



HELLENIC REPUBLIC



MINISTRY OF ECONOMY AND FINANCE

SPECIAL SECRETARIAT FOR
PUBLIC & PRIVATE PARTNERSHIPS

PUBLIC & PRIVATE PARTNERSHIPS (PPP)

BRIEF GUIDE



Athens, 2006



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PUBLIC & PRIVATE PARTNERSHIPS (PPP)

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I. ABOUT **PUBLIC & PRIVATE PARTNERSHIPS**

I.1 **Public Private Partnerships: An introduction**

Public Private Partnerships (PPPs) are contractual agreements, usually long-term ones, between a public entity (the Contracting Authority) and a private counterpart, with the objective of implementing a project and / or providing a service. In a PPP scheme, the private partner bears, in whole or in part, the implementation cost of the project, as well as a substantial part of the risks related with its construction and operation. The public partner, on the other hand, lays out a set of output specifications on the design, technical, and operational characteristics of the project and determines the private partner's payment mechanism, either through partial (e.g. annual) payments linked with the availability of the project and the compliance with its output specifications or through direct payments by the end-users via fees (e.g. tolls).

I.2 **The rationale for implementing Public Private Partnerships**

The objective of PPPs is to involve private partners in the implementation of projects or the provision of services, aiming not only at securing additional financial resources, but also at benefiting from their know-how, human resources, innovative approach and ability to efficiently manage complex projects for the public benefit. The main benefits of PPPs are the following:

- **Ability to finance more projects**

The Government, along with the local authorities, have to respond to the constantly increasing needs and requirements of the citizens for modern and qualitative provision of infrastructure and services. The use of private funds, complementary to the public ones, may contribute to the faster implementation of projects and the delivery of services. PPP schemes are a new means of achieving the strategic priorities of public entities, complementary not only to the traditional public works, which by no means will be limited, but also to other forms of partnership between the public and the private sector, such as the concession agreements of the Ministry of the Environment and Public Works or the collaborations of Local Authorities with private partners, that continue to be implemented. Under PPP schemes, public entities implement and offer to citizens more works and services in a faster and more efficient manner.

- **Transfer of risks to the private sector**

The integration, depending on the structure chosen, of the design, financing, construction, and operation of a project under a PPP structure, along with the transfer of relevant risks to the private partner, creates incentives for a more diligent and efficient design and implementation of the projects. This, in effect, results in substantial reductions, if not abolishment, of cost and time overruns. Moreover, the fact that the private partner also undertakes the responsibility for maintaining the projects results in services of higher quality, with greater functionality throughout the project's life cycle.

- **Enhancement of the investment environment**

PPP schemes mobilize more funds than those that the public sector alone could mobilize, providing, hence, the opportunity to various parties and investors of the private sector to get involved in infrastructure projects, innovate and develop new activities. The long-term nature of PPP projects results in setting up financially stable companies with predictable cash flows. These cash flows feed the market and thus promote the growth of the economy.

1.3 Features of **Public Private Partnerships**

The selection of the private partners that will undertake a PPP project is made through an international public tender. PPPs are implemented through contractual agreements, whereby all the aspects of a project, not only during its construction period but also during its operational phase, as well as the obligations of the two contracting parties, are clearly set and agreed upon. At the end of the contractually predefined operational period the projects implemented under a PPP scheme are transferred from the private partner to the Contracting Authority.

