

## Background



### What is a Public Private Partnership?

Private sector involvement in providing municipal services and infrastructure is not a new or ground-breaking concept; today's economic situation has just brought the concept more to the forefront. Solid waste hauling contracts, long-term leasing of office space, and private operation/maintenance of water and wastewater treatment plants are a few proven examples of how private firms have assisted municipalities in providing services through the years.

Public Private Partnerships recognize the fact that both the public and private sectors have certain advantages relative to the other in the performance of specific tasks. By allowing each sector to do what it does best, public services and infrastructure can be provided in the most economically efficient manner.

While increased private sector participation in providing services and infrastructure may lead to tangible benefits in certain circumstances, PPPs are not a panacea or the only option municipalities should consider in their efforts to provide quality services at the lowest possible cost.

Under no circumstances should PPPs be seen as a substitute for strong, accountable, and effective governance. Ensuring that the services are provided in a manner that is fair, affordable, safe, and environmentally friendly remains the exclusive responsibility of the municipality.

**Public  
Private  
Partnership  
(PPP) :  
Using  
private  
sector  
expertise  
and  
resources  
to address  
public  
sector  
needs**

Anderson Consulting  
Services

What constitutes a private partner?

Although the term PPP implies that partners in this process are for-profit companies, the definition of partnering is broad enough to encompass other organizations including:

- ❁ Other public sector institutions, e.g., federal or provincial governments, universities, municipalities, joint-service providers, school or health boards; or
- ❁ Not-for-profit organizations, e.g. community groups, service clubs, social service organizations, or recreation associations.

The route the municipality takes in entering into a partnership depends on the individual project. For example, if the municipality wants to enter into an agreement with a non-profit or another municipality, sole sourcing is the route they would take. If the municipality has decided to enter into partnership with the private sector, then other types of procurement should be used.

**In most situations, the guiding principle should be to determine the type of organization which can provide the highest level of service at the best cost.**

Reasons to consider PPPs

The state of the provincial economy, combined with new or increasing service responsibility and decreasing transfers from other levels of government, are the primary forces motivating municipalities in Nova Scotia to seek alternative means of providing services and infrastructure.

Furthermore, meeting environmental regulations in the areas of solid waste management, water quality, and wastewater treatment is forcing municipalities, especially in areas where infrastructure is old and in need of replacement, to seek other options. In many cases, the private sector is both willing and able to partner with the municipality in a win-win scenario.

The municipality can expect to achieve some or all of the following benefits from a PPP:

- ❁ **Construction Cost Savings:** Combining design and construction components under one private partner can result in savings through a 'phased in' or 'fast-track' construction schedule, faster procurement, lower interim financing, and a reduction in the risk of cost and time overruns.
- ❁ **Operational Savings:** In some cases, private partners

are able to reduce operating costs through operating multiple facilities, specialized technology, sharing specialized labour, more flexible compensation arrangements, bulk purchasing, and centralizing the administrative staff. These savings are often enhanced when the private partner is involved at the program or infrastructure design stage.

- ❁ **Faster Implementation:** By dealing with fewer service providers, combining the design and construction, reducing procurement time, and accelerating capital financing, required services and infrastructure may be introduced faster, and thus, cheaper.
- ❁ **Preserved or Improved Levels of Service:** Municipalities may gain access to expertise and facilities which, for various reasons, may not be available in-house. Economies of scale and the introduction of new technologies may open the way for the same or better service at a lower cost. Some private partners, such as firms operating water utilities, have operations throughout the world. This enables them to achieve economies of scale and access knowledge and technology not available to a single municipality.
- ❁ **Risk Sharing:** Under traditional practices, governments assume all risk associated with service delivery. PPPs allow the transfer of some of this risk to the private partner, such as that associated with liabilities, cost overruns, market fluctuation, ongoing maintenance, regulatory compliance, etc.
- ❁ **Financing Options:** Municipalities in Nova Scotia usually arrange long-term borrowing through the Nova Scotia Municipal Finance Corporation (MFC). While MFC generally has access to lower-cost funds than those available to the private sector, it only goes to the market twice a year and is restricted to a limited line of investment vehicles. The wide range of financing options (e.g. both debt and equity markets), use of tax instruments and the flexibility available to the private partner (i.e. the ability to periodically refinance debt or use financial innovation) may, in some cases, reduce the cost of capital for a particular project.
- ❁ **Avoidance of Capital Debt:** Municipalities in Nova Scotia are limited as to how much they may

incur in debt service charges as a percentage of revenues at any given time. While PPPs may be a means of financing capital projects 'off-balance sheet', it should be remembered that any capital costs to the private partner will be recovered in the service charge ultimately levied on the municipality or the end user.

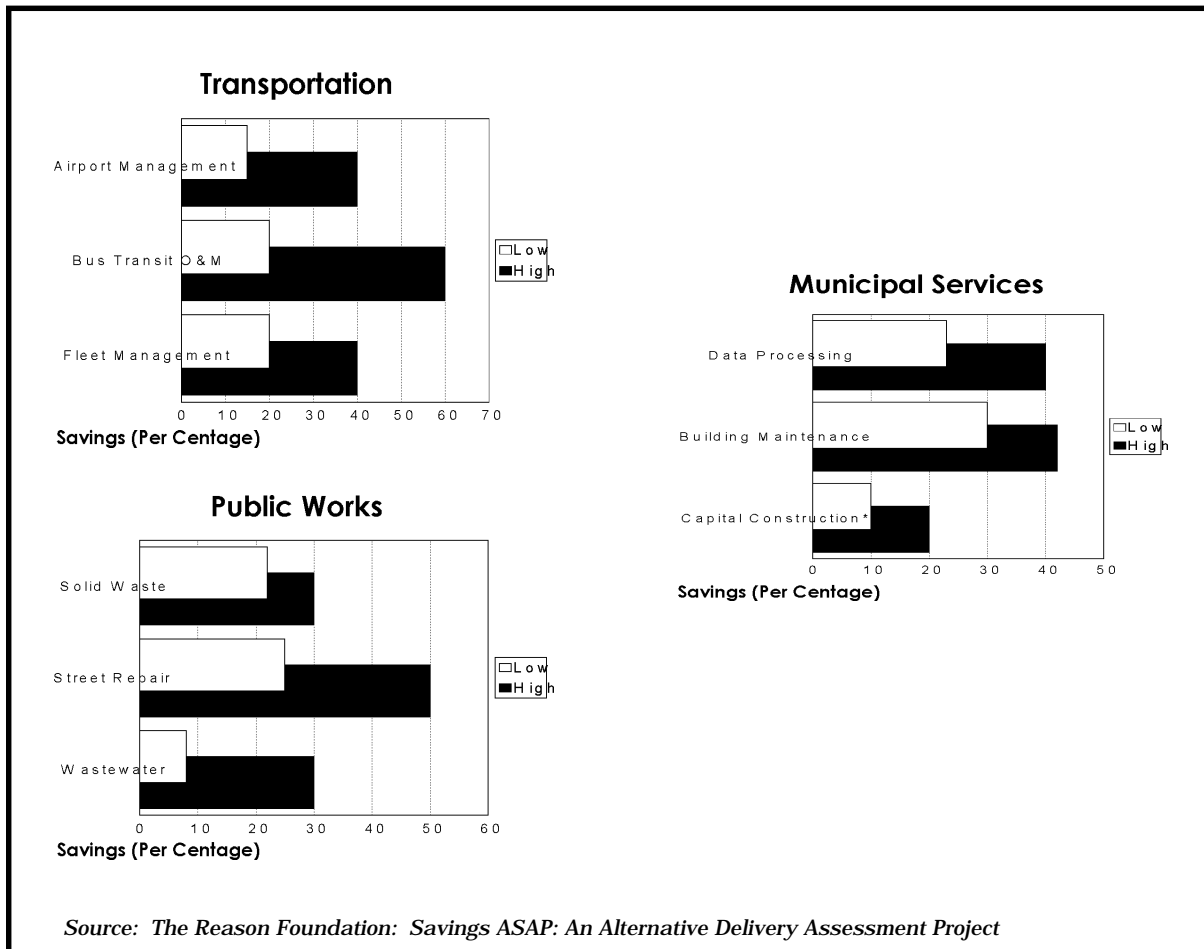
- ❁ **Enhanced Public Management:** In allowing a greater role for the private sector in the provision of municipal services and infrastructure, municipal managers are able to spend more time planning and monitoring results as opposed to managing the resources required to provide a service.
- ❁ **Greater Performance Measurement:** Exposing municipal services to competition and conducting detailed evaluations of the costs and benefits associated with alternative service delivery, allow additional opportunities to benchmark municipal programs against market standards.
- ❁ **Increased Public Sector Revenues:** PPPs may provide municipalities with new sources of revenue in the form of property taxes, lease or franchise payments, or profit sharing agreements.
- ❁ **Enhanced Economic Development:** PPPs create opportunities to market municipal services to other jurisdictions, attract private investment from outside the province where permitted, provide expanded lines of business to local entrepreneurs, enhance the quality and expertise of the local labour force, create a new business climate in the region as well as a new rapport between government and the commercial sector, and create exportable technologies for local industry.
- ❁ **Innovative Solutions:** Competition encourages potential private partners to search for creative ways to deliver a particular service more efficiently than their competitors or the municipality itself. Innovation may be particularly important when a municipality is looking to provide a new service or infrastructure, to solve a problem where there is no immediately apparent solution, or if the cost of the traditional approach may be not be affordable.
- ❁ **Realize the Value of Under-Utilized Assets:** Creative development projects combined with intensified marketing initiatives by a private partner may succeed in increasing the use of a particular asset or service to reflect its potential value.

✿ **Enhanced Facility Maintenance:** Municipalities are often reluctant or unable to dedicate appropriate funds for the ongoing maintenance of facilities despite the long-term savings that may be achieved in doing so. Depending upon the structure of the partnership, private partners are motivated to protect the value of their assets, extend their life, and invest in equipment and machinery that lead to increased efficiency.

✿ **True Costing and True Value:** The price of municipal services, in the form of user charges or the general tax rate, seldom reflects the full cost of the service (e.g. depreciation, risk capture, overhead). The PPP process helps determine the true cost to the municipality.

✿ **Arms-Length Independence:** PPPs may facilitate the efficient and needs-based delivery of certain services by removing political influences from day-to-day operations.

### Demonstrated Range of Savings



Which components of service provision have the potential for increased private sector participation?

