

## **Technical Topic N°2: "SUPERIOR AUDIT OF STATE COMPANIES AND PUBLIC-PRIVATE PARTNERSHIPS"**

Work at the technical sessions focused on public-private partnerships, or PPPs.

As a result of the sharing of ideas, three thematic areas were addressed:

- 1) Problems and Risks
- 2) Recommendations for implementation
- 3) Transparency and access to information

### **1) Problems and Risks**

It is important to perform proper risk allocation, given the diversity in the regulations and even legal "gaps".

Allocating risks in PPP projects is key to their successful development and it is usually carried out in accordance with the premise set out in the classic theory that "risks should lie with the agents that can best control them."

The main current and potential problems detected by the participating SAIs are:

- Weaknesses in the selection of projects.
- Lack of comprehensive planning when selecting and prioritizing the projects implemented under this mechanism.
- Not reviewing previous economic, financial, technical, environmental and social studies and how they compare with other PPP contracts.
- Discretion in decision making.
- Inadequate quality of the resulting goods and services.
- Generation of direct or contingent state debt without efficient budgetary control.
- Development of projects subject to political cycles.
- Additional unforeseen costs in the execution of works.
- Poor assessment of risks by the state in the planning phase.
- Cost overruns due to macroeconomic volatility.
- Limitations to overseeing and supervising works

### **2) Recommendations for implementation**

Regarding the Recommendations:

- PPPs are a means and not an end in itself, so they should not serve to justify projects that do not make economic and social sense.
- Audit PPP projects throughout the life cycle of the project, especially in the planning stages prior to signing the contract.
- Carry out a review in which an appropriate risk allocation mechanism is determined in the development of the operational phase, to verify if the termination and/or completion of the contract was planned and effectively managed and assess the economic-financial capacity of the potential building contractors of the PPPs.
- Check if the contracts have been designed to include the following elements:
  - Correct risk transfer between the different agents involved in the project.
  - Mechanisms to settle conflicts that are agile and involve technical and independent personnel.
  - Contractual changes limited after the project is awarded.
- Openness to all possible sources of resources available in the market to finance PPP projects.
- Identify the agencies involved as partners in the PPP project and their responsibilities.
- Establish metrics assessing project performance.
- Demonstrate that the projects to be financed through PPP contracts generate value with respect to other conventional bidding procedures. To this end it will be necessary to implement a complementary "value for money" appraisal mechanism, which incorporates aspects such as quality of service and takes into account the public's satisfaction with the building work.
- Examine the resulting public/private financing and concession agreement with the participation of SAIs.
- Incorporate - through legislation, agreement and/or in PPP contracts - a clause that guarantees the adequate financing of SAI audits.
- That procurement and convening departments have officials duly trained in all technical aspects relating to the projects.

### **3) Transparency and access to information**

PPP projects are by definition public projects, and, as such, it seems reasonable that the whole of society should have access to information on them - contractual changes, financing conditions, quality of service provision etc.

SAIs concluded from shared experiences that there are laws in their countries on accessing public information on state activities in general, though specific legislation on transparency within the framework of PPPs exists only in some countries.

In general, laws stipulate that there be openness concerning processes and/or acts, and that citizens have the right to request information. However in some countries transparency is not applied to the whole process; rather, it focuses on the moments after signing the contract. As such the design and planning of projects is not transparent.

Good practices suggested by SAIs include:

- Registering agreements and contracts
- Obligatory disclosure of building work processes and audit results,
- Drafting and sending of SAI reports to parliament
- Web portals, online consultation system
- Complaints mechanisms for civil society, with strict anonymity.
- Minimizing limitations to transparency, relating for example to data protection laws and information non-disclosure permission.
- Generating a database of contractors, suppliers and contracting entities.
- The publication of certain milestones in the process could be a precondition for the continuation of the process. For example, prior to initiating a tender for the contract, all information on contracting intended for potential tenderees should be published on the agency's website.
- Free access for auditors to the information systems for carrying out audits.