- **Project's financing and reimbursement**

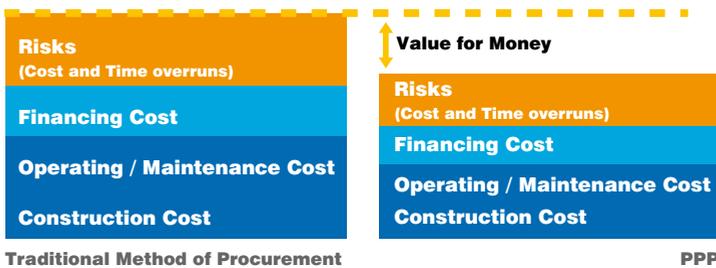
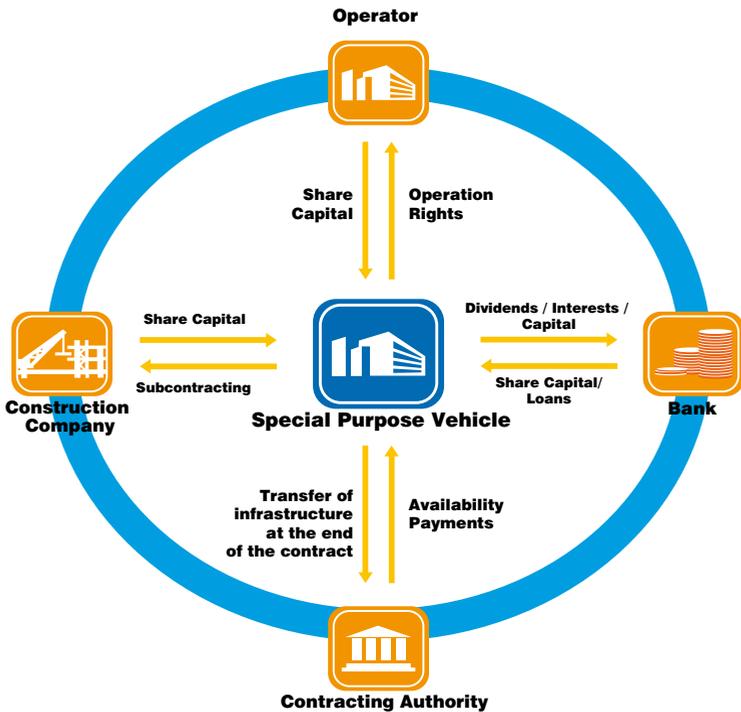
Upon the termination of the tender, the private partner selected creates a Special Purpose Vehicle (SPV) that will undertake, according to the scheme of the partnership:

- the finalisation of the design of the project,
- its construction, and
- either the operation and exploitation of the project or its maintenance according to the contractual agreement.

* From this point forward, when project is mentioned it refers to the construction of a work or the provision of a service

The SPV signs an agreement with the Contracting Authority, whereby all aspects related to the project are regulated and its financing is secured. Typically, the financing comes from, to a small extent, the private partner's equity and to larger one from bank loans.

The SPV undertakes the responsibility of constructing the project's infrastructure (construction, renovation of existing infrastructure, installation of equipment, etc) and the provision of pre-agreed services during the life of the contract, using either own resources or subcontractors that meet the criteria determined by the Contracting Authority. During the project's life, the SPV is paid either through regular instalments by the Contracting Authority (availability payments) or through fees paid by the end users. In turn, it gradually repays the loans it has obtained and, provided that it records profits, it distributes dividends to its equity investors, based on the yield on its equity.



1.4 The roles of the public and the private partner in a PPP

In a PPP scheme, the roles of the public and private partners are clearly determined.

The public partner undertakes:

- the determination of the general PPP scheme
- the evaluation of the private partners' proposals
- the support of the implementation of the project
- the monitoring of the implementation of the project and of the contractual obligations of the private partner

The private partner undertakes:

- the elaboration of the design of the project, according to the general framework of the tender
- the construction of the project
- the securing of the financial resources
- the management and operation of the project and / or its maintenance
- the transfer of the project to the public sector at the end of the contractual period

Public Sector's Role		Private Sector's Role	
Formation of Output Specifications	Evaluation	Design	Construction
Approval	Support / Monitoring	Financing	Operation

1.5 Main stakeholders in a PPP scheme

The success of a PPP scheme depends on the efficient and smooth collaboration of all the parties involved, both public and private ones.

A. Private Sector

- Construction Companies
- Banks / Financial Institutions
- Operators
- Advisors

B. Public Sector

- Interministerial PPP Committee
- Contracting Authorities
- Special Secretariat for PPPs, Ministry of Economy and Finance

2. TYPES OF **PUBLIC PRIVATE PARTNERSHIPS**

PPPs constitute a financial tool to implement projects and provide services, that has been widely used internationally in many alternative forms, depending on the allocation of the risks that the two contracting parties agree upon, but also on the ownership of the underlying assets. Notwithstanding the fact that many alternative forms of PPPs have been developed, we can categorize PPP schemes in two major types: projects where the end-user pays a fee (e.g. tolls) to the private partner for using the infrastructure or service, and projects, such as schools or hospitals, where the public partner reimburses the private partner with availability payments and the end-user pays no usage fees.

