPP option⁴</p> | <p>Affordability: the capacity to pay for building, operating and maintaining the project</p> | <ul style="list-style-type: none"> ▪ Draw a preliminary “project plan” covering the programme of studies, project procurement procedure, assessment of workload for the Authority and its advisers, allocation of tasks among the project team members, etc. ▪ Adopt a document storage and management system | <ul style="list-style-type: none"> ▪ Assist the financial adviser in developing a preliminary financial model aimed at assessing the main financial features of the project (e.g. costs, revenues, typical financing structure); ▪ Propose cost and revenue assumptions ▪ For transport projects, may propose a preliminary tariff policy for user-pay PPP | <ul style="list-style-type: none"> ▪ Develop a preliminary financial model aimed at assessing the main financial features of the project (e.g. costs, revenues, typical financing structure); ▪ Propose assumptions on macroeconomic indicators and financing structure ▪ Help prepare a preliminary business case⁵ for the | <ul style="list-style-type: none"> ▪ May carry out a preliminary assessment of the legal issues related to the feasibility of the project as a PPP |

⁴ The five steps of this stage are usually carried-out broadly simultaneously as they feed each other.

⁵ A business case is a consistent document that captures the business justification for initiating a project.

| Phases of the project | Steps | Roles of advisers | | | |
|-----------------------|--------------------------------------|--|---|---|---|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | | options | project <ul style="list-style-type: none"> Assess the basic budgetary and fiscal sustainability of the project over the long run (ideally considering both firm and contingent liabilities) Identify additional sources of funding such as grants | |
| | Risks: identification and allocation | Note: This step requires a multidisciplinary approach and close collaboration among the various advisers to produce a realistic and comprehensive risk evaluation | | | |
| | | <ul style="list-style-type: none"> Contribute to identifying the project management risks that are specific each of the PPP options | <ul style="list-style-type: none"> Identify the technical and demand/revenue-related risks of the project and quantify their potential financial impact (e.g. risks related to the project design, construction, tariffs including regulatory regime, operation, maintenance, life cycle, changes in technology). Propose an allocation of these risks based on the advisers' experience of | <ul style="list-style-type: none"> Identify the macroeconomic and financing risks of the project and quantify their potential financial impact (e.g. interest rate movements, inflation, expected financial return, refinancing) Propose an allocation of these risks based on the advisers' experience of similar projects Support other advisers in evaluating the financial | <ul style="list-style-type: none"> Identify legal, regulatory and administrative risks such as expropriation procedures and costs, planning/construction permits, environmental licences, authorisation to commence operation and possible changes in law In conjunction with other advisers, draft a risk matrix and propose a risk allocation between parties |

| Phases of the project | Steps | Roles of advisers | | | |
|-----------------------|--------------------|--|--|--|--|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | | similar projects | impact of risks <ul style="list-style-type: none"> ▪ Gather data from other advisers and run the preliminary financial model to assess the overall financial impact of the risks identified | |
| | Bankability | <ul style="list-style-type: none"> ▪ Typically not involved | <ul style="list-style-type: none"> ▪ Typically not involved | <ul style="list-style-type: none"> ▪ Perform a market analysis to make sure the project will meet requirements of financial stakeholders (e.g. equity investors, lenders, bond markets) ▪ Advise the Authority in designing an attractive project for financial stakeholders ▪ Check the financial capacity of the Authority to bear the cost of the project over the long run (long term sustainability) ▪ Help secure additional public funding opportunities for the project (grants) | <ul style="list-style-type: none"> ▪ Typically not involved |

| Phases of the project | Steps | Roles of advisers | | | |
|------------------------------|---|---|--|---|---|
| | | Project management | Technical/market/demand | Financial | Legal |
| | Value for Money | <ul style="list-style-type: none"> Compare the organisational implications of the various procurement options (traditional procurement, various procedures to procure a PPP, etc.) | <ul style="list-style-type: none"> Compare the procurement options regarding construction, operation and maintenance issues, output and outcomes (demand/revenue, service level, performance, etc.) Highlight the differences in term of costs, demand, revenues and performance levels (including risk valuation) | <ul style="list-style-type: none"> Further develop the preliminary financial model to enable a comparison between the PPP option and the most probable alternative public procurement route Collect data from the technical adviser and run the financial model Update and fine-tune the preliminary business case | <ul style="list-style-type: none"> May contribute to identifying key differences between procurement options and procedures |
| | Eurostat and accounting treatment | <ul style="list-style-type: none"> Typically not involved | <ul style="list-style-type: none"> Typically not involved | <ul style="list-style-type: none"> Assess whether the PPP can be expected to be on or off balance-sheet for the public sector for Eurostat reporting purposes Assess how the project will be recorded in the public accounts | <ul style="list-style-type: none"> Support the financial adviser on the legal aspects of the risk allocation and other features relevant to the Eurostat/accounting treatment analysis |
| 2.1 Getting organised | Set up the project team and governance structure | <ul style="list-style-type: none"> Propose a workable project governance structure for the Authority: set out the decision-making chain and how key responsibilities and | | | |

