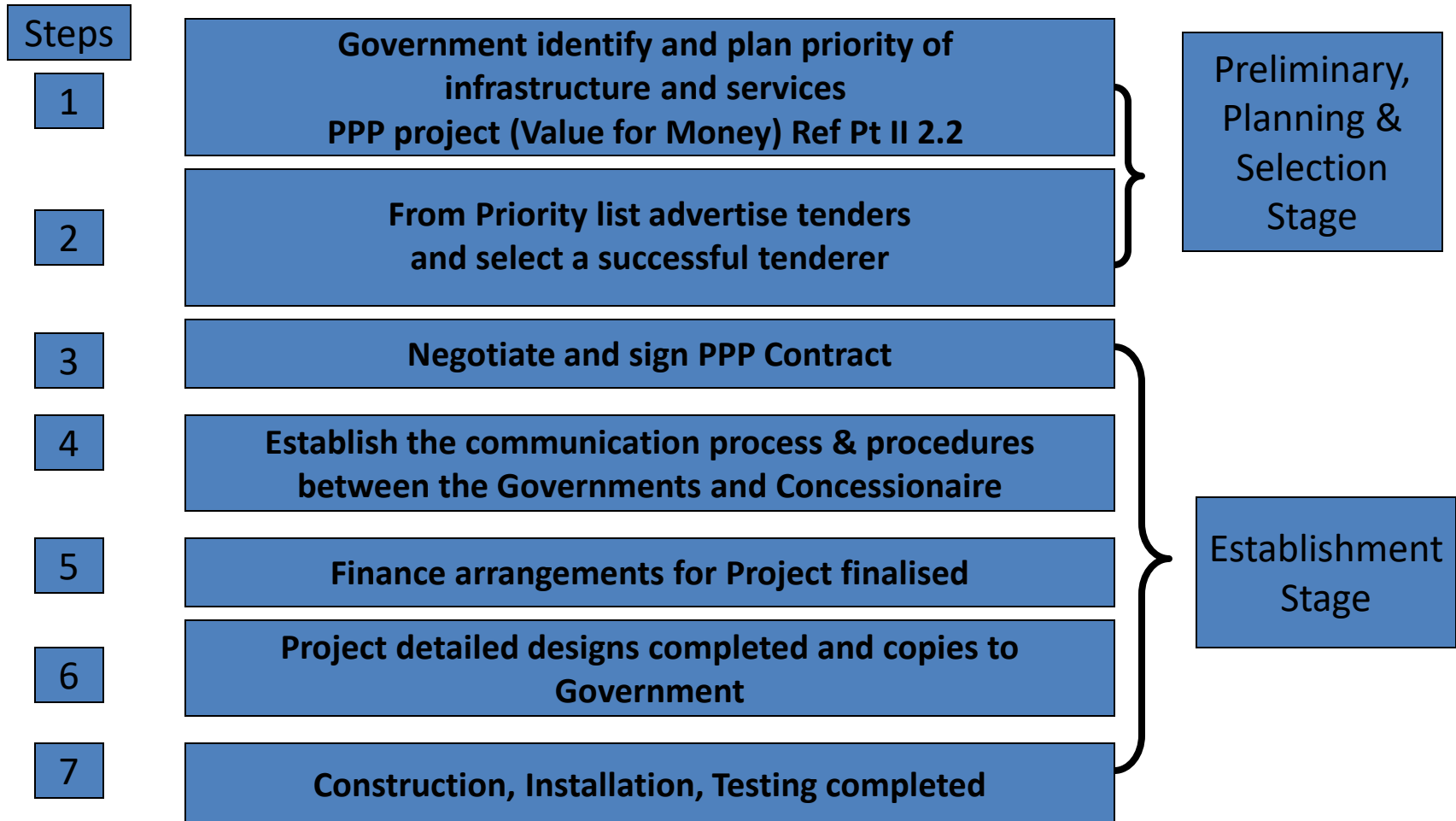
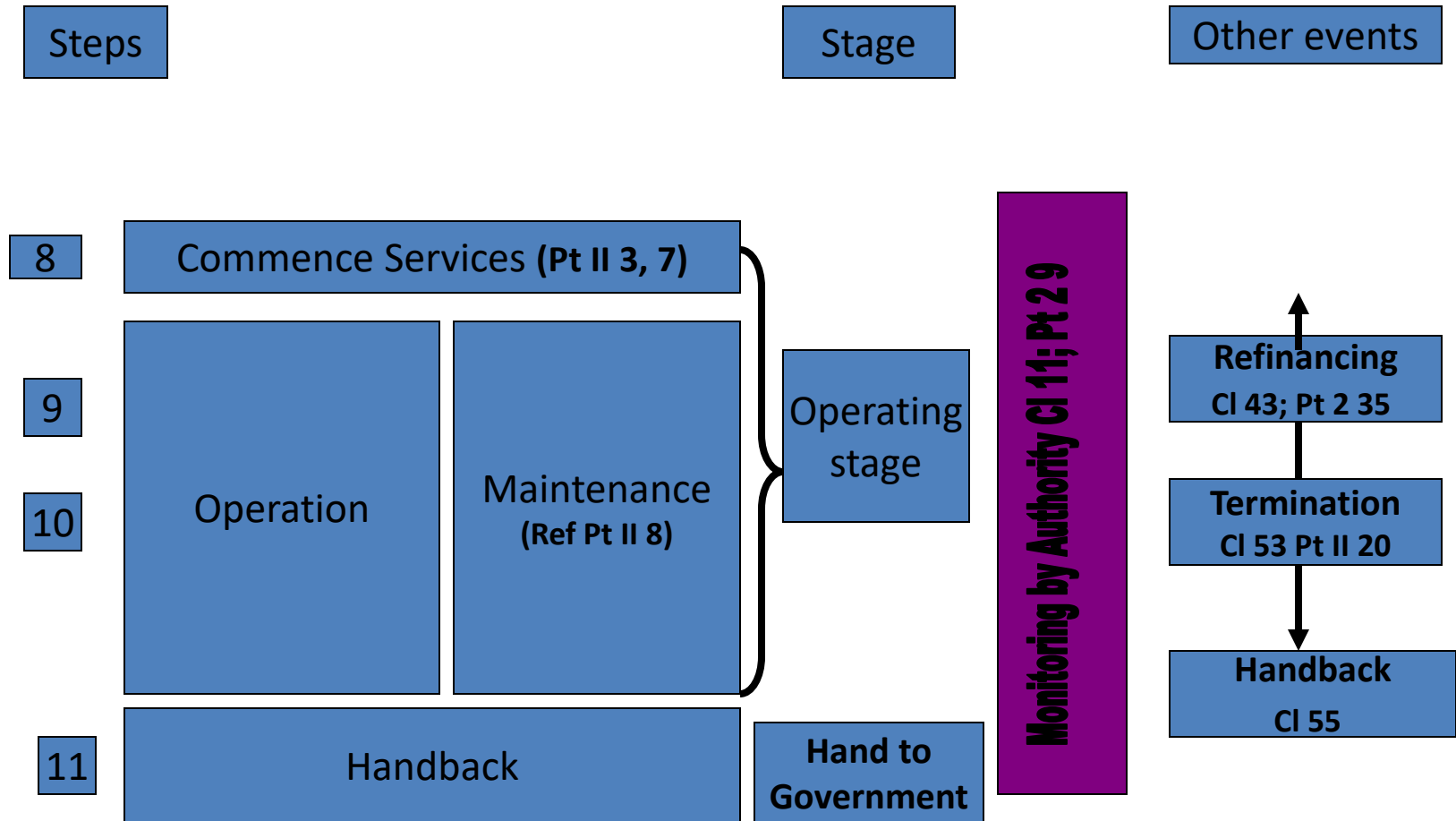


The Steps in a PPP Concession Contract



The Steps in a PPP Concession Contract



Overview of Concession Contract Structure

Introduction &
definitions

Clause 1 Definitions

Clause 2 Interpretation

Clause 3 Effectiveness of Agreement

Clause 4 Duration

Responsibilities
And
Procedures

Clause 5 Design/Construction Certificates

Clause 6 Programme

Clause 7 Health, Safety & Security

Clause 8 Statutory Undertakers

Clause 9 Services Commencement Cert

Clause 10 Standard of Operations/Maintenance

Clause 11 Monitoring Performance

Clause 12 Representatives

Clause 13 Notices

Clause 14 Liaison Procedures

Clause 15 Warranties

Responsibilities Service Commencement

Issue	Responsibilities and Roles
Prior to Service Commencement (SC) CC Clause 9	Date or timing is agreed in the contract, during the construction the Authority will want to know the progress
	Authority's participation limited so it avoids taking back And of the risks associated with design, construction etc
	The Authority's requirements would have been negotiated and written into the contract – outputs etc
	Authority role limited to: (ref: 3.2.3) -Reviewing & commenting on designs (section 3.4) -Viewing & observing tests of equipment -Administering agreed process for proposed changes -Following agreed procedure that commencement can be accepted (ref: Section 3.6) - apply agreed procedure if contractor fails SC time -Audit contractor's activities with QA systems (ref 3.5)
	The Authority should not approve any document only Write "acknowledged" on it or comment
Critical Date	If the contractor fails to meet SCD – dealt with in payment mechanism (S10) or occasionally by termination

