

# International Meeting Infrastructure and PPPs

BUSINESS OPPORTUNITIES IN INFRASTRUCTURE AND PPPs:  
MEETING WITH THE WORLD REFERENCES ON THE THEME

APRIL 27TH - 28TH, 2015 - BRASILIA

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## DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS

SPEAKER: Christopher Wright

**Gcila** | GLOBAL CONSTRUCTION  
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## DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS

1. **PPP Basics**
2. The Problem – Avoidance or Prompt Resolution of Disputes
3. Potential Solutions

## **DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS**

PPP Defined:

“A cooperative venture between the public and private sectors, built on the expertise of each partner, which best meets clearly defined public needs through the appropriate allocation of resources, risks, and rewards.”

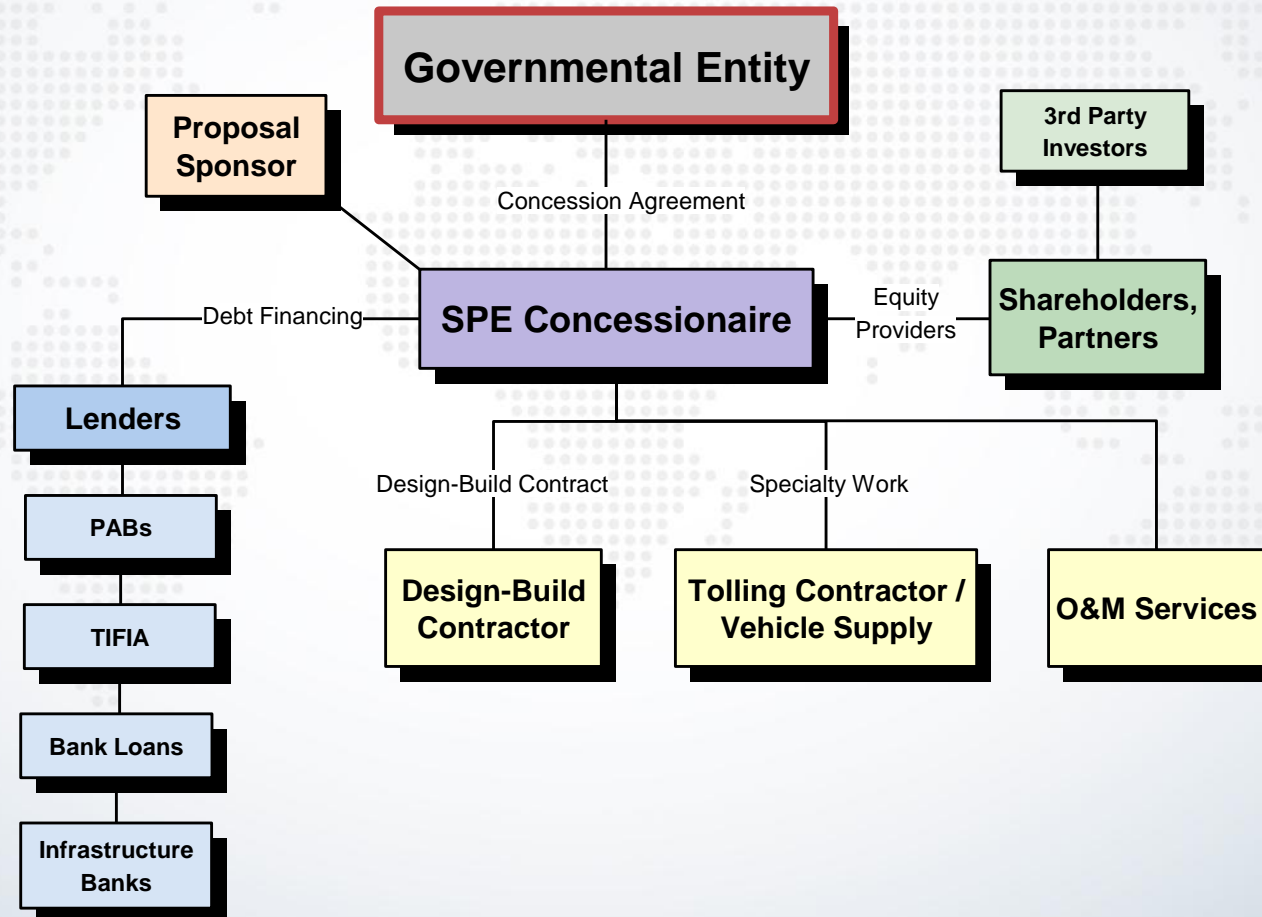
Key Concepts:

- (1) Partnership;
- (2) Clearly defined objective;
- (3) Proper allocation of risk;
- (4) Opportunity for reward.