| Phases of the project | Steps | Roles of advisers | | | |
|--|---|---|--|--|--|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | <p>tasks will be discharged by the Authority</p> <ul style="list-style-type: none"> Propose solutions to consult periodically with the various project stakeholders: end-users, affected parties | | | |
| | Develop the project plan and timetable | <ul style="list-style-type: none"> Propose a roadmap for the project preparation, procurement and implementation in terms of reporting, timetable, allocation of financial and human resources, risk monitoring, and budget supervision etc. | <ul style="list-style-type: none"> Provide a realistic timetable for the technical implementation of the project | <ul style="list-style-type: none"> May help to establish monitoring tools for the Authority's budget over the preparation and procurement phases of the project | <ul style="list-style-type: none"> May be involved in assessing administrative and legal issues as they arise |
| 2.2 Before launching the tender | Carry out further studies | <ul style="list-style-type: none"> Identify pending risks and advise on additional studies that should be performed Propose any fine-tuning of the project procurement organisation and timetable Confirm readiness to launch tender | <ul style="list-style-type: none"> May update previous studies Perform additional studies (e.g. detailed traffic forecasts, survey of ground conditions) Confirm readiness to launch tender | <ul style="list-style-type: none"> May update previous studies Prepare the business case Confirm the market "appetite" for financing the project and simulate the most likely financing solutions Assess the impact of tax | <ul style="list-style-type: none"> May assess particular issues with regard to the legal feasibility of the project Confirm readiness to launch tender |

| Phases of the project | Steps | Roles of advisers | | | |
|-----------------------|---|---|--|--|--|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | | | provisions on the project ▪ Confirm readiness to launch tender | |
| | Prepare the detailed design of the PPP arrangement and draft the PPP contract | Note: This step requires a multidisciplinary approach and a close collaboration among the various advisers | | | |
| | | ▪ Coordinate the advisory team to ensure a balanced/reasoned outcome from the technical, financial and legal advice | ▪ Contribute to the design of the risk allocation and mitigation strategy ▪ May propose contractual provisions or/and advise on clauses dealing with the design and construction process, service specifications, information reporting, output requirements and performance measurement ▪ Provide inputs on sensitivity tests on technical parameters | ▪ Contribute to the design of the risk allocation and mitigation strategy ▪ Run the financial model to assess various risk allocation scenarios ▪ Contribute to the design and testing of the payment mechanism ▪ Propose contractual provisions regarding the payment mechanism, the funding/financing features, reporting of key financial and accounting information, the financial consequences of an early termination of the contract, accounting and tax obligations, insurance requirements | ▪ With the support of the other advisers, produce a detailed risk matrix ▪ Based on the input of other advisers, design the risk allocation and mitigation provisions ▪ Propose an outline/draft of the PPP contract to be proposed to the bidders |

| Phases of the project | Steps | Roles of advisers | | | |
|----------------------------|---|--|--|--|--|
| | | Project management | Technical/market/demand | Financial | Legal |
| | Procurement procedure | <ul style="list-style-type: none"> May contribute to the analysis that feeds the choice of the procurement strategy and procedure to be adopted May adapt the organisation of the project procurement to ensure that it suits the selected procedure | <ul style="list-style-type: none"> May contribute to the analysis that feeds the choice of the procurement strategy and procedure to be adopted | <ul style="list-style-type: none"> May contribute to the analysis that feeds the choice of the procurement strategy and procedure to be adopted | <ul style="list-style-type: none"> Propose a procurement procedure considering EU and national procurement legislation and the project features |
| | Bid evaluation criteria | <ul style="list-style-type: none"> May contribute to discussions regarding the choice of evaluation criteria | <ul style="list-style-type: none"> Propose criteria regarding the technical and economic aspects of the project: quality of the design, technical robustness, relevance of technical solutions, demand, performance targets | <ul style="list-style-type: none"> Propose criteria regarding the financial aspects of the project (e.g. cost to the Authority and/or the users, payments to the Authority by the private partner, suitability and robustness of the financing structure) Model the effects of the proposed evaluation criteria in several bidding scenarios | <ul style="list-style-type: none"> Propose a bid evaluation process in accordance with the legal framework Lead the design of a set of weighted criteria aiming to identify the “<i>most economically advantageous tender</i>” |
| 3.1 Bidding process | Note: Throughout this stage, the legal adviser together with the other advisers should ensure that the key procurement principles are followed (e.g. transparency of the decision-making process, equal treatment of bidders, confidentiality of bids) | | | | |
| | Procurement notice, prequalification and | <ul style="list-style-type: none"> Organise a (electronic) data room (for large and/or | <ul style="list-style-type: none"> Assess the technical capabilities of the bidders to | <ul style="list-style-type: none"> May contribute to the drafting of the procurement | <ul style="list-style-type: none"> Draft the procurement notice and the |

