

MALAYSIAN PUBLIC PRIVATE PARTNERSHIP

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ABSTRACT

The Malaysian government employs Public Private Partnership (PPP) as a tool for the development of infrastructure. The literature postulates different aspects of Malaysian PPP projects however there is a dearth of the robust description of the process for Malaysian PPP projects. Therefore, this study aims to describe the process of Malaysian PPP projects. To achieve the objective, the phenomenological research method is adopted and interviews are conducted with PPP practitioners in Malaysia. The findings of interviews explain the five phases of Malaysian PPP projects. Furthermore, the detailed design concept and clear agreement play vital role in PPP projects. The findings may help the research in the better understanding of PPP.

Keywords: Public Private Partnership, Projects, Phenomenological Research, Design Concept, Agreement.

INTRODUCTION

Provision of public infrastructure is the prime responsibility of the government, however, due to budgetary pressure different government tend to involve private sector for public services by implementing the tool; Public Private Partnership (PPP). Likewise, Malaysian government has adopted PPP for public service and development of infrastructure due to innovation, reduction of public money tied up in capital investment and reduction of the total project cost (Ismail, 2013a). Though, Malaysian government has been employing PPP since the mid-1980s the allocation of funds in Ninth Malaysian Plan (Plan, 2006) and inclusion PPP projects as strategy in Tenth Malaysian Plan (Plan, 2010) were the vital steps towards the enhancement of PPP projects in Malaysia (Ismail, 2013b). Furthermore, in year 2009 Unit Kerjasama Awam Swasta (UKAS) was developed as a separate department under the direct supervision of Prime Minister of Malaysia (About UKAS, n.d). The recent literature for Malaysian PPP projects describes the problems in PPP projects (Khadaroo, Wong & Abdullah, 2013; Markom & Ali, 2012; Abdul, Memon & Zulkifli, 2014; Takim, Ismai & Nawawi, 2013), critical success factors (Ismail, 2013b), risks (Ahmad, Ibrahim & Minai, 2017) and evaluation of value for money (Ismail, Takim & Nawawi, 2011). However, the recent literature lacks the description of the process for Malaysian PPP projects. In addition, the questions like; what the phases of Malaysian PPP projects are and how does each phase is carried out, are unrevealed. Therefore, this study attempts to describe the Malaysian PPP project that may help to develop the better understanding for future researchers.

LITERATURE REVIEW

In literature, the consensus on one definition of PPP does not exist but all researchers and practitioners are certain on the fact that the PPP arrangements mean involvement of both public and private sectors, since, the level of involvement differs from region to region and project to project. Therefore, for a better understanding of concept Peter (1998) elucidated five characteristics that describe PPP projects. Firstly, a PPP partnership comprises of two or more players; one of them is public and the other is private. Secondly, each partner acts as a principal. Thirdly, PPP is a continuous partnership that creates long-term relationships, whereas, the relationship is a one-off transaction. Fourthly, in PPP agreement, each player/partner contributes something in terms of resources such as capital or land for the creation of a partnership. Lastly, the most important feature of PPP that differs from others is transfer and sharing of risks. The Prime Minister PPP Department (UKAS) Malaysia describes PPP as:

Public Private Partnership (PPP) is a form of cooperation between the public and private sector whereby a stand-alone business is created, funded and managed by the private sector as a package that encompasses construction management, maintenance and repair works as well as replacement of public amenities comprising buildings, infrastructures, equipment and facilities (Definition, n.d.).

METHODOLOGY

The main objective of this research is to describe the PPP project process. Creswell (2017) suggests that phenomenological research method is helpful to inquire about any phenomenon. Therefore, the current study adopts the phenomenological method to describe PPP project process. In this method, based on guidelines of Groenewald (2004), first the 28 semi-structured interviews were conducted. The interviewees were UKAS personals, PPP experts in Ministry of Health, PPP experts in Ministry of Public works and PPP experts from Private companies that involve in PPP projects. Atlas-ti 8.0 has been used to arrange the interview data and to generate the themes/codes that helped to describe PPP process.

FINDINGS AND DISCUSSION

Based on the findings of interviews the PPP process is composed of five phases; Pre-Project Planning phase and selection of Private Partner or SPV (Special Purpose Vehicle), Planning Phase, Construction Phase, Commencement of Operation and transfer to government.

