Professionalising Rural and Small Town Water Supply Management - Contracting Issues

WSP-RWSN Webinar Series
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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

- DUE DILIGENCE
- WHAT FORM OF CONTRACT
- CLUSTERING OF PROJECTS
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
Main issues for form of contract

- Existing assets or new build?

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- Operator remuneration

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- Is there a model form of contract already?
Clustering of contracts

Scheme B

Scheme A

Scheme C

ONE BID PROCESS/ ONE CONTRACT
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 -

- 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 -


- Maharastra – Urban Water Toolkit -

- ADB – Developing Best Practices in Private Sector Investment in Infrastructure -