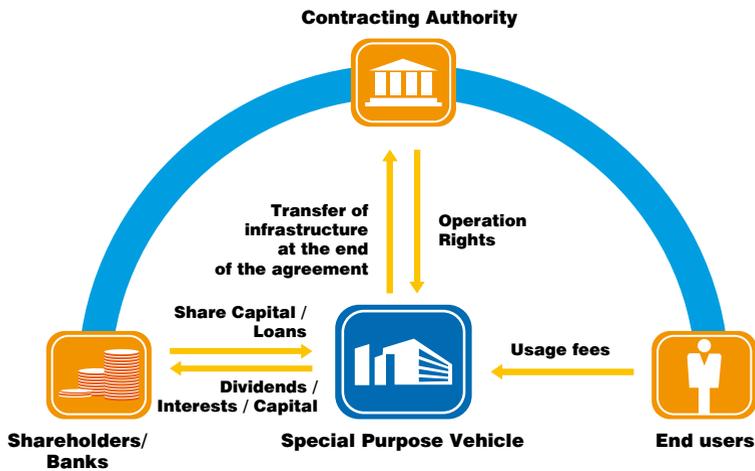
2.1 Projects where the end-user pays a fee directly to the private partner

This is the type of projects, whereby the private partner, besides their design, construction and maintenance, undertakes their operation / exploitation as well.

In such projects, the initial investment of the private partner is reimbursed through the fees that the end-users pay directly to the SPV for the use of the infrastructure or services provided. The amount of these fees, the conditions and their collection mechanism is clearly defined in the contractual agreement between the Contracting Authority and the selected private partner.

The private partners, beyond the financing and the construction risk, also undertake the demand risk, which is related with the usage of the project, so as to be able to have forecasted revenues. At the end of the contractual period, the infrastructure is transferred to the Contracting Authority.

In case that the fees paid by the end-users are not sufficient enough to cover the whole cost of the project, the public sector may support this venture, either through lump sum contributions during the construction phase or through availability payments during the operational period.



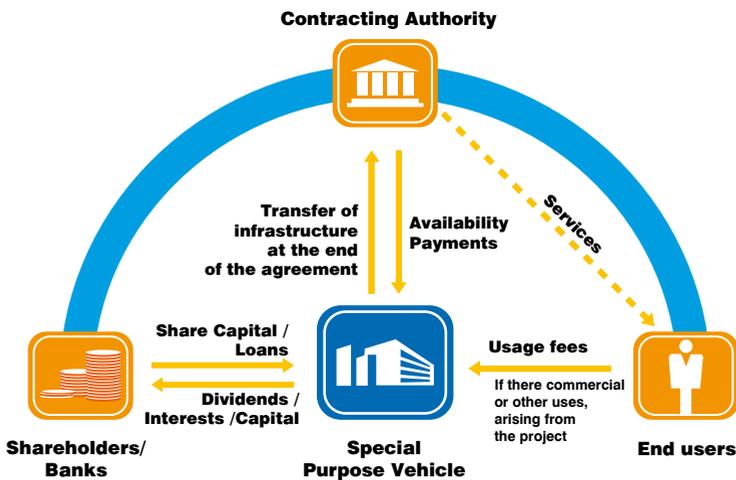
Common examples that fall under this category include transport projects (ports, airports, railways, car parking, etc.), environmental projects (water supply, waste management and sewage), energy and tourist infrastructure projects.

2.2 Projects where the public sector reimburses the private sector

This is the case of projects that are not operated by the private sector. Basically, these are projects with a social character, which are operated by the State and are offered to citizens for free.

In these projects the initial investment of the private partner is reimbursed by the Contracting Authority through regular availability payments, linked with the pre-determined output specification criteria. The risk that the private partner undertakes is the availability risk, i.e. the management and maintenance of the project, so as to render it available, according to predefined quality criteria, defined in the contract for the whole contractual period. The payments made by the State are called availability payments, because if they are to be made in full, the private partner should cater for the efficient management and maintenance of the infrastructure or the services that it provides. If the services offered fall below a set limit, the availability payments are reduced or even cancelled until the private partner abides by its contractual obligations and achieves the set quality limit. At the end of the contractual period, the project is transferred to the public entity.

