



NATIONAL AUDIT OFFICE OF THE REPUBLIC OF LITHUANIA

Public audit report

PUBLIC-PRIVATE PARTNERSHIP

21 August 2013, No. VA-P-60-10-12

Audit started 22 October 2012
Audit completed 21 August 2013

Full audit report in Lithuanian is available on the website
of the National Audit Office: www.vkontrole.lt

EXECUTIVE SUMMARY

In many countries, public and private sectors closely cooperate in tackling infrastructure challenges: upgrading roads, transport systems, entertainment and recreation facilities, schools, hospitals, etc. and creating necessary infrastructure.

Lithuanian legislation provides for contractual and institutional public-private partnerships¹:

- concession is regulated in the Law on Concessions (1996)²;
- public-private partnership has been regulated in the Law on Investments since 2010³.

¹ Law of the Republic of Lithuania on the Management, Use and Disposal of State and Municipal Assets, 12 May 1998, No. VIII-729 (as amended by Law No. XI-1258 of 23 December 2010), Art. 2 (12).

² Law of the Republic of Lithuania on Concessions, 10 September 1996, No. I-1510 (as amended).

The largest number of contracts concluded in Lithuania are concession contracts – 36 concession contracts were under implementation at the end of 2012⁴. The implementation of the concession contracts will be covered in another public audit report (III quarter of 2013).

The present public audit report addresses public-private partnerships. The practice of public-private partnership projects in Lithuania is still in a nascent stage. So far (as on 28 June 2013), only two public-private partnership contracts have been concluded, another five projects have been approved by Government resolutions or decisions of municipal councils. In total, 22 public-private partnership projects have been developed and submitted to the Ministry of Finance for evaluation since 2010.

The programme of the 15th Government of the Republic of Lithuania⁵ provided for development of public-private partnership by creating legal, institutional and administrative conditions for such partnership and a corruption prevention mechanism, as well as promotion of public-private partnership projects ensuring effective implementation of public functions, attracting private investments into activity areas subject to the regulation by the public sector. The 16th Government of the Republic of Lithuania intends to continue the cooperation between public and private initiatives implementing investment projects in the areas attributed to the functions of the public sector and covering public services⁶.

International practice focuses on the development and management of public-private partnership projects because only comprehensive conditions of partnership projects and efficient management of project implementation can provide protection of the public interest ensuring that the public sector will receive the services for which it is paying⁷. The public sector is responsible to the public for the quality of the service provided, therefore it should have a good understanding of all aspects of PPP in order to fulfil its responsibilities and to monitor the fulfilment of the obligations undertaken by the private sector⁸.

The objective of the audit – to evaluate effectiveness of public-private partnerships:

- validity of project selection;
- validity of the data of project feasibility studies and partnership projects;

³ Law of the Republic of Lithuania on Investments, 7 July 1999, No. VIII-1312 (as amended by Law No. XI-299 of 16 September 2009 which entered into force as from 1 January 2010).

⁴ [Accessed on 17 May 2013] Internet address: <http://www.finmin.lt/web/finmin/ppp/statistika>.

⁵ Approved by Resolution No. XI-52 of the Seimas of the Republic of Lithuania of 9 December 2008, p. 271 and 286.

⁶ Programme of the Sixteenth Government for 2012-2016 approved by Resolution No. XII-51 of the Seimas of the Republic of Lithuania of 13 December 2012, p. 78.

⁷ Netherlands Court of Audit. Public-Private Partnerships: International Audit Findings, 2010.

⁸ Government Objectives: Benefits and Risks of PPPs. [Accessed on 17 May 2013] Internet address: <http://ppp.worldbank.org/public-private-partnership/overview/ppp-objectives#benefits>.

- appropriate assurance of project implementation;
- accuracy and the level of information of public data on PPP;
- efficiency of the use of funds of the Public-Private Partnership Promotion Programme 2010–2012.

The audit subject – public-private partnership.

The auditees – Ministry of Finance of the Republic of Lithuania, Ministry of Economy of the Republic of Lithuania, Ministry of the Interior of the Republic of Lithuania, Police Department under the Ministry of the Interior, Ministry of Justice, Prison Department under the Ministry of Justice, Vilnius City Municipality, Ministry of Transport and Communications of the Republic of Lithuania, Lithuanian Road Administration under the Ministry of Transport and Communications, Administration of Akmenė District Municipality.

The audit period – 2009–2013.

The practice of public-private partnership (PPP) projects in Lithuania is still in a nascent stage, so the audit conclusions were formulated upon assessment of the “Guide to Guidance: How to Prepare, Procure and Deliver PPP Projects“ developed by the European PPP Expertise Centre⁹, a summary document on 21 audits of PPP prepared by the Netherlands Court of Auditors “Public-Private Partnerships: International Audit Findings”¹⁰, consideration of UK experts’ opinion about PPP development problems¹¹, and analysis of PPP project screening, coordination, approval and implementation in Lithuania over the period 2009–2013.

The public audit conclusions and recommendations provided below were drawn upon the assessment of the audit findings.

Conclusions

On legal regulation

1. The requirement laid down in the Rules for the development and implementation of public-private partnership projects obligating the project implementing authority to take into account its own strategic performance plans when initiating an investment project does not meet the provisions of the Strategic Planning Methodology concerning the development and approval of strategic performance plans, so the requirement is not feasible.

⁹ EPEC (European PPP Expertise Centre). The Guide to Guidance: How to Prepare, Procure and Deliver PPP Projects, 2011.

¹⁰ Netherlands Court of Audit. Public–Private Partnerships: International Audit Findings, 2010.

¹¹ David Wright. UK consultancy PPP Solutions Limited. An event on PPP issues in London on 11-12 April 2013.

2. In order to facilitate screening of public-private partnership projects, Expediency criteria for the application of public-private partnership were approved in 2010; however, the application of these criteria was envisaged only in 2010-2012. If the implementing authority does not evaluate conformity of PPP projects to the Expediency criteria for the application of public-private partnership prior to the initiations of PPP projects and preparation of feasibility studies, inappropriate public costs are incurred in relation to the preparation of feasibility studies – due to lack of funds the Ministry of Finance has proposed not to give an opinion on two projects (out of 10) analysed during the audit.

3. Legislation and methodological documents on public-private partnerships do not specify what kind of PPP project value should be estimated and approved – real or nominal. When different values are used, similar services of different projects, like the projects themselves, cannot be compared with each other, so no favourable conditions are provided for the dissemination of know-how concerning the preparation of feasibility studies, and project implementing authorities face difficulties in controlling the validity of the data provided in the feasibility studies.

On project management during the preparation and coordination of feasibility studies

4. A number of project implementing authorities do not take sufficient responsibility for the validity of data: irregularities and shortcomings were identified in five feasibility studies, four implementing authorities were not able to explain the estimation of the project value without help of the drafters of the feasibility studies.

5. Project management in the stages of the preparation and coordination of feasibility studies is not sufficiently good and does not conform to the international practice and recommendations of methodological documents on public-private partnerships: none of the institutions implementing the six projects subject to the analysis had project managers, five institutions did not have working groups. This may be one of the reasons of the failure to ensure validity of the data of feasibility studies and partnership projects.

On methodological documents on public-private partnerships

Methodological documents on public-private partnerships are very important to the success of the preparation of public-private partnership projects. Having examined preparation of feasibility studies of the approved public-private partnership projects and execution of the first public-private partnership contract and analysed international practice, we found that methodological documents on public-private partnerships need some improvement because they:

6. do not provide detailed information on the items which are included in the estimation of the project value and the public-private partnership fee and shown in the feasibility study, drafters of

the feasibility studies decide on the costs to be included in the project value at their own discretion. The data provided in many feasibility studies does not show the estimated value of the project, the data of some feasibility studies does not include the estimated public-private partnership fee. As a result, the implementing authorities find it more difficult to control the validity of the data of the feasibility studies and partnership projects;

7. do not provide for that the partnership contract should specify assets transfer and status issues in the event of contract termination, as recommended by international experts, so project implementing authorities do not know the consequences of such contract termination and thus are not able to evaluate whether it is more cost-effective to terminate or to continue the implementation of the contract;

8. do not provide for a Partnership Contract Management Manual, as recommended by international experts, and do not discuss its preparation guidelines. The absence of the Contract Management Manual hinders supervision of services provided by the private sector, so the project implementing authority finds it difficult to make sure whether the public sector is really receiving the services it is paying for;

9. do not discuss in detail the principles to be followed when drafting technical specifications of the services provided by a private entity under a public-private partnership contract: at present, services are targeted either at the end result, as recommended by international practice, or a detailed list of tasks, which, in foreign experts' opinion, increases the cost of the partnership contract.

On the provision of information of public-private partnership

10. Project implementing authorities have no obligation to provide information to the Central Project Management Agency on project implementation progress. Part of the data on public-private partnerships published in the specialized website administered by the Central Project Management Agency *www.ppplietuva.lt* has not been updated and so gives misleading information on the intended partnership contract signing date, project implementation stage, etc.. Publication of inaccurate information prevents access of persons interested in the development of public-private partnership to relevant information.

11. The legislation does not address the issue of publicity of public-private partnership contracts. One of the two public-private partnership contracts concluded in Lithuania, the partnership contract on Palanga bypass project, is confidential, so no conditions have been provided to ensure transparency of the performance of the public sector and dissemination of information on know-how concerning conclusion and execution of public-private partnership contracts.

On the implementation of the Public-Private Partnership Promotion Programme

12. There are no summary results of the implementation of the Public-Private Partnership Promotion Programme 2010–2012, some results are accessible only to the implementer of a relevant measure, which does not ensure continuity and availability of the Programme results to all interested persons.

13. A limit in the amount of LTL 1 billion of public sector obligations under all partnership contracts was set for the period of the Public-Private Partnership Promotion Programme 2010–2012. No such limit has been set for the period from 2013. In the long term, the increasing number of public-private partnership contracts and the absence of a limit may lead to failure to align the financial obligations of the public sector under partnership contracts and financial capacity of the state.

Recommendations

To the Ministry of Finance of the Republic of Lithuania:

1. In order to improve initiation of public-private partnership projects, the quality of the preparation of feasibility studies and partnership projects, project implementation and contract management, and to make sure that the public sector receives the services it is paying for:

1.1. to initiate amendments and/or supplements of legislation in order to:

1.1.1. determine which strategic planning documents should include initiated investment projects which are planned to be implemented by way of public-private partnership;

1.1.2. impose an obligation on the implementing authority to have a permanent project manager and a project management team in all phases of the project – from project initiation to the expiry of the partnership contract, and to define clear team members' roles and accountability for their performance;

1.1.3. specify the value to be used for the estimation of the project – real, nominal or other type;

1.2. to ensure that public-private partnership documents are supplemented with additional information:

1.2.1. to supplement methodological documents on public-private partnerships specifying the items to be included for the estimation of the project value and the public-private partnership fee and provision thereof in the feasibility study;

1.2.2. following the recommendations of the European PPP Expertise Centre, to specify issues of property transfer and status in the event of contract termination in methodological documents on public-private partnerships;

1.2.3. to supplement methodological documents on public-private partnerships with guidelines for the preparation of the Partnership Contract Management Manual;

1.2.4. to discuss in detail principles for drafting technical specifications of services in methodological documents on public-private partnerships.

2. In order to prevent inappropriate spending of the public sector for the preparation of project feasibility studies, to take decisions on further use of Expediency criteria for the application of public-private partnership.

3. In order to ensure accessibility to relevant and detailed information about public-private partnership projects, to revise the information provided on the website *www.ppplietuva.lt* and to envisage measures to ensure that the Central Project Management Agency receives relevant information on current public-private partnership projects on a regular basis.

4. In order to provide for conditions for the dissemination of know-how concerning conclusion and execution of public-private partnership contracts, to initiate amendment of the Law on Investments, which regulates what information provided in contracts should be made public.

5. In order to align the financial obligations of the public sector assumed under partnership contracts with the financial capacity of the state, to initiate establishment of the limit of the public sector's obligations under all partnership agreements.

To the Ministry of Economy of the Republic of Lithuania:

1. In order to ensure continuity and availability of the results of the implementation of the Public-Private Partnership Promotion Programme 2010–2012, to summarize the results and forward them to the Central Project Management Agency, which is authorized to provide methodological and consultative assistance on concession issues and development and implementation of public-private partnership projects.