No matter which category of PPP the municipality is interested in entering into, these factors are common:

- ❁ **The decision to provide a service:** Includes the municipality's statutory responsibility to provide certain services, as well as its role in identifying public needs, feasibility analysis, and the development of implementation plans.
- ❁ **Management and regulation:** Includes the monitoring and evaluation of services to ensure compliance with stated and regulatory performance standards, accountability, transparency, accessibility, and compliance.
- ❁ **Project design:** Includes the translation of objectives and performance standards into detailed specifications.
- ❁ **Procurement and construction:** Includes the purchase, lease, or construction of all fixed assets detailed in the design stage. Often the design and construction components of service delivery are combined.
- ❁ **Finance:** Includes the provision of interim and long-term financing, either debt or equity, for working capital and capital investment.
- ❁ **Ownership:** Includes the legal title of fixed assets including equipment, intellectual property, software, technology, land, rolling stock, and/or buildings.
- ❁ **Operations:** Includes delivery of the service and day-to-day decision-making authority related to it.
- ❁ **Maintenance:** Includes preventive maintenance, repair, and refurbishment of any required fixed assets including equipment, rolling stock and/or buildings.
- ❁ **Sales and Marketing:** Includes ensuring that an asset or service is utilized at an appropriate level.
- ❁ **Public Information:** Communicating information about the PPP to the constituents of the municipality.

Depending upon the circumstances and the service in question, both the public and private sectors possess inherent advantages in performing each of these tasks. With the exception of the decision to partner, service management and regulation, municipalities may wish to consider increased private sector participation in each of the above responsibilities on a project by project basis.

The **decision to provide a service** and the **management and regulation** of all public services should ultimately

remain the responsibility of the municipality under any partnership structure.

**What are the various forms a PPP can take?**

PPPs exist in many forms, with varying degrees of responsibility shifted from the public to the private partner. The following forms of PPP may be considered by municipalities in Nova Scotia:

- **Privatization/Build-Own-Operate (B-O-O):** Ownership and responsibility for a particular asset or service is transferred from the municipality to the private partner or is built by the private partner in cooperation with the municipality. This form of PPP usually involves private sector financing of the project.
- **Build-Own-Operate-Transfer (B-O-O-T):** The private partner designs and builds a required public service facility and operates it for the municipality for a specified period after which ownership reverts to the government. This may

**Various Forms of Public Private Partnering**

	Design	Procurement & Construction	Financing	Ownership	Operations	Maintenance	Marketing
<b>Privatization /Build-Own-Operate (BOO)</b>	Private or Public	Private or Public	Private	Private	Private	Private	Private
<b>Build - Own Operate-Transfer (BOOT)</b>	Private	Private	Private	Private then Public	Private	Private	Private
<b>Build-Transfer-Operate</b>	Private	Private	Private	Public	Private or Public	Private or Public	Private or Public
<b>Lease/ Purchase</b>	Private	Private	Private then Public	Private or Public	Private or Public	Private or Public	Private or Public
<b>Turnkey</b>	Private	Private	Public	Public	Private	Private or Public	Private or Public
<b>Developer Financing</b>	Public	Public	Private	Public	Public	Public	Public
<b>Operations &amp; Maintenance</b>	Public	Public	Public	Public	Private	Private or Public	Private or Public

or may not include private financing.

- **Build-Transfer-Operate (B-T-O):** Same as above except ownership of the facility reverts to the municipality prior to commencing operations.
- **Lease/Purchase:** The private partner designs, finances, and builds a facility to meet public needs and leases it to the municipality for a specified period, after which ownership vests in the municipality.
- **Turnkey:** The municipality provides the financing for the project, but engages the private partner to design, construct, and operate it for a specified period of time.
- **Developer Financing:** The private partner assists in financing a project in return for development concessions.
- **Operations and Maintenance:** The municipality contracts with the private partner to operate and maintain a particular facility or service.

The following table illustrates which partner has responsibility for each service component under the various partnership structures discussed above.

While there are potential benefits to partnering with the private sector to provide municipal services and infrastructure, these must be weighed against the potential risks. It is impor

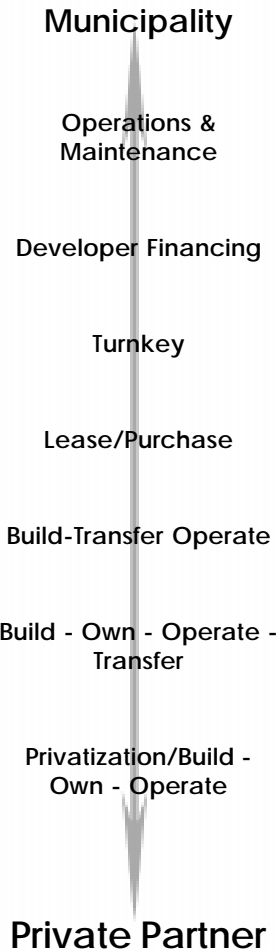
While there are potential benefits to partnering with the private sector in providing municipal services and infrastructure, these must be weighed against potential risks. It is important to remember that assumption of risk is the foundation of all business. While PPPs may be beneficial in transferring some risk to the private partner, complete risk avoidance usually comes at a very high price. The challenge is to negotiate a partnership where the risks of doing business are more than offset by the resulting benefits.

What are some of the risks involved in public private partnering?

Some of the risks that municipalities may face when embarking upon PPPs are included in the following section. Many of these risks can be offset or eliminated entirely by adhering to best practices during the partnership building and contract negotiation stages.

- ❁ **Loss of Control:** PPPs may result in the transfer of some control to the private partner in determining the types of services offered, service levels, timing, and pricing, depending on the nature of the contract that is negotiated and the

Risk Transfer In PPPs



resources the private partner invests in the project.

❁ **Confused Lines of Accountability:** Under a PPP, the service provider (i.e. private partner) may not be directly accountable to the public as is the case when municipalities provide services directly. Increased public resources may be required to ensure that the private partner is fulfilling contractual service requirements.

❁ **Increased Cost to the User:** As many municipalities do not account for recoverable costs through user fees for the full range of costs associated with service delivery (e.g. depreciation, risk, overhead) when setting tax rates or service fees, partnerships may result in a higher price to the end user or the municipality.

Depending upon the degree of flexibility worked into the contract, monitoring and conflict resolution costs may also outweigh any benefits that might have otherwise accrued from the sharing of risks and rewards. Municipalities should be cautious in evaluating programs that may require user fees, to ensure that these fees are not so high that they exclude certain segments of society.

❁ **Loss of Municipal Jobs:** Municipal employees may face job losses or significant changes in their job descriptions. This may lead to morale problems with remaining staff, work stoppages, or, in some limited cases, legal challenges.

❁ **Service Interruption:** Work stoppages, bankruptcy or other business-related problems faced by the private partner could lead to service interruptions, so the municipality must have a backup plan in place.

❁ **Limited Competition:** Where municipalities are seeking to increase private partner participation in services that have been provided by the public partner, there may be a limited number of firms with the experience or expertise to compete for the contract. In such cases, a public monopoly may simply be replaced with a private monopoly that nullifies many of the advantages of a partnership.

❁ **Decreased Service Quality and Efficiency:** In its efforts to ensure an acceptable rate of return on investment, private partners may be motivated to reduce costs at the expense of service quality, preventative maintenance, or even public safety. In the case of 'cost plus' contracts, where the private partner is guaranteed a minimum return, there may be little or no motivation to reduce costs or improve efficiency.

❁ **Limited Control Over Public Policy:** Municipal policy objectives such as equal opportunity employment, standard levels of service or guaranteed minimum wage levels may be difficult to realize under a PPP.

❁ **Long-term Commitments:** In circumstances where the private partner is expected to contribute large amounts of capital to a specific project, the required term of the contract may need to be quite long so as to allow a reasonable amortization period.

Longer contracts increase the risk of legal disputes, service interruptions and the gradual elimination of any in-house expertise in the service area over its duration.

❁ **Perception of Bias in the Selection Process:** Not only must a municipality's procurement process be fair, open, accountable, and objective, it must also be perceived as being so. Competitive procurement for municipal services or infrastructure may expose the municipality to charges of favouritism or exclusion. This is especially true when innovative service delivery solutions are required and the lowest cost bid may not necessarily be the one selected or when a sole source service provider is engaged without competition.

❁ **Transfer of Assets:** The transfer of highly visible assets may be perceived negatively by the public or may not be permitted under provincial legislation. Where ownership of a particular asset is to be transferred to the municipality following the conclusion of a partnership, the private partner may not be motivated to conduct ongoing or preventative maintenance towards the end of the contract.

❁ **Confidential Information:** A PPP may require access to privileged information or confidential data by the private partner. In the absence of sufficient controls and penalties, the potential for the abuse of this information exists.

When considering the potential benefits and risks of PPPs, municipalities should strive to achieve the balance between the two that results in the best service at the lowest possible cost with an acceptable level of risk. Complete risk transfer, like complete risk assumption, is seldom a cost effective solution.



PITFALLS

What are some of the common fallacies concerning public private partnerships?

Although private partner participation in the provision of municipal services and infrastructure is not a new concept, the absence of widespread experience with the process has fuelled a number of common misconceptions including:

- **The prime benefit of PPPs is debt avoidance:** While private partner financing does avoid 'on-book' capital debt, the municipality is ultimately responsible for repaying the money it borrowed through service charges levied by the private partner.

Although there are often advantages to private partner financing, complete avoidance of capital debt should only, in certain circumstances, be the primary reason for a PPP. The true benefits of partnering result from increased efficiency and innovation made possible through the introduction of competition.

- **Municipalities can always finance a project more cost effectively than the private partner:** In fact, there are occasions when the private partner can finance a project more cost effectively than the Municipal Finance Corporation. This is largely due to MFC's practice of going to market only twice a year and the limited lines of investment vehicles open to it under current legislation. Furthermore, the private partner has access to equity capital and is able to refinance existing debt when interest rates drop. These options are not presently available to the MFC. Therefore, life cycle costs of capital must be considered.

Also, the private partner may deploy certain tax advantages or investment incentives. Thus, while debt avoidance should never be used as an argument in favour of PPPs, the appearance of lower cost financing at MFC should likewise not be used as an argument against it.

- **PPPs are used primarily for infrastructure projects:** While partnerships for infrastructure tend to be the most visible, those involving the provision of services are just as common. The *1996 Inventory of Municipal Public/Private Partnerships* published by the Canada/Nova Scotia COOPERATION Agreement to Promote Private Sector Participation in Municipal Infrastructure found that roughly half of all Canadian municipal PPPs were for service delivery.
- **The municipality loses control over services under PPPs:** The municipality **should not and does not have to give up** its role as service manager or regulator, even under a private partner ownership arrangement. In fact, a formal contract may provide municipalities with more control than they enjoy under 'in-house' service provision.