These PPP schemes are usually implemented for projects that have a social character; such as schools, hospitals, buildings for the accommodation of the public sector, or the provision of ICT services, as well as for transport projects with lower demand (rural roads, public transportation, etc).



It is common that under such PPP schemes, additional commercial or other uses may stem from the exploitation of the project (e.g. exploitation of the commercial spaces in a building where a public entity will be accommodated). In this case, the public partner complements with availability payments the revenues of the SPV from the exploitation of the commercial spaces. Basically, it is the same payment mechanism as the one elaborated above, yet the payments that the public counterpart has to make are lower, due to the extra revenues the SPV has.

2.3 Comparison between the two main types of PPPs

	End-users pay fees to the private partner	The State pays availability payments to the private partner
Projects' Characteristics	<ul style="list-style-type: none"> • The reimbursement of the investment is made through direct charge to the end-users (motorways, ports, environmental projects, etc) 	<ul style="list-style-type: none"> • The reimbursement of the investment cannot be effected through direct charge to the end-users (schools, hospitals, public buildings, etc.)
Reimbursement of the private sector	<ul style="list-style-type: none"> • The end users pay fees 	<ul style="list-style-type: none"> • The public partner makes regular availability payments
Investment Risk	<ul style="list-style-type: none"> • Higher risk • Demand risk and revenues' volatility risk • Higher returns on equity, in accordance with the higher risk undertaken 	<ul style="list-style-type: none"> • Lower risk • Revenues are not affected by demand, but by the availability of the services • Revenues are based on meeting pre-determined quality criteria (lower quality of services results to lower availability payments) • Lower returns on equity, in accordance with the lower risk undertaken
Calculation of Revenues	<ul style="list-style-type: none"> • Based on the overall cost of the project and determined in the contractual agreement • The fees charged may vary within predetermined ranges, according to certain conditions 	<ul style="list-style-type: none"> • Based on the overall cost of the project • The investment is reimbursed through partial availability payments made only when the project is operational
Possible subsidy from the public sector	<ul style="list-style-type: none"> • Possible subsidies during the construction phase • Possible guarantee for minimum revenues 	<ul style="list-style-type: none"> • No subsidies during the construction phase • Commercial or other uses may reduce the payments made by the State

3. THE LEGAL FRAMEWORK

3.1 Law 3389/ 2005

Many countries have established a legal framework for the implementation of PPP projects, as a consequence of the complexity in the implementation of these projects and the large number of entities that are involved in them. In Greece, Law 3389/2005 introduces a legal framework for the implementation of Public & Private Partnerships. Briefly, the law codifies the concepts, which are related to PPPs, defines the implementation of PPP projects, establishes two new administrative bodies (the Interministerial PPP Committee and the Special Secretariat for PPPs) for the specialization of PPP policy and the monitoring of the implementation of the PPP projects, defines the contract award procedures, the contractual and legal issues and makes special arrangements for licenses and the taxation of the SPVs.

For the first time, Law 3389/2005 introduces a stable legal framework that promotes and facilitates the wider implementation and development of PPPs in Greece and creates reliance in the market. The implementation of the law by the Public Entities is not mandatory.



3.2 Administrative Bodies

Under Law 3389/2005, two new administrative bodies have been established, aiming at the support of Public Authorities, in order to improve the effective preparation and management of **PPP** projects.

A) The Interministerial Committee for Public-Private Partnerships (**IM PPP Committee**) is a collective governmental body that defines and specializes PPP policy, approves PPP projects that fall under Law 3385/2005 for the provision of infrastructure and the delivery of services by private funds, and coordinates and monitors the implementation of PPP projects.

IM PPP Committee comprises, as regular, members the Minister of Economy and Finance, the Minister of Development, and the Minister of the Environment, Planning and Public Works and, as special members, the Minister or Ministers supervising each of the Public Entities participating in a Partnership. The Minister of Economy and Finance will chair the IM PPP Committee, oversees its work and is responsible for submitting respective recommendations to it.

