



Sustainable Water Integrated Management Support
Mechanism (SWIM- SM)
Project funded by the European Union

TRAINING ON EVALUATING AND STRUCTURING PPPS IN THE WATER SECTOR
Day1-second session

FINDING RIGHT PARTNER

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8 June 2015

Finding the right partner

There are several criteria for the success of a PPP which involves a government agency contracting with a private partner to design, construct, operate, maintain, and/or manage a facility or system, in whole or in part. Proper selection of the partner in a competitive environment is the most critical of these criteria.

As the agreements are lengthy, establishing a long-term working relationship with a private sector partner becomes a critical factor for the success of the partnership, particularly where the selection is from many entities including engineering, construction and financial institutions.

The partner's selection process 1/

The PPP procurement process is the best opportunity for a public agency to build a partnership with a private partner.

Since the scope of work, schedule and plan of finance often cannot be precisely determined, use of the traditional public agency “low bid” procurement process cannot apply. Instead, most PPP projects use the public Request for Qualifications (RFQ)/ Request for Proposals (RFP) process with the public agency selecting a partner based on the “best value” , rather than to the “lowest bidder”.

The partner's selection process /2

A public agency uses a multi-step process to select a private partner :

- First step consists of a RFQ to determine an eligible pool of candidates
- The resulting “short list” of candidates are invited to submit a full RFP, consisting of the partner's technical proposal and PPP structure. *(For some projects this may involve an additional preliminary step where prior to requesting an RFQ, a public agency solicits EoI)*

A successful procurement will attract competitive proposals from qualified parties, obtain attractive terms that meet the public agency's procurement objectives and result in an equitable contract that fairly serves both partners as well as the public.

Information about the partners

Key information a public agency should request from a potential private partner to perform an in-depth review:

- Description of the Proposed Partner Qualifications & Experience
- Financial Capability References
- Risk Transference
- Litigation & Controversy

This information will assist the public agency in finding a partner that is experienced and will bring the “best value” to the PPP over the term of the long-term partnership.

Discussion



TRAINING ON EVALUATING AND STRUCTURING PPPS IN THE WATER SECTOR

ROLE OF STAKEHOLDERS IN A PPP

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Challenge of involving different parties in PPP projects

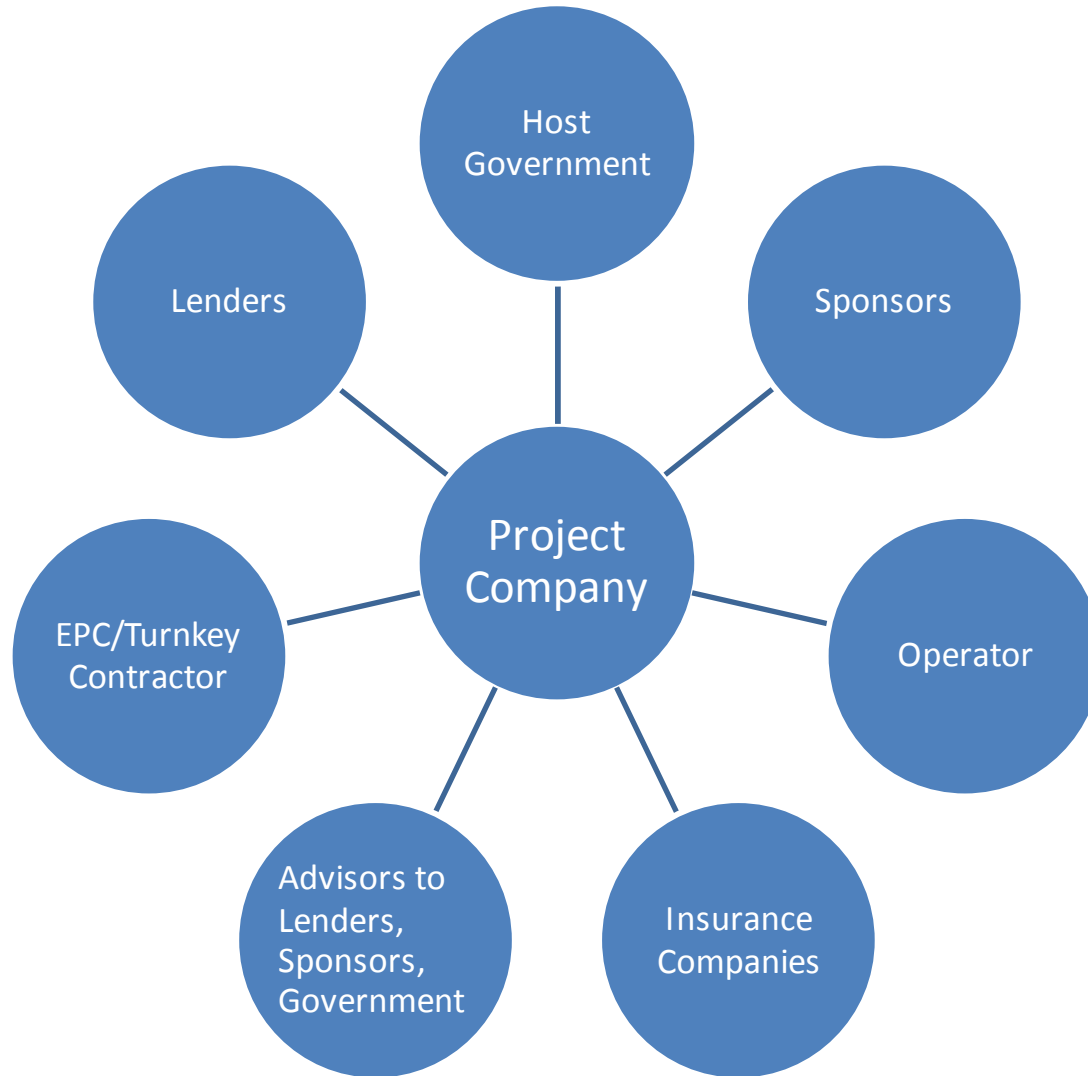
- Challenge lies in having to bring considerable number of parties with different interests together to achieve one goal:

A successful Project

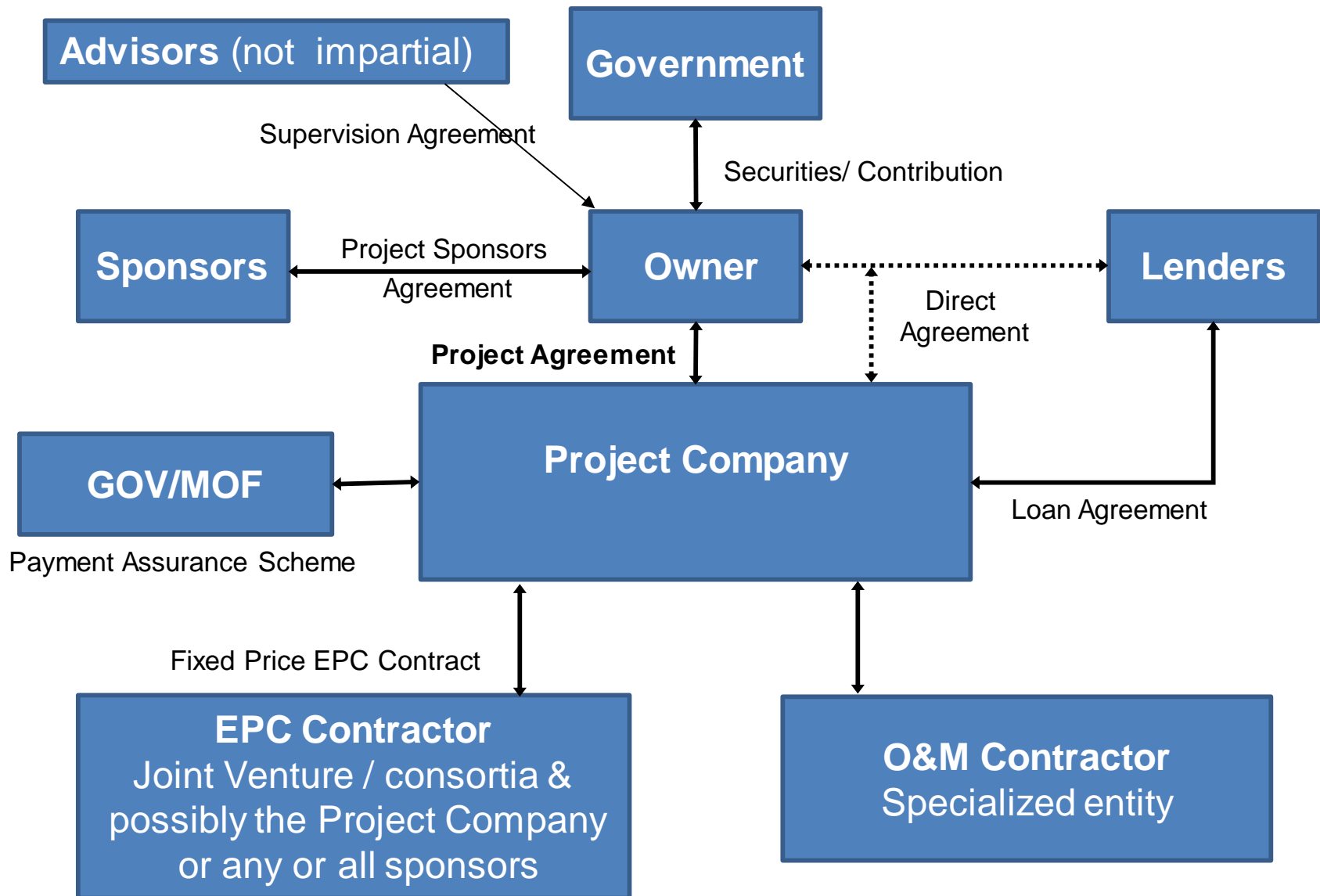
This process is complicated but interesting.