| Phases of the project | Steps | Roles of advisers | | | |
|-----------------------|-----------------------------|---|---|---|--|
| | | Project management | Technical/market/demand | Financial | Legal |
| | shortlisting | <p>sensitive projects mainly) that provides project information to the bidders and give clarifications as necessary</p> <ul style="list-style-type: none"> ▪ Update the project organisation if necessary ▪ Monitor risks that can compromise the procurement of the project (e.g. non-compliance with legal timelines, inefficient dissemination of information to decision-makers, etc.) and propose solutions to mitigate them | <p>implement the project (e.g. technical solutions, track record of past projects) from expressions of interest to qualification</p> | <p>notice and the prequalification questionnaire</p> <ul style="list-style-type: none"> ▪ Assess the financial capabilities of bidders to implement the project (e.g. financial/credit analysis of key sponsors) from expression of interest to qualification ▪ Propose a shortlist of bidders and draft a report justifying the Authority's choice | <p>prequalification questionnaire</p> <ul style="list-style-type: none"> ▪ Propose a list of appropriate publishing media (including OJEU) for the procurement notice ▪ Assess the formal admissibility of expressions of interest and/or qualification submissions ▪ Prepare letters for both qualified and unsuccessful bidders |
| | Invitation to tender | <ul style="list-style-type: none"> ▪ Update the project organisation if necessary ▪ Monitor risks that can compromise the procurement of the project and propose solutions to mitigate them | <ul style="list-style-type: none"> ▪ Contribute to the drafting of parts of the tender documentation (e.g. information memorandum, instructions to bidders regarding the technical aspects, technical selection criteria including scoring | <ul style="list-style-type: none"> ▪ Lead the drafting of parts of the tender documentation (e.g. information memorandum, instructions to bidders regarding financial, tax and accounting aspects, financial model requirements, templates for letters of support from | <ul style="list-style-type: none"> ▪ Lead the drafting of parts of the tender documentation, finalise the drafting of the PPP contract to be proposed to bidders, fine-tune the evaluation criteria, set out instructions to bidders regarding the legal aspects of their bids (e.g. |

| Phases of the project | Steps | Roles of advisers | | | |
|-----------------------|---------------------------------|---|---|---|--|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | | system) | financiers) | contract mark-up, legal set-up of the private partner) <ul style="list-style-type: none"> Verify the final version of the tender documentation before sending it to bidders |
| | Interaction with bidders | <ul style="list-style-type: none"> Update and fine-tune the project timetable e.g. for the competitive dialogue process, where used, number of dialogue rounds, topics to be covered at various rounds, time allocated to bidders to improve their bids Manage the bidders' access to the data-room and organise clarification meetings Prepare and lead meetings with bidders (e.g. detailed agenda, time-keeping, minutes) Allocate the evaluation tasks among advisers Monitor risks that can | <ul style="list-style-type: none"> Analyse the technical aspects of intermediate bids with a focus on performance (e.g. targets, measurement, incentives) Raise any clarification questions on the bids Contribute to the definition of a dialogue strategy Participate in the preparation for and meetings with the bidders Between each dialogue round, contribute to updating the tender documentation regarding technical issues | <ul style="list-style-type: none"> Analyse the financial aspects of intermediary bids with a particular focus on the financing structure (including the hedging strategy) and the payment mechanism Raise any clarification questions on the bids Propose a dialogue and negotiation approach tailored to the specificities of each bid (e.g. timing, intensity) Participate in the preparation and holding of meetings with the bidders Advise on optimal financing structures Between each dialogue | <ul style="list-style-type: none"> Analyse the legal aspects of intermediate bidder submissions with a specific focus on the allocation of risks/responsibilities between the Authority and the bidder consortium and within the various components of the consortium itself Raise any clarification questions on the bids Contribute to the definition of a dialogue strategy Participate in the preparation for and meetings with the bidders Lead the PPP contract negotiations Lead the updating of tender |

