



## COMPREHENSIVE LONG TERM CONTRACTS ISSUES AT STAKE

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# OUTLINE

**WHY SUCH A TERM?**

**MORE EFFICIENCY?**

**ISSUES FOR PUBLIC AUTHORITIES**

**AWARDING & MANAGEMENT**

**STRENGTHENED GOVERNANCE**

**A REALISTIC BALANCE**

# WHY SUCH A TERM?

## Traditional schemes:

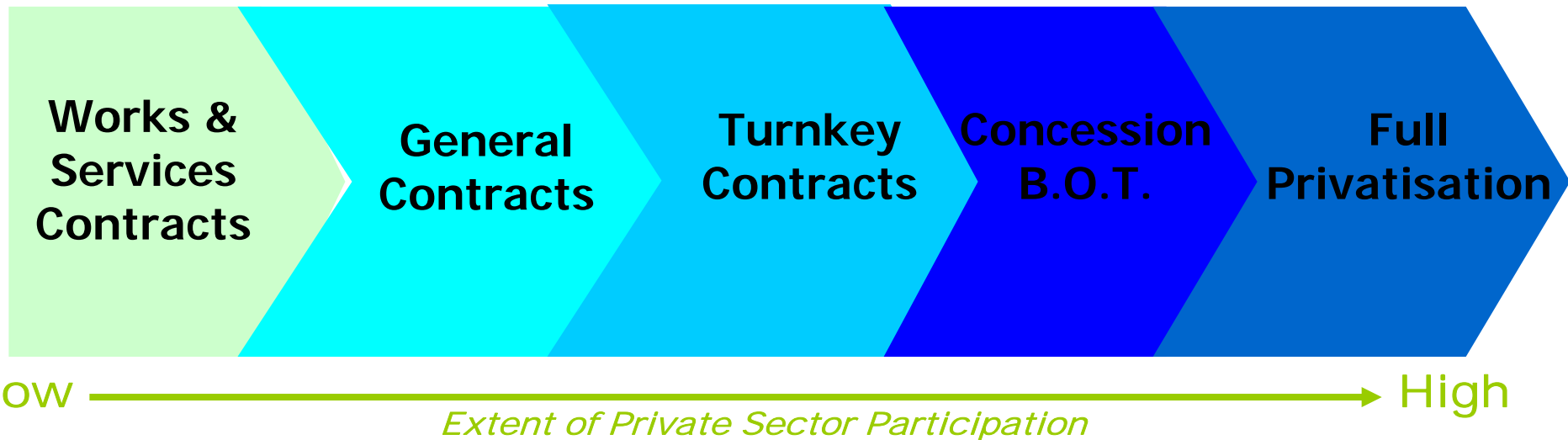
- Owner-engineer-contractors
- One contractor  $\Leftrightarrow$  **one task**
- Infrastructure  $\neq$  services
- Unilateral definition of contracts' content
- Penalties in case of default

## New trends

- More comprehensive contracts: **multitask**
- A **longer term**
- A set of tasks **including services**
- Contracts' content defined by **dialogue**
- Risk management system open to **unforeseeable events**

# A CONTINUUM OF ALTERNATIVES

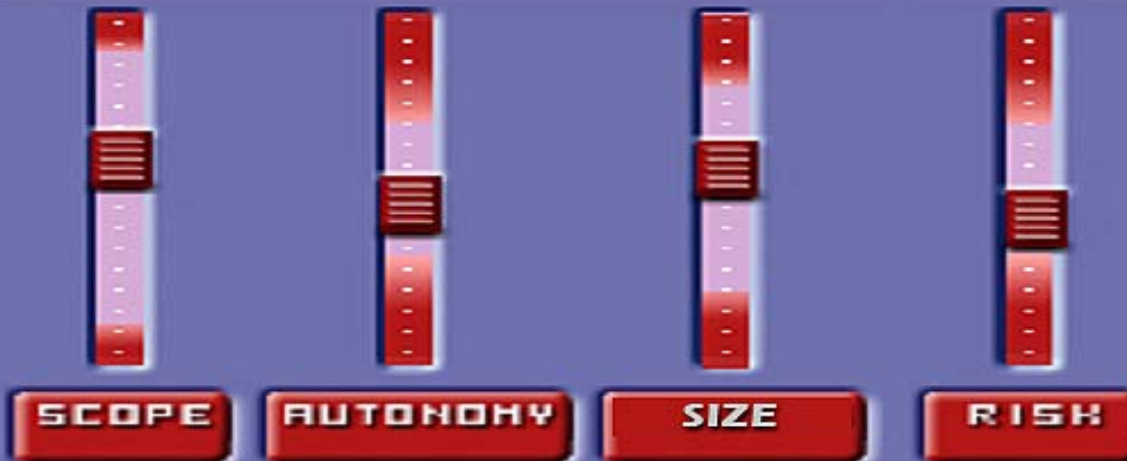
➔ A key issue : co-operation / competition



Labels used in jargon such as Turnkey contracts, BOT, DBFO or performance-based maintenance contract have no single and clear definition. Each solution is too complex and too unique to be characterized in one word or acronym.

*Adapted from World Bank Toolkit : <http://rru.worldbank.org/toolkits/highways>*

# EQUALIZER



**Scope of work:** tasks assigned to the private sector

**Autonomy:** initiative left to the private actors

**Size:** size of project(s) concerned by the agreement

**Risks:** how to share them among actors

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# MORE EFFICIENCY ?

## **A long range comprehensive view →**

- Room for contractor innovation
- Better coordination among tasks
- Better asset management

## **Higher transaction costs**

- But lower ones during the contract

## **Performance indicators / means obligations?**

## **End of the contract: facilities conditions?**

# ISSUES FOR PUBLIC AUTHORITIES

## Procurement

- Performance-based contracts, design & build...
- Purchase of infra. services and not infra. assets
- Life-cycle cost savings by bundling const.& op.

## Market oriented tools

### Quest for new resources

- “fiscal” / “concession” toll
- Time spreading of financial burden

## Possible impact on public finances

### Provision of a legal framework

→ civil law / common law

- ⇒ an organisation process & a financing mechanism
- ⇒ a changing but not a weaker role for gvt

# AWARDING & MANAGEMENT

## How to award the contract?

- Are there capable contractors?
  - SME....
  - Integrated contractors, consortia....
- Competitive dialogue?

## How to deal with unforeseen events?

- The contract, only the contract
  - ➔ risk of default
- Renegotiation
  - ➔ risk of unfair competition
- A fitted initial contract
  - Rendez-vous provision
  - “Embedded” multi-year contracts



# A STRENGTHENED GOVERNANCE

New regulation process to be set up

- A new task for public administration
- A new relationship for private sector
- Increase of transaction costs

How to do?

- Contract
  - what completeness and what legal safety?
  - medium term contract embedded in long term contract
- Legislation & best practices
- Audits and users' survey
- Different roles for different bodies
  - **an independent regulator/administration/courts...?**

# IN SEARCH OF A BALANCE

A BALANCE TO BE FOUND BETWEEN :

- **Competition**      ⇔ **Transaction costs**  
                                 ⇔ *Cooperation*
  
- **Profit**                      ⇔ **Risk**  
   ⇔ *Public utility*
  
- **External regulation**      ⇔ **Contract**

# BE REALISTIC

Government regulator and protector, at least

No partnership without legal safety  
(i.e. constraints for the public partner)

No partnership without actual commitment of  
the private sector

No partnership without a mutual confidence

In a market economy, the user chooses

Partnership = cooperation / competition

Beyond the wording and the legal cultures  
to understand the core concepts.



*Thank you*