

# Professionalising Rural and Small Town Water Supply Management - Contracting Issues

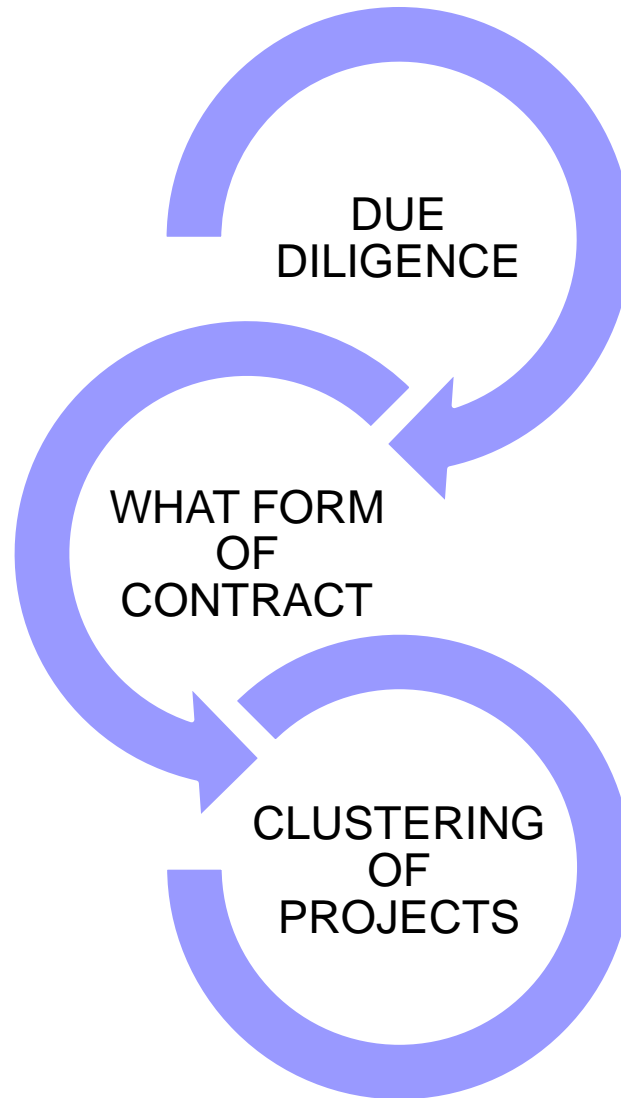
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# Introduction

- Small scale projects
- Capacity of parties limited – keep simple
- Survey of contracts and bidding documents supported by WSP and World Bank showed variation in level of complexity of contracts
- Feedback from operations staff that some provisions worked better than others
- WSP and WB have developed a toolkit on contracting issues for small scale projects