- Although the aim is one, but self interests vary and might conflict with each other.
- Parties may be located in different jurisdiction and individual laws may conflict.

Main Parties to any PPP Project



Simplified Contractual Framework



Role and Obligations of the Project Company in PPP Projects 1/

Project Company/Borrower

- This might be a joint venture of limited number of companies, suppliers, operators, construction companies and, very rarely, financiers.
- The Company will be set for a special and well defined purpose (SPV/V) to limit its activities to certain works. This limits the borrowers from involvement in any non-project activities, ensuring that the lenders are not exposed to any additional risks unrelated to the project.

Role and Obligations of the Project Company in PPP Projects 2/

- The Project Company will design, engineer, procure construct, complete and test the Works in accordance with the Project Agreement.

- It will complete the works in accordance with the Agreement and in all respects comply with:
 - the technical requirements
 - project company's conceptual design
 - all applicable statutory requirements
 - government authorisations
 - good industry practice, and
 - shall be fit for the intended purposes

Role and Obligations of the Project Company in PPP Projects /3

- Project Company shall be responsible at all times for the provision of all utilities and services (electricity, water etc), including for entering into all necessary agreements with power suppliers, utility owners and other service providers.
- It may contract with EPC Contractor to design, engineer, procure, construct, complete and test the Works, provided, however, that the appointment of the EPC Contractor by the Project Company shall not relieve the Project Company of any of its obligations or potential liability.

Role and Obligations of Sponsors in PPP Projects

Sponsors/Shareholders

are those companies, individuals, agencies promoting the project

Roles:

- Developing the project
- Injecting different types of equities
- Obtaining permits and consents
- Providing debts or act as guarantors
- Managing the project

Role and Obligations of Third Party Investors in PPP Projects

Third Party investors

are just investors looking for return on their investments for their own shareholders such as Social Security Corporation.

They will not act as sponsors, but want to be on the Board of the Project Company.

Role and Obligations of Lenders in PPP Projects 1/

Lenders/Banks

If project is large or the level of risk is high, then syndicates of lenders is formed. In such case, the lenders assign Lead Arranger representing all lenders in front of the Company, Sponsors and Owner

Role and Obligations of Lenders in PPP Projects /2

Role of *Lead Arranger* on behalf of the *Lenders*:

- arranges the loan
- represents lenders throughout all project phases and protects their interest
- hires advisors to evaluate the project from technical, legal and financial view point
- administers loan (facility agent) during loan term
- administers the bank accounts (account bank or facility agent)
- Account bank ensures that the project insurances are completed and documented. It also maintains all project accounts

Role and Obligations of Construction Co. in PPP Projects

Construction Company

Lenders usually prefer that sponsors and project company divest itself of responsibility for project management. Thus, Contractors Role:

- Design, engineer, procure, construct, commission and test the Works and assume full responsibility for the on-time completion
- All construction liabilities and quality of works being responsibility of the Project Company are transferred back to back to the Contractor through an EPC agreement for design, engineer, procure, construct, complete and test the Works

Role and Obligations of the Operator in PPP Projects

Operator

Lenders and Owners usually prefer that an O&M Company be hired at an early stage of the project phases if the Sponsors or the equity shareholders is not the operator. Operator's Role:

- Operates the project and ensures that day to day operation and maintenance of the project is undertaken in accordance with pre-agreed upon guidelines
- Ensures operations cost are within budget
- Follows renewal requirements and procedures to ensure life time and handover requirements are met.