| Phases of the project | Steps | Roles of advisers | | | |
|---------------------------------------|---|--|---|---|---|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | <p>compromise the procurement of the project and propose solutions to mitigate them</p> | | <p>round, contribute to updating the tender documentation regarding financial issues</p> | <p>documentation between each dialogue round</p> <ul style="list-style-type: none"> ▪ Draft/review documents to be sent to bidders (e.g. letters, list of questions) |
| | Evaluation of tenders and selection of a preferred bidder | <ul style="list-style-type: none"> ▪ Monitor and coordinate the evaluation process ▪ Bring together all contributions in a coherent and evidence-based report ▪ Contribute to identifying the preferred bidder ▪ Monitor risks that can compromise the procurement of the project and propose solutions to mitigate them | <ul style="list-style-type: none"> ▪ Analyse the technical aspects of the final bids ▪ Participate in seeking clarifications on any issues that may appear useful to a good understanding of bids ▪ Evaluate and score the technical aspects of the bids ▪ Contribute to identifying the preferred bidder | <ul style="list-style-type: none"> ▪ Analyse the financial aspects of the final bids: overall cost to the Authority, public guarantees sought, robustness, integrity and coherence of the financial model, acceptability of the main terms and conditions of the financing, etc. ▪ Participate in seeking clarifications on any issues that may appear useful to a good understanding of bids ▪ Evaluate and score the financial aspects of the bids | <ul style="list-style-type: none"> ▪ Analyse the legal aspects of final bids, in particular, the proposed PPP contract amendments ▪ Lead clarifications on any issues that may appear useful to a good understanding of bids ▪ Evaluate the legal aspects of the bids ▪ Review the draft evaluation report ▪ Prepare letters for successful and unsuccessful bidders |
| 3.2 PPP contract and financial | Final PPP contract | <ul style="list-style-type: none"> ▪ Together with the other advisers, organise the framework for interactions with the bidders (timetable, | <ul style="list-style-type: none"> ▪ Contribute to discussions with the preferred bidder ▪ Finalise the technical provisions and/or annexes | <ul style="list-style-type: none"> ▪ Contribute to negotiations with the preferred bidder ▪ Contribute to finalising the PPP contract provisions and | <ul style="list-style-type: none"> ▪ Lead discussions with the preferred bidder (clarifications, confirmation of commitments, |

| Phases of the project | Steps | Roles of advisers | | | |
|-----------------------|-----------------------------|--|--|---|---|
| | | Project management | Technical/market/demand | Financial | Legal |
| close | | <p>remaining issues, agreed matters)</p> <ul style="list-style-type: none"> Monitor risks that can compromise the procurement of the project and propose solutions to mitigate them | to the PPP contract | annexes dealing with financial aspects (which can be established before financial close) | <p>negotiations)</p> <ul style="list-style-type: none"> Finalise legal annexes to the PPP contract Carry out a final review of the full PPP contract documentation |
| | Financing agreements | <ul style="list-style-type: none"> Monitor risks that can compromise the financial close and propose solutions to mitigate them | <ul style="list-style-type: none"> Typically not involved | <ul style="list-style-type: none"> In the case of a financing competition, oversee the process on behalf of the Authority Assist the Authority in negotiations with the lenders Review the impact on the Authority's payments/user charges of changes in the financial assumptions Review the financing agreements Review any proposed interest rate and currency hedging strategy | <ul style="list-style-type: none"> Draft the direct agreement between the Authority and the lenders (if any) Review the financing agreements and ensure consistency with the PPP contract and the direct agreement Assist the Authority in the negotiations with the lenders |

| Phases of the project | Steps | Roles of advisers | | | |
|--------------------------------|--|--|-------------------------|--|--|
| | | Project management | Technical/market/demand | Financial | Legal |
| | Financial close | <ul style="list-style-type: none"> Monitor risks that can compromise the financial close and propose solutions to mitigate them | | <ul style="list-style-type: none"> Supervise the financial close process on behalf of the Authority Run the financial model to reflect the final macroeconomic/financial parameters Supervise the execution of any interest rate/currency hedging | <ul style="list-style-type: none"> Organise the financial close process Review the conditions precedent to financial close Prepare and review the execution of all project and financing agreements |
| 4.1 Contract management | Note: It is difficult to set out a typical contract management process as contract management activities ⁶ depend significantly on the project characteristics and events arising during its life. Moreover, the way Authorities usually involve advisers at this stage is much less standardised than for the pre-financial close stages. | | | | |
| | Allocate management responsibilities | <ul style="list-style-type: none"> Propose a sound organisation for contract management: staffing, governance and decision- | | | |

