

PPP development in Poland: main trends and conclusions

Institute for PPP | Bartosz Korbus





Polish legal sources for PPP - current status

- Act of 19 December 2008 on public-private partnership (Journal of Laws of 2009, No. 19, item 100, as amended), hereinafter referred to as the PPP Act, and AMENDMENT OF 5 July 2018
- Ordinance of the Minister of Economy of 11 February 2015 on risks and factors taken into account in their assessment (Journal of Laws of 2015, item 284, as amended)
- Act of 21 October 2016 on the concession contract for construction works or services (Journal of Laws of 2016, item 1920), hereinafter referred to as the Act on concessions

First legislation: Act of 28 July 2005 on public-private partnership



THE NATURE OF PPP

Definition

- Public-Private Partnership (PPP)
- Cooperation based on a contract
 - concluded in the procedure of competitive dialogue (a form of public procurement)
 - aiming at implementing a public task,
 - under which the public entity and the private partner share tasks and risks related to their implementation,
 - in such a way that the project which they jointly undertake is implemented as effectively as possible,
 - taking into account the entire life cycle of its implementation.
- In the PPP type of cooperation the most important are the risks associated with the construction stage as well as the availability risk and the economic risk associated with the implementation of the project, what determines the remuneration mechanism of the private party. These remarks also apply to concessions.



LEGAL SOURCES IN THE FIELD OF PPP

The PPP Act, and the Act on concessions

- Relationship to the Public Procurement Act and the Act on concessions:
 - The Procurement law and the Act on concessions mainly regulate methods of selection of a contractor and a concessionaire respectively.
- Procedural rules regarding the selection of a private partner:





LEGAL SOURCES IN THE FIELD OF PPP

Institutional famework















PPP system project

The project provides activities in the following areas

3 Training, International **Publications -**Promotion of PPP -Analysis of the workshops and PPP market training events guidelines economic events, country visits information and standards, best materials, website practices on the PPP subject



Instytut PPP/Institute for PPP:

An NGO established in 2004, with the aim to promote PPPs.

IPPP activities include: participation in the legislative proces, consultations, opinions.

Promotion of PPP best practices in various sectors.

IPPP publishes FORUM PPP and other publications (analyzes and reports).

Capacity building, training sessions and courses for representatives of local and central government, agencies, national controlling institutions. Organization of seminars, debates and workshops.

PARP's partner in the first PPP systemic project (2010-2015) and active participant of second edition (2016-2021) -> preparation of a database with ppp projects.





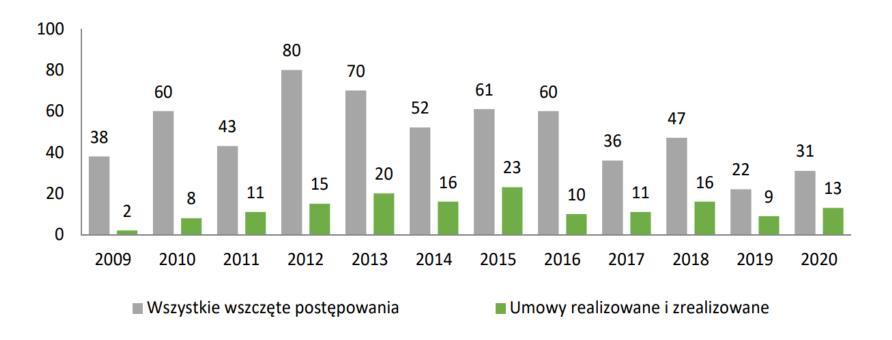
Definition of the PPP market in Poland

- As a result of the tender proceedings for the selection of a private partner or licensee initiated by public entities under the aforementioned two acts within 11 years from the beginning of 2009 to the end of 2020 172 PPP contracts / concession contracts were concluded, of which 154 entered into the implementation phase.
- It is worth mentioning that in Poland there are also PPP or concession contracts being implemented which were concluded under other regulations, both before 2009 (e.g. motorway projects implemented under the Act on Toll Motorways and the National Road Fund of October 27, 1994) as in later years.



PPP Market in 2009 - 2020

 From the beginning of 2009 to the end of 2020, a total of 600 proceedings for the selection of a private partner or concessionaire were initiated. Slightly over ¼ proceedings (154) resulted in conclusion of a contract. In the case of 32 proceedings, the tender procedures were still in progress as for December 31, 2020.



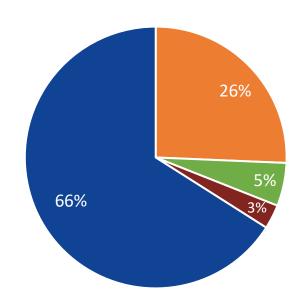
Source: PPP Market Report 2009-2020, Ministry of Funds and Regional Policy, Warsaw 2021



PPP market in figures

 Not all of the initiated proceedings result in the conclusion of a contract, as well as not all contracts which are concluded guarantee their implementation in accordance with the original assumptions.

