District of Maple Ridge
Handbook on
Public Private Partnership

From the Office of the:

General Manager: Corporate and Financial Services

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Handbook on Public Private Partnership

Note: The material in this handbook has been compiled from reports prepared by the Ministry of Municipal Affairs and Industry Canada.

Executive Summary:

Public private partnerships (P3's) are arrangements between government and private sector entities for the purpose of providing public infrastructure, community facilities and related services. Potential benefits that can be realized are cost savings, risk sharing, improved levels of services, maintenance of existing levels of service, enhancement of revenues, more efficient implementation, economic benefits, and the ability to react with more flexibility to customer trends.

As with conventional forms of service delivery, there can be risks such as loss of control by the municipality, increased user costs or fees, political risks, unacceptable levels of accountability, unreliable service, inability to benefit from competition, reduced quality or efficiency of service, bias in the selection process, or labour issues. A detailed analysis of such risks is required at the front end of the project.

A dedicated team of individuals must be formed and a Business Plan developed taking into account several issues such as costs, operational and maintenance standards, and acceptability by the public, elected officials, the private sector, other stakeholders, as well as government staff.

A Consultation and Communication Plan should be developed and submitted with the detailed Business Plan facilitating two-way communication between the government and affected stakeholders. This Plan helps to eliminate fear of change as well as the unknown, and better shapes the proposal to address the objectives, concerns, and meet the needs of the end-users.

The process for identifying and selecting the preferred partner must be understood. As well, agreements must be negotiated by knowledgeable people and formally documented and adopted. The Municipality must decide at the outset how the construction works will be managed and make sure it has a legislative responsibility with respect to the project. As well a good contract manager or management team is key to any successful P3 project. Reporting to Council and the public on construction, contractual, and financial issues is also important.

In summary, used properly P3s can serve as a valuable tool. Up front planning is the key!

I Introduction:

i What is a Public Private Partnership?

Public private partnerships (P3's) are arrangements between government and private sector entities for the purpose of providing public infrastructure, community facilities and related services. Such partnerships are characterized by the sharing of investment, risk, responsibility and reward between the partners. The reasons for establishing such partnerships vary but generally involve the financing, design, construction, operation and maintenance of public infrastructure and services.

The underlying logic for establishing partnerships is that both the public and the private sector have unique characteristics that provide them with advantages in specific aspects of service or project delivery. The most successful partnership arrangements draw on the strengths of both the public and private sector to establish complementary relationships.

The roles and responsibilities of the partners may vary from project to project. For example, in some projects, the private sector partner will have significant involvement in all aspects of service delivery, in others, only a minor role.

While the roles and responsibilities of the private and public sector partners may differ on individual servicing initiatives, the overall role and responsibilities of government do not change. Public private partnership is one of a number of ways of delivering public infrastructure and related services. It is not a substitute for strong and effective governance and decision making by government. In all cases, government remains responsible and accountable for delivering services and projects in a manner that protects and furthers the public interest.

Please note that in this guide, the term "service delivery" is used primarily to describe public purpose infrastructure and related services. Partnership arrangements can also be established for services not involving public infrastructure.

ii Forms of Public Private Partnership

Public private partnerships can vary in:

- the degree of risk allocated between the partners
- the amount of expertise required on the part of each partner to negotiate contracts
- the potential implications for ratepayers

The allocation of risk between the partners is a key consideration that affects various other aspects of partnership agreements, including rewards, investments and responsibilities. (*Fig.2.1 Appendix*) ***Types of Public Private Partnerships*** provides an overview of the more common forms of public private partnership, starting with those that transfer the least amount of risk to the private partner.

iii Why a Public Private Partnership?

A public private partnership can be a viable option for delivering a public service or project. The municipality should undertake a cautious approach and examine all relevant factors and issues when considering this type of arrangement. The different forms of public private partnership vary in terms of how risks and responsibilities are allocated. They also vary in complexity and the degree of expertise required to successfully negotiate required contracts.

The municipality should not assume that public private partnerships provide easy outs to difficult servicing issues. They should expect that increased transfer of risk will result in higher expectations for reward by the private sector and that the negotiation of contracts will require a high degree of expertise. The following discussion provides an overview of some of the potential benefits and risks associated with public private partnerships.

II What are the Potential Benefits of Public Private Partnerships?

The municipality can realize important benefits when public private partnerships are used in the appropriate context. This is not to say that these benefits could not be achieved by municipalities entering into contracts on their own. Rather, benefits can arise from the strengths that the different parties bring to the table. Potential benefits include:

- ***Cost savings***

With public private partnership, the municipality may be able to realize cost savings for both the construction of capital projects as well as the operation and maintenance of services. For example, construction cost savings can often be realized by combining design and construction in the same contract. The close interaction of designers and constructors in a team can result in more innovative and less costly designs. The design and construction activity can be carried out more efficiently, thereby decreasing the construction time and allowing the facility to be put to use more quickly. Overall costs for professional services can be reduced for inspections and contract management activities. As well, the risks of project overruns can be reduced by design-build contracts.

Cost savings can also be realized by the municipality in the operation and maintenance of facilities and service systems. Private partners may be able to reduce the cost of operating or maintaining facilities by applying economies of scale, innovative technologies, more flexible procurement and compensation arrangements, or by reducing overhead.

- ***Risk sharing***

With public private partnership, the municipality can share the risks with a private partner. Risks could include cost overruns, inability to meet schedules for service delivery, difficulty in complying with environmental and other regulations, or the risk that revenues may not be sufficient to pay operating and capital costs. Risks should be allocated to the party best capable of managing the risk. For instance, local governments are usually not equipped to handle large-scale construction projects, whereas the private sector is. As such, construction risks are often appropriate to be left with private partners.

- ***Improved levels of service or maintaining existing levels of service***

Public private partnerships can introduce innovation in how service delivery is organized and carried out. It can also introduce new technologies and economies of scale that often reduce the cost or improve the quality and level of services.

- ***Enhancement of revenues***

Public private partnerships may set user fees that reflect the true cost of delivering a particular service. Public private partnerships also offer the opportunity to introduce more innovative, non-government revenue sources that would not be possible under conventional methods of service delivery.

- ***More efficient implementation***

Efficiencies may be realized through combining various activities such as design and construction, and through more flexible contracting and procurement, quicker approvals for capital financing and a more efficient decision-making process. More efficient service delivery not only allows quicker provision of services, but also reduces costs. Also, the community may be able to enjoy the additional services sooner than might otherwise be the case.

- ***Economic benefits***

Increased involvement of the municipality in public private partnerships can help to stimulate the private sector and contribute to increased employment and economic growth. Local private firms that become proficient in working in public private partnerships can "export" their expertise and earn income outside of the region.

- ***Ability to react with more flexibility to customer needs***

III What are the Potential Risks of Public Private Partnerships?

As with conventional forms of service delivery, there are risks as well as potential benefits associated with public private partnerships. The municipality can reduce or eliminate the risks by understanding what they are and addressing them through well-conceived negotiations and contractual arrangements, and the involvement of stakeholder groups. Potential risks include:

- ***Loss of control by the municipality***

Public private partnerships, by their nature, involve a sharing of risks, benefits and decision making between the partners. Public private partnerships that involve significant investments and risks by the private partner often provide for greater involvement of the private partner in decisions concerning how services are delivered and priced. This often leads to concerns about who controls the delivery of services. The issue of control needs to be addressed at the time the project is defined and kept in mind when the contract is negotiated. In the final analysis, the municipality has the authority and responsibility to establish servicing standards and to ensure that the public interest is protected.

- ***Increased user costs or fees***

It is hard to establish the true costs of providing services when establishing our pricing policies for fees for services. For example, the costs of overhead or administration and depreciation of assets are often not included in the pricing of individual services. In some cases, there are explicit subsidies for specific services. The delivery of services through public private partnerships requires pricing policies and fees to reflect all relevant costs. This can have the effect of increasing user fees for specific services. The cost of managing public controversy over increased fees or developing complex policies for staging fee increases can often negate the value of public private partnerships for specific services.

- ***Political risks***

Many public-private projects impose increased political risks on elected officials. They are called on to explain not only why the project should be a public priority, but also how the partnership will generate clear benefits that are not available from conventional delivery. And at times, elected officials may be called on to explain the behaviour of a partner over whom they have no direct control.

- ***Unacceptable levels of accountability***

Certain services are more sensitive than others in terms of public demand for accountability and responsiveness. With public private partnerships, the lines of accountability for the provision of services are less clear to the public than under conventional service delivery. This may result in public criticism of the partnership arrangement and the private partner, or require increased involvement of the municipality in ensuring compliance and responding to public demands. The accountabilities must be understood by each partner and must be clearly communicated to the public.

- ***Unreliable service***

Private partners may encounter labour disputes, financial problems or other circumstances that may prevent them from honouring their commitments. Public private partnership contracts should anticipate such difficulties and put in place measures to deal with them. It should be noted that public partners can also be prone to labour disputes.

- ***Limited competition***

Competition among private partners to secure the right to enter into a public private partnership is an important benefit for the municipality. Competition leads to innovation, efficiency and lower costs. The municipality may not be able to benefit from public private partnerships if there are only a limited number of potential private partners with the expertise or ability to respond to a request for proposals.

- ***Reduced quality or efficiency of service***

If not properly structured, public private partnership contracts can result in a reduction in service quality, inefficient service delivery or a lack of proper facility maintenance. For example, cost-plus contracts provide little incentive for the private partner to maintain quality or increase efficiency. The municipality should also consider the life cycle cost approach in establishing evaluation criteria for projects or services.

- ***Bias in the selection process***

As with conventional forms of service delivery, there is always the potential for the municipality to be accused of bias in selecting proponents. This may be more prevalent with public private partnerships given that "low bid" may not always win the contract if the municipality has established other criteria (e.g., value for money). The potential for accusation of bias can be reduced through well-developed policy and procedures, and by ensuring transparency in dealing with potential private partners. Clear selection criteria are absolutely essential to success.

- ***Labour issues***

Even though collective agreements and labour laws apply to public private partnership arrangements, there could be adverse reaction from labour unions or municipal staff.

IV Stages in Developing a Successful Public Private Partnership

i Develop a P3 Project Team and a Preliminary Business Plan

The Team

The nature of public-private partnership projects calls for the formation of a dedicated team of individuals capable of identifying, evaluating and implementing P3 projects.

Rationale for a Team Approach to P3 Projects

In order to prepare itself for the unique nature and requirements of public-private partnerships, governments must identify who will have the responsibility, authority and accountability for decisions with respect to P3 projects.

Municipal Council will establish a committee or team to focus its efforts on undertaking the following responsibilities:

- Consulting with political decision makers, staff, unions, the public, and the private sector to define the project, the preferred partnership structures, acceptable levels of risk and minimum service requirements;
- Establishing and adhering to a P3 policy outlining the general practices to be followed in evaluating and implementing partnerships;

- Providing a single point of entry for the private sector to approach government with P3 initiatives;
- Developing and managing a communications strategy to educate staff and the public on the benefits of P3s. It should lay out, in detail, how the government plans to ensure service quality and continuity and how it will deal with existing employees;
- Assessing the interests of community residents who may be affected by proposed P3s, and working with them to appropriately address those interests.
- Identifying and evaluating existing and future P3 opportunities. This responsibility includes evaluation of P3 proposals from staff and the private sector;
- Allocating responsibility for individual P3 proposals to project teams and providing support as required;
- Ensuring that P3 initiatives receive an appropriate level of review, in a timely manner, and are conducted according to the P3 policy;
- Reviewing the project team's conclusions and making recommendations to the political decision makers whether or not to proceed with P3 contract negotiations;
- Reviewing draft P3 contracts and making recommendations to the political decision makers to approve or modify contracts;
- Ensuring that the private partner complies with contract provisions.

The committee/team will be provided with a mandate from Municipal Council to fulfil each of these responsibilities.

Committee/Team Structure and Membership

The structure of the P3 Committee will depend on the complexity of the project. It must include members with a variety of skills, including tangible skills, such as finance and law, and less tangible ones, such as creativity, entrepreneurship, and insight into the marketplace. It may not have many of the areas of expertise required for a public-private partnership. In such cases, it is important to secure trusted advisors from outside of the organization. The types of expertise required for a public-private partnership include but are not limited to:

Knowledge of

- Contracts and contract law
- Procurement process & specifications/contract management needs
- Risk management techniques and contingency planning
- Terms and conditions of individual contracts
- The need to forecast future demand
- Government accounting and financial management
- Relationship management
- Quantity surveyor

Abilities

- To identify the principal demand and cost drivers for each service
- To produce and implement plans for managing relationships with suppliers
- To analyze the contract management environment and adopt the appropriate style
- To apply contract management procedures and techniques
- To manage relationships successfully

Individual Qualities

- Ability to work as a member of a team
- Effective interpersonal skills
- Forward looking and pro-active approach
- Positive and practical attitude to change and innovation
- Ability to work reliably under pressure and prioritize competing demands

Municipal Council will appoint a leader and an alternate within the organization who has the ability to understand and manage the complexities and dimensions of the project. While many other types of expertise can be secured from outside the organization, the development of leadership for public-private partnerships must come from within the organization. The leader is especially important, as he/she will also be the "project champion!" As well, the leader will require significant assistance from the Corporate Senior Management Team and the organization must be prepared to make this significant investment in staff time.

Developing a Preliminary Business Plan

Once the committee is struck its first objective will be to prepare a preliminary business plan for the project. The purpose of this preliminary plan is to define the project and to see if there is a rationale to look into the matter in more detail. In doing this assessment, the team will consult with stakeholders which should include the business/development community and service providers. The preliminary plan will look at the feasibility of the project and will include a cost benefit analysis that looks at:

- Capital costs such as purchase, construction, project management, and professional fees;
- Operating and maintenance costs (repairs & maintenance, staffing, and insurance) over the life of the project;
- Administrative overhead costs;
- Carrying costs;
- Willingness of elected officials to accept reduced direct control. Areas where direct control is required and those areas that are negotiable must be identified.

The plan should also look at benchmarks to provide insight into our current approach to providing the service. This may assist us in finding ways to increase efficiencies without resorting to a P3.

The benefits and costs should be systematically analyzed and take into account quantifiable and non-quantifiable measures. In some cases, assumptions will be used and those assumptions should be openly discussed and independently verified. Further, a sensitivity analysis on the impact to the business case of a change in the underlying variables must be done.

ii If the Preliminary Business Plan suggests that a P3 is the preferred method, a Detailed Business Plan, including criteria for evaluating the P3 must be developed.

1 Financial

The intent of the detailed plan is to build on the work done in the preliminary plan. Generally, completion of a project using P3 will have different costs than if the project were to be undertaken using a conventional public sector implementation process. These differences relate primarily to the role that the private sector partner is being asked to play, the risks that are being transferred to the private sector partner and the returns the partner is expected to receive from the project. A clear concept of the risks and benefits must be understood and the project should only proceed as a P3, if the benefits and clear and compelling.

2 Operational

Operating and maintenance standards must be identified and articulated. The standards need to consider both the inputs into the project as well as the outputs generated by the project. The former include all relevant elements within the control of the public sector agency (or for which the public sector agency is best able to assume the risk) that feed into the project. The latter include all relevant elements within the control of the private partner that flow from the project. Inaccurate or incomplete operating specifications may lead to costly amendments to the legal agreements or sub-optimal operation and maintenance of the asset, potentially reducing the residual value of the asset at reversion.

There may be operational issues that cannot realistically be addressed by the private partner. An example of this type of operational consideration: changes in legislation dealing specifically with the project. No reasonable developer would "bet the farm" on a project in which an adverse change in, say, environmental regulations could result in insolvency. Such operational restrictions must be resolved before the project will be considered as a feasible and attractive opportunity by the private sector. The operating risks must be identified and a decision made as to how they are to be allocated.

The private partner must be held accountable for appropriate performance. Mechanisms must be put in place as incentives for the private partner to continue to operate and maintain the asset appropriately. This concern is particularly acute near the end of the contract term. It is also particularly pertinent to operational considerations, as it is most typically during operations that accountability for performance is measured and regulated.

3 **Acceptability**

Is the public-at-large willing to accept a P3 approach and the involvement of the private sector in the project?

Risks associated with public acceptance, and specifically the ability of the public to materially impact a project, are not generally risks that private sector developers are well equipped to manage. Gaining and retaining community support will be critical for success.

It is also important for the partner to appreciate that local governments do business in an open and transparent manner. This will require a level of disclosure and public discussion that the partner may not be comfortable with. Expectations in this regard must be clarified early in the process.

Are elected officials willing to accept a P3 approach?

While this matter is addressed in the preliminary business plan, detailed discussion is required in the detailed business plan. In assessing the opportunity presented by a P3 project, potential bidders look for tangible signs that the project, and use of P3 procurement, have strong political commitment and support. A half-hearted or disorganized P3 project, or unclear political signals, will undermine a government's ability to muster future private sector interest in P3 opportunities. This issue arose for example when a large municipality which decided to seek proposals for the operation of a public facility, received bids from potential private sector partners, analyzed the responses and identified the preferred bidder; then the Councillors decided to debate the question of whether the idea of involving a private sector operator should be pursued at all. In other words, are the elected officials willing to accept the reduction in direct control in a P3 approach? Solid support from elected officials is required at the outset and must be nurtured throughout the P3 process.

Are other stakeholders willing to accept a P3 approach and the involvement of the private sector in the project?

Where a product or service is an integral component of a larger system, acceptance of other stakeholders within that system must be considered. For example, although the provision of land ambulance services may represent a viable opportunity for a P3, its success or failure would be contingent on the support of, for example, community-based hospitals and the regional medical profession.

Is government staff willing to accept a P3 approach and the involvement of the private sector in the project?

Staff acceptance of P3 procurement is likely to be high for government products and services that have traditionally been contracted out. Staff acceptance of P3 procurement is likely to be less widely accepted for government projects that have in the past been provided by government

employees. In the latter case, concerns over job security and the disruption to the normal work environment may generate substantial resistance from government staff. Similarly, are the senior staff willing to accept the reduction in direct control implicit in a P3 approach? If there is a lack of commitment to the project at the senior staff level, this will pose a significant challenge to the success of the P3 project.

4 **Implementation**

Is it possible to generate meaningful competition in a P3 procurement?

In general, is there an adequate pool of private sector bidders who would be interested in and capable of pursuing the opportunity? For example, does one potential bidder have some inherent perceived or real advantage that would effectively discourage other potential bidders from pursuing the opportunity? If so, a "standard" competition method of procurement would be inappropriate. Benefits may still flow from a P3, but they would be procured through direct negotiation.

Is the project free of jurisdictional or liability issues that prevent a public body from using a P3 approach?

Various projects that might be pursued using a P3 process are governed by a web of legislative, regulatory and policy constraints that might preclude a P3 approach. Before pursuing a P3, the municipality must satisfy itself that it has the necessary legal authority to pursue the project in that manner.

Is there a successful transition plan?

Some P3s may involve the transfer of ongoing operations to a private partner. The risk of an unsuccessful transfer may outweigh the expected benefits of using P3 procurement. This has proven to be a real issue when the transition involves the transfer of large numbers of government employees to a private partner, requiring all of the various labour and union issues to be addressed successfully.

5 **Timing**

Are the time lines adequate to develop operating specifications?

Identifying and articulating operating specifications are important components of the detailed project plan. Inaccurate or incomplete operating specifications may lead to costly amendments to the agreement or sub-optimal operation and maintenance of the asset, potentially reducing the residual value of the asset at reversion, if applicable.

6 **Private Sector Interest**

A final hurdle involves examination of the general marketability of each project. Marketability, in this sense, refers both to the ability and level of interest among private vendors to provide the service as well as to the conditions of the market for the service (i.e., demand, price, long-term outlook, scale of the project). Not to be forgotten is an approach to employees, with a suggestion that they too might form a private company to bid on the P3. This may be defined as 'managed competition'. However, if employee ownership is an option:

- The bidding process must be fair, in that the employees should not have preferential access to internal information - they should have the same access that the private sector proponents have;
- The employees' proposal must calculate costs the same way that a private sector proponent would, including such things as overhead, depreciation of facilities and equipment, salaries, benefits, etc.

The objective of any private sector firm is to invest its resources (time and money) in a way that allows it to earn a reasonable rate of return on that investment. The magnitude of the required return is a function of the risk that the investor must assume.

If the risk to the private firm is too high, it may require a level of compensation (either in the form of increased user fees or guarantees) that offsets the intended benefits of the partnership. If the government is unwilling or unable to provide this compensation, there may be little or no interest from the private sector in providing the service.

Private sector interest can be measured in a number of ways including:

- Various financial analyses specific to the service, including simple cash flow analysis to determine the net cash flow required by a private partner, and how this net cash flow requirement can be achieved - is it through the introduction of user fees or increased tax rates?
- Overlay of a capitalization rate on net operating income/against asset valuation;
- Issuing a *Request for Expressions of Interest*-this document would detail the broad objectives of the desired partnership and the risks the municipality is willing to share;
- Seeking advice from other government jurisdictions that have partnered similar activities.
- Seeking advice from consultants.

If the private sector does not show sufficient interest in providing a particular service, the government may either change the scope of the project (i.e., reallocate risks or increase compensation) or eliminate it from further consideration for P3. Services where there is an adequate level of private sector interest (i.e., two or more interested and qualified proponents) will proceed to the implementation stage.

iii A Consultation and Communication Plan Is Required

Note: Consultation and communication are two separate things. While the plans for each can be developed together, there may be instances where separate plans are required. While a group of stakeholders will be involved in the development of the business plan, a broader consultation and communication plan is required to reach the community. The potential for successful implementation of a P3 is greatly enhanced if such a plan is properly conceived and executed. The Consultation and Communication Plan should be developed and submitted with the detailed Business Plan. The benefits of doing this are many:

- The fear of change and the unknown can be managed by providing an open, transparent process where the community is involved in a meaningful way;
- The public-private partnership proposal can be shaped to better meet the needs of the end users as well as to reflect the concerns of other stakeholders;
- Innovative and cost-effective ideas and concepts may be identified in the course of the consultation program;
- The "other" partners - namely the end users and those involved in providing the service - are brought into the process, and their objectives, concerns and needs can be identified and addressed in the public-private partnership.

As is the case in every stage of the P3 process, the project team should prepare a consultation and communications strategy that involves all of the key stakeholders at appropriate times in the process. The strategy should facilitate two-way communication between the government and the affected stakeholders. Various methods of disseminating information and receiving responses should be provided in the strategy.

<u>The strategy should include the following</u>:

- Objectives of the consultation and communications strategy;
- Identification of key stakeholder groups and their interests in the project/servicing initiative;
- The key milestones in the project/servicing initiative where consultation and communication is required or desirable;

- The time frame and points in the process where the involvement of various stakeholders is required;
- The overall approach and methods to be used for informing the stakeholders as well as receiving input from them;
- The involvement of the media in the communications process, with an emphasis on:
    i. Generating a positive relationship with the media.
    ii. Keeping the public apprised of the progress.
- How statutory requirements will be met, including notification, advertising, disclosure of agreements. The extent of the consultation program should reflect the scope of the project and the existing or expected interest in it by stakeholder groups. Larger, more controversial projects should be accompanied by an extensive consultation and communication plan that incorporates a variety of approaches and methods over an extended period of time. Smaller or less controversial projects may not require the same level of effort. Stakeholders should be involved as early as possible in the process to avoid difficulties at later stages.

iv Selecting a Preferred Partner

The selection of a *preferred* partner is basically the commitment to enter into negotiations with one party.

The steps required to select the private partner include:

- Issuing a Request for Expressions of Interest (RFEI) or Request for Qualifications (RFQ). The information to be provided in the RFQ will vary but should include the detailed business plan and a list of those issues that are not negotiable.
- Evaluating the RFEI and RFQ submissions and shortlisting as appropriate.
- Issuing a Request for Proposals (RFP) to the shortlisted candidates.
- Evaluating the RFP submissions in relation to the established criteria.
- Selecting the preferred partner.

Documenting and recording the selection process

It is imperative when seeking a qualified private sector partner that the municipality accurately document and record the selection process. At the minimum, this documentation and recording of proceedings in the selection process should include:

- The names of all respondents to a Request for Qualifications (RFQ), a Request for Expressions of Interest (RFEI) and a Request for Proposal (RFP);
- Reasoning behind the elimination of potential partners at each stage of the evaluation process;
- Minutes of all meetings;
- A review of how each of the bidder's submissions was compared and evaluated at the RFQ, RFEI and RFP stages of the process;
- All information that was disclosed in response to questions or requests for information from potential partners and how the requests were handled;

Maintaining these documents and records is essential as it ensures that the selection process was fair, open and transparent. Not only does this build trust with the private sector for future partnership opportunities, but also confidence from constituents who will be the end users of infrastructure or services provided by the public-private partnership.

v Negotiation

Once the selection team has chosen the preferred private partner, the public-private partnership agreement must be negotiated. This does not preclude negotiating concurrently with two or more proponents.

This section contains guidelines for:

- Reaffirming government objectives

- Establishing a negotiating team
- Determining the type of agreement and what it should include
- Addressing labour law and statutory regulations

These guidelines should be taken into account in negotiating the partnership agreement.

Preparing for the Negotiations

The results of the evaluation process, including a recommendation on risk allocation, will be presented to Municipal Council for a decision prior to the start of contract negotiations with the successful applicant. The following guidelines should be taken into account in the negotiation of a public-private partnership.

Municipal Objectives

Municipal objectives should be reaffirmed, including:

- Ensuring the agreements contain all necessary controls over quality, excellence and effectiveness of the service or facility, since these matters generally cannot be regulated unilaterally by the government after the long-term agreements are made;
- Clearly allocating the risks between the government and the private partner;
- Ensuring the combination of benefits afforded by the public-private partnership will be better than if only the government provided the facility or service (e.g., cost, service, implementation time);
- Ensuring the public is protected in the event the private partner becomes insolvent, bankrupt or walks away during the term of the agreement;
- Ensuring the government is obtaining value for money. The consideration provided by the government must be balanced by the benefits received by the community;

Establishing the Negotiating Team

It is important to have a leader or point person to lead the negotiations. There can only be one leader, so the other side does not "divide and conquer" and so that one individual takes responsibility and accountability for the process and results. This person leads the preparation and the negotiations. The Negotiating Team can be a subset of the P3 Project Team and would be responsible for reporting to Council, through the P3 Project Team. If necessary, external assistance can be sought on the Negotiating Team.

Negotiation team members are necessary for conferencing before and during negotiations, taking notes, providing specialized advice (e.g., financial calculations during negotiations) and having knowledge of the documents as the negotiations progress.

The negotiating team must prepare by establishing objectives, strategically planning, ascertaining the facts and conducting due diligence regarding the private partner. Such strategic planning deals with long-range objectives and is more important than tactics. Most of this material will be included in the business plan developed with the input of stakeholders.

First, it is important to establish objectives as opposed to simply positions. These objectives must be based on the strong commitment of the team, be the result of significant preparation, have the support of the government elected body and be realistic in light of the powers of the government. When these have been outlined, tactics can then be planned to achieve public sector objectives and strategies. All strategies and tactics should be vetted with the government elected body so there are no surprises.

It is important to find out about the private party that is partnering with the government. Information may be obtained from discussions with junior members of other negotiating teams or other representatives of the private partner, investor newsletters, financial statements, banks, contractors with the other party, other governments and in some cases, the proceedings of tribunals (e.g., Utilities Commission).

If the private party contacts the government during the negotiations, it is important to listen but provide no information. Identify the strengths and weaknesses of each side in the negotiations and try to ascertain what is the least-cost alternative, least-worth alternative and bottom line of the private partner.

Objectives to be Achieved During the Negotiation Process

There are a number of objectives to be achieved during the negotiation process. These include:

- Identifying responsibilities of the respective public and the private partners
- Setting out the legal liabilities of the respective public and private partners
- Identifying clear standards of performance, goods to be delivered, services performed and delivery or performance dates
- Ensuring control of costs, quality, service, deadlines, safety, community relations, compliance and operating/maintenance requirements
- Balancing risks and benefits between the public and private partners (e.g., financial savings, return on investment, increased service)
- Contingency arrangements if the private partner is dissolved, bankrupt, contravenes the agreement or agreements, or if the partnership is dissolved
- Identifying mechanisms for monitoring performance, quality of service and other government objectives
- Establishing conflict resolution mechanisms
- Providing a buy-back clause to permit the government to reacquire the service or facility

vi Agreements Required

While each agreement relating to a public-private partnership arrangement is different, some items should be considered for inclusion:

- A description of the project (including information on the scope of the project), deliverables, the term and the effective date of the agreement;
- Payment provisions, including the time, amount and currency;
- Identification of the private partner's management team, including:
  - identification of key individuals and covenants relating to their participation
  - identification of the contract manager
  - provisions for the replacement of key individuals or contract managers
  - requirements for private partner representatives, officers or employees to be on site or in the community
- Administrative relationships of the parties, including: - identification of the parties' contract manager
  - clarification as to whether the government may inspect, attend on the site, monitor, measure results or otherwise administer the terms and conditions of the agreement
  - a review process, pursuant to which the parties assess performance
  - schedules of meetings and who should attend, in relation to contract administration
- Transfer, lease, licence or use of government premises or facilities, including responsibilities for insurance, liability, security, operation and maintenance, maintenance standards/timing;
- Allocation of revenue from services or facilities;
- Acceptance of deliverables, equipment standards;
- Contract revision arising from material change (e.g., changes in technology, equivalent materials, applicable laws, acts of God or other unforeseen circumstances, change of scope);
- Lending, borrowing and financing arrangements, including payments, rates, security and notice;
- Indemnity, release and insurance provisions;
- Due diligence of the parties:
- Applicable manuals, including their preparation, approvals and amendment;
- Risk management strategy, including risk allocation, guarantees and warranties;
- Dealing with statutory and regulatory requirements;
- "Re-openers" to deal with major change;

- Process, including approvals, related to engaging subcontractors or other private partners;
- Termination provisions, including:
  - business failure
  - insolvency or bankruptcy
  - breach of contract
  - major change, including provision for re-entry or buy-back by the government, transfer to another private partner or shutting down the project
- Labour relations provisions, including:
  - successor rates
  - wage and benefit guarantees
  - dealing with the cost of staff reduction
  - treatment of employees on contract termination
  - relocation of identified employees to the private partner
  - Workers' Compensation Board provisions
  - employment equity, if applicable
  - fair wages, if applicable
  - local preference for hiring
- User fees regulation
- General matters, including:
  - conflict or dispute resolution mechanisms, such as commercial arbitration, alternate dispute resolution or other remedies or recourses
  - confidentiality and privacy, subject to the Freedom of Information and Protection of Privacy Act
  - force majeure
  - notices where information is to be sent and conditions governing transfer of information between or among the parties
  - termination provisions that identify which clauses survive termination
  - clarification that the contract is governed by the laws of the specific province and Canada
  - establishment of a contract amendment process
  - clarification that the set of agreements constitutes the entire agreement between the parties and supersedes any prior communications
  - identification of how rights may or may not be waived or acquiesced to during the term
  - publicity
  - ownership of intellectual property, facilities or new technologies developed
  - reporting requirements, including the provision of Audited Statements

vii Construction Works/Plans/Contract Management

Construction Works

Contracting authorities purchasing construction works typically retain extensive monitoring and inspection rights, including the right to review the construction project and request modifications to it, to follow closely the construction work and schedule, to inspect and formally accept the completed work and to give final authorization for the operation of the facility. On the other hand, in many privately financed infrastructure projects, the contracting authority may prefer to transfer such responsibility to the concessionaire.

Instead of assuming direct responsibility for managing the details of the project, the contracting authorities may prefer to transfer that responsibility to the concessionaire by requiring the latter to assume full responsibility for the timely completion of the construction. The concessionaire, too, will be interested in ensuring that the project is completed on time and that the cost estimate is not exceeded, and will typically negotiate fixed-price, fixed-time turnkey contracts that include guarantees of performance by the construction contractors.

The municipality must decide at the outset how the works will be managed.

Legislative Responsibilities of the Municipality

The municipality must make sure that while it is a partner in the project, it still has a legislative responsibility with respect to the project. These two roles must be kept separate.

The project agreement should set out in detail the steps where the municipality is going to be dealing with the project as the legislative authority rather than as the partner so that authorities & responsibilities are clearly understood.

Variation in the Project Terms

During the course of construction of an infrastructure facility, it is common for situations to arise that make it necessary or advisable to alter certain aspects of the construction. The municipality may therefore wish to retain the right to order changes in respect of such aspects as the scope of construction, the technical characteristics of equipment or materials to be incorporated in the work or the construction services required under the specifications. Given the complexity of most infrastructure projects, it is not possible to exclude the need for variations in the construction specifications or other requirements of the project.

However, such variations often cause delay in the execution of the project or in the delivery of the public service; they may also render the performance under the project agreement more onerous for the concessionaire. Furthermore, the cost of implementing extensive variation orders may exceed the concessionaire's own financial means, thus requiring substantial additional funding that may not be obtainable at an acceptable cost.

Measures to control the possible need for variations must be developed. The project agreement should set forth the specific circumstances under which the contracting authority may order variations in respect of construction specifications and the compensation that may be due to the concessionaire, as appropriate, to cover the additional cost and delay entailed by implementing the variations.

The project agreement should also clarify the extent to which the concessionaire is obliged to implement those variations and whether the concessionaire may object to variations and, if so, on which grounds. According to the contractual practice of some legal systems, the concessionaire may be released of its obligations when the amount of additional costs entailed by the modification exceeds a set maximum limit.

Infrastructure projects are complicated and compensation methods can include a combination of various methods, ranging from lump-sum payments to tariff increases, or extensions of the concession period. For instance, there may be changes that result in an increase in the cost that the concessionaire may be able to absorb and finance itself and amortize by means of an adjustment in the tariff or payment mechanism, as appropriate. If the concessionaire cannot refinance or fund the changes itself, the parties may wish to consider lump-sum payments as an alternative to an expensive and complicated refinancing structure.

Guarantee Period

The construction contracts negotiated by the concessionaire will typically provide for a quality guarantee under which the contractors assume liability for defects in the works and for inaccuracies or insufficiencies in technical documents supplied with the works, except for reasonable exclusions (such as normal wear and tear or faulty maintenance or operation by the concessionaire). Additional liability may also derive from statutory provisions or general principles of law, such as a special extended liability period for structural defects in works, which is provided in some legal systems. The project agreement should provide that final approval or acceptance of the facility by the contracting authority will not release the construction contractors from any liability for defects in the works and for inaccuracies or

insufficiencies in technical documents that may be provided under the construction contracts and the applicable law.

Contract management:

A good contract manager or management team is key to any successful P3 project.

A contract manager must be the single point of contact, ensuring not only that the obligations of the contract are met, but also that the agreed on risk allocation is maintained throughout the life of the agreement.

The manager and/or the management team will require skills ranging from contract management skills to interpersonal skills. While these skills can be maintained in-house or on-call, experience suggests that a strong, capable contract manager should be at the helm of any team and that this manager and staff be appointed at an early stage; in this way, they will be aware of how the contract was developed and the finer points of what was agreed to.

Training on contract management and partnerships will likely need to be offered to core project team staff. Perhaps some of this training can be offered in conjunction with the partner to save costs and start a solid working relationship.

> *"It is important to move quickly on education and training. Experience elsewhere has shown that the P3 process can be damaged if the requirements for action are ahead of the capacity of participants to deliver. This is not a 'go slow' recommendation; rather it demonstrates the critical nature of the education component in implementing P3s." Building Partnerships: Report of the Task Force on Public-Private Partnerships, BC Gov't 1996.*

No matter what the situation, the length of most P3 arrangements means that some staff will likely change. With continuity difficult to maintain, succession planning is important.

Depending on the intricacies of the project, it may also be prudent to hire auditors occasionally to ensure the adequacy of the government's contract management and performance monitoring abilities and procedures.

V Reporting

Monthly progress reports should be provided to Council. Such reports will provide an update on construction, contractual, and financial issues.

VI Conclusion

P3s can be successful; some examples in Maple Ridge are the Maple Ridge Golf Course and Planet Ice. Used properly, P3s can serve as a valuable tool. This handbook attempts to provide a systematic approach to dealing with P3s.

Appendix

(Fig 2.1) Types of Public Private Partnerships

Type of PPP	Features	The municipal Applications	Advantages	Disadvantages
1. Operations and Maintenance	The municipality contracts with a private partner to operate and maintain a publicly owned facility.	A broad range of municipal services including water and wastewater treatment plants, solid waste removal, road maintenance, parks maintenance/ landscape maintenance, arenas and other recreation facilities, parking facilities, sewer and storm sewer systems.	• potential service quality and efficiency improvements • cost savings • flexibility in structuring contracts • ownership vests with the municipality	• collective agreements may not permit contracting out • costs to re-enter service if contractor defaults • reduced owner control and ability to respond to changing public demands
2. Design-Build	The municipality contracts with a private partner to design and build a facility that conforms to the standards and performance requirements of the municipality. Once the facility has been built, the municipality takes ownership and is responsible for the operation of the facility.	Most public infrastructure and building projects, including roads, highways, water and wastewater treatment plants, sewer and water systems, arenas, swimming pools and other the municipal facilities.	• access to private sector experience • opportunities for innovation and cost savings • flexibility in procurement • opportunities for increased efficiency in construction • reduction in construction time • increased risk placed on private sector • single point accountability for the owner • fewer construction claims	• reduced owner control • increased cost to incorporate desirable design features or change contract in other ways once it has been ratified • more complex award procedure • lower capital costs may be offset by higher operating and maintenance costs if life-cycle approach not taken
3. Turnkey Operation	The municipality provides the financing for the project but engages a private partner to design, construct and operate the facility for a specified period of time. Performance objectives are established by the public sector and the public partner maintains ownership of the facility.	This form of public private partnership is applicable where the public sector maintains a strong interest in ownership but seeks to benefit from private construction and operation of a facility. This would include most infrastructure facilities, including water and wastewater treatment plants, arenas, swimming pools, golf courses and the municipal buildings.	• places construction risk on the private partner • proposal call can control design and location requirements as well as operational objectives • transfer of operating obligations can enhance construction quality • potential public sector benefits from increased efficiency in private sector construction • potential public sector benefits from increased efficiency in private sector operation of the facility • construction can occur faster through fast-track construction techniques such as design-build	• reduced the municipal control over facility operations • more complex award procedure • Increased cost to incorporate changes in design and operations once contract is completed • depending on the type of infrastructure, financing risk may be incurred by the municipality

Type of PPP	Features	The municipal Applications	Advantages	Disadvantages
4. Wrap Around Addition	A private partner finances and constructs an addition to an existing public facility. The private partner may then operate the addition to the facility for a specified period of time or until the partner recovers the investment plus a reasonable return on the investment.	Most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, and recreation facilities such as ice arenas and swimming pools.	• public sector does not have to provide capital funding for the upgrade • financing risk rests with private partner • public partner benefits from the private partner's experience in construction • opportunity for fast-tracked construction using techniques such as design-build • flexibility for procurement • opportunities for increased efficiency in construction • time reduction in project implementation	• future facility upgrades not included in the contract with the private partner may be difficult to incorporate at a later date • expense involved in alteration of existing contracts with the private partner • perceived loss of control • more complex contract award procedure
5. Lease - Purchase	The municipality contracts with the private partner to design, finance and build a facility to provide a public service. The private partner then leases the facility to the municipality for a specified period after which ownership vests with the local government. This approach can be taken where the municipality requires a new facility or service but may not be in a position to provide financing.	Can be used for capital assets such as buildings, vehicle fleets, water and wastewater treatment plants, solid waste facilities and computer equipment.	• improved efficiency in construction • opportunity for innovation • lease payments may be less than debt service costs • assignment of operational risks to private sector developer • improve services available to residents at a reduced cost • potential to develop a "pay for performance" lease	• reductions in control over service or infrastructure
6. Temporary Privatization	Ownership of an existing public facility is transferred to a private partner who improves and/or expands the facility. The facility is then owned and operated by the private partner for a period specified in a contract or until the partner has recovered the investment plus a reasonable return.	This model can be used for most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, parking facilities, the municipal buildings, airports, and recreation facilities such as arenas and swimming pools.	• if a contract is well structured with the private partner, the municipality can retain some control over standards and performance without incurring the costs of ownership and operation • the transfer of an asset can result in a reduced cost of operations for the municipality • private sector can potentially provide increased efficiency in construction and operation of the facility • access to private sector capital for construction and operations • operational risks rest with the private partner	• perceived or actual loss of control • initial contract must be written well enough to address all future eventualities • private sector may be able to determine the level of user fees, which they may set higher than when under municipal control • difficulty replacing private partner in the event of a bankruptcy /performance default • potential for the municipality to re-emerge as the provider of a service or facility in the future • displacement of municipal employees • labour issues in transfer of the municipal employees to the private partner

Type of PPP	Features	The municipal Applications	Advantages	Disadvantages
7. Lease-Develop-Operate or Buy Develop-Operate	The private partner leases or buys a facility from The municipality, expands or modernizes it, then operates the facility under a contract with the municipality. The private partner is expected to invest in facility expansion or improvement and is given a specified period of time in which to recover the investment and realize a return.	Most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, parking facilities, The municipal buildings, airports, and recreation facilities such as arenas and swimming pools.	• if the private partner is purchasing a facility, a significant cash infusion can occur for the municipality • public sector does not have to provide capital for upgrading • financing risk can rest with the private partner • opportunities exist for increased revenue generation for both partners • upgrades to facilities or infrastructure may result in service quality improvement for users • public partner benefits from the private partner's experience in construction • opportunity for fast-tracked construction using techniques such as design-build • flexibility for procurement • opportunities for increased efficiency in construction • time reduction in project implementation	• perceived or actual loss of control of facility or infrastructure • difficulty valuing assets for sale or lease • issue of selling or leasing capital assets that have received grant funding • if a facility is sold to a private partner, failure risk exists—if failure occurs, the municipality may need to reemerge as a provider of the service or facility • future upgrades to the facility may not be included in the contract and may be difficult to incorporate later
8. Build- Transfer-Operate	The municipality contracts with a private partner to finance and build a facility. Once completed, the private partner transfers ownership of the facility to the municipality. The municipality then leases the facility back to the private partner under a long-term lease during which the private partner has an opportunity to recover its investment and a reasonable rate of return.	Most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, parking facilities, The municipal buildings, airports, and recreation facilities such as arenas and swimming pools.	• public sector obtains the benefit of private sector construction expertise • public sector obtains the potential benefits and cost savings of private sector operations • public sector maintains ownership of the asset • public sector ownership and contracting out of operations limits any provincial and federal tax requirements • public sector maintains authority over the levels of service(s) and fees charged • compared to a Build-Operate- Transfer model, avoids legal, regulatory and tort liability issues • under Occupiers' Liability Act, tort liability can be avoided • government control of	• possible difficulty in replacing private sector entity or terminating agreements in event of bankruptcy or performance default

Type of PPP	Features	The municipal Applications	Advantages	Disadvantages
			operational performance, service standards and maintenance • ability to terminate agreements if service levels or performance standards not met, although facility would continue to permit repayment of capital contributions and loans and introduction of new private partner • construction, design and architectural savings, and likely long-term operational savings	
9. Build-Own-Operate-Transfer	The private developer obtains exclusive franchise to finance, build, operate, maintain, manage and collect user fees for a fixed period to amortize investment. At the end of the franchise, title reverts to a public authority.	Most public infrastructure services and facilities, including water and wastewater systems, recreation facilities, airports, the municipal administration and operations buildings, parking facilities and solid waste management facilities.	• maximizes private sector financial resources, including capital cost allowance • ensures the most efficient and effective facility is constructed, based on life-cycle costs • allows for a private sector operator for a predetermined period of time • the community is provided with a facility, without large up-front capital outlay and/or incurring of long-term debt • all "start-up" problems are addressed by the private sector operator • access to private sector experience, management, equipment, innovation and labour relationships may result in cost savings • risk shared with private sector	• facility may transfer back to the public sector at a period when the facility is "work" and operating costs are increasing • public sector loses control over the capital construction and initial mode of operations • initial contract must be written sufficiently well to address all future eventualities • the private sector can determine the level(s) of user fees (unless the public sector subsidizes use) • less public control compared to Build-Transfer-Operate structure • possible difficulty in replacing private sector partner or determining agreements if bankruptcy or performance default
10. Build-Own-Operate	The municipality either transfers ownership and responsibility for an existing facility or contracts with a private partner to build, own and operate a new facility in perpetuity. The private partner generally provides the financing.	Most public infrastructure and facilities, including water and wastewater systems, parking facilities, recreation facilities, airports, the municipal administration and operations buildings.	• no public sector involvement in either providing or operating the facility • public sector can "regulate" the private sector's delivery of a "regulated/ monopolistic" service area • private sector operates the service in the most efficient manner, both short-term and long-term • no public sector financing is required	• the private sector may not operate/construct the building and/or service "in the public good" • the public sector has no mechanism to regulate the "price" of the service, unless it is a specifically regulated commodity • the good/service being delivered is subject to all federal, provincial and municipal tax regulations

Type of PPP	Features	The municipal Applications	Advantages	Disadvantages
			• income tax and property tax revenues are generated on private facilities, delivering a "public good" • long-term entitlement to operate facility is incentive for developer to invest significant capital	• no competition, therefore necessary to make rules and regulations for operations and to control pricing

Bibliography

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Notes

1. *It is intended that there are other policies in place and this handbook needs to be read in conjunction with those other policies. Ex. Purchasing Policy and Fee for Service Agreements Policy.*

2. *"Public-Private Partnerships" refer to partnerships with the private sector as well as other governments and non-profit organizations.*