Pre-Project Planning Phase & Selection of Private Partner

First, a government ministry identifies the reasons and the need for involvement of private sector in certain public services or infrastructure. Malaysian PPP projects are exclusive because of application of PPP in most of the sectors especially health and education. In actual, the PPP project process starts from submission of project details and requirements to Prime Minister PPP department (UKAS) by the respective ministry. Based on the consensus of UKAS experts and ministry officials, a “Need statement” is developed. This need statement is a vital document because the planning stage strategies are based on this document. Thus, the clarity of the need statement is important. After the development of the need statement, UKAS technical experts evaluate the project based on the following criteria:

1. Is the application of PPP tool for the project appropriate?
2. What is the suitable type of PPP for the project?
3. What is the functionality of Project?
4. What are the expected levels of quality and cost associated with each type of quality level?
5. What are the Value for Money (VFM) ratios based on functionality, quality and cost?
6. What is the technical expertise that is required from SPV?

Based on the evaluation a report is compiled and submitted to the Director-General of UKAS. After the approval of the project with the consent of the prime minister the respective ministry launches the advertisement to invite bidders.

In the first phase, the primary question is, application of PPP to a certain project, because inappropriate application of PPP tool may increase the cost for government. The second critical decision in this phase is a selection of suitable PPP model. In Malaysia different types of PPP models exist such as; Build Operate Transfer (BOT), Build Lease Maintain & Transfer (BLMT), Build Own Operate (BOO) Build Lease & Transfer (BLT) and Land Swap.

In BOT, an SPV is granted a concession contract to build the facility, operate for a certain time (concession period) and transfer the ownership of facility to government after the concession period. In this arrangement SPV directly collects the revenue from user of facility. This model is mostly used for the development of roads and highways in Malaysia. In BLMT, the SPV builds the facility; lease the facility to government for certain concession period. In this concession period, the SPV maintains the facility and transfers the facility to government after the concession period. However, in BLMT government pays the fixed rent SPV for the facility. The Malaysian governments use this type of PPP for the construction and maintenance of hospitals, university campuses and hostels. In BOO, SPV builds facility, owns it and provide services/infrastructure to the government under purchase agreement for certain time, whereas, after fixed concession period government is not liable to buy services and SPV may shutdown the facility. This type of arrangement is used in power sector of Malaysia. In BLT SPV builds the facility, lease to the government but do not maintain or manages in concession period and after the concession period the government own the facility. The BLT is used to construct government buildings in Malaysia. In land swap despite of paying rent government settles payment by giving a land to the SPV for constructing any facility. The land swap is also used for construction of buildings for government.

After the bidding process a SPV is selected for the project. However, there is a lengthy process between agreement and selection of SPV.

Planning Phase

After selection SPV, UKAS gives a detailed briefing on requirements and government expectation from projects.

At the start of planning stage first, a technical committee is formed comprising technical experts from government ministry members and SPV experts. Based on the sector of project (i.e., health, education or infrastructure) government selects its expert for technical committee, as each sector needs different experts i.e., health sector need medical experts, road projects need respective infrastructure experts. Moreover, sometimes Malaysian government hires special experts from educational institutions depending on project requirement and recommendation from UKAS. After the formation of the technical expert committee, SPV is asked to submit the “Design Concept”.

Design Concept is a detailed document that includes the construction design, expected time of construction, functional design, operational output, technology requirement, human resource requirement, material/labour requirement and costs of construction, operation and finance. In fact, every aspect of the project is reported in the Design Concept. Any shortcoming in this proposed design may cause SPV a significant loss or lead project to failure.

After the consensus on technical issues of design concept, financial aspects are discussed. A financial committee is formed that comprises of SPV, UKAS and government officials. The financial committee focuses on macroeconomic and financial aspects to decide the unitary charges. A “Unitary charge” is payment to SPV. Furthermore, an important decision of financial committee is debt to equity ratio for PPP project. In most of the cases, SPV is allowed 80:20 debt to equity ratio that means SPV can use 80 percent as debt finance, whereas, in some cases the ratio can be 90:10.

After settlement of financial issues, a legal committee is formed that comprises of legal and tax experts from government, SPV and UKAS. The legal issues include; the list of permits, discussion of tax rules and ownership structure. In addition, legal committee drafts the agreement for the project.

Based on discussion of all committees the detailed reports are developed. All these reports and design concept are directed to respective ministry for final approval. The ministry may seek independent experts' opinion and may suggest more amendments or approves the design concept.