# 1. Key issues to consider prior to drafting

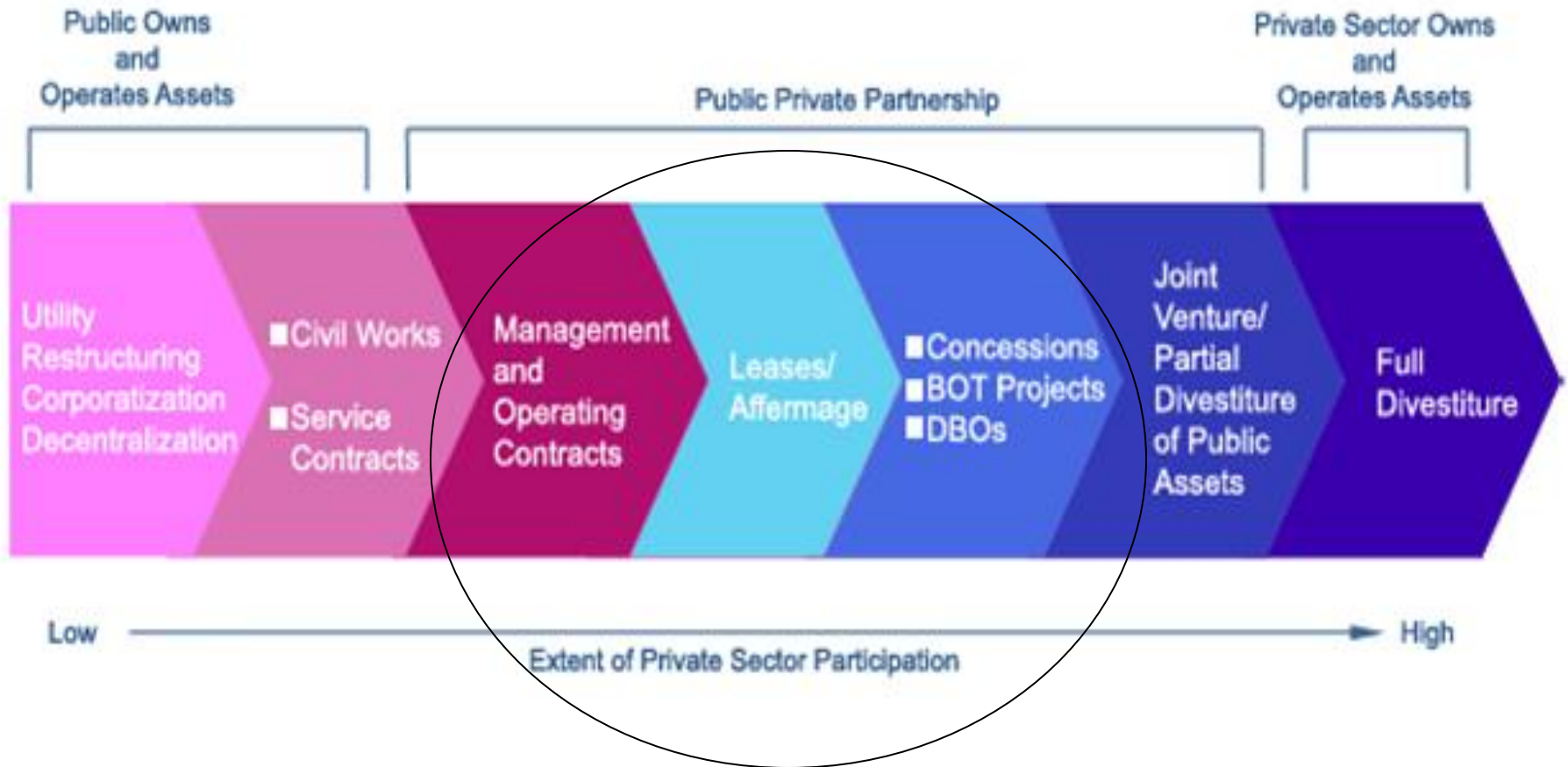


# Legal Due Diligence



- Contracting parties
- Who owns assets/ water permit?
- Common law or civil law?
- Legal water quality/ service standards?
- Restrictions on contracting?
- Tariff policy
- Fees and taxes
- PPP law or procurement law
- Environmental obligations
- Taking security – lender issues
- Existing operator/ employees?