Responsibilities Service Commencement

Issue	Responsibilities and Roles
Submission of Designs and information to the Authority	Basic design is in the contract subject to more development if only minor changes will not trigger Sec.12 change in service
	<p>Contract process provides for:</p> <ul style="list-style-type: none"> -Contractor to submit designs & information to Authority in format and timetable agreed -Minor design changes (no impact cost or service) accepted -Authority comment within agreed time (if it wishes) -Discussion and adoption by the contractor of comments
Quality Management Systems (QA)	The Contractor as part of CC has to have, the Authority can Audit the QMS. The CC includes the right to examine off-site Activities to determine the adequacy and accuracy of the QMS
Acceptance & Service Commencement	The contractor has to demonstrate that the infrastructure Meets the required outputs before the Acceptance Certificate Is issued by the Authority: the CC should require contractor to
	<ul style="list-style-type: none"> -Form of tests, inspections/demonstrations to be done -Timetable, procedures and programme for the tests etc -consequences of failure; --notices to be given to the Authority -Responsibility for costs & organisation of the tests & repeats -Access for the authority to see tests, and documentation required -Responsibility for assessing satisfaction of the tests (joint)
"No Approval" Just acceptance	

Performance Monitoring

Issue	Responsibilities and Roles
The CC should Provide for	<p>a) Level of performance required</p> <p>b) How the Authority can monitor contractors performance</p> <p>c) Consequences of failure to perform (contractors)</p>
Setting Performance	To encourage innovation, optimise risk transfer contract specifies performance via outputs (service standards) at negotiation stage; refer Sections 9.2.5 & 9.2.6
	Ensure performance measurement system have been use previously and have been tested (demerits to high/low)
	Use benchmarks applied to similar services elsewhere
	Financiers will want reasonable achievable levels so they can be sure to get repaid their senior debt
Monitoring Clause 11	CC provides for a mechanism which enables Authority to measure contractors performance
	Monitoring involves collection and evaluation of data, it should be objective, relevant & quantifiable & agreed with the contractor
	Should be a clear connection between data collected, unavailability & financial penalties for poor performance
	Monitoring commences from the service commencement date (SCD)

Performance Monitoring

Issue	Responsibilities and Roles
Who does the monitoring	<p>Monitoring can be done by the Authority, a third party or contractor but is ultimately the Authority's responsibility</p> <p>Monitoring should be done at three levels</p> <ul style="list-style-type: none"> -By the contractor via a QMS measuring performance -review of the QMS by the Authority – spot checks -Ability for users to report failures
Who pays for Monitoring	Each party should bear its own costs for monitoring, this will ensure the Authority does not act heavy handedly and avoids a conflict of interests
Qualitative Issues	Objective performance criteria should always be used however some required performance measures difficult to measure – i.e. customer satisfaction surveys
Sub-contractors	Contractors responsibility – Authority uses the payment Mechanism to ensure contractor fixes
Reporting Results	<p>Key issues to decide in the CC:</p> <ul style="list-style-type: none"> -Reports required by whom, How frequently? Different ones -Standardisation of monitoring and formats -How soon after a monitoring period for it to be received? -How often are meetings required between the parties?

Performance Monitoring

Issue	Responsibilities and Roles
Consequences of Poor Performance	The CC must set out clearly the consequences for poor performance
	Common approach is for the contractor to incur X number Of demerit points – varies for seriousness of failure
	Accumulation does not have immediate financial impact Payment deductions start once an agreed level is reached
	Appropriate to have ratchet mechanisms to encourage Performance. Demerit points increase from 3 to say 6
	Demerit points should not be earned back by improved performance in a later period
	Performance points system should cover all aspects of the service and will need to be divided for each part
	Persistent performance failure could lead to Termination Refer: Section 20.2.3

Communication between the Contractor & Authority