With its decisions, the IM PPP Committee:

- approves the inclusion of Partnerships under the provisions of this law,
- rescinds such approval decisions, in case a Contracting Authority does not abide with its obligations,
- approves the inclusion in the Public Investment Programme of the contractual fee to be paid to the Private Entities,
- decides whether the public sector will participate in funding the construction of individual works or the supply of services forming the partnership objective,
- makes all other relevant decisions.

B) The Special Secretariat for Public-Private Partnerships (**PPP Unit**) has been established within the Ministry of Economy and Finance. This Special Unit identifies projects that can be delivered via a PPP scheme, promotes their implementation and provides support and assistance to IM PPP Committee and to the Public Entities in the context of all necessary procedures for the finalization of a PPP project.

Its main responsibilities involve the following:

- the identification of the works or services which may be constructed or provided through Partnerships and be included under the provisions of Law 3389/2005,
- the promotion of the construction of projects or the supply of services through the Partnership framework,
- the facilitation and support of Public Entities in pursuing the Contract Award Procedures, as defined in Law 3389/2005, for the selection of Private Entities that will be undertaking the construction of projects or the supply of services under Partnership arrangements,
- the monitoring of the implementation of Partnership Contracts and Ancillary Agreements, regularly briefing the IM PPP Committee, preparing and submitting recommendations for managing any problems that might arise and
- the preparation and presentation of an annual report to the respective committee of the Parliament.



3.3 Conditions for inclusion under the provisions of Law 3389/2005

Law 3389/2005 sets out a simple and clearly defined framework that fosters the implementation of PPPs in Greece and therefore does not include under its provision all possible forms of PPP projects implemented internationally. Given the uniqueness and complexity of each PPP scheme, it wouldn't be feasible for a law to cater for all specific characteristics of the various PPP schemes and would result in creating more problems than the ones it endeavors to tackle.

Partnerships may be subject to the provisions of Law 3389/2005, provided that all the following conditions are met:

- their purpose is the construction of works or provision of services in the area of competence of the Public Entities on the basis of a provision of the law, or a contract, or their articles of incorporation,
- it is provided that the Private Entities, against payment to be made as a lump sum or in installments by the Public Entities or by final users of these works or services, shall assume a substantial part of the risks associated with the financing, construction, availability of or demand for the partnership object, and related risks, such as, for example, management and technical risk,
- it is provided that the financing, in whole or in part, of the construction of the works or provision of services, shall be accomplished with capital and resources secured by the Private Entities, and
- the total contractually budgeted cost for implementing the Partnership object does not exceed two hundred million Euros, not including the Value Added Tax payable.

By unanimous decision of the Interministerial Committee for Public-Private Partnerships, it is possible, in exceptional circumstances, for Partnerships to be subject to the provisions of this law, even though one or more of the above conditions are not met.

Public-Private Partnerships shall not be allowed to engage in projects or activities that are the direct and exclusive province of the State, under the terms of the Constitution of the Hellenic Republic, such as national defense, police work, the award of justice, and the execution of judicially imposed penalties.

Law 3389/2005 does not cover the case of partnerships, in which a public entity may participate in the SPV that undertakes a project.

3.4 Benefits of inclusion under the provisions of Law 3389 / 2005

In the past, various issues had arisen during the implementation of concession agreements, issues related with their financing and implementation. These problems were dealt with special laws ratified by the Parliament, laws that also ratified the concession contracts. It was therefore necessary to include in Law 3389/2005 clauses, similar to the ones ratified in the concession agreements, so as to establish a framework that fosters the participation of the private sector and that enables the public sector to implement a more extensive pipeline of PPP projects.

With the integral treatment of issues, such as licences, archaeological findings, expropriations, the collection of fees by the end users, the favorable taxation of the private partners that participate in a partnership, Law 3389/2005 establishes the conditions for the successful implementation of PPPs in Greece.

Finally, the inclusion of a project under the provision of Law 3389/2005 has the following benefits:

- the acceleration of the procedure for appointing advisors, thanks to the support of the PPP Unit
- the on-time and full report to relevant Ministers for all approved PPP projects, resulting to the faster solution of any potential problems
- securing funds for the availability payments (inclusion in the Public Investments Programme in a special category for PPPs)
- enabling the contract award procedures, thanks to the coordination of the IM PPP Committee and the support of the PPP Unit
- flexibility and clarity of the legal framework.