Role and Obligations of Other Parties in PPP Projects

Suppliers

Such as fuel suppliers in some projects or suppliers of material during the O&M. Such suppliers will be party to the whole procurement of the project under a separate agreement similar to the O&M.

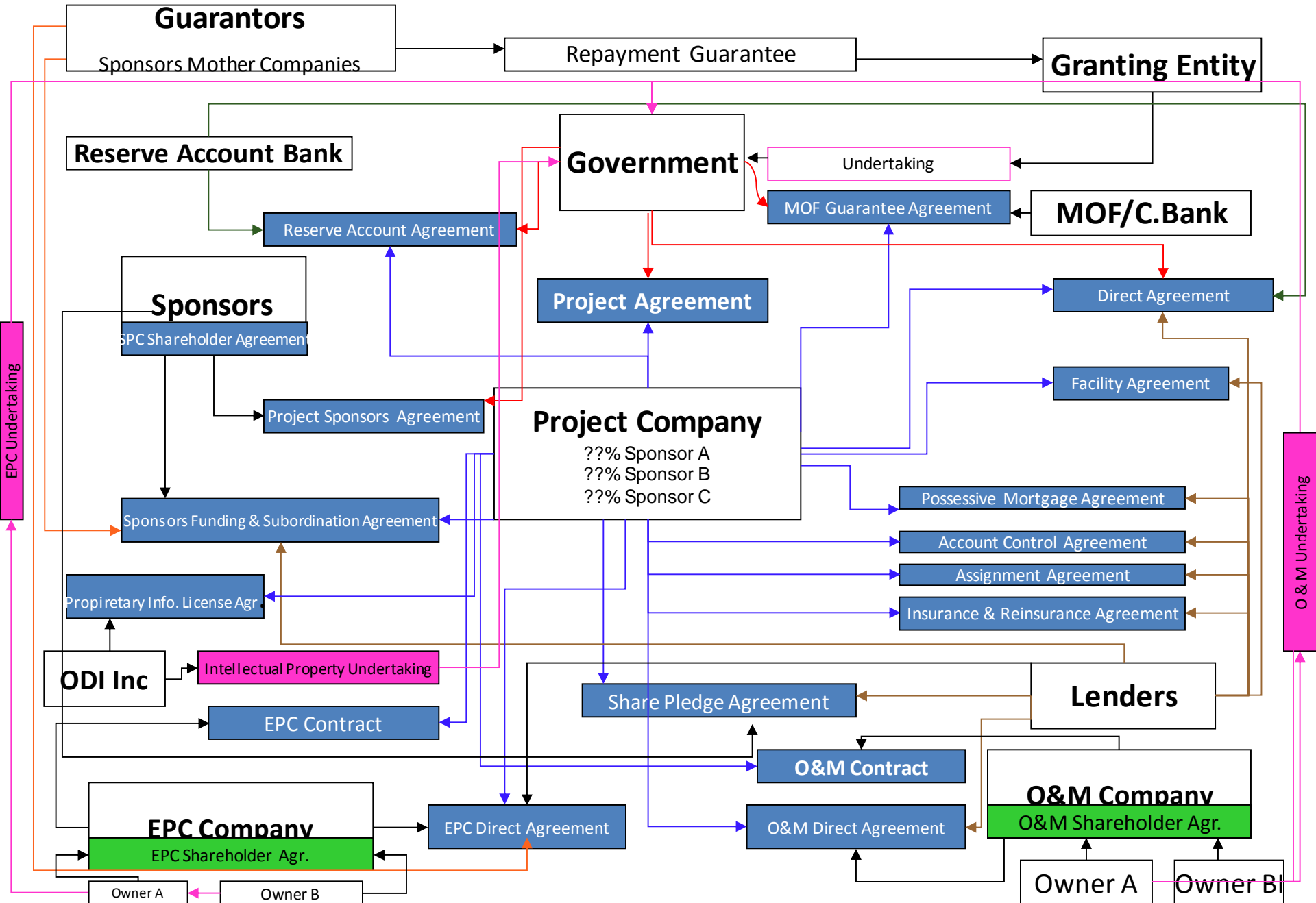
Purchaser or Off-taker

Other than Government such as electricity companies or oil distribution companies. They sign a binding agreement taking the risk of sale and paying for the products the project is producing;

Insurance Companies

Their role is to cover the lenders, owner and the sponsors against major catastrophe or casualties affecting the project or personnel.

Full Contractual Framework



THANK YOU