In urgency, the technical and financial committees may work simultaneously but legal committee is formed after the settlement of technical and financial issues as drafting of the agreement is based on technical and financial reports.

Before the agreement is signed, SPV seeks financier based on the approved design concept and government guarantees. Recently, for the PPP models in which government is liable to pay rent the government provides a guarantee of payment of unitary charges (Rent) or land swap whereas, in user pay (BOT) the guarantee of payment is not issued. After attaining the debt, SPV prepares the documents and attains all the required permits and approval from other government departments. The Design approval, finance (Debt) arrangements and preparation of documents are vital matters before signing of agreement. These matters take long time and may cause delay or cancellation of project. The delay in approval may cause increase in cost of SPV. After the approval from ministry both SPV and government ministry signs the agreement whereas UKAS does not enter in agreement. The UKAS acts as facilitator between SPV and government ministry.

The agreement PPP project is a vital document. It defines roles and responsibilities of parties, ownership and span of control. Generally, agreement contains following aspects;

1. Key terms' definitions
2. Concession period
3. Concession charges
4. Government obligations
5. Representatives and Warranties
6. Design and Construction rules
7. Land and Asset management
8. Key Performance Index (KPI) for operation and service level
9. Agents and sub-contractors
10. Default of any party
11. Expropriation, Force Majeure
12. Project Monitoring Committee (PMC)

13. Dispute Resolution Committee (DRC)
14. Environmental laws
15. Compliance with general laws

After the agreement, the Project Management Committee (PMC) is formed to monitor the project. However, due to large number of highway projects (BOT), Ministry of Works (MoW) has established a separate monitoring department; Malaysian Highway Authority (MHA) but for BLMT and other types of PPP projects a PMC is formed.

The PMC is formed to govern and monitor the project from construction to the end of concession period. In addition, for monitoring KPIs are the yardsticks to measure the performance of SPV. Based on sector and type of projects government ministries and UKAS have prepared general guidelines, whereas, the specific KPIs are prepared at planning stage.

Construction of Facility

The respective ministry issues a letter; permission to start construction after the agreement is signed. Based on the schedule in design concept, SPV starts the construction of facility. In all types of PPP projects delay in construction affects the budgeted revenues of SPV because inflow of cash starts at commencement of operation, however, SPV must pay the debt instalments at scheduled time. The delay in construction affects the net revenue because SPV gets unitary charge for specific concession period and government does not increase concession period. In case of delay in construction, the SPV may be granted additional time to complete the project but failure to complete construction within the additional period may lead to the termination of the agreement. After the construction of facility, the PMC members and government inspectors inspect the construction site. The government does not permit SPV to commence operation if construction of facility is not according to the approved design; however, for minor defects an extension of time is granted to rectify the issues.

Commencement of Operation

The respective ministry issues approval for the commencement of operation after the inspection. Based on KPIs, the operations are monitored. For highways projects (BOT), SPV submits the monthly report and MHA inspectors inspect the project. Furthermore, the PMC conducts regular meetings, tracks the operational and macroeconomic variables in all other types of projects except BOT. The vital function of PMC and monitoring department (MHA) is the review of unitary charge. In case of highways the toll charges must review after 3 or 5 years. Likewise, for other types of PPP the maintenance charges may need to review. In review, the unitary charge may increase or remain same. In addition, the SPV preserves the right to request for review/increase of unitary charges for any significant increase in cost of operation due to any sudden event.

Transfer of Facility

In all types of concessions, the SPV transfers the ownership of facility to the government ministry after concession period except BOO. For the transfer process, the agreement states the working conditions of assets. In addition, the agreement states the depreciation and write-off method for the valuation of assets. In all types of PPP models, the government is not liable to pay any settlement charges except any arrears.

CONCLUSION

The study aims to describe the general process of PPP projects in Malaysia. In order to achieve objective, the study employs the phenomenological research method by conducting interviews with the practitioners of PPP in Malaysia. The findings of interview postulate that Malaysian PPP arrangement comprises of pre-planning phase, planning phase, construction, operation and transfer phase. The development of need statement in pre-planning provides basics for the further phases. In addition, the design concept and clarity of agreement play a vital role in PPP arrangement because design concept states the details of project and agreement elucidates the roles and responsibilities of each partner. Furthermore, the completion of construction and commencement of operation at scheduled time is vital for the SPV revenue. Moreover, the KPIs for all stages serve as yardstick to gauge the performance of SPV. Lastly, the SPV transfers the ownership after concession period.

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