4. THE PROCEDURE FOR INCLUSION UNDER THE PROVISIONS OF THE **PPP** LAW

4.1 Proposal to the **PPP** Unit

The Public Entity (Contracting Authority) wishing to implement a PPP project may submit a proposal to the PPP Unit, which then evaluates the feasibility of the specific project under a PPP scheme. This proposal should include the following:

- Detailed description of the project that will be provided as a PPP, and its technical characteristics,
- Indicative budget of the proposed PPP project,
- Operation and maintenance cost,
- Schedules,
- Presentation of the proposed PPP scheme,
- Value for Money (VfM) evaluation, which justifies the implementation of the project under a PPP scheme,
- Other issues that influence the implementation of the project, such as legal and environmental.

The above data should provide a reliable indication for the nature of the project, its financing needs and its lifetime. As such, a detailed financial analysis is needed, especially in the case where the private partner bears the demand risk, in order to correctly quantify this risk that affects the anticipated revenues.

The PPP unit analyses the public entity's proposal and determines whether it can be implemented as PPP under the provision of Law 3389/2005. In case that the proposal is positively evaluated, as it was initially submitted or was finally amended with necessary modifications, the PPP unit includes it in the "List of Proposed Partnerships" and notifies the public entity of this decision.

4.2 Decision of the IM PPP Committee

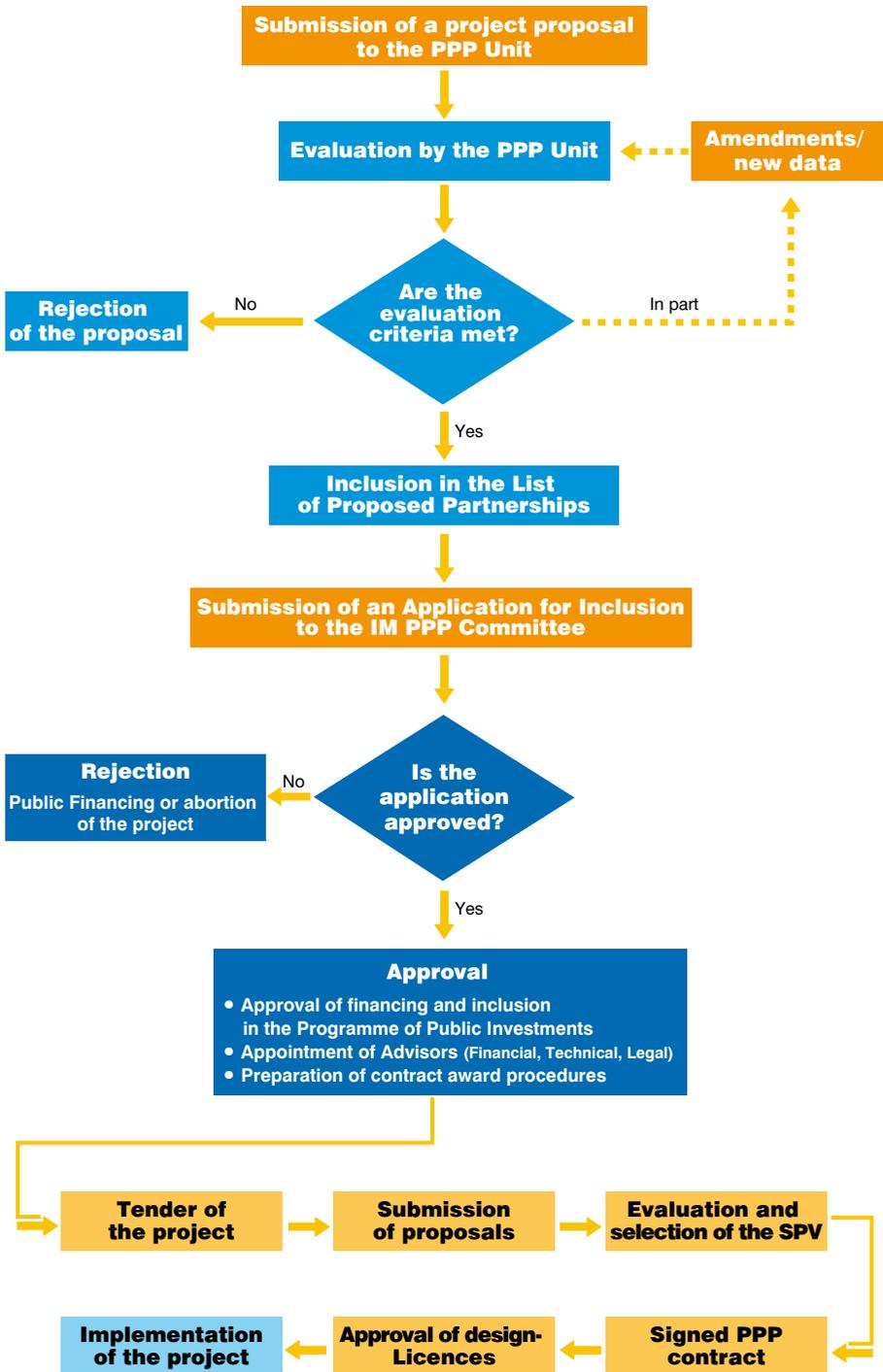
If the involved Public Entities decides to submit an ‘Application for Inclusion’ within no more than two months after the date of notification the Minister of Economy and Finance, acting as the President of the IM PPP Committee, sets this application as an item of the agenda of the next meeting of the IM PPP Committee and invites all regular members and the Minister that supervises the involved Public Entity.