- **Existing employees always lose under PPP:** In fact, many partnerships identified in the *Inventory of Municipal Public/Private Partnerships* required that the private partner hire existing staff at similar wages and benefits. In fact, Nova Scotia's labour laws usually guarantee the succession of labour contracts. When staff reductions are required, they often take place through attrition or relocation elsewhere in the private or municipal organization. The private partner may also be able to increase the marketability of its employees through cross training and exposure to a variety of operations, responsibilities, and technology transfer.
- **The private partner's requirement for profit will increase the cost of service:** While the private partner does require a profit, it is usually able to earn this profit at existing or lower costs. This may be achieved through increased productivity, bulk purchasing, innovations in technology or management, use of centralized administrative staff, or increased revenue through expanded and improved services. In some cases, users may even be willing to pay more for the range and quality of services provided by the private partner.

It is also important to note that municipalities rarely account for all costs when pricing a particular service. When items such as depreciation, overhead, financing, and risk are included in the municipality's costs a more accurate comparison can be made.

- **Service quality will decline under a PPP:** If the partnership is structured so that private partner is subject to competition, the quality of service will likely be maintained and may even be enhanced in an effort to keep the contract and draw new customers. Also, the private partner is more likely to engage in expenditures for ongoing and preventative maintenance, improved efficiency or additional staff throughout the life of the contract. Finally, performance standards can be stipulated in the contract with penalties for failure to comply.
- **Partnering is a municipality's only reaction to dwindling resources:** While the combination of increasing service demands and dwindling public resources has placed greater attention on alternate service delivery, it is important to note that partnerships are gaining popularity in the private sector as an efficient way of doing business. Services, whether public or private, are often best delivered by specialists, rather than by 'in-house' employees with few of the incentives inherent in a focused, single purpose opera-

tion.

- **PPP is the same as privatization:** The table on page 7 illustrates that privatization is one among many forms of PPP options available to municipalities. It involves the transfer of virtually all components of service delivery responsibility to a private partner. In many cases full privatization is neither desirable or permitted under legislation and public private partnering comes in many forms apart from privatization

Steps that should be followed in building a PPP

The exact process to be followed when assessing the feasibility of and negotiating a PPP will vary according to the type of service or infrastructure in question, the partners involved, and the preferred partnership structure. Each service or infrastructure project should be evaluated separately on its merits as a potential PPP.

However, there are a series of common steps in the partnership building process which will ensure that a fair and open process is used to assess the feasibility of a partnership; select the most appropriate private partner, and negotiate a favourable service contract for all parties involved. These steps are introduced in the figure below.

### Stages of the Partnership Building Process

1. Establish Internal Framework
2. The Decision to Partner
3. Implementation Plan
3. Implementation Plan
4. Selecting a Preferred Partner
5. Negotiating the Contract
6. Working With the Partner

The steps are detailed and complex processes that vary from partnership to partnership. The following chapters will address each of these six steps individually, outlining the different options available to municipalities and the conditions under which they best apply.

## Guiding Principles for Public Private Partnering

### 1. Exercise Critical Judgement

- ❁ Evaluate each PPP opportunity on its own merits - don't undertake it if it's not going to be feasible.
- ❁ Negotiate the best deal for the taxpayers of the municipality.
- ❁ Ensure that quality service is being provided to the residents of the municipality throughout the life of the PPP.
- ❁ Remember that PPPs require a shift in organizational thinking from directing or (rowing) operations to managing (or steering).

### 2. Commitment Must Be Demonstrated (Not Just Stated)

- ❁ If a municipality decides to undertake a PPP, make sure there's a strong commitment on behalf of council and senior staff. Don't waste the resources that both the municipality and the private partner are required to invest in the process.
- ❁ A strong commitment is essential - pulling out half way through a project sends messages that the municipality isn't committed to partnering.
- ❁ PPPs are like marriages - both partners must be content that they can build a long-term commitment before entering into the arrangement.
- ❁ Recognize that conditions change over the long-term length of a PPP, and be prepared to make changes when appropriate.

### 3. Communicate, Communicate, Communicate

- ❁ Communication is important throughout every stage of the PPP process. Communications must be two-way and include employees, council, the public, and the partners.

### 4. Maintain a Focus on Process and Outcomes

- ❁ The goal of a PPP is to achieve synergy between the municipality and the private partner. In a successful PPP, the whole is more than the sum of the two partners.
- ❁ The structure of the procurement process will determine the PPP's success or failure.
- ❁ Recognize that the request for proposal documents are the backbone of the contract.
- ❁ Managing PPP contracts effectively means that the municipality must acquire new sets of skills. It's role now is to steer not row.
- ❁ Don't stifle the creativity of the private partner.
- ❁ Results are more important than inputs.

### 5. Be Fair

- ❁ Selecting a partner must be fair, transparent, and open.
- ❁ Flexibility is the key to a successful contract negotiating process.
- ❁ Ensure that the PPP involves arrangements for fair treatment of employees and a smooth, seamless transfer from the municipality to the private partner.
- ❁ Solve problems using conflict resolution techniques - do everything possible to stay out of court.

## Chapter 1: Establish the Internal Framework

**The purpose of this chapter is:** To outline the structural steps the municipality should take prior to initiating a comprehensive PPP Program.

These steps are:

- ✿ Assigning general responsibility for PPPs to an existing or special purpose committee
- ✿ Establishing a municipal PPP **policy**

These steps provide the framework to identify, evaluate, and implement potential PPPs. By focusing responsibility for PPPs in one committee, the expertise required can be brought together on short notice.

When the decision is made to proceed with a PPP project, having a specific municipal policy will make the process much easier.

### Stages of The Partnership Building Process

#### 1. Establish the Internal Framework

#### 2. The Decision to Partner

#### 3. Develop the Implementation Plan

#### 4. Selecting a Preferred Partner

#### 5. Negotiating the Contract

## 1.1 Reasons for appointing a PPP Committee

A PPP **committee** concentrates expertise and responsibility for partnering in one place. It is both a champion and a cynic of partnering. It allows consideration of PPPs for all services and infrastructure while at the same time ensuring they are used only when appropriate. The specific responsibilities of a PPP committee may include:

- ◆ **Consulting** with council, staff, unions, the public, and the private sector to define preferred partnership structures, acceptable levels of risk and minimum service requirements;
- ◆ Establishing a municipal PPP **policy** outlining the general practices to be followed in evaluating and implementing partnerships. The policy should reflect the findings of the consultation process;
- ◆ Providing a **point of entry** for the private sector to approach the municipality with PPP initiatives;
- ◆ Developing and managing a **communications strategy** to educate staff and the public on the benefits of PPPs. It should lay out, in detail, how the municipality plans to ensure service quality and continuity and how it will deal with existing employees;
- ◆ **Identifying and evaluating** existing and future PPP opportunities, as outlined in “The Decision to Partner”. This responsibility includes evaluation of PPP proposals from staff and the private sector;
- ◆ **Allocating responsibility** for individual PPP proposals to project teams and providing support as required;
- ◆ Ensuring that PPP initiatives receive an appropriate level of **review**, in a timely manner, and are conducted according to the PPP policy;
- ◆ Reviewing the project team’s conclusions and making **recommendations** to council whether or not to proceed with PPP contract negotiations;
- ◆ Reviewing draft PPP **contracts** and making recommendations to council to approve or modify contracts;
- ◆ Ensuring that the private partner **complies** with contract provisions as detailed in *Chapters Five and Six*;

The committee should be provided with a mandate from council to fulfil each of these responsibilities. Much of this mandate can be included in the municipal PPP policy.

The PPP committee should not, however, add to the size and complexity of government. Line departments and staff should have the authority to seek out and initiate PPP opportunities as they arise. The role of the PPP committee is to provide support for this process rather than add an additional layer of bureaucracy.

A. Structure of the committee

The structure of the PPP committee will depend upon the size and resources available to the municipality and its commitment to public private partnering. The municipality could:

- ◆ Create a **special or select** committee to deal exclusively with PPPs. This committee may include councillors, staff, members of the public, and the private sector;
- ◆ Expand the role of an **existing committee**, such as Corporate Services or a standing committee of council, to include responsibility for PPPs;
- ◆ Delegate responsibility for PPPs to **Committee of the Whole**; or
- ◆ Delegate responsibility for PPPs to a **staff department** such as Finance, Planning, Engineering, or Public Works.

The municipality should choose the committee structure that best suits its own circumstances.

B. Choosing The committee members

In order to fulfil its responsibilities, the PPP committee 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.

Although most PPP committee structures are made up of municipal councillors, the ongoing involvement of staff in the process is essential. This is especially true when the role of the committee is to evaluate current municipal services and operations as potential areas for increased PPP.