Status	Number	Percentage of all initiated proceedings
Executed contarcts	154	26%
Proceedings in progress	32	5%
Not executed and terminated contracts	18	3%
Annulement of the tender proceedings	398	66%





Reasons for invalidating tender proceedings

- Taking into account the proceedings in progress, nearly ¾ of all initiated proceedings for selection of a private partner or concessionaire have not led to the conclusion of a contract.
- Among the most frequent reasons for invalidating proceedings are:
 - Lack of the private partner's intrest in the implementation of investments, i.e. failure to submit an application for admission to participate in the tender proceedings;
 - No offers or inadmissibility of submitted offers for further evaluation and comparison;
 - Significant change in circumstances, which meant that the conducted proceeding or execution of the subject of the public-private partnership, is not in the public interest anymore, which could not have been foreseen earlier;
 - A defect in the proceedings that prevents the conclusion of a valid contract.

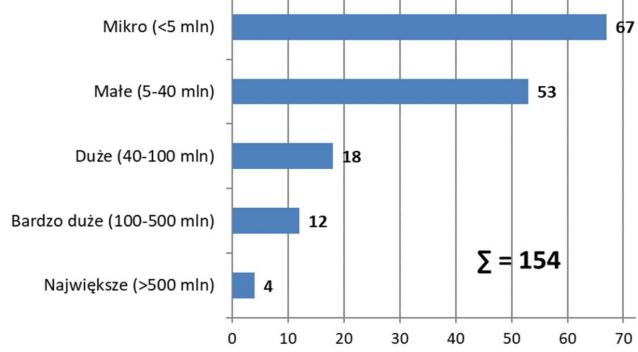


Value of the PPP contracts

 The total value of investment outlays and services in the all of 154 ongoing PPP contracts amounts to approximately PLN 8.14 billion gross. The most numerous are the projects from lower value ranges (120 contracts have a value below PLN 40 million).

The four largest contracts in Poland have a total value of almost PLN 2.92

billion, which is over ⅓ of the value of all PPP contracts.

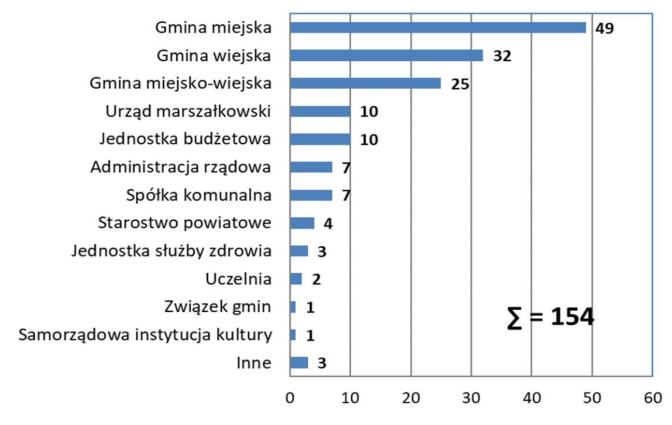


Source: PPP Market Report 2009-2020, Ministry of Funds and Regional Policy, Warsaw 2021



Public entities with PPP contracts

Local authorities and related to them unites concluded a total of 139 PPP contracts (i.e. 90% of the contracts under implementation), of which 106 were concluded by the basic level of local authorities i.e. municipalities, and 10 by marshal's offices. Only 7 contracts were signed by the central administration.

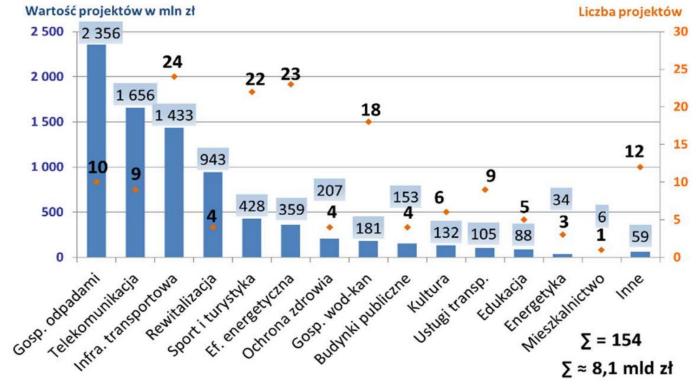


Source: PPP Market Report 2009-2020, Ministry of Funds and Regional Policy, Warsaw 2021