# What Form of Contract



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

# Main issues for form of contract

## ■ Existing assets or new build?

**EXISTING ASSET**  
MANAGEMENT/ O & M  
CONTRACT/ LEASE/  
AFFERMAGE

**NEW BUILD (+EXISTING)  
ASSET**  
DBO/ DBL / BOT / CONCESSION

## ■ Operator remuneration

TARIFF

FEE

LEASE/  
AFFERMAGE

MANAGEMENT/  
O & M  
CONTRACT

TARIFF

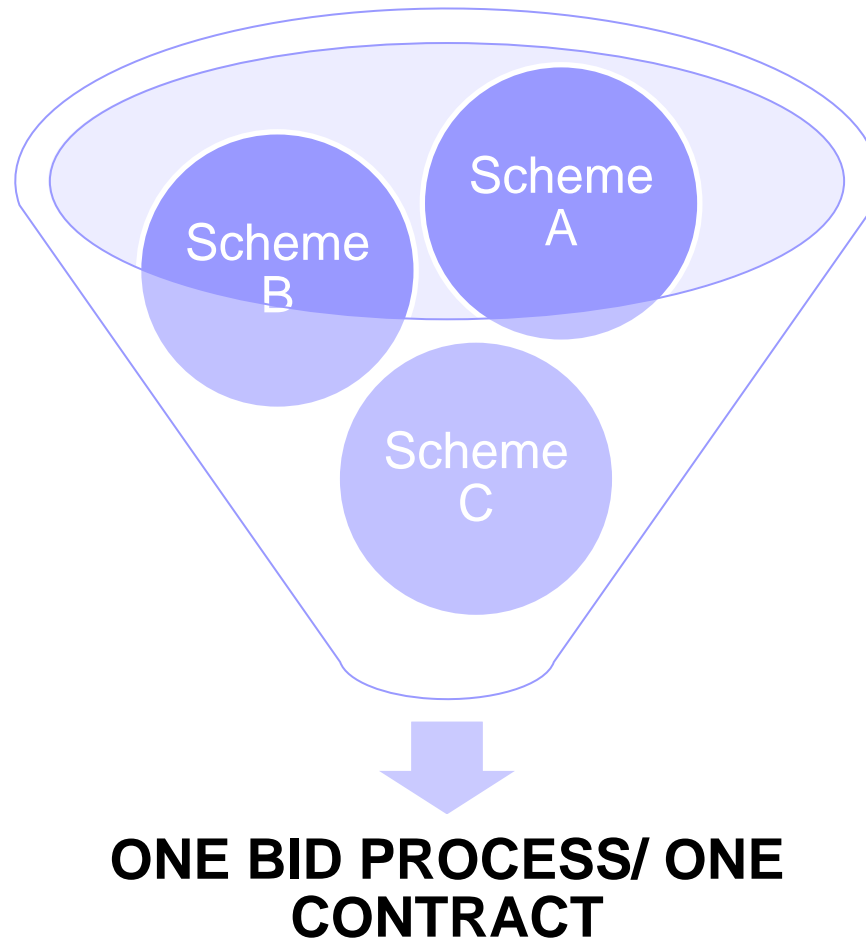
FEE

CONCESSION/  
DBL

DBO/ BOT

## ■ Is there a model form of contract already?

# Clustering of contracts



## 2. Key Contractual Issues

### Duration

- How long? – risk/ investment by operator
- Contract renewal?

### Conditions precedent

- What needs to happen before start of operations? Eg - Financial close/ land acquisition/ permits
- Penalties and early termination if not achieved

### Rights and obligations of operator

- Right to provide water services (exclusive), over land and assets, to charge, to extract water
- Obligation – deliver service, repair and maintain (small parts/ large parts?), develop business and asset management plans



# Key Contractual Issues...

## Capital investment obligations

- Rehabilitation of existing or new build?
- Replacement of parts towards end of contract?
- How will capex be financed?

## Obligations of Authority

- Provide land and existing assets, [obtain water permit]
- Major repair and renewal?
- Pay operator
- Monitor operations

## Performance standards and targets – penalties and bonuses

- A few clear, measurable and attainable standards and targets
- penalties/ bonuses - incentivise good performance and punish bad behaviour
- Relief events

# Key Contractual Issues....

## Tariffs

- Tariff to cover costs of operation and maintenance and capex (unless there is other funding source)
- Tariff methodology - clear
- Tariff adjustments (legal limitations?)
- Social tariffs and affordability

## Payment of operator

- From tariffs or operator fee or both?
- Will operator collect tariffs on behalf of authority?
- If operator receives tariffs, does it take all revenue risk?

## Monitoring contracts

- Process for tariff setting and adjustment (regulation)
- Conflicts resolution
- Performance verification
- Audits
- Business planning and investment planning

## Accounts and reporting

- Frequency
- Verification
- Limited capacity of parties

# Key Contractual Issues ...

## Customers

- Billing procedures
- New connections
- Customer contract/ right to cut off delinquent customers
- Complaints procedure

## Dispute Resolution

- Day to day disputes
- Independent engineer/ conciliation
- Existing legal mechanism? - Arbitration/ courts?

## Liability/ insurance

- Legal liability of operator – any limitation?
- Environmental liability
- Public health
- Insurance
- indemnification

## Expiry/ early termination

- Handover
- Termination events (default, force majeure, at will)
- Process (notification, cure periods)
- Consequences (termination payments)



# Toolkit for Structuring PSP Contracts for Small Scale Water Projects -

<http://ppp.worldbank.org/public-private-partnership/ppp-sector/water-sanitation/small-water-providers>

- Key design issues and contractual provisions
- What each provision should include
- What team found in global review of contracts
- Recommendations (sample wording/ sample term sheets/ sample contracts)

# Other 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](http://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>