The PPP committee should include or have access to at least one staff member from the following disciplines or departments:

- ◆ Executive office
- ◆ Purchasing

- ❁ Public Works/Engineering
- ❁ Unions
- ❁ Planning
- ❁ Human Resources
- ❁ Finance/Audit
- ❁ Legal Services
- ❁ Economic Development

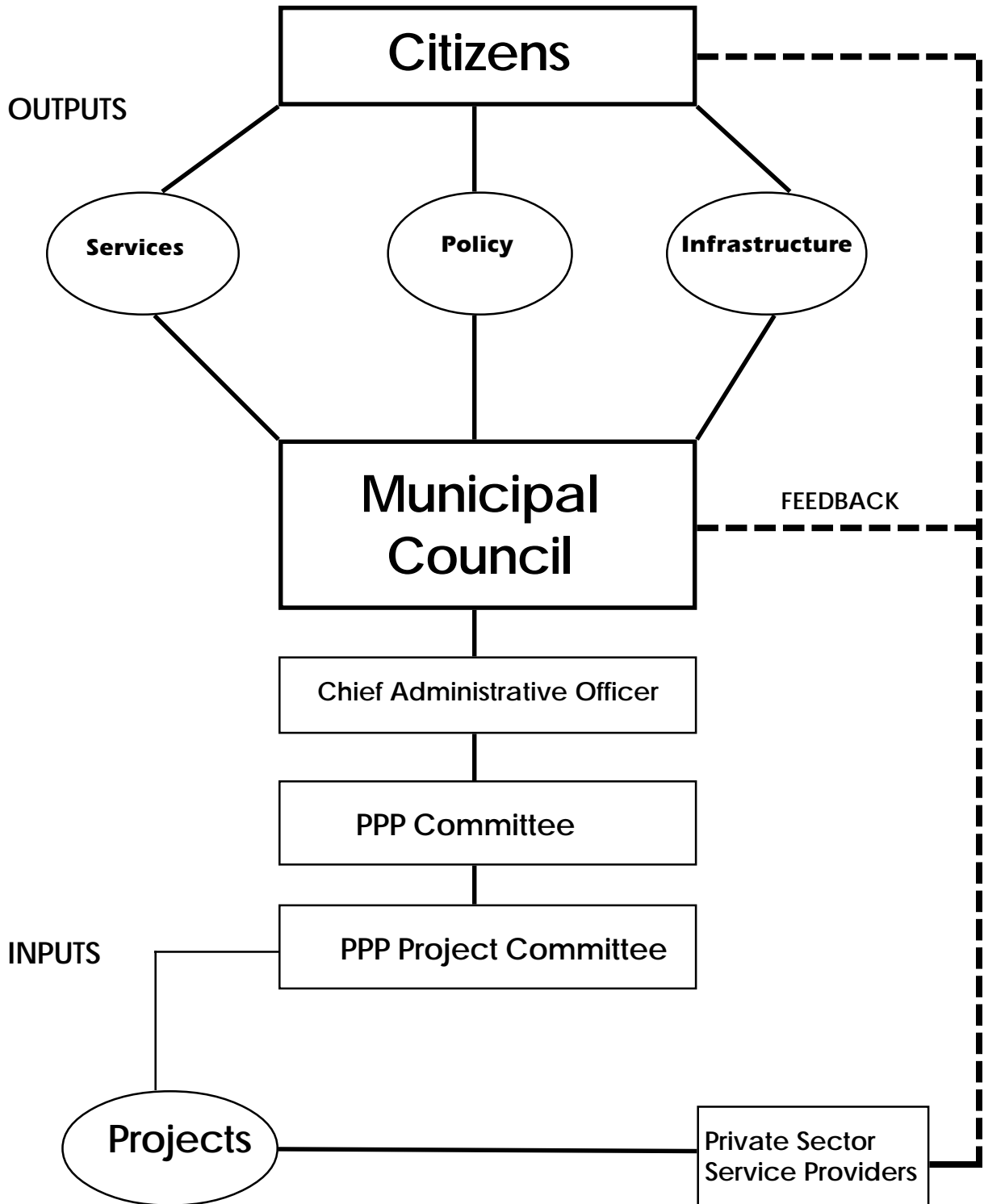
While it is recognized that smaller municipalities in the province may not have all of the staff resources listed above, it is important to include people with a range of backgrounds on the PPP committee.

In addition to council and the staff members listed above, the committee should include, or have access to, individuals with expertise in the following areas:

- ◆ Public and private finance
- ◆ PPP arrangements
- ◆ Legislation and regulation
- ◆ Land and building development
- ◆ Taxation
- ◆ Asset valuation
- ◆ Cost accounting and financial modelling
- ◆ Facility operations
- ◆ Business management
- ◆ Investment and development incentives
- ◆ Architecture/engineering/information technology
- ◆ Local commercial development market
- ◆ Communications
- ◆ External advisors for specific projects

It may be beneficial for the committee to have authority to appoint advisory members as it deems necessary and appropri-

Figure 1.1: The Public Private Partnership Process



ate because the committee's responsibilities are general, as opposed to project specific. Individuals with expertise in these areas may only be required at committee meetings from time to time, e.g., when writing the PPP policy, reviewing a draft contract or monitoring the performance of a private partner. Experts will be of most benefit to the project teams appointed by the PPP committee for specific PPP projects.

Municipal staff will require training in order to operate in the PPP environment. Therefore it is essential to ensure that training is provided in:

- ◆ Business management
- ◆ Negotiation
- ◆ Mediation
- ◆ Arbitration
- ◆ Contract law and legal elements of contracting out
- ◆ Project management
- ◆ Performance management

Personnel with this training should be called on to act as in-house resources and may also, depending on the circumstances, be called upon to instruct other staff as required.

***Case Study 1.1:***

**The District of Chilliwack, B.C.**

**In 1996, the District of Chilliwack established a Task Force on Public Private Partnering. The task force consists of municipal councillors and staff, and its role is to assess all PPP opportunities in the District.**

**The District has undertaken a number of PPP projects. The Municipal Airport has been privatized. All construction undertaken by the District is carried out under Design-Build PPPs. To date, 11 construction projects have been completed as PPPs saving the municipality \$2.5 million dollars.**

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## 1.2 Establish a municipal PPP policy

The first task of the PPP committee will be to establish a **municipal policy** on public private partnering. Its purpose is to formally state the benefits the municipality hopes to achieve through PPPs and the process it will follow.

The policy need not be an endorsement of PPPs for all municipal services and infrastructure. Rather, it should provide a **documented, systematic approach to conducting PPPs on a service-by-service basis.**

No matter how many times a municipality conducts a PPP, each one will be different. A formal policy will provide individual project managers with a road map to guide them through the process. It will also ensure that the process itself is fair and open and that the interests of the public are protected.

The PPP policy should compliment existing policies concerning procurement, planning, conflict of interest, labour relations, etc.

### A. Goals of the PPP policy

The specific goals of a formal PPP policy include:

- Defining what the municipality means by public private partnering and who it considers to be acceptable partners;
- Ensuring that PPPs are examined as an option for delivering existing and future services;
- Ensuring that PPPs are used only when appropriate;
- Providing a step-by-step guide to project managers who are responsible for evaluating and negotiating individual PPPs;
- Communicating the municipality's approach to partnering to the public, municipal staff and the private sector. This will ensure the use of a transparent, accountable, and accessible process;
- Defining standards of conduct and conflict of interest guidelines for those involved in the process.
- Outlining the municipality's approach to unsolicited proposals.
- Identifying the risks and concerns associated with PPPs and documenting how the municipality will address them.

B. The consultation process

The PPP policy should be a reflection of the municipality's goals and objectives as well as the concerns and aspirations of its residents. In order to achieve this, the PPP committee should organize and conduct a comprehensive **consultation process** involving:

- ◆ Elected officials
- ◆ Municipal management
- ◆ Municipal staff
- ◆ Unions
- ◆ The municipality's agencies and organizations
- ◆ Special interest groups
- ◆ Residents
- ◆ The local Chamber of Commerce
- ◆ Potential private partners
- ◆ Relevant provincial departments and regulatory agencies

A number of **techniques** are available to assist the PPP Committee in gathering information that is both useful and reflective of public opinion. They include:

- ◆ **One-to-one interviews** with councillors, municipal managers, union leaders, and heads of interested community and business groups;
- ◆ **Focus groups** with individual departmental teams including Finance, Planning, Public Works, Administration, Legal, and Human Resources;
- ◆ **Public meetings** to inform and solicit input from residents and community groups;
- ◆ **Meetings** with various service and facility user groups and private sector organizations;
- ◆ **Distribution of information** to employees and the public accompanied by mail-in response forms or via the municipality's world wide web site (if appropriate) by adding a feedback loop to the website, and
- ◆ **Distributing the results of the consultation process**, along with a draft PPP policy, indicating where public input has been incorporated.

Understanding and acceptance of PPP by residents is key to the success of the policy and ultimately any partnership. It is of little value to go through the process of preparing a policy and attempting to put it into practice if the concerns of the end users, have not been addressed.

In preparing the policy, the PPP committee should make a special effort to ensure that the residents have an opportunity for input into the process. For example, the committee could host public meetings or open houses to both inform and solicit input from residents. At the conclusion of the process, the committee could put in an advertisement in the local paper indicating that the policy was finished and indicate where copies were available.

The consultation process is not only to gather useful information for the PPP policy. It is also a means of communicating the municipality's reasons for exploring the benefits of PPP and to encourage 'buy in' by staff and the public and of gathering input which leads to a better policy. Communicating openly and discussing the options available to employees and their unions, may minimize some of the fears associated with the change in service delivery.

Residents and municipal employees are more likely to support a PPP Policy if they have participated in its development. The consultation process leads to creation of a community, as opposed to a government PPP Policy.

Case Study 1.2:

The Region of Halton, Ont. (pop. 340,000)

**In 1995 the Region of Halton, Ont. conducted a comprehensive consultation process leading towards the development of a corporate policy on PPP. The following issues or concerns were identified through the process:**

- Maintaining control of services**
- Ensuring the partner's accountability**
- Evaluating the cost/benefit ratio**
- Consulting with stakeholders**
- Ensuring a fair and objective process**
- Maintaining continuity of service**
- Managing human resources**
- Transferring assets**
- Dealing with potential abuse of privilege**
- Managing partnering in**

**Halton's corporate policy addresses each of these issues individually and outlines the general process to be followed by staff when evaluating and conducting PPPs.**

C. Elements of the Policy

Just as every PPP is unique, so too are the policies that municipalities adopt to guide them through the process. In general, a **PPP Policy** consists of five distinct parts:

- (i) Introduction
- (ii) Guiding principles
- (iii) Communications strategy
- (iv) Human resources strategy
- (v) The PPP process

The content will depend on the municipality's specific goals and objectives and the results of its consultation process. The following discussion is intended to act as a guide only.

C.(i) Introduction

This part of the policy may include the following elements:

- ✿ Purpose of the policy
- ✿ Municipality's definition of PPP
- ✿ Benefits accruing to the municipality from a PPP
- ✿ Components of service provision eligible for PPP
- ✿ Forms of PPP permitted
- ✿ Eligible private partners

This part of the policy provides specific policy statements to address the issues raised during the consultative process. These policy statements must be specific if they are to have a direct impact on the negotiation of PPPs. However, they must also be flexible enough to allow innovation and creativity on the part of the private partner.

C. (ii) Guiding principles

The following **guiding principles** have been adapted from those proposed by the Government of Nova Scotia to encourage effective PPP arrangements:

**Accountability for the level and quality of essential services will remain with the municipality:** Services can be contracted out or turned over to the private sector; governance cannot.

**All legislative and regulatory requirements can and will be met:** In certain cases, however, legislation and regulations must be amended in order for a partnership to succeed.

**Fair and adequate provisions will be made for existing employees:** This may include first consideration for public employees by the private partner, offers of alternative positions within the municipality, severance packages, and the right of existing employees to compete against the private sector.