In this meeting, the report drafted by the PPP Unit is presented to the Ministers, and all necessary and additional information and clarifications are provided, so as to help Ministers to reach a decision. After that, the IM PPP Committee announces its decision, to either approve or reject this application. If the IM PPP Committee decides to approve a partnership, the PPP Unit has to coordinate and monitor all contract award procedures, as defined in Law 3389/2005, so as to select the SPV that will participate in the partnership.

4.3 Contract award procedure

Beyond specific regulations with the award of PPP contracts, it must be noted that Law 3389/2005 is in line with the general principles of both national and Community law (equal treatment, transparency, protection of public interest etc), regulating the contract award procedures and the relations of the Contracting Authorities with candidates. The procedures for contract award are either open or restricted. In the case of complex contracts, the process of the competitive dialogue or the negotiated procedure may be applied.

Contracts will be awarded by the Public Entity acting as Contracting Authority either on the criterion of the tender being the most economically advantageous or on the criterion of lowest price. The minimum qualifications and abilities of the tenders who participate in the contract procedure are clearly defined by the Invitation to Tender.





5. TARGETS AND OUTLOOK

The Ministry of Economy and Finance, in the framework of the reforms it is implementing, and having recognized the benefits of the PPP schemes, drafted and ratified Law 3389 / 2005, that fosters the implementation of PPP projects in a context of transparency, efficiency and safety both for the private and the public sector. PPPs have been a subject of discussion over the last years. Many stakeholders, either through their involvement in concession agreements or through observing the evolutions in the other countries of Europe, had underlined the need for creating a legal framework that would enable the widespread implementation of PPP projects.

The Law 3389 / 2005 comes in to cover a legal gap and to a great extent resolve a series of issues and obstacles. The adoption of this law is the first step for the implementation of PPP projects in our country. Going forward, the public bodies need to move ahead with careful steps in the implementation of a series of pilot projects in various sectors, thoroughly structured and designed. These projects will pave the way for a widespread expansion of PPPs in Greece.

Today the call for collaboration between the public and the private sector is more than evident. Basic target of the Government is the promotion of partnerships and synergies between the public and private sector, as well as the coordination of the role of the Central Government's with that of the regional and local Authorities.

PPPs represent a field whereby the public and private forces can join up creatively and provide tangible results for the Greek economy and the social State by ensuring the timely and qualitative delivery of vital infrastructure projects, releasing assets for more investments and facilitating the provision of social policy. The opportunities arising through this legal framework are significant and we believe that both the public and the private parties will opt to take advantage of them.

This Brief Guide is a publication of the
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