⁶ For more information on contract management, see the following EPEC report "Managing PPPs during their contract life – Guidance for sound management" (www.eib.org/epec/members/work-programme/operational-ppp/index.htm)

| Phases of the project | Steps | Roles of advisers | | | |
|-----------------------|---|--|--|--|--|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | <p>making chain, reporting, timetable, risk monitoring, budget supervision, etc.</p> <ul style="list-style-type: none"> Lead the drafting of a user-friendly contract management manual⁷ | | | |
| | Monitor and manage project delivery and service outputs | | <ul style="list-style-type: none"> Supervise design activities together with the Authority Monitor and report on the implementation of works by taking part in site meetings, reviewing reports produced by the private partner and investigating issues that may arise At project completion, supervise the acceptance procedure (e.g. tests, inspections, notifications) Advise on the implementation of the tools | <ul style="list-style-type: none"> Follow-up the utilisation of the financing, by the private partner Contribute to the drafting of the contract management manual on financial issues Support the adaptation of the financial model to meet the requirements of the operational phase Support the Authority in managing the payment mechanism Support the Authority in the | <ul style="list-style-type: none"> Contribute to the drafting of the contract management manual on legal issues Support the Authority in resolving contract interpretation issues and disagreements with the private partner |

⁷ This document provides a roadmap on how to manage the contract efficiently for all those at the Authority who will be involved in that process, either directly or indirectly.

| Phases of the project | Steps | Roles of advisers | | | |
|-----------------------|--------------------------------------|--------------------|--|--|---|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | | for monitoring the performance of the private partner <ul style="list-style-type: none"> Assess the quality of, analyse and report on the performance data provided by the private partner | accounting/budgeting aspects from the project <ul style="list-style-type: none"> Review and analyse the accounting and financial data regularly provided by the private partner Support the Authority in carrying out any performance reviews and in depth financial health-checks analysis | |
| | Managing changes to the PPP contract | | <ul style="list-style-type: none"> Assess the technical impact of proposed changes and advise the Authority accordingly | <ul style="list-style-type: none"> Assess the financial impact of proposed changes in running the financial model and advise the Authority accordingly Explore refinancing opportunities and assess any refinancing proposals made by the private partner | <ul style="list-style-type: none"> Assess the legal impact and feasibility of any change that may be proposed Draft or review PPP contract amendments when required |
| | Dispute resolution | | <ul style="list-style-type: none"> Advise the Authority on the issue being disputed | <ul style="list-style-type: none"> Advise the Authority on the issue being disputed | <ul style="list-style-type: none"> Explain/clarify dispute resolution provisions and processes Advise the Authority on the |

| Phases of the project | Steps | Roles of advisers | | | |
|------------------------|------------------------------------|--|---|--|---|
| | | Project management | Technical/market/demand | Financial | Legal |
| | | | | | issue being disputed |
| | PPP contract termination or expiry | <ul style="list-style-type: none"> In case of likely termination, may advise on a crisis management strategy Plan the retendering of the contract or transfer of the assets back to the Authority to ensure service continuity | <ul style="list-style-type: none"> Review state of the assets and required rectification works⁸ | <ul style="list-style-type: none"> In case of termination, assist the Authority in the calculation of termination payments Assist the Authority in clearing final payments owed to/by the private partner and closing the accounts | <ul style="list-style-type: none"> Explain/clarify termination provisions Advise on how to protect the Authority's interests Advise on the legal process and issues related to the termination or expiry of the PPP contract |
| 4.2 Ex post evaluation | Institutional framework | <ul style="list-style-type: none"> May propose an evaluation process | | | |
| | Analytical framework | | <ul style="list-style-type: none"> May audit the technical aspects of the project and propose improvements | <ul style="list-style-type: none"> May audit the financial aspects of the project and propose improvements | <ul style="list-style-type: none"> May audit the legal aspects of the project and propose improvements |

⁸ This may also be needed at the beginning of the process if there is a transfer of existing assets to the private partner (e.g. case of a brownfield PPP project)



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