**PPPs will only be considered when there are adequate opportunities for competition:** A public monopoly will not simply be exchanged for a private one.

**An open and transparent process will be used in all PPP initiatives:** In order to maintain public trust and ensure fairness, all parties must be willing to expose their proposals to public scrutiny.

**PPPs must result in equal or better service delivery:** Measures must be taken to ensure that private partners can and will maintain or enhance the delivery standards set by the municipality.

**PPPs must reduce the cost to government of delivering a service:** The reductions in cost to government must, however, be weighed against increased user fees to residents.

**The municipality will maintain reasonable in-house expertise when the cost of doing so is reasonable:** Maintaining in-house knowledge is necessary to evaluate partnering proposals and service delivery once a partner is providing the services. It also eases the transition back to public service provision should this become a necessity.

**Opportunities should be created for sustainable economic growth:** Not all PPPs will result in economic growth. Priority should be given to those that do.

**PPPs must have acceptable implications for other government services and the private sector:** PPPs with large companies can displace smaller local firms or transfer expertise that the municipality relies upon for other purposes to the private sector. This must be factored into any decision to enter into a PPP.

The issues and policy statements presented above have been taken from an existing PPP policy. The PPP committee

will be responsible for writing policy statements unique to your own jurisdiction. The **Best Practice Guidelines** presented at the end of each chapter in this document may be of some assistance to the PPP committee in writing these statements. In the final analysis, however, each statement must be tailored to address the concerns of the public and gain approval by council.

C. (iii)  
Communications  
strategy

If a PPP is to succeed, it needs to have communications strategies in place at various points in its life cycle. Effective communications has always been about understanding who the audience is through extensive research and dialogue and then designing an approach that will bring understanding or consent.

The strategy must address internal audiences - employees, union leaders, and councillors so they understand the rationale behind PPPs and their impact on the municipality's finances, personnel, and service delivery. When the agreement is signed there has to be open and effective communication between all members of the private partnership.

Then there are the outside audiences - residents of the municipality who may be affected by changes in service delivery. It is in the municipality's best interest to have a communications strategy that explains the reasons for entering into a PPP and the benefits the citizens will receive as a result.

The communications strategy should clearly indicate the circumstances where public input will be sought before a PPP begins or it should indicate the stage in the PPP process where it will be sought. Different levels of communication with the public will be required depending on the service being partnered. For example, greater public involvement is required for the sale of an asset than for contracting out the delivery of a municipal payroll.

C. (iv)           Human  
resources strategy

Employees of the municipality may be the ones most affected by the PPP. Their jobs may be transferred from the public sector to the private, changed, or eliminated. A human resources strategy can help address these concerns and allay the fears of the employees by requesting that affected municipal employees have right of first refusal for positions within the PPP, that succession rights of unions (as described in the Trade Union Act) are transferred to the private partner, and by investigating options such as encouraging employees to bid

on the contract themselves (and giving them the tools to do this), transferring employees within the municipality, arranging buyouts and early retirement, and trying to minimize the number of layoffs.

C. (v) The PPP process

The final part of the PPP Policy outlines the process that the municipality will follow each time it considers a PPP for the provision of services or infrastructure. Although the particulars may vary from partnership to partnership, the following six stages should characterize each and every partnership considered by a municipality:

Figure 1.2: Stages in the PPP Process

Stage 1: Establish internal framework

**This stage involves creating a PPP committee and establishing the municipality's PPP policy. This is the broad framework that guides the conduct of all PPPs in the municipality;**

Stage 2: The decision to partner

**This stage involves identifying current and future PPP opportunities, evaluating and prioritizing specific projects and deciding to proceed with a particular PPP;**

Stage 3: The implementation plan

**This stage involves the creation of a project team, constructing a detailed cost/benefit analysis, selecting a procurement process, developing a communications strategy and the securing of necessary approvals;**

Stage 4: Selecting a preferred partner

**This stage involves selecting evaluation criteria, issuing RFQ and RFP documents, selecting the preferred partner, and debriefing unsuccessful proponents;**

Stage 5: Negotiating a contract

**This stage involves creating a contract negotiation team, defining what is/is not open to negotiation, developing a draft contract and service transfer plan and obtaining council's approval;**

Stage 6: The partnership in action

**This stage involves working with the private partner, monitoring performance, conducting regular evaluations, dissolving the partnership and returning the service/facility/infrastructure to public sector ownership (where applicable)**

**Stage One of this process had been discussed in detail in this chapter. Stages *Two* through *Six* will be discussed individually in the chapters which follow.**

### 1.3 Giving the policy teeth

The PPP policy should describe the partnering process without limiting the flexibility required to deal with each proposed PPP on a project-by-project basis. The policy should act as a guide for project managers rather than a rigid set of instructions.

Once the PPP committee has finalized the policy, it should become an official municipal document. Not only will this demonstrate the municipality's commitment to fair and open public private partnering. It also prevents the policy from being amended on an ad hoc basis.

A number of options exist to formalize the PPP policy, including:

- ◆ Presenting the PPP policy to council for approval as a municipal policy;
- ◆ Presenting the PPP policy to council for approval as a recorded resolution or administrative order; or
- ◆ Amending the municipality's planning strategy or procurement policy to include the PPP policy.

The remainder of this document deals with stages Two through Six in the PPP process. It details the specific steps and considerations the municipality should take when evaluating and negotiating PPPs. From this point onward, it will be assumed that the municipality has established a PPP committee and formalized a municipal policy.

## BEST PRACTICES

- ◆ Make sure there is support from senior staff and council support for public private partnering. It requires support and leadership from the top echelons if it is going to succeed. (Intransigence on behalf of middle management is a major obstacle for PPPs.)
- ◆ Senior levels of the organization must take ownership of the PPP process and must be actively involved in overseeing it.
- ◆ Involve top management in preventing or resolving internal impediments to the PPP process.
- ◆ Establish a municipal PPP committee and ensure it has the resources to carry out its mandate.
- ◆ Develop a municipal PPP policy which:
  - identifies key risks and concerns and the guidelines for dealing with them;
  - puts appropriate measures in place to protect the citizens of the municipality,
  - has been developed with input from council, staff, community groups and the residents of the community, and
  - ensures that there is a consistent approach to all PPPs that is transparent, accountable, and accessible.
- ◆ Have a communications strategy in place to inform employees, unions, councillors, media, and the public on the reasons for entering into a PPP and the effects it will have on service, employment, and municipal finances.
- ◆ Remember that real or perceived conflict of interest issues can hamper implementation or hurt credibility.

## Chapter 2: The Decision to Partner

The goals of this chapter are:

- ❁ To outline the steps the municipality should take to identify potential PPP opportunities
- ❁ To assist the municipality in evaluating and prioritizing potential PPP opportunities
- ❁ To assist the municipality in selecting specific PPP projects for implementation

Each of the above responsibilities rests with a **municipal PPP Committee** described in *Chapter 1*. Once potential PPPs have been identified or approved for implementation, the PPP Committee will delegate responsibility for implementation to a **specific project team** (*Chapter 3*).

## Stages of The Partnership Building Process

1. Establish the  
Internal  
Framework

2. The  
Decision to  
Partner

3. Develop the  
Implementation  
Plan

4. Selecting a  
Preferred  
Partner

5. Negotiating the  
Contract

6. Working With  
the Partner

## 2.1 Identifying potential PPPs

The primary objective of this process is to uncover PPP opportunities existing within the municipality's current services and infrastructure. It involves a systematic review of all programs and facilities to determine whether additional feasibility analysis is required in each case.

The value of the exercise is that it prevents pursuing a partnership with little chance of success by identifying, at a preliminary stage, where public and private interests may collide or where the municipality's strengths outweigh those of the private sector.

There are four main stages to this process:

- ⊗ Establishing the evaluation criteria;
- ⊗ Identifying the full range of services;
- ⊗ Conducting a preliminary screen;
- ⊗ Applying various PPP structures to the remaining services.

These steps relate only to services currently being offered by the municipality or those included in municipal planning documents or capital budgets. New services, whether proposed by the private sector or the municipality will not be identified by this initial process. Such proposals must be evaluated by the PPP Committee as they arise.

### A. Establishing the evaluation criteria

Certain municipal services lend themselves more easily to partnering than others. The role of the PPP committee is to conduct a preliminary screening of the full range of existing and planned municipal services to determine which ones can be eliminated from more detailed analysis.

The evaluation criteria used will depend largely on the municipal PPP policy. Some questions a municipality may wish to ask when screening existing and planned services include:

- Can the municipality legally transfer responsibility for elements of this service to a private partner?
- Is a PPP for this service permitted under existing regulations?
- Is there a competitive market for the provision of this service? Will this competition continue through the life of the PPP?

- Could the service be marketed more effectively by a private partner?
- Can the output of this service be measured easily?
- Are there potential cost savings to the municipality through PPP?
- Is the municipality unable to provide the service due to limited financial capacity (capital and operating)?
- Does the service require expertise or a commitment of resources that is unavailable to the municipality?
- Is there political and public acceptance that a change in service provider would be beneficial? Has it been tested?
- Do existing employee agreements permit a PPP for this service?
- Will a PPP for this service have an acceptable impact on the operations of existing programs or other departments?
- Can required levels of specialized expertise be retained within the municipality at a reasonable cost?
- Can a PPP for this service be introduced under existing joint service delivery arrangements?
- Is the proposed service distinct and separate from the municipality's other services?
- Will user fees exclude certain segments of society from this service?
- Is the quality of service likely to improve as the result of a PPP?
- Can a PPP arrangement avoid significant service disruptions?
- Will a PPP provide protection of confidential data?
- Can government objectives be achieved equally as well or more effectively through a PPP?
- Can the service be provided more quickly through a PPP?
- Will a PPP for this service enhance the local economy?

These are simply examples and may not reflect the priorities contained in a municipality's PPP policy. They are not meant to be a substitute for a full feasibility analysis but rather are an initial screen to eliminate certain services from further consideration. For this reason, the evaluation criteria should be easy to administer and not require extensive research.

**B. Identifying the full range of services**

There are three types of services that can be identified as having potential for a PPP:

- Services currently being provided by the municipality;
- Services that the municipality sees a demand for or plans to provide in the future;
- Unsolicited proposals from the private sector.

**C. Conducting a preliminary screen**

There are numerous ways to identify the services that fall under each of these categories. Services the municipality is currently providing are relatively easy to identify. Financial statements, budget documents, departmental business plans, and existing contracts with private operators, concessionaires, and management companies will assist in identifying these.