PPP contracts by sectors

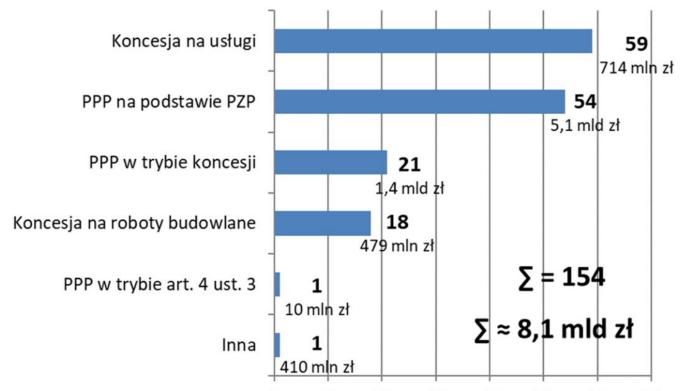
 The largest number of projects is implemented in 4 sectors: transport infrastructure, energy efficiency, sports and tourism, water and sewage management, while in terms of value - waste management and telecommunications are those which dominate.





PPP contracts according to the legal basis

The PPP market is dominated by the concession model (98 contracts altogether, which is $\frac{2}{3}$ of the total number of contracts), which is mainly determined by the popularity of concessions for services. However, PPP contracts have a greater value, amounting to PLN 5.1 bilion.



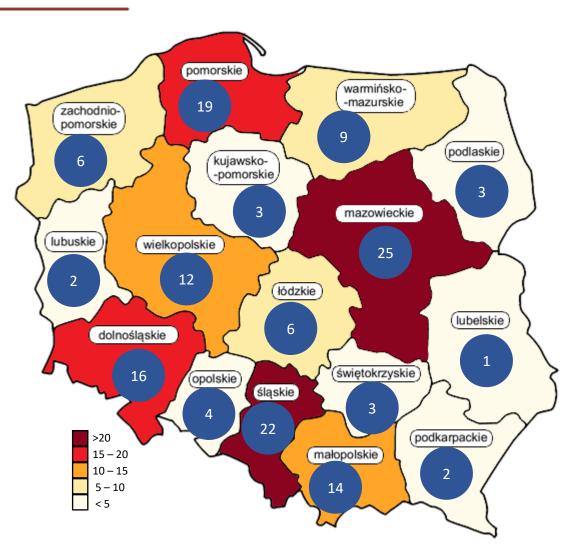
Source: PPP Market Report 2009-2020, Ministry of Funds and Regional Policy, Warsaw 2021



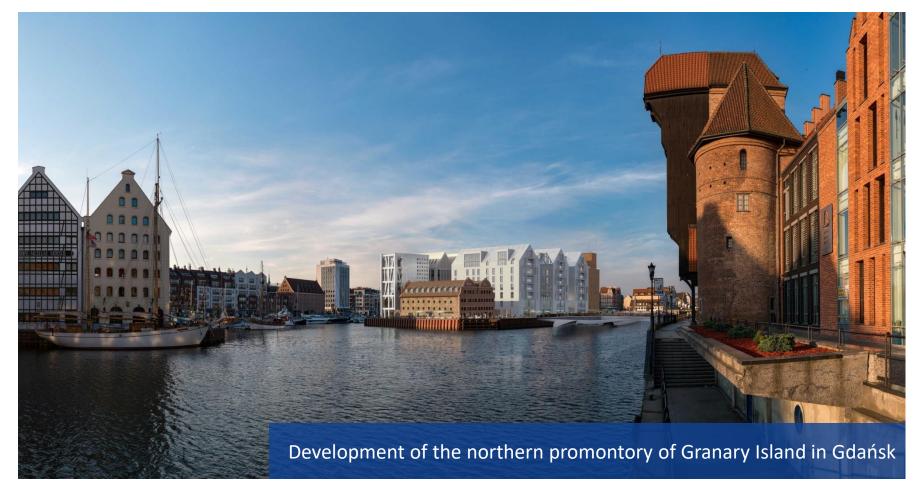
PPP contracts by province

70% of the PPP contracts are focused in 6 provinces: Mazowian (a leader with 25 contracts), Silesian, Pomeranian, Lower Silesian, Lesser Poland and Greater Poland.

7 contracts are nationwide these are concessions for online payment services as well as publishing and filming activities.









Case study – revitalization

- <u>Project:</u> Development of the northern promontory of Granary Island (Wyspa Spichrzów) in Gdańsk, North of Poland.
- Value of the contract: PLN 400 000 000
- <u>Duration of the contract:</u> 204 months (17 years).
- <u>Model:</u> The act on concessions for works or services in connection with art. 4 sec. 1. of the Act on PPP.
- The objective of the project is to revitalize the Granary Island. Apart from hotels, residential or engineering facilities, the project includes construction of a pedestrian overpass on the Motława river, a road system on the Island, the Stągiewny bridge, and a drawbridge.

The City Hall of Gdańsk

(public entity)

Granaria

(private partner)

14 III 2014

procurement notice

3 VI - 25 VIII 2014

negotiations (4 rounds)

31 III 2015

conclusion of the contract

CONSTRUCTION PHASE



- The main, direct objective of the city is to revitalize the key area for the city. The operational objective is to build infrastructure (a public purpose investment) as well as to stimulate investment activities in the private part of the investment.
- An investor under a PPP contract, as well as accompanying agreements, can fully control the course of the two investment processes and its own contribution (real estate).
- Generally, the value of expenditure made in the public interest was balanced with the price which the private sector paid to the public entity for the property purchased as part of the transaction.





- <u>Financing</u>: The public part of the infrastructure (public purpose investments) is financed through the sale of real estate constituting the contribution of a public entity. The private part (commercial investments) is financed from the private partner's resources.
- Risk on the side of the public entity: the risk related to making available the asset being the contribution to the undertaking.
- Risk on the side of the private partner: The risk of design and construction. The risk of obtaining financing for the entire undertaking. The risk of demand for services provided as part of the venture in the commercial part (also within the sale of property). Availability risk in terms of a public purpose investment.
- <u>Remuneration</u>: Benefits related to the development of the commercial part of the project an opportunity to earn remuneration from the provision of commercial services (hotels or commercial premises) and the sale of these properties after commercialization or as independent units.







Case study – revitalization

- <u>Project</u>: Development of the railway station in Sopot and its neighboring areas, with participation of private entities.
- Value of the contract: PLN 100 000 000
- <u>Duration of the contract</u>: 149 months (12 years 7 months).
- <u>Model</u>: The act on concessions for works or services in connection with art. 4 sec. 1. of the Act on PPP
- The objective of the project is to modernize the railway station, widen the tourist offer of the town of Sopot, make the public space, which is important in terms of tourism, more attractive, and provide tourists and residents with a wider range of services and hotels. The strategic objective is to create a representative building area, and architectural and functional visiting showpiece of Sopot.

The City Hall of Sopot

(public entity)

Polskie Koleje Państwowe SA

(public entity)

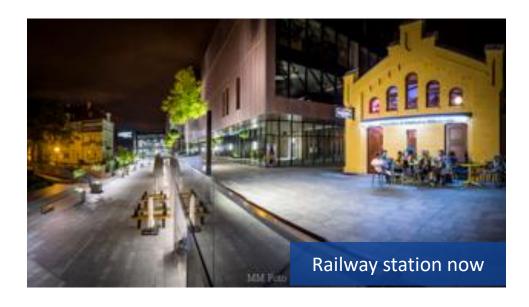
Bałtycka Grupa Inwestycyjna S.A. (private partner)

The venture includes two key areas for the development of tourism in Sopot - the railway station and the beginning of the tourist route, which ends directly on the Sopot pier.



- The project was supported with the JESSICA European Initiative. At the same time, it was the first "hybrid" PPP project in Europe, financed with the use of repayable assistance funds.
- The scope of the undertaking includes the implementation of: a transport system; development of the area intended for a railway station; commercial and service facilities; a hotel; underground car parks and parking lots at Kolejowa Street.







- <u>Financing</u>: The public part of the infrastructure (public purpose investments, including those in the site of the Polish State Railways PKP) is financed by the sale of real estate being the contribution of the public entity. The private part (commercial investments) is financed from the private partner's resources.
- This is the first "hybrid" project in Europe which applies the JESSICA initiative, the private partner obtained resources for the project from a soft loan and its own funds. The loan granted by the JESSICA initiative amounts to nearly PLN 42 million.
- Financial closing January, 7, 2013 (conclusion of a loan agreement with the Stateowned BGK bank).
- Risk on the side of the public entity: The risk related to making available the asset being the contribution to the undertaking.



- Risk on the side of the private partner: The risk of design and construction. The risk of obtaining financing for the entire undertaking. The risk of demand for services provided as part of the venture in the commercial part (also within the sale of property). Availability risk in terms of a public purpose investment
- Remuneration: the right to derive benefits from the object of the PPP, implemented in the areas owned by the private partner, i.e. excluding the transport system and the railway station. The income of the private partner will be reduced by the payment to the public entity. In addition, there is a possibility of charging remuneration for the provision of commercial services (hotels or commercial premises) and the sale of these properties after commercialization or as independent units.



Case study – waste management





Case study – waste management

- <u>Project</u>: Waste Management System for the City of Poznań -Contract 1.
- Value of the contract: PLN 925 051 656
- <u>Duration of the contract</u>: 25 years since the beggining of the operation
- <u>Model:</u> The Public Procurement Act in connection with art. 4 sec. 2. of the Act on PPP
- The project includes design, construction, financing of the Municipal Waste Heat Treatment Plant in Poznań and the further operation of the facility.
- The objective of the investment is to introduce modern solutions in the field of waste management, resulting from the tasks imposed on municipalities in 2011 by the act on maintaining cleanliness and order in the municipalities.

City Hall of Poznań

(public entity)

Sita Zielona Energia

(private partner)

The PPP contract is planned to be compatible with financing from the Cohesion Fund.

At the stage of submitting offers, the Private Partner had to guarantee the capability to finance 100% of investments (uncertainty of subsidies).



Case study – waste management

- <u>Financing</u>: A "hybrid" project. A subsidy from the Cohesion Fund PLN 330,000,000 (33.80%) Private Partner's own funds PLN 640,000,000 (61.48%) Beneficiary's own funds PLN 49.22 million (4.72%).
- Risk on the side of the public entity: The public entity assumes the risk of demand it is
 responsible for ensuring the adequate amount of the waste stream. In addition, the public
 entity is responsible for the correct settlement of the contract for co-financing, and payment
 of a part of the remuneration (contribution) related to the refund obtained from the
 Cohesion Fund.
- Risk on the side of the private partner: the private partner assumes the construction and availability risk, as well as the risk of demand for energy sold as part of the operation of the venture. The part of the remuneration related to the construction of the facility will be payable directly from the budget of the public entity.
- <u>Remuneration</u>: a monthly payment (availability fee) made by the public entity (excluding the construction phase) to the private partner, that takes into account the private partner's income related to operation of the facility, including the sale of heat and electricity or slag.



Case study – water and sewage management





Case study – water and sewage management

- <u>Project</u>: Construction of a sewage treatment plant in Mława, implemented in the PPP formula, and the provision of services in the field of collection and treatment of municipal sewage.
- Value of the contract: PLN 50 000 000
- <u>Duration of the contract</u>: 396 months (33 years).
- Model: The act on concessions for works or services in connection with art. 4 sec. 1. of the Act on PPP
- Construction of a new sewage treatment plant together with design, financing and its operation by a partner.

The City Hall of Mława

(public entity)

ONDEO Polska Sp. z o.o.

(private partner)



Case study – water and sewage management

- Risks on the side of the private partner: The main risks on the side of the private partner is the construction risk (in particular, project financing, construction in accordance with the Description of the Subject of the Contract and its implementation within 36 months from conclusion of the contract) and accessibility risk (in particular regarding operation of the old and new facility, takeover and training of personnel including a guarantee of employment for a period of 5 years). In addition, the private partner assumes a part of the demand risk, which is shared with the public entity (in particular in terms of providing the entire waste stream from a municipality, guarantee of the quantity for the first period of 20-25 years with a threshold of tolerance of / + 3% and indexation of the rates).
- Remuneration: payment for 1 m3 of sewage flowing into the sewage treatment plant. At the same time, according to the division of risks, a guarantee of the amount of sewage with a tolerance of deviations amounting to / + 3% (based on the average number of years) was introduced.



Case study – public buildings





Case study – public buildings

- <u>Project</u>: Construction of a building of the District Court in Nowy Sącz at Grunwaldzka street in the formula of publicprivate partnership.
- Value of the contract: PLN 49 000 000
- <u>Duration of the contract</u>: 279 months (23 years 3 months).
- Model: The Public Procurement Act in connection with art. 4 sec. 2. of the Act on PPP
- Design and construction of a building of the District Court in Nowy Sącz, implemented in the PPP formula, maintenance and management of the building. The objective of the project is to provide the Ministry of Justice with a facility which meets the standards of work and customer service while optimizing costs, and energy efficiency.

Distric Court in Nowy Sącz (public entity)

PPP Projekt Sp. z o.o.

(private partner)

12 X 2013

procurement notice

05 III 2015

conclusion of the contract

CONSTRUCTION PHASE

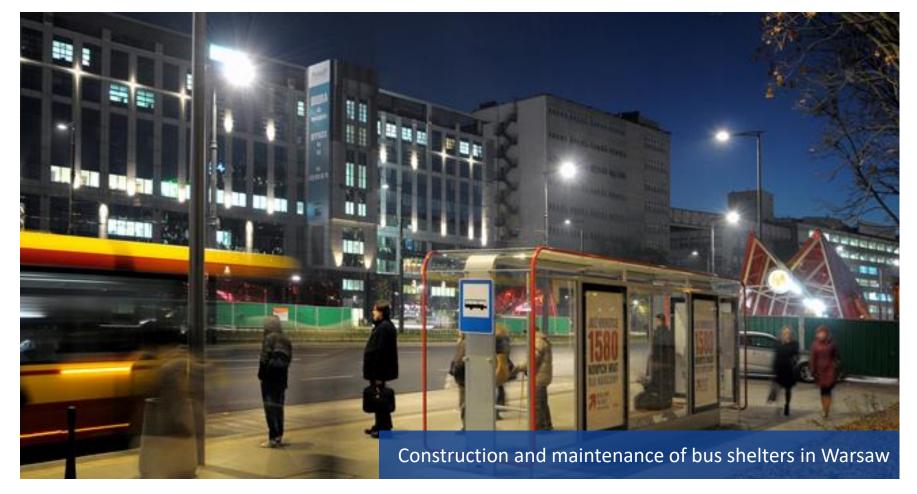


Case study – public buildings

- <u>Financing</u>: Financing at the investment and operational stage lies wholly on the private partner.
- Risk on the side of the public entity: The risk associated with bringing the asset in legal and technical condition suitable for the implementation of the PPP contract, and the risk of demand for premises made available by the private partner in accordance with the contract provisions. The risk of demand for the provided services within the venture.
- <u>Remuneration</u>: Remuneration payable directly from the budget of the public entity, related to the implementation of the investment and the availability of the building in the standard set in the contract.



Case study – transport infrastructure





Case study – transport infrastructure

- <u>Project</u>: Concession for the construction and maintenance of bus shelters and other items of equipment.
- Value of the contract: PLN 98 000 000
- <u>Duration of the contract</u>: 108 months (9 years).
- Model: The Act of 9 January 2009 on concessions for construction works or services
- The objective of the project is to replace bus shelters in Warsaw with the participation of a private partner.

The City Hall of Warsaw (public entity)

consortium:

AMS and Stroer Polska

(private partner)

18 V 2010 procurement notice

18 XII 2013

conclusion of the contract

OPERATIONAL PHASE



Case study – transport infrastructure

Scope of the project:

- under one contract with the Concessionaire, the public entity secured the implementation of a whole range of services related to the purchase, assembly and maintenance of bus shelters (also disassembly and development of existing ones), which until now have been contracted under several separate tenders (or several dozens within the period of 10 years)
- execution of approx. 625 bus shelters, made on the basis of the so-called "competition" project indicated by the Concession Grantor
- design and construction of about 955 bus shelters, made on the basis of Concessionaire's own project prepared in accordance with the Concession Grantor's guidelines
- disassembly of old bus shelters from their current location
- carrying out preparatory works aimed at determining a precise location of a bus shed, together with an analysis of the possibility of installing a power connection or another way of lighting for the bus shelter (e.g. solar panels, etc.);
- assembly of bus shelters in approx. 1580 locations indicated by the Concession Grantor;

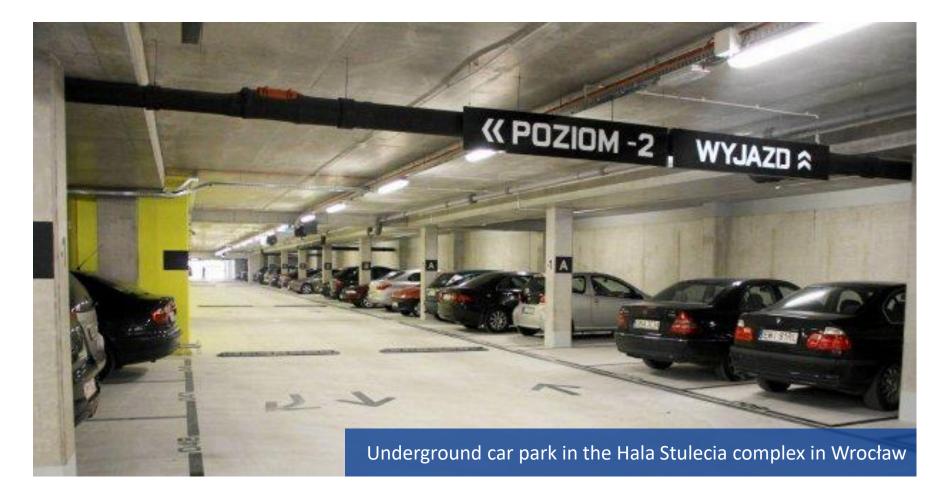


Case study – transport infrastructure

- <u>Financing</u>: The investment and operational stage are financed from the resources of a private partner, costs are covered by current revenues.
- Risk on the side of the public entity: The risk related to bringing the asset in legal and technical condition suitable for the performance of the concession agreement.
- Risk on the side of the private partner: the construction risks, the risk associated with the operation and maintenance of the subject of the concession (snow removal is on the part of the Concession Grantor) and the total risk of demand. The partner assumes also the risk of devastation.
- Remuneration: The right to operate advertising displays on the bus shelters.



Case study – car parks





Case study – car parks

- <u>Project</u>: Construction of a two-storey underground car park with an area at the ground level, and the necessary infrastructure within the Hala Stulecia complex in Wrocław.
- Value of the contract: PLN 43 300 000
- <u>Duration of the contract</u>: 360 months (30 years).
- Model: The Act of 9 January 2009 on concessions for construction works or services
- The subject of the concession is the design and construction of a two-storey underground parking lot with an area at the ground level with a total of 800 parking spaces for passenger cars and 20 lots for buses, and reconstruction of the existing road system to the extent necessary to provide a proper parking and traffic management

Wrocławskie Przedsiębiorstwo Hala Ludowa Sp. z o.o.

(public entity)

Budimex Parking Wrocław Sp. z o.o.

(private partner)

7 IV 2011

procurement notice

23 IV 2012

conclusion of the contract

OPERATIONAL PHASE



Case study – car parks

- <u>Financing</u>: Financing at the construction stage is the responsibility of the concessionaire.
 At the operational stage, if the expected profitability is not achieved, the Concession Grantor will pay to the Concessionaire the amount ensuring an appropriate return on investment.
- <u>Risk on the side of the public entity</u>: The risk related to bringing the asset in legal and technical condition suitable for the implementation of concession. Partially, the risk of demand for services (in the absence of the assumed level of the parking usage).
- <u>Risk on the Concessionaire's side:</u> Risk of building, design, maintenance and operation in a way which ensures the availability of parking space for users, the greater part of the risk of demand for services provided within the project.
- Remuneration: The concessionaire's remuneration is the sole right to use the subject of
 the concession and to collect benefits for the duration of the contract. It is allowed to
 provide benefits directly from the grantor's budget due to failure to achieve the
 assumed level of the facility usage.



Case study – energy efficiency





Case study – energy efficiency

- <u>Project:</u> Thermomodernization of the public utility buildings in Zgierz
- <u>Value of the contract:</u> PLN 56.6 million.
- <u>Duration of the contract:</u> 300 months (15 years).
- <u>Model:</u> The Public Procurement Act in connection with art. 4 sec. 2. of the Act on PPP.
- The objective of the project is energy modernization and revitalization of 23 educational facilities in Zgierz, as well as achievement of nearly 45 % savings in energy consumption

The City Hall of Zgierz

(public entity)

ENGIE Services Sp. z o.o.

(private partner)

25 IX 2015

procurement notice

30 | 2017

conclusion of the contract

CONSTRUCTION PHASE



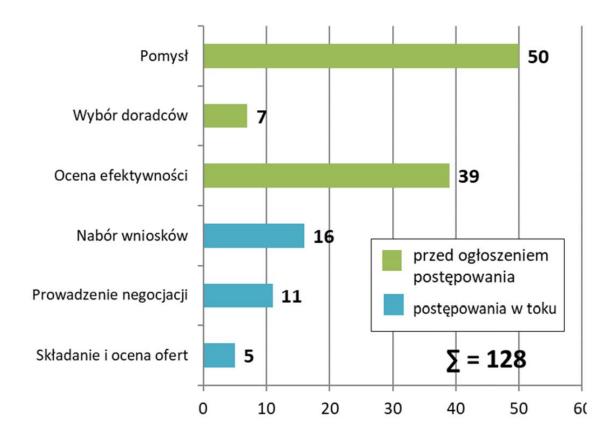
Case study – energy efficiency

- <u>Financing</u>: Financing comes from the private partner's own funds or a loan (within its own funds and debt financing). However, the public entity assumes that it will be also possible to co-finance the implementation of the Project from the funds available under the Regional Operational Program for the Lodzkie Province 2014-2020 for the implementation of the project entitled "Comprehensive thermomodernization of public utility buildings and the municipal resource of the city of Zgierz" (Project indicated in the Strategy of the Lodz Metropolitan Area 2020+, the project symbol: 3-024). In such a model, it will constitute a "hybrid" project.
- Risk on the side of the public entity: Risk related to the provision of infrastructure, demand risk related to the change of the intended use of buildings. Potential risk of settlement of the EU subsidy.
- <u>Risk on the Concessionaire's side</u>: Designing and execution of construction works. Risk related to the availability of the subject of the venture, in particular this related to obtaining guaranteed energy savings.
- <u>Remuneration</u>: Availability fee linked with the achievement of declared energy savings. Part of the remuneration may be contributed as a contribution of a public entity, i.e. financing part of the investment outlays from the funds obtained from the EU reimbursement.



PPP investment projects

• At the end of 2020, 128 PPP investment plans were identified, mostly (75%) in the pre-announcement phase. Their total value is PLN 41 billion.

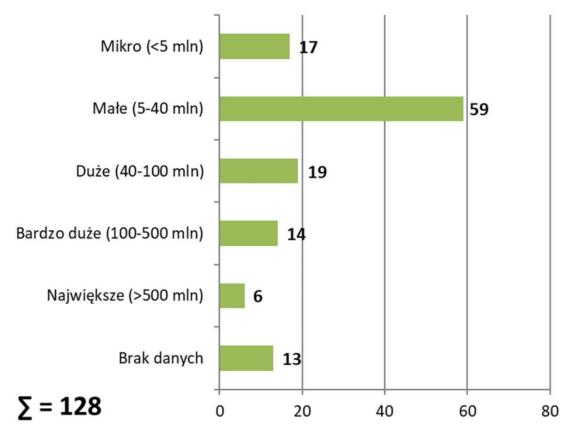


Source: PPP Market Report 2009-2020, Ministry of Funds and Regional Policy, Warsaw 2021



Value of the investment projects

 The value structure of PPP investment plans is very similar to the value structure of the concluded contracts. The largest part are projects with a value up to PLN 40 million. However, there are noticeably fewer micro projects (value below PLN 5 milion).

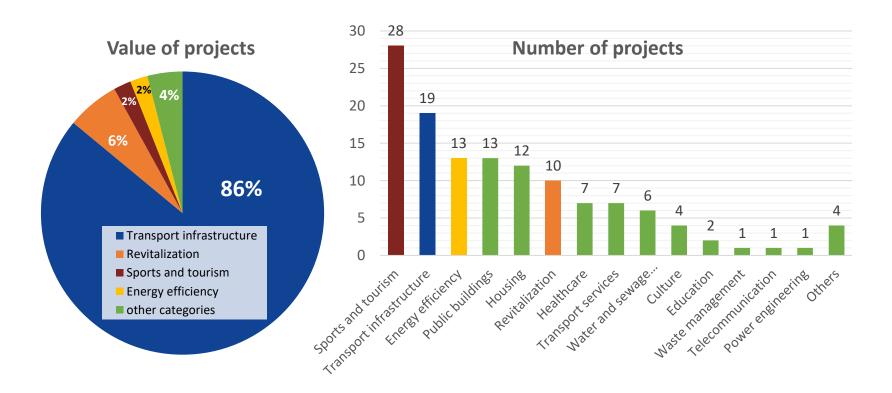


Source: PPP Market Report 2009-2020, Ministry of Funds and Regional Policy, Warsaw 2021



Investment projects by sector

The majority of investment projects in PPP were recorded in the sectors of sport and tourism (28) and transport infrastructure (19) energy efficiency (11) and public buildings (11), i.e. in the sectors that are PPP market leaders in terms of activity. In terms of the value of the projects, the transport infrastructure sector is definitely dominant. Recently, an increase in the number of ppp projects in the housing sector can be observed.





Governmental projects:

- 1. Construction of the Central Port development of the deepwater part of the Port of Gdansk.
- 2. Construction of the Outer Port in the Port of Gdynia
- 3. Construction of the Silesian Canal.
- 4. Construction of the cascade of the section of the freely flowing Odra River from Brzeg Dolny to the mouth of the Nysa Łużycka River.
- 5. Construction of the Lubiąż water barrage.
- 6. Development of the grounds of the National Stadium.
- 7. Construction of the Statistical Office in Warsaw
- 8. Building and maintaining state archives in the formula of public-private partnership



CONCLUSIONS:

IMPORTANT – ESTABLISHING A GOVERNMENT POLICY FOR THE DEVELOPMENT OF PPPs

The Policy identifies a series of activities to be implemented to ensure proper development and use of PPPs in Poland:

- 1. Proposing the necessary legal amendments.
- 2. Developing and monitoring a PPP project pipeline (a database of investment plans).
- 3. Keeping a database of signed PPP projects and monitoring their implementation and impact.



CONCLUSIONS:

- 4. Carrying out educational and dissemination activities including the development and implementation of a communication strategy.
- 5. Developing and wide dissemination of guidelines, recommendations, good practice.
- 6. Providing comprehensive advisory services to public bodies.
- 7. Certification (quality assurance/assessment). Assessment of the benefits of the PPP project and the quality of analysis carried out prior to project implementation. Possibility of verification by the PPP Unit of a decision to implement an infrastructure project as PPP, as well as the adequacy of the PPP project preparation.



CONCLUSIONS:

- 8. Developing and implementing an obligatory opinion on the formula to be used to implement large projects financed from the Government/State budget.
- 9. Analysing and establishing a system of warranties and guarantees for the public and private sectors
- 10. Assessing opportunities to develop instruments to co-finance the public sector's costs of preparing and implementing investment projects (e.g. preferential loans for public entities). This assessment should take into account both the needs and capacity of the state budget and the benefits which may be brought about by the increased level of investment.
- 11. Developing and implementing sectoral/regional strategies for PPP development, (optional activity).



THANK YOU!



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