

Country Reports

The Netherlands

Public-Private Partnership in the Netherlands

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I. Public-Private Partnership (PPP) Projects by the Central Government

1. Government Agencies

The vast majority of PPP projects in the Netherlands including private financing (DBFM or DBFMO¹) are tendered by the central government, in particular by the agencies Rijkswaterstaat (affiliated to the Ministry of Infrastructure and the Environment) and Rijksvastgoedbedrijf (affiliated to the Ministry of the Interior and Kingdom Relations). Occasionally the Ministry of Defence acts as the contracting authority.

2. When is DBFM(O) applied?

DBFM(O) is used to create added value, it is not a goal in itself. In the initiatory phase DBFM(O) is compared to other forms of contracts. For each project with an estimated value above €25 million for accommodation projects and €60 million for infrastructure projects, this comparison is made by means of the so-called *added value test*.

These tests are intended for decision-makings by the central government and are carried out in phases. First, the 'Public Private Comparator' (PPC) clarifies the financial advantages and disadvantages as regards the different implementation methods for a given project. Based in part on a PPC, a decision can be taken to start a DBFM(O) tendering process. At a later date, the 'Public Sector Comparator' (PSC) clarifies the total costs and risks over the project's life cycle, if the government were to carry it out itself. In comparison to previous projects realized in the conventional way, the DBFM(O) projects have created so far an added value of 10% to 15% on average.

3. Tendering

PPP projects are usually tendered, making use of existing (EU-based) procurement legislation. The competitive dialogue procedure is normally applied with the 'most economically advantageous tender' used as the award criterion. The most commonly used sub-criteria for awards are: the price (net present value), the risk management plan and the value of certain risks listed in the tender guidelines (listed risks) accepted by the private party. The central government PPP projects are governed by standardized DBFM(O) contracts. The standard DBFM(O) contracts versions 4.1 apply at the moment.

4. Financing

Most of the PPP projects in the Netherlands have payment mechanisms which are based on 'availability.' These payment mechanisms are broadly accepted by both commercial and multilateral development banks. The Dutch government does not provide financing or guarantees for PPP projects. It does accommodate private financing, for instance, by agreeing to enter into a direct agreement with the financiers of the project. In addition, the standard DBFM(O) contracts contain detailed provisions dealing with the repayment of financing costs in case of early termination of the project due to, for instance, force majeure or a breach of contract by the contracting authority. The provisions also cover financings

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1 DBFM or DBFMO: Design, Build, Finance, Maintain, Operate.

by way of a bond issue or financing solutions with credit enhancement. These standard DBFM(O) terms have been deemed acceptable by the financing parties active on the Dutch market.

The situation on the market for financing DBFM(O) projects was already good, and has even strongly improved since mid-2013. Partly because of the proven track record of Dutch DBFM(O) projects, the required private financing is available in abundance on the finance market, both as equity and loan capital. The conditions for financing are attractive. All DBFM(O) projects have been successfully put out to tender with 100% committed financing.

At the moment many different kinds of financiers are active, both Dutch and foreign. Besides short-term financing during the construction period, a larger group of banks have recently become more active in the provision of long-term loan capital for DBFM(O) projects. Dutch and foreign institutional investors are also involved. Where loan capital is concerned, it is mainly insurance companies that are involved. Institutional investors provide financing both directly and via constructions involving funds, as well as via banks that provide the expertise and then pass on the long-term financing to underlying institutional investors. In both cases, institutional investors are able to give a 100% advance commitment for the financing under the current market conditions.

The market consortium determines the choice of the best financing way. It is the consortium that is, after all, in the best position to assess and manage its risks from the project and to arrange the optimal financing structure for it. The central government certainly keeps a close eye on whether trends on the financing market may eventually lead to problems in financing projects and – if necessary and desirable – takes appropriate measures.

5. Success Factors

According to the Dutch central government the success factors of the Dutch DBFM(O) approach are the following:

- Focus on ‘value for money’

DBFM(O) is not a goal in itself. DBFM(O) is applied to create ‘tax payers value for money’ and not to bypass EMU-standards.

- Consistent DBFM(O) policy

DBFM(O) policies are clear, consistent and predictable.

- Projects

The current deal flow is well filled and steady, in particular when it comes to roads and locks projects. Market operators are willing to extend their market position and DBFM(O) expertise. They are also willing to participate in smaller projects because of the promising prospects for larger ones in the future.

- Standardization

The central government continues to standardize the DBFM(O) form of contract and the uniform tender guidelines. Lessons learned and new relevant developments are implemented in a regular manner. This should enable projects to proceed faster, simpler and more transparent resulting in lower transaction costs for the government and market operators.

6. The Future

The DBFM(O) projects in the pipeline for the coming years involve primarily infrastructure. Currently, around 10 potential DBFM(O) dry infrastructure projects have been announced or are being put together. There are no major railway projects foreseen in the near future that could be put out to tender by means of DBFM(O). Where housing is concerned, rebuilding or renovation will take place. In future, it is predicted that a number of government housing projects fulfilling the DBFM(O) criteria will hit the market.

7. Contract Management

An increasing number of DBFM(O) projects are entering the operating phase. In the phase after the contract has been signed, it is necessary to ensure that the agreed performance is provided throughout the entire duration of the project. Many changes will take place during the long duration of projects, both as regards the market and its possibilities and as regards the government and its demands. Long-term con-

tracts in this changing environment require a strategy and a proactive approach with regard to existing projects. That is the only way to properly guarantee the added value of DBFM(O) in the long term.

That is why ministries have professional contract managers who are able to check the market conformity to changes, and to continuously learn and improve on the basis of practical experience. The lessons learned are of course used to further improve future contracts and tendering.

II. Local Government Bodies

There is an increase in local government bodies entering into PPP contracts, although the number is still very limited. More PPP projects by decentralized authorities (e.g. provinces, water boards and municipalities) are expected in the near future. Other integrated forms of contract (D&C, DBM(O), etc.) have already been applied more frequently – with a clearly rising tendency.

PPSsupport became operational in 2012 with a view to making the knowledge and experience of PPP gained within the central government available to local and regional authorities and semi-public institutions. It was set up by the central government in consultation with the local and regional authorities and the market parties. Social trends show that public/semi-public clients are increasingly seeking for greater efficiency (value for money), budget security in the

longer term, risk control, innovation and sustainability. Integrated forms of contracts can be a way of meeting these needs. PPSsupport has recently provided knowledge transfer, advice and support for over 50 projects. The work involved differs according to the progress of the project: from the exploratory stage and tendering through to completion. These projects cover various sectors and are the responsibility of the relevant local or regional authority or semi-public institution. As of 1 February 2016 PIANOO, a division of the Ministry of Economic Affairs, has taken over all PPSsupport's tasks.

PPSsupport focuses on integrated forms of contracts based on the life-cycle approach and output management. These kinds of contracts are referred to as DBM(O) and DBFM(O) contracts. Integrated forms of contracts can help to ensure the quality of public services and/or reduce the burden on public/semi-public clients. Social trends show that public/semi-public clients are increasingly seeking for greater efficiency (value for money), budget security in the longer term, risk control, innovation and sustainability. Integrated forms of contracts can be a way of meeting these needs.

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