## **DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS**

- Types of PPP Projects (Highways, Bridges, Hospitals, Sewage Treatment Plants, Power Plants, Rapid Transit).
- All are complex projects that inherently have increased risks associated with delays, impacts and cost escalation.
- Above risks are shared and shifted among the PPP Stakeholders/Partners via contracts.
- All of the risks impact the flow and availability of money.

## DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS



## DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS

1. PPP Basics
- 2. The Problem – Avoidance of and/or Prompt Resolution of Disputes**
3. Potential Solutions

## **DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS**

- Lenders, Equity Providers, and Concessionaire desires:
  - Minimal cost increase
  - Revenue/Use Payments ASAP
  - No delays
- Design-Build Contractor desires:
  - Protection that all work will be paid for
  - Resolution of extra items/delays ASAP
  - Mechanism for payment assurance



## **DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS**

- Are Typical Methods of Dispute Resolution Adequate?
  - Structured Negotiations?
  - DAB / DRB?
  - Arbitration?
- All three have shortcomings when used on a PPP Project.

## **DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS**

- PPP Projects typically use a DAB/DRB followed by Arbitration.
- United States, where PPP use is increasing, is following this model.
- Issues:
  - (1) DAB/DRB process is time consuming.
  - (2) Arbitration is even more time consuming.
  - (3) Uncertainty as to enforcement.

## DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS

### DAB 10 Step Process to Further Proceedings:

1. Make referral to DAB for decision
2. Promptly make documents and site available
3. Within **84 days** receive a reasoned decision
4. Be bound and give effect to the decision unless revised by agreement or arbitral award
5. Continue work
6. Within 28 days of decision, give notice of dissatisfaction
7. **If no reasoned decision given in 84 days, given notice of dissatisfaction within 28 days thereafter**
8. You are not entitled to commence arbitration unless a notice of dissatisfaction is given
9. **Be finally bound if no notice** of dissatisfaction given by either party
10. **Commence arbitration on or after the 56<sup>th</sup> day** following the notice of dissatisfaction

## **DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS**

### **Conclusion:**

Given the timeline and issues of finality/enforceability, stakeholders in PPP projects need a more efficient and enforceable method of dispute avoidance and resolution.

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1. PPP Basics
2. The Problem – Avoidance or Prompt Resolution of Disputes
3. **Potential Solutions**

## **DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS**

1. Clear establishment and definition of required results.
2. Dedication of sufficient resources to provide timely design review and approval.
3. Contemporaneous review during design phase.
4. Accelerated resolution of technical design disputes:
  - Technical expert designated in contract with ability to offer non-binding decision.
  - If Public Entity or Concessionaire dispute decision, DB Contractor proceeds but entitled to immediate hearing with binding decision and increased costs if Technical expert's decision is deemed proper.

## **DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS**

5. Include procedure for rapid approval of post design modifications.
  - Design Build Contractors have greater ability to solve field problems and avoid delays if in field solutions can be quickly reviewed/approved.
6. Expedite DAB/DRB process: 84 days is too long.
7. Make DAB/DRB immediately enforceable or establish expedited arbitration process to allow prompt resolution and enforcement during construction.

## **DISPUTE PREVENTION AND RESOLUTION IN PPP CONTRACTS**

8. Different DAB/DRB and process for different issues.
  - Financing issues
  - Design Compliance
  - DB Cost Issues/Changes
  - Post Completion Issues
9. Follow Best Practices and have DAB/DRB members maintain familiarity with project to allow for more efficient resolution.




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