

PPP practice and innovations - Toulouse case study



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Public equipments funding tools available for public-private partnerships in France

URBAN PARTNERSHIP PROJECT: AN URBAN AMENITY FUNDING AND GUIDANCE TOOL

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Reminder of legal context:

- ❖ The Urban Partnership Project was set up under the MOLLE Act 2009-323 of 25 March 2009 (“Mobilisation pour le Logement et la Lutte contre l’Exclusion” - also called the Boutin Act)
- ❖ and is codified by articles L.332-11-3, L.332-11-4, L.311-4 and R.332-25-1 to R.332-25-3 of the Code de l’Urbanisme (French building code).
- ❖ Act 214-366 of 24 March 2014 for Access to Housing and Urban Renovation (or ALUR Act).

General principles:

- The Urban Partnership Project (UPP) is a participatory planning scheme to fund the extra public amenities rendered necessary by new construction or development operations. It does not cover the amenities included in the project itself.
- Examples of public amenities thus funded: roads and networks, schools, and buildings for cultural facilities.
- The UPP does not aim to demand excessively high contributions. Thus, when the capacity of a public amenity exceeds the needs generated by the operation, the construction company bears only a proportionate share of the cost.
- Reliant upon private enterprise, the UPP often serves the interests of the community.
- Only a local authority or EPCI (public inter-municipal cooperation establishment) with legitimacy for producing and managing documentation relating to the local urbanisation plan can sign UPP contracts for areas under their jurisdiction that have been identified as urbanised (U zones) or apt for development (AU zones).
- The UPP cannot be cumulated with other contributions or building-related taxes payable when planning permission is granted.

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Participation formalised by the signing of an agreement:

- ❑ The owner or builder proposes to the local authority to sign an agreement when the planned operation requires the creation of amenities of which the cost cannot be fully covered by building tax alone.
- ❑ The authority draws up an agreement setting out all the amenities it undertakes to create and defining a precise timetable along with the projected cost and the constructor's expected contribution, which can be adjusted as and when the work is completed. The agreement even allows for the prefinancing of the work.. It is submitted to the authority's executive body for approval before being signed for a maximum duration of 10 years.
- ❑ The constructor is allowed to contribute land in lieu of funding, but may not contribute labour.
- ❑ This contractual document must be negotiated and finalised before an application for planning permission is submitted. The signed agreement is included in the administrative file.
- ❑ The agreement also allows for amendments through the addition of supplementary clauses in the event of the clauses initially agreed by both parties leading to fulfilment difficulties.

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Example of a UPP initiated by Toulouse Métropole: Creation of a clinic on the site of Lasbordes-Ribaute (town of Quint-Fonsegrives).

Agreement signed between the constructor and Toulouse Métropole on 23 November 2013 for a duration of years.

Purpose: preparation of a 7.4-hectare site for the construction of this key medical institution.

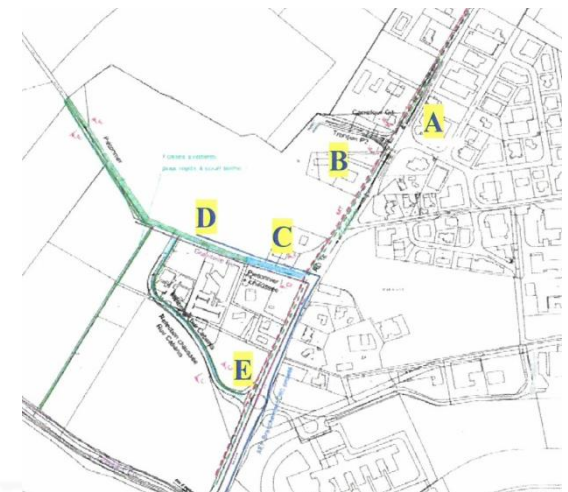
An amenities programme split into two phases:

- ❖ Phase I (2013/2016): gyratory system and access road, other roads and networks, walkways and refurbishment of a street impacted by the construction site.
- ❖ Phase II (2016/2021): road sections and reservoir.

Total cost of work estimated at €7.8 inclusive of all taxes.

Constructor's contribution: €6.9 million paid in several instalments as and when the work progressed

Clinic opened to the public at the end of 2018.



Phase 1 work programme

Developments introduced by Act 214-366 of 24 March 2014 for Access to Housing and Urban Renovation (or ALUR Act).

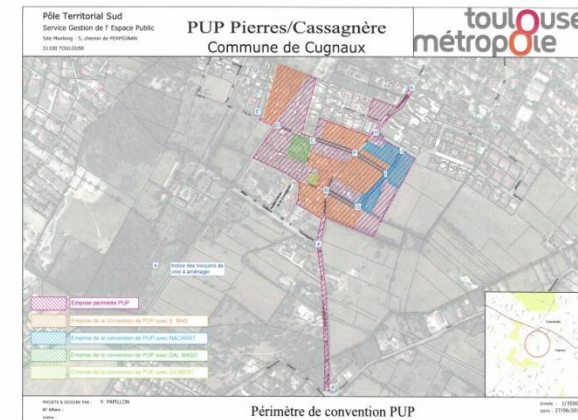
- ❖ Adjustment of the UPP in line with a project logic, by allowing the signing of separate agreements with different constructors within an operating sector.
- ❖ These agreements can finance different amenities depending on the location of sites and the envisaged programme of works.
- ❖ Extension of the maximum agreement validity to 15 years.
- ❖ Possibility for the constructor to put together a presentation of the project to be submitted for debate by the executive body of the appropriate authority. This must be done before planning permission is applied for.
- ❖ There are now two forms of UPP that may accompany projects, depending on the type of amenities required following the sector's development.

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Example of a global UPP initiated by Toulouse Métropole: Building in the sector of Chemin de la Cassagnère (town of Cugnaux)

- ❖ Purpose of the UPP sector approved by the Metropolitan Council on 15 December 2016: to accompany the development of the 1.9-hectare sector covering Chemin des Pierres et Chemin de Cassagnère, a sector with high transformation potential.
- ❖ Programme of public amenities planned in a single phase: redevelopment of paths, creation or extension of roads and networks, creation and landscaping of a storm water basin and play area. Total cost of work estimated at €3.1 inclusive of all taxes.
- ❖ Constructors' total contribution estimated at €1.9 million. Their individual contributions are determined by a ratio calculated on the basis of the sector's urbanisation potential, an estimated floor area of 16,200 m².
- ❖ 3 agreements were signed with promoters for the building of a total of 214 homes.
- ❖ Local inhabitants wishing to carry out extensions of less than 50 m² had to pay a fixed contribution of €50/m².



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Limitations of a tool to be deployed with caution:

- The works programme with timetable and costs is determined on the basis of estimations or studies that could be delayed during execution, or might underestimate the end cost, even if some room for manoeuvre is left for unforeseen events.
- The share of funding payable by the constructor is determined on the basis of the ratio of public amenities to private ones. The criteria need to be highly impartial because these notions have no precise legal definition under French law which is subject to change, as is the actual building work.
- The UPP is a very flexible tool which caters for adjustments to the initial agreement by way of an amendment signed by both parties. In the UPP sectors, it is difficult to negotiate with constructors for an increase in their participation once the operation is finished.
- The UPP cannot be cumulated with other financial contributions for public amenities. Thus, the agreement leads to legitimate exoneration from Building Tax throughout the period of execution.
- Such conditions expose the authority behind the agreement to legal proceedings, especially in the event of the constructor considering the estimated participation to be disproportionately high.

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Other available tools for financing public equipments

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Other taxes and participations valid for the funding of public amenities since 1 January 2015

Taxes	Contributions
Building tax and mark-ups	Contribution to the building of public amenities (PREPE)
	Joint development zone contribution (Act 311-4 of the building code)
	Low-density payment (VSD)

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Building tax and mark-ups (TAM)

Legal texts	Main characteristics
<p>Articles L.331-1 to L.311-34 of the Building Code</p>	<ul style="list-style-type: none"> • Rate of 5% applied by law for a structure like Toulouse Métropole. • Automatically applied whenever planning permission is granted. • When the amenity requirements cover a large area, the rate <ul style="list-style-type: none"> • can be higher, up to 20%. • Following annual deliberations by the executive body of the authority concerned, this decision <ul style="list-style-type: none"> • is adopted before 30 November on the basis of a <ul style="list-style-type: none"> • programme of required public amenities, for application from 1 <ul style="list-style-type: none"> • January of the following year. • The building tax mark-up can vary between different sectors of a <ul style="list-style-type: none"> • municipality. When this happens, it contributes to the implementation of an <ul style="list-style-type: none"> • overall urban development strategy.

Contributions in Joint Development Zones (ZAC):

Legal texts	Main characteristics
<p>Articles L.311-4 to L.311-5, and L.331-4 to 331-7 of the Building Code</p> <p>Article 1585C of the General Tax Code</p>	<ul style="list-style-type: none"> • Through these contributions, a Developer holding a planning concession pays for public amenities needed for the future inhabitants and users of the Joint Development Zone (ZAC). The ZAC is an urban project fulfilment procedure. • The cost is then redistributed by the developer through land prices for that operation. • This rule is adopted when the ZAC is created and excludes the operation from the levying of any Building Tax. • Specific agreements defined by articles L.311-4 and L.311-5 of the building code enable the spreading of the cost of public amenities among landowners located in the sector and whose land has not been purchased from the developer.

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Participation for exceptional public amenities (PREPE):

Legal texts	Main characteristics
Articles L.332-6 and L.332-8 of the Building Code	<ul style="list-style-type: none">• This covers the financing of public amenities made necessary by• a new construction intended for farming, industrial, artisanal or commercial purposes and whose nature or importance justifies the request for a contribution. • Such amenities must be of an exceptional nature that exceeds the community's ordinary facilities. • The authority does not have to deliberate in such cases. • The contribution amount and method of payment are set out in the planning permission.

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Low-density tax (VSD)

Legal texts	Main characteristics
<p>Article L.331-36 of the Building Code</p>	<ul style="list-style-type: none"> • In zones A and AU, no local urbanisation plan may be instituted, with the possibility of division into sectors at municipality level in the aim of fighting against urban sprawl. • This tax allows each municipality to choose its own minimum density threshold per sector. • For constructions below that threshold, constructors must pay a tax contribution calculated on the surface area required to reach the threshold. • The low-density tax is instituted by deliberation of the executive body of the competent authority for a period of 3 years, except in the event of amendment by a new decision that is more favourable to investments in rental property.

Contractualization of development project financing in france

Focus on the real estate concession contract

❖ What is a concession ?

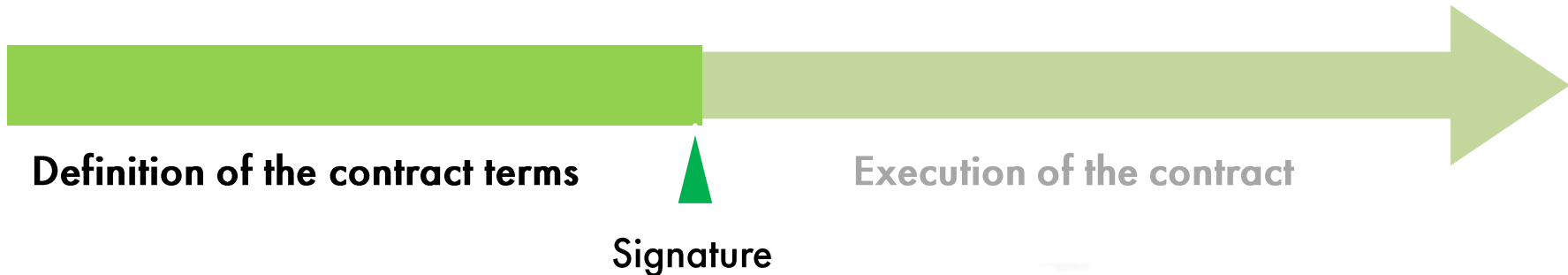
The concession is a **delegation contract** from the public body who took the initiative of the operation to a **quasi-public or private developer** who will do the studies and realization.

	Concession	UPP
Private financing participation to public infrastructures	✓	✓
Delegation of responsibility to the developer to execute the public infrastructures	✓	✗

	Concession	UPP
Delegation of responsibility to the developer to execute the public infrastructures	Possible and moreover the local authority can financially participate to the public infrastructures	Not Possible
Contract duration	Long	Short
Public policy position	Public authority put forward Public authority = leader	Developer put forward Public authority = support worker
Possibility of evolution of the contract	Easy	Less easy
Perimeter	Large	Usually less large
Risk taking	Sharing of risk with the developer	No risk taking by the developer
Governance	Management tool for complex and ambitious projects	Financial tool to support urbanization but with no particular ambition

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❖ The concession procedure until the signature of the contract



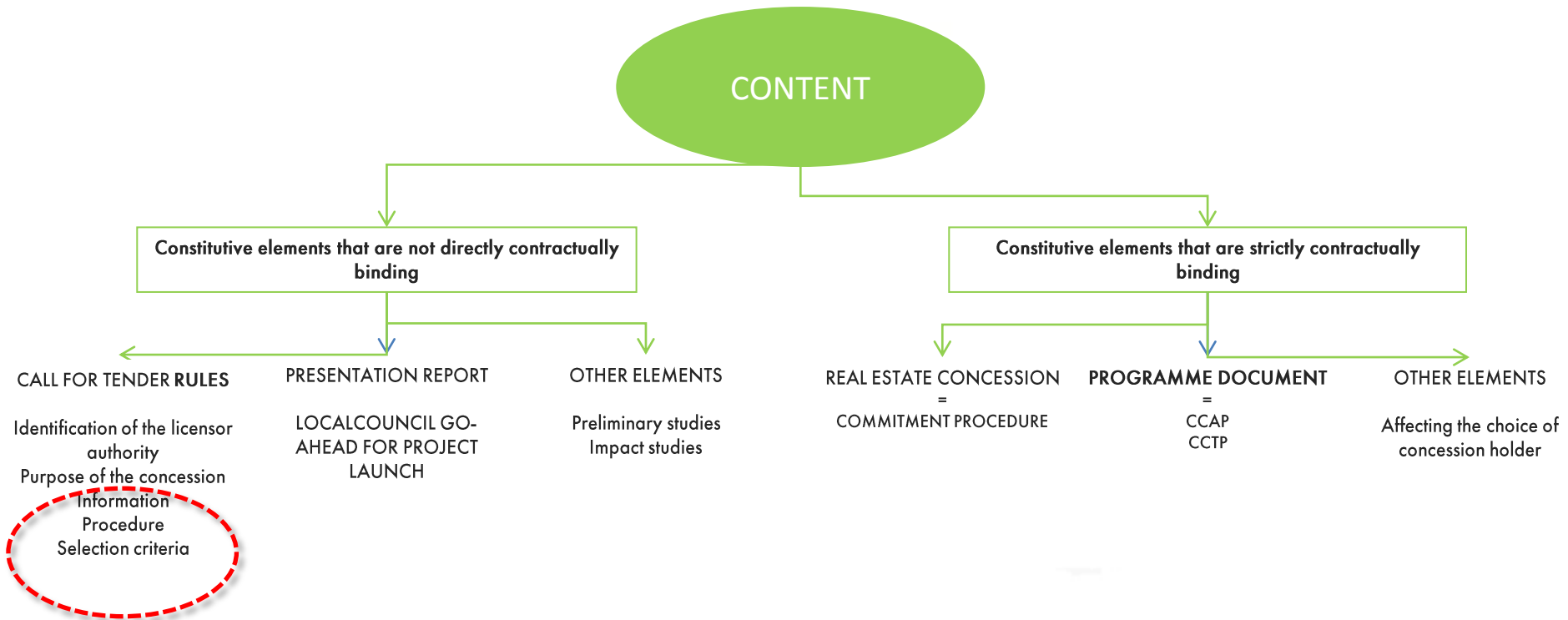
❖ Target objectives of the local authority



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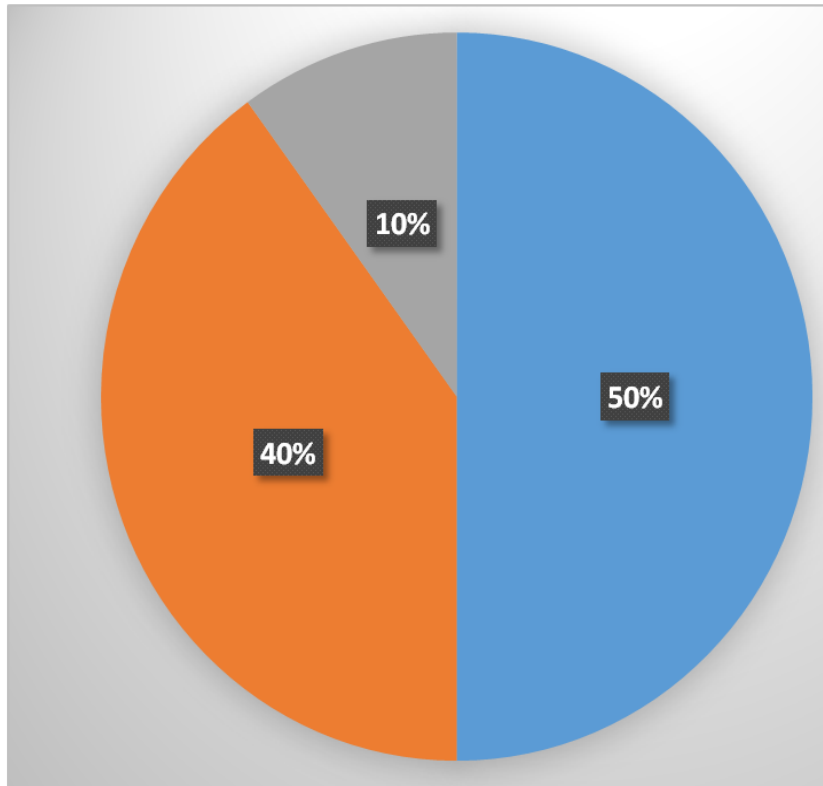
❖ Calls for tender aimed at developers

The tender documents must include all the information required to enable applicants to put together their proposal, clearly describing the tasks incumbent on them and the risks for which they will be liable.



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*Proposal assessment criteria
Example in Toulouse: Guillaumet project*

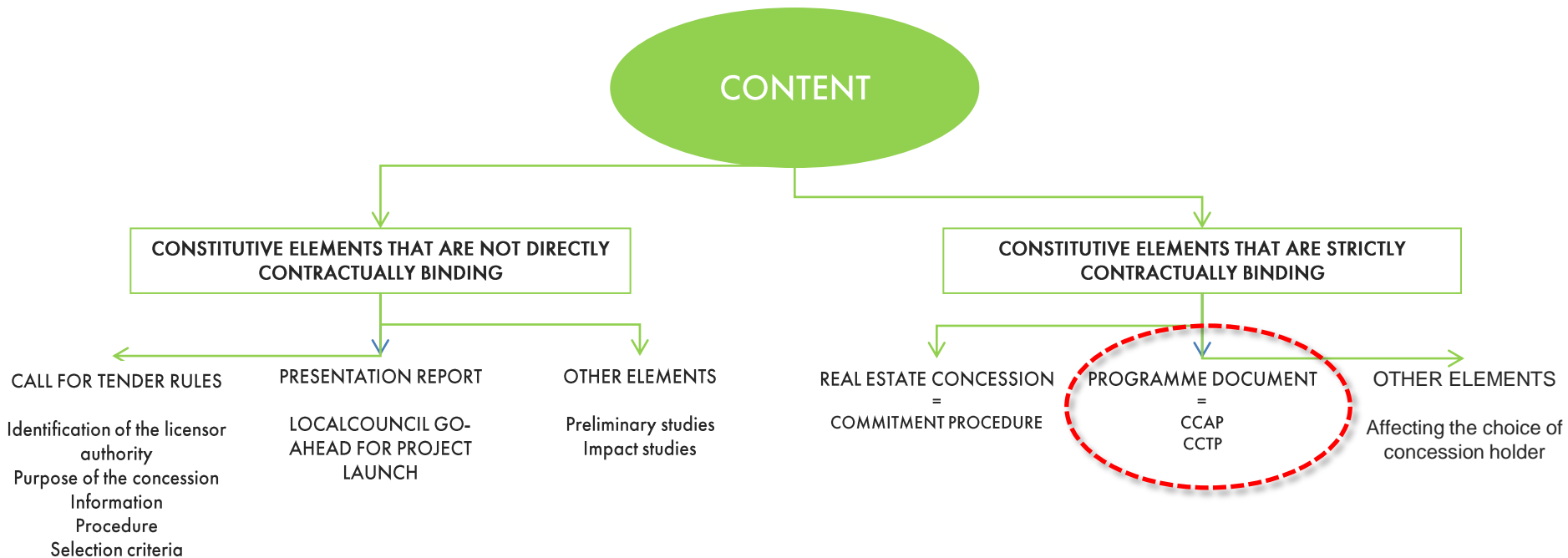


- Quality of the project criteria
- Financial criteria
- Capability / competences of the candidate criteria

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❖ Calls for tender aimed at property developers

The tender documents must include all the information required to enable applicants to put together their proposal, clearly describing the tasks incumbent on them and the risks for which they will be liable.



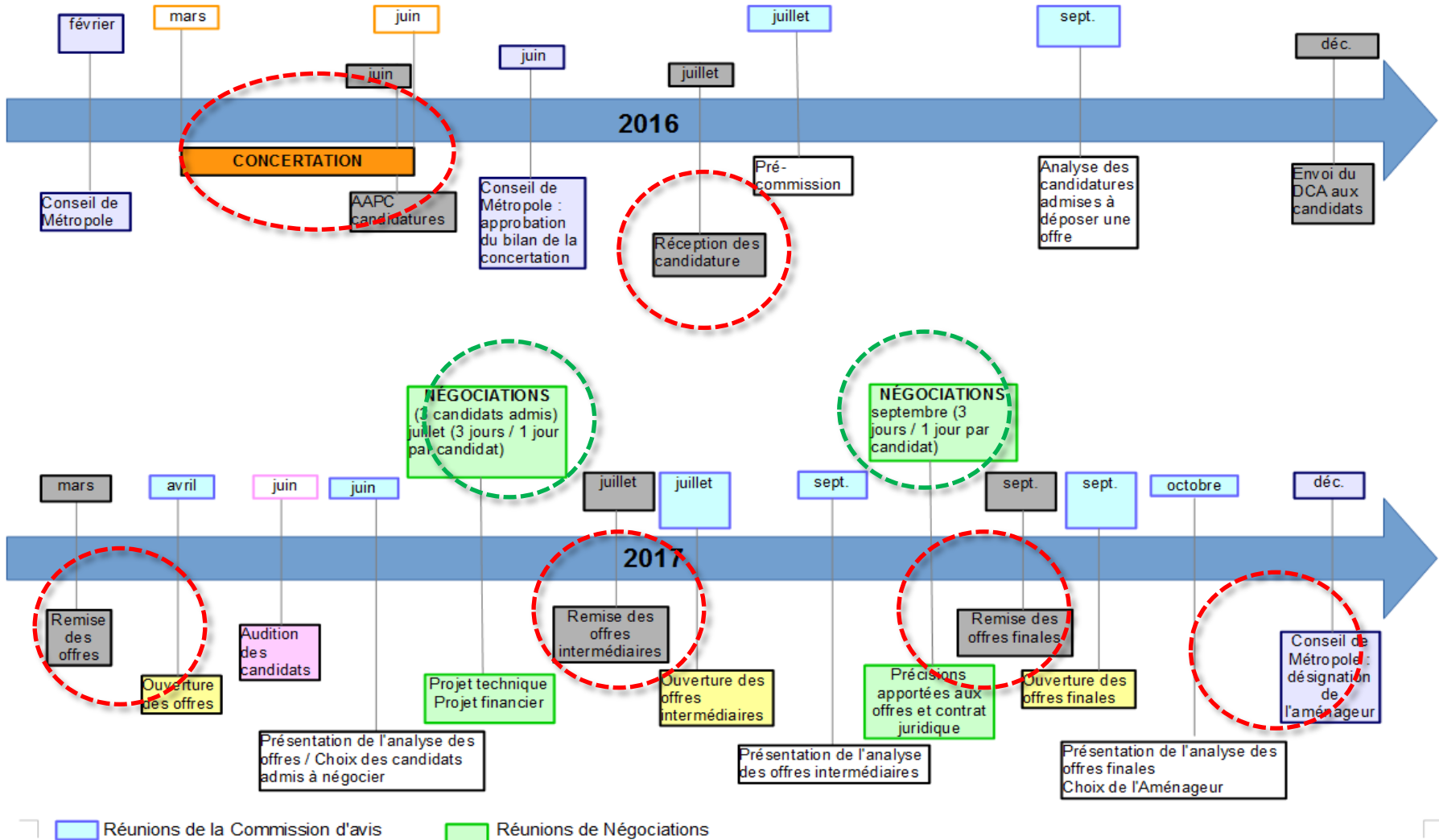
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Content of the work specification example in toulouse: guillaumet project



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Stages of the procedure : example in toulouse: guillaumet project



Final project choice



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Content of the real estate concession agreement

1. General provisions

Purpose, target objectives, transaction schedule, missions, progress of procedures, duration, completion date, contract modification

2. Real estate provisions

Terms and conditions of purchase / terms and conditions of property release / terms and conditions of transfers / informing the licensor of the terms and conditions governing the rights of public authorities

3. Construction work

Schedule of work to be carried out / terms and conditions of validation par by the licensor / terms and conditions of execution / return and handover of completed work

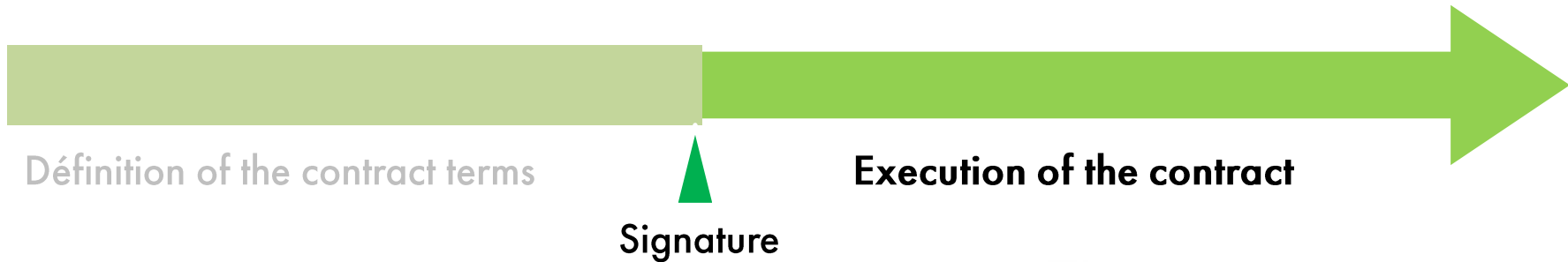
4. Financial provisions

Funding of the transaction / financial participation of the licensor and related terms and conditions / CRACL / loan guarantees / costs charged to the concession holder / control procedures, sanctions

5. Final payment / termination

Consequences of contract expiry, conditions governing repurchase or forfeiture by the licensor, early contract termination conditions

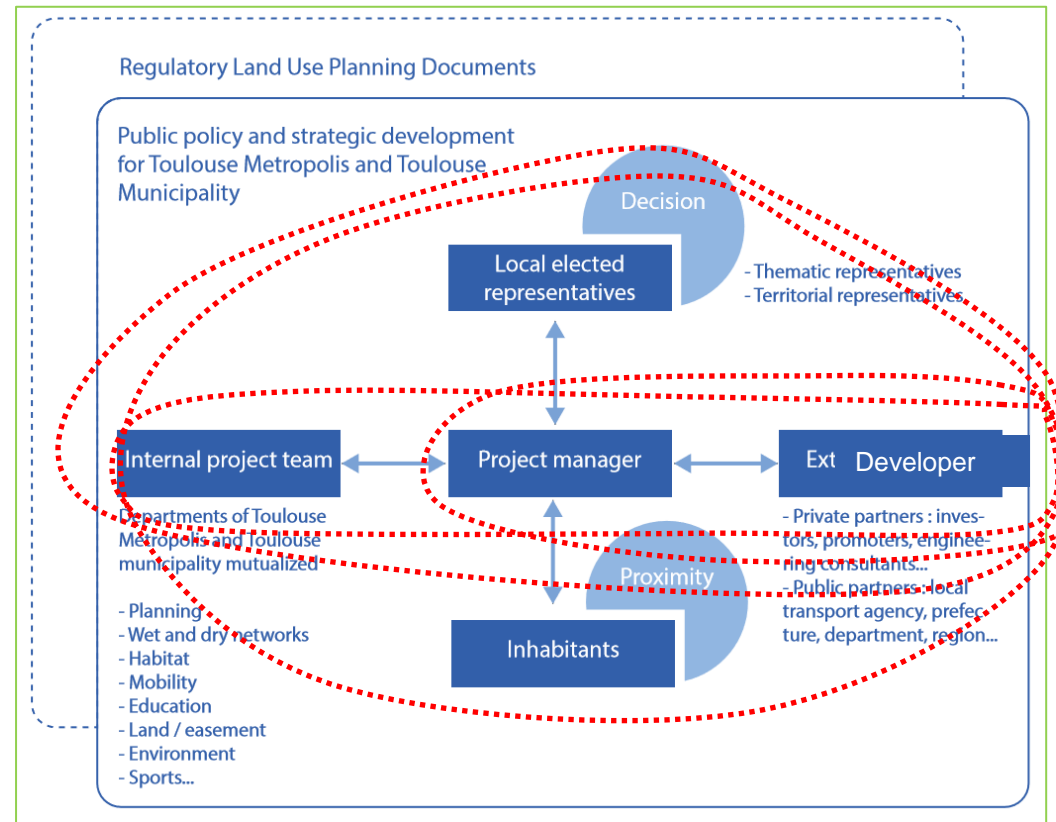
❖ Implementation phase of the concession



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Different type of meeting for the smooth running of the project

- ❖ Steering / monitoring committee
- ❖ Technical committee
- ❖ Public meeting
- ❖ Review meeting



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