Future or planned services can be identified through:

- capital budget documents
- capital improvement plans
- facility master plans
- municipal planning strategies
- business plans
- development plans
- public consultations

PPPs are often best suited to these types of services because they provide a way for governments to satisfy unmet and expensive demands. As a new service will be provided through the PPP, there is often less resistance from existing employees and current users.

Current, past, and future unsolicited proposals from the

private sector should also be considered a source of candidate PPPs. Proposals that were rejected in the past may gain new relevance when introduced under a strong commitment by the municipality to partnering. As stated earlier, future proposals must be evaluated by the PPP committee as they are received.

D. Which services could be provided by a PPP?

Once the full range of existing and future municipal services has been identified, the task of the PPP committee is to apply its evaluation criteria to each one. This process answers the question “which existing and future services could be delivered as a PPP?” This is not a commitment by the PPP committee to initiate PPPs for these services, it is simply a means of eliminating services that do not meet these criteria from further analysis.

The PPP committee should develop a rating system where the full range of services can be labelled according to suitability for further PPP consideration. Potential categories include:

■ **Not Suitable for Further Consideration:** Services that might fall under this category include:

- those which legally cannot be transferred to the private sector;
- those for which no competitive market exists, and
- those that deal with confidential or sensitive information, e.g. governance, police, fire and social services. (However, there may be components or support services that can be provided through a PPP.)

■ **Not Suitable for Further Consideration at This Time:** Services that might fall under this category include:

- those where the output cannot be measured easily;
- those where there is political or public resistance to partnering;
- situations where user fees are fully leveraged or unacceptable, or
- instances where partnering is not permitted under existing collective agreements.

In each of these cases, there are steps the municipality can take to prepare the service for PPP in the future.

■ **Suitable for Further Consideration at this time:** These are services for which there are no immediate and

obvious obstacles to PPP, so they could be delivered through a PPP. These services will form the basic menu of PPP opportunities currently available to the municipality. The challenge to the PPP committee is to assess whether or not these services **should** be delivered through a PPP.

E. Menu of partnering opportunities

By applying the full range of partnering structures permitted under the PPP Policy to those services found to be suitable for further consideration, the PPP committee is provided with a complete listing of partnering opportunities.

Table 2.1 illustrates what a municipality’s menu of options might look like. More than one PPP structure may apply to each of the services identified.

The menu not only identifies those services that merit further consideration for PPP; it also lists the types of PPP structures that are deemed applicable or acceptable to each.

For example, although 11 services were found to be suitable for further consideration in Table 2.1, there are actually 25 different PPP options available.

**Table 2.1: Menu of Privatization Options**

Privatization/ B-O-O	B-O-O-T	B-T-O	Lease Purchase	Turnkey	Developer Financing	Operations & Maintenance
Electric Utility						
Airport						Airport
		Water Treatment Plant		Water Treatment Plant		Water Treatment Plant
	Police Station		Police Station			
			Street Lights		Street Lights	
Transit Service						Transit Service
	Stadium	Stadium		Stadium		Stadium
		New Landfill		New Landfill		
Fleet Management System						Fleet Management System
			Bridge			
						Data Processing

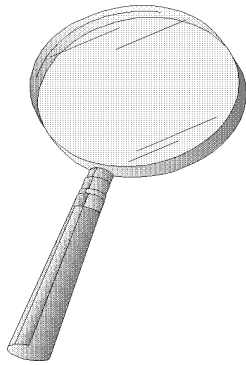
Generally, each municipality should establish its own policy on dealing with unsolicited proposals. The preferable approach, in virtually all cases, is to employ a competitive process when initiating a PPP.

There may be a rare occasion when a unique proposal is submitted that upon evaluation, cannot be put to the test of the competitive marketplace. However, in the majority of instances, a number of suppliers will be able to compete to provide the service, program, or infrastructure being proposed.

The policy must be in place to protect issues of intellectual property or unique technology, for the protection of the organization submitting the unsolicited proposal.

Therefore the preferred response to an unsolicited proposal is to follow the municipality's PPP policy, subject it to a thorough evaluation, and if it is viable, invite competition to provide the product or service.

## 2.2. Selecting specific PPP opportunities for implementation



The menu of PPP opportunities identifies those services that are suitable for further consideration at this time. Once the menu has been compiled, the PPP committee then decides which ones will proceed to the implementation stage. As implementation requires a great deal of time and resources, it is essential that each opportunity be thoroughly analysed before a commitment is made.

In some cases, all opportunities identified in the menu will proceed to implementation. In others, only one or two will proceed. There are three distinct stages of this analysis and each one may allow the PPP committee to further narrow its list of PPP opportunities. They are:

- ◆ Analysing legal, regulatory, and institutional constraints;
- ◆ Conducting preliminary cost-benefit analysis, and
- ◆ Determining general marketability of each opportunity.

### A. Analysing legal, regulatory, and institutional constraints

A preliminary analysis of legislative and regulatory constraints will have been conducted at the opportunity identification stage. Before a particular opportunity for implementation is approved, the service must be examined in detail to ensure that there are no legislative or regulatory barriers to PPP. If this step is ignored, significant investment in time and money can be spent developing a partnership only to find that it

cannot proceed in the current environment.

Specific statutes and regulations requiring examination will vary with the service being considered for PPP. For example, environmental and health concerns will apply chiefly to water, solid waste, and wastewater projects, while transportation and education barriers may dominate a partnership for student busing.

In general, potential constraints to PPP should be examined using existing legislative, regulatory, taxation, and local public policy frameworks. A determination should be made concerning the ease of mitigating these obstacles.

**B. Legislative framework**

Municipalities are governed by Municipal Act, the Towns Act, and the statutes governing the province's three Regional Municipalities. Although efforts are currently under way to review these statutes to provide greater flexibility to municipalities with respect to PPPs, significant barriers currently exist. For example, while a municipality can, through bylaws, govern the use of public or private sewer systems, it can only mandate residents to connect to a publicly-owned system. This is clearly an obstacle to a privately-owned and operated wastewater system.

Other statutes applying generally to municipal PPP structures include the Municipal Affairs Act, Assessment Act, the Halifax Regional Municipality Act, the Cape Breto Regional Municipality Act, the Planning Act, and the Public Utilities Act.

**C. Regulatory framework**

Both federal and provincial agencies impose standard guidelines governing many municipal services such as water and wastewater. While there is no reason to believe that these guidelines would differ in any way under a PPP, the relationship between a regulatory agency and a municipal government may be quite different than one between the regulatory agency and a private partner.

Traditionally, the relationship between a municipality and a provincial regulatory agency has been characterized by shared financial risk. Since the financial participation of the province may eventually disappear under a PPP scenario, so too will the willingness of regulatory agencies to assume risk in its approval and policy functions. As a result, a private partner may be required to obtain discretionary approvals that typically are waived for municipalities. While these approvals

may be relaxed as trust and a private sector track record are established, they will certainly exist in the short-term. These approvals may create barriers or increase the cost of partnering.

D. Taxation framework

Obstacles and issues related to property tax can be found in the Assessment Act. Municipalities are currently not permitted to grant property tax concessions to the private sector, but this is under review. Therefore, under any scenario where a private partner owns the property involving a particular service, it will be subject to property and business occupancy tax. This is an increased cost of partnering that does not apply under public ownership unless the partnership is structured to mitigate the situation.

The same applies generally to federal and provincial income and corporate taxes, and the Harmonized Sales Tax. Both provincial and federal tax authorities deal with special requests for exemptions or concessions on a case-by-case basis. Similarly, municipalities should investigate tax-related obstacles on a project-by-project basis. As these issues are complex and subject to ongoing change, the PPP Committee may wish to seek outside assistance for this part of the analysis.

E. Local public policy framework

Despite the growing acceptance of public/private partnerships as a legitimate means of providing municipal services, a great deal of mistrust and misunderstanding continues to exist. While education and communication may go a long way to reduce resistance, in some cases, there may be insurmountable obstacles to PPP.

Each of these areas is complex, requiring significant resources, and expertise to examine in detail. By doing so, however, the municipality will avoid initiating a partnership that is ultimately destined to fail.

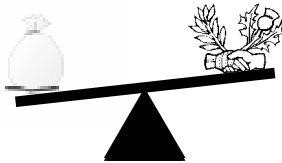
A second reason to examine the legislative, regulatory, taxation, and public policy constraints early in the process is that it allows the time required to implement necessary changes. For example, the Department of Housing and Municipal Affairs is currently examining legislative changes to facilitate PPPs at the municipal level in Nova Scotia. If the municipality is aware that these changes are planned, the proposed PPP may simply be delayed as opposed to discounted entirely.

## 2.3 Conduct preliminary cost-benefit analysis

Ideally, the municipality will enter into a PPP to achieve one or more of the benefits outlined in the introduction to this document. In many cases, such benefits can be achieved only by incurring new costs. If the benefits of partnering outweigh the costs, a sound business case likely exists.

The purpose of the preliminary cost-benefit analysis is twofold:

- ❁ To establish the **benchmark** cost of providing the service in-house.
- ❁ To determine whether the potential benefits of partnering outweigh the costs.



**Benchmark costs** are the current financial costs, either capital or operating, of providing a particular service in-house. A clear understanding of these costs is an essential prerequisite to measuring the potential benefits of partnering. Benchmark costs include the following:

- ◆ The full direct costs of providing the service including salaries and wages, benefits, office space and equipment, capital equipment, rolling stock, debt servicing etc.;
- ◆ Indirect costs, such as corporate overhead, that can be defined as incremental to the service and that will disappear following a PPP;
- ◆ The one-time costs associated with entering into a partnership such as severance packages, contract administration, performance monitoring, exiting the service, and
- ◆ The cost of capital financing including interim and long-term financing, and the associated fees.
- ◆ Benchmark costs may be fully developed to provide a shadow bid.

A second advantage of determining benchmark costs is that it provides insight into the municipality's current approach to providing the service. The benchmarking exercise may assist managers in finding ways to increase efficiency without resorting to a PPP. This is one reason why benchmarks should be calculated prior to the implementation phase.

The allocation of costs must be carried out in a manner which would create a level playing field for external service providers when compared to in-house costs.

It is recommended, where possible, that municipalities considering alternate service delivery options first prepare

activity-based accounting for the services to be assessed for partnering or managed competition. Only these overhead costs which would not 'go away' for either in-house or external service provision should be excluded in the level playing field costing of this service.

If the benchmark costs fail to dissuade the PPP committee from considering the service for partnering, the next step is to conduct a preliminary cost-benefit analysis. Although some benefits and most costs can be expressed in financial terms, many cannot.

The 'softer' elements of the service must be identified and considered where possible. Examples include:

- Loss of control or accountability;
- The change and upheaval associated with partnering;
- The loss of in-house expertise, and
- Risk transfer as a benefit or a liability.

The benchmarking exercise will have already identified many of the costs associated with providing the service in-house. However, there are some costs that are commonly overlooked including:

- ◆ Overhead costs resulting from the use of the municipality's equipment, office space, and staff by the private partner.
- ◆ The one-time costs of establishing the partnership including the request for proposals, evaluation of submissions and contract negotiation. Consultants may be required for this process.
- ◆ The costs associated with monitoring the contract, liaising with the private partner, and maintaining in-house expertise.

It should be remembered throughout this exercise that the goal is to determine whether or not the service should proceed to the implementation stage. It is not meant to provide a definitive statement on the desirability of negotiating a PPP. Due to the time and resources required for conducting the analysis and the intangible nature of some of the costs and benefits, the depth and due diligence will vary with the scope (budget, public profile, employee impact etc.) of the service being examined.

By this stage, the PPP committee should have a fairly good idea of which projects will proceed to the implementation

## 2.4 Assess private sector interest

stage. The final hurdle involves an 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 PPP. This may be defined as 'managed competition'.

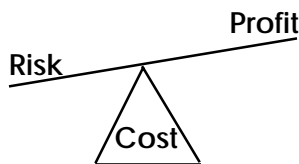
However, if employee ownership is an option:

- ◆ The employees should have no additional access to internal information- they should have the same access that the private sector proponents have, to ensure a fair bidding process, and
- ◆ 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 municipality is unwilling or unable to provide this compensation, there may be little or no interest from the private sector in providing the service.

The municipality may wish to gauge private sector interest prior to investing the time and resources required to implement a partnership opportunity. Private sector interest can be measured in a number of ways including:

- ◆ Various financial analysis specific to the service including simple cash flow analysis to determine the net cash flow required by a private partner, projected to user fees or 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 municipalities that have part-



nered similar activities (see the *Inventory of Canadian Municipal PPPs* published by the Canada/Nova Scotia COOPERATION Agreement), and

- ◆ Seeking advice from consultants.

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

## 2.5 Initiate implementation Process

The final task of the PPP committee in the 'decision to partner' stage is to prioritize and schedule those projects which have been selected for implementation and give individual project teams the responsibility to carry out the task.

The preferred process for prioritizing services which have withstood the above analysis depends upon several variables, including, most importantly, the level of resources the municipality can commit. Therefore, an assessment must be made in order to assess the level of effort required to engage in the PPP process. After that has been concluded, some municipalities may wish to implement each opportunity immediately while others will initiate only a small number of projects per year.

The following are factors the PPP Committee may wish to consider when prioritizing services for implementation:

- ⊗ Which projects have the greatest potential for financial benefit?
- ⊗ Which projects have the greatest possibility of early success?
- ⊗ Which projects will demand the most staff resources?
- ⊗ Which unmet service demands are most pressing?
- ⊗ Which services have the most likelihood of generating competition?
- ⊗ Which projects can be undertaken simultaneously?

Once the list of PPP opportunities has been prioritized, the Committee must schedule each project for implementation. Depending upon the number of services identified for PPP, the

schedule may have to span more than a single year. As new PPP opportunities arise, they too must be integrated into the schedule.

**Case Study 2.1:**

**The City of Charlotte, N.C.**

**The City of Charlotte, N.C. has developed an extensive service review program where each and every municipal service is subjected to competition on a regular basis. Both the private sector and the City may submit bids to provide the service. The program began in 1995 and, to date, 45 services have been involved. Of these, the City (in house) itself has won 16 competitions.**

**Twenty-nine services are up for competition in 1997 including fleet management, waste water flow management, sewer cleaning, payroll processing, animal control, school crossing guards and street cleaning.**

**The City uses a five-year rolling schedule where new services are identified for competition each year. The five-year waiting period between identification and competition provides managers with adequate time to make efficiency-enhancing changes to their respective operations and prepare them for competition.**

When the PPP implementation schedule has been established, responsibility for those projects first on the list must be transferred to a separate project implementation committee. This committee will be responsible for guiding the PPP process from the partner selection stage to contract negotiation and monitoring. The PPP project team is described in the *Chapter 3*.

From this point forward, the role of the PPP Committee is reduced to providing periodic advice to individual project teams as well as evaluating new partnership proposals for implementation and responding to sole source applications. The remainder of this guidebook deals exclusively with the implementation of specific PPP projects.

## BEST PRACTICES

- ◆ Analyse the municipality's infrastructure, programs, and services to determine the potential for PPPs, including
  - future opportunities for PPPs
  - benefits and risks
  - barriers
  - cost-benefit analysis
  - benchmark costs
- ◆ Ensure there is adequate interest from the private sector before continuing with the PPP process.
- ◆ Prioritize projects that have been identified as potential PPPs and set up an implementation schedule rather than initiating all projects at once and assigning project teams to each potential PPP.
- ◆ Use outside experts to assist the project team when required.
- ◆ When comparing public and private alternatives, either as a feasibility analysis or a detailed evaluation of actual proposals, evaluate the proposed costs of future private operations against the cost of future public operations.
- ◆ Risk must be shared between the public and private parties. Generally speaking, the more risk the private sector bears, the more compensation it will demand.
- ◆ Once the analysis is complete, the municipality should decide if it can effectively negotiate the allocation of risk in a contract. Depending on the situation, the municipality may assign risks to the private partner.
- ◆ Responsibility for compliance within the full range of federal/provincial regulations must be clear in the PPP.

- ◆ Impacts on existing employees must be fully considered when comparing the costs of public and private operating alternatives.
- ◆ Assess the contract's impact on existing union contracts or labour agreements and union negotiations in the future.
- ◆ Make sure fees charged by the private operator do not exclude residents from using the facility or service.
- ◆ The public must be fully and completely satisfied that procurement rules and regulations are in the public's interest, and not susceptible to manipulation.
- ◆ The municipality must develop and publish its PPP procurement policy so residents understand that the municipality is using this means of procurement because:
  - the need is identified but the means to achieve it are unknown;
  - creative solutions are expected to be a key element of the procurement process;
  - the municipality expects the private sector to assume a variety of risks not ordinarily accepted by the public sector;
  - factors other than prices will be important to satisfy the needs of the municipality - complexity of the project, experience and credentials of the private partner, and the financing arrangements, and
  - the private sector is expected to provide some investment capital in the project.
- ◆ Municipal workers should be able to submit bids in any out sourcing program, in recognition that the underlying reasons for PPPs are competition and cost-effectiveness.

## Chapter 3: Develop the Implementation Plan

**The purpose of this chapter is:** To outline the steps the municipality should take prior to implementing a specific PPP project. They include:

- ❁ Establishing a project team
- ❁ Refining the project's scope
- ❁ Preparing a conceptual budget (shadow bid)
- ❁ Selecting a procurement process and evaluation criteria
- ❁ Preparing an implementation schedule
- ❁ Preparing and initiating a communications strategy
- ❁ Obtaining necessary approvals

Each of these steps relate to specific PPP projects chosen for implementation. A particular **project** will reach this stage either through the 'decision to partner' process outlined in *Chapter 2*, or through an alternate (ad hoc) approach taken by the municipality. No matter how implementation of a specific project has been chosen, the steps in this chapter, and the remainder of this document, apply to all types of PPP initiatives, regardless of their scope or intent.

### Stages of The Partnership Building Process

1.  
Establish the  
Internal  
Framework

2. The Decision  
to Partner

3. Develop  
the  
Implementation  
Plan

4. Selecting a  
Preferred  
Partner

5. Negotiating  
the Contract

6. Working With  
the Partner

### 3.1 Establish a project team

The role of the project team is to guide the PPP process from the planning stage through to negotiations and signing a contract. Even though it may be appointed by the PPP committee, it is **separate** and **distinct** from it. The specific responsibilities of the project team are:

- ❁ Determining if outside consultants are required and hiring them as needed;
- ❁ Developing an implementation plan for the partnership ;
- ❁ Selecting a preferred private partner (*Chapter 4*);
- ❁ Assisting in negotiating a service contract with the preferred partner (*Chapter 5*);
- ❁ Monitoring the private partner's performance and resolving any conflicts that arise (*Chapter 6*).

The municipality's PPP policy may require the project team to report directly to the PPP committee. However, this creates an additional layer of bureaucracy that can be avoided by having it report directly to council (or a committee of council).

Members of the project team should reflect the type of project. The same types of expertise required for the PPP committee will also be needed for the project team. However, this expertise will need to be more focused and developed in the project team.

The project team leader must be an individual who understands the service in question very well. It is possible that the ideal person is someone brought in on contract. That means that the person leading the team is working at arms-length from both the municipality and the partners, so they do not have a vested interest. They must have, however, enough authority within the municipality to give the project legitimacy. Otherwise, potential partners may not have enough confidence in the project's success to dedicate adequate time and resources to it.

Other things to consider when appointing the project team include:

- ❁ Making sure there is adequate **technical expertise** on the team. This will be very important when drafting the terms of reference for the project, writing Request For Qualifications and Request For Proposal documents, and evaluating proposals;
- ❁ Making sure the project team members are able to spend adequate **time** on the process;

- ❁ Looking for potential **conflicts of interest** among the team members. If any exist and are serious, or are seen to be serious, the person involved should not be included on the team;
- ❁ Assigning specific responsibilities to each team member;
- ❁ Establishing a process for **reporting** to senior management and council;
- ❁ Making sure the project team is given enough **authority** to complete the job;
- ❁ **Communicating** this authority to team members and potential private partners, and
- ❁ Considering the need for outside professional advisors (consultants).

Hiring outside advisors/consultants to assist project teams when required is considered a best practice. Areas where assistance may be needed include finance, contracts, accounting, environmental issues, engineering, insurance and law. Depending on the scale of the PPP, the cost of hiring these consultants is usually offset by the expertise and experience they provide.

Other reasons that the municipality should consider hiring consultants include:

- PPP is a complex and rapidly changing concept. Many of the issues involved will be outside the expertise of in-house staff. This will not be the case with those sitting on the other side of the negotiating table;
- Third party consultants can provide an unbiased opinion concerning whether PPP is the best option for the municipality. Opinions of in-house staff and the private sector are not necessarily free of self-interest;
- The presence of external advisors will help prove to potential private partners that the municipality is serious about PPP, not just conducting a 'fishing expedition.'
- The presence of impartial advisors will help eliminate criticism regarding equity and fairness in the selection process.

If the project team decides that outside consultants are needed, they should be brought on line as early in the process as possible. *Case study 3.1* illustrates how the Berwick Elec-

### Case Study 3.1:

#### The Town of Berwick, N.S.

**In May of 1996 the Berwick Electric Commission issued an RFP for consultancy services. The role of the consultant was divided into two phases:**

**Phase 1: Analyse the Commissions's existing hydroelectric generating system and make recommendations as to the desirability of a PPP for system enhancements;**

**Phase 2: If a PPP was deemed appropriate, assist the Commission in selecting a private partner and the negotiating a long-term construction and service contract.**

**The results of phase 1 concluded that a PPP was not a realistic option for the Commission at this time. As a result, phase 2 did not proceed and the Commission was saved considerable time and resources.**

**Contact: Mr. Don Regan (902)538-3724**

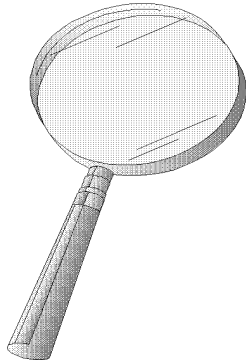
tric Commission saved considerable time and resources by including consultants from the very beginning.

It is important to note that, if the project team is assisted by consultants in the planning stage, these same consultants should **not** be permitted to bid on the final contract. **They should be made aware of this prior to signing a contract with the municipality.** This will avoid having the municipality subjected to justifiable charges of conflict of interest.

### 3.2 Refine the scope of the project

Once the project team has been established, its first task is to refine the scope of the project and decide exactly what it hopes to achieve through a PPP. This allows the project team to prepare a conceptual budget for the project and provides the team with the information required to prepare the terms of reference which potential partners will use to write proposals.

Refining the scope of the project consists of the following steps:



- A. Conducting a detailed needs assessment;
- B. Identifying acceptable and unacceptable risks;
- C. Identifying preferred partnership structures, and
- D. Specifying the basic conditions of the partnership

The PPP Policy will have already limited the scope of any partnership in general terms. For example, a PPP Policy may state that the ownership of all facilities and infrastructure involved in providing public services will remain with the municipality. The project team then decides which PPP structure involving public ownership is best suited to the situation.

A. Conducting a detailed needs assessment

If the municipality chooses to perform the 'Decision to Partner' process outlined in *Chapter 2*, a preliminary needs assessment will have already been done. The project team must now look at the service in more detail to determine exactly the specific, measurable, and quantifiable objectives it hopes to achieve through a PPP. If the service in question, for example, is a facility, the basic design, technical specifications, location, size, level and type of services to be offered, insurance requirements etc. must be defined.

If the project relates to a program or service, the desired level of service must be specified. The municipality may require a fleet management system for its vehicles so the needs assessment will identify the number of vehicles involved and the outcomes required from the system (i.e. maintenance scheduling, performance measurement, life cycle cost modelling, capital acquisition etc.).

Whether the project relates to infrastructure or a service, the needs assessment should identify the required results rather than how they will be achieved. Determining how they will be achieved is the role of the private sector in a partnership.

Additional factors to consider when assessing the municipality's needs include:

- ⊗ The **legislative or regulatory** requirements the service must comply with;
- ⊗ The **financial objectives** the municipality hopes to achieve, e.g. reduced or capped operating deficit, avoidance of capital debt, increased revenues;
- ⊗ The **employment objectives** the municipality wish to

achieve, e.g., creation of highly skilled jobs, protection of existing municipal jobs, new training programs, and

- ❁ The **economic development** goals the municipality hopes to achieve, e.g., new industrial growth, development of new technologies, growth in secondary industries.

The results of the needs assessment will guide the project to completion. It will form the basis of the project's terms of reference to be used by potential partners in writing their proposals and the project team will use the results as a guide in evaluating how well each proposal meets its needs.

Finally, the results will be used to evaluate the performance of the private partner throughout the life of the contract. **Each of the municipality's needs should be clearly stated so private sector firms can comprehensively respond to them in their proposals.**

In some circumstances the project team may be able to identify a clear need but have no preconceived solution for achieving it. Examples of such needs include:

- ❁ An information technology system for a school board
- ❁ Creating safer neighbourhoods
- ❁ A cleaner environment

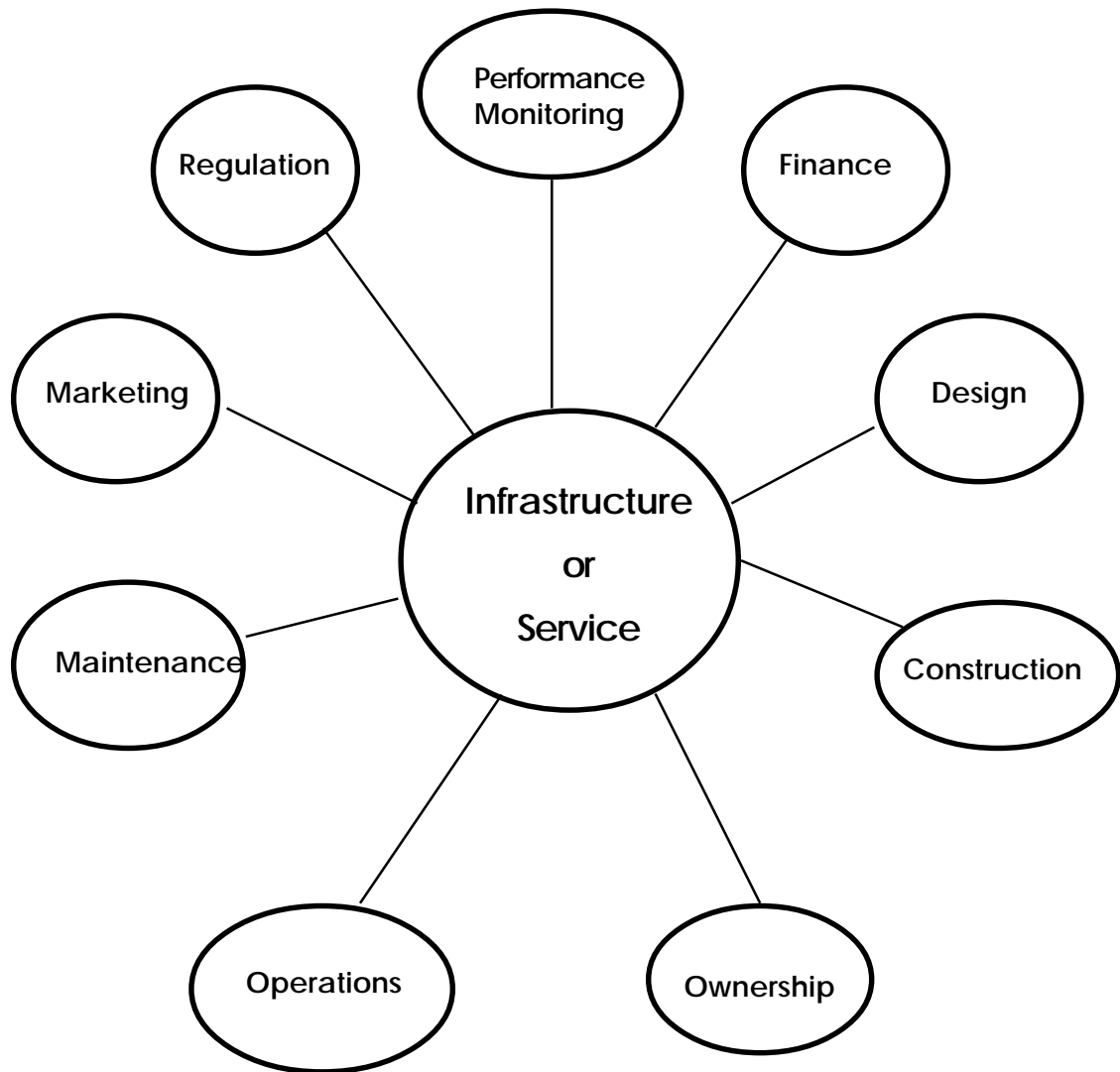
In situations where a need has been identified without a clearly defined solution, the completion of a detailed needs assessment and shadow bid may not always be possible so the project team might wish to hire a partner to assist in defining and communicating its needs. This is generally the approach taken by the **Cooperative Business Solutions** (CBS) process developed by the Province of Nova Scotia. More will be said on CBS later in the chapter.

## B. Identifying and allocating risks

This document's introduction lists some of the general risks a municipality may experience when entering into a PPP. For the most part, these are risks the project team should try to eliminate. Loss of control, reduced service quality, and a perception of bias in the selection process, for example, are all undesirables that should not be present in any partnering agreement.

Not all risks **can** or **should** be transferred entirely. Risk is the foundation of all business. A PPP is simply a business agreement between two or more parties. The more risk a municipality transfers to its private partner, the greater the

Figure 3.1 Elements of municipal services to be analysed for risk transfer



level of compensation the partner requires in return. The challenge in any partnership is to share the risks in such a way that each partner receives the maximum benefit.

The final decision concerning the risks each partner assumes will be decided during the contract negotiation stage (*Chapter 5*). The role of the project team is to identify the full range of potential risks and determine which ones should be assumed by the municipality and which should be transferred to the private partner. It is important to maintain enough flexibility to allow innovative risk sharing suggestions from the private sector. Nothing should be written in stone until the contract is signed.

The following are some of the risks (and accompanying examples) the project team may wish to consider:

- **Standard insurable risks** (fire, flood, automobile, machinery, equipment, transit, worker's compensation, third party liability);
- **Design error or omissions;**
- **Delayed completion or start up date;**
- **Failure to supply product or service;**
- **Directors' and officers' liability;**
- **Insufficient demand** (lower than expected hook-ups to a private water system or lower revenues than expected from facility rentals/operation);
- **Environmental liability** (contamination of a water source or air pollution);
- **Employment practices liability** (fair hiring practices, equal opportunity or harassment);
- **Technology risk** (failure of proposed technology or inability to keep up with technological change);
- **Force majeure** (events beyond the control of either party such as changes in the law, expropriation, acts of God, etc.);
- **Business interruption** (strike, unplanned maintenance, insufficient operating capital);
- **Bankruptcy of private partner or subcontractor;**
- **Inflation or currency fluctuation;**

- **Permit compliance;**
- **Residual value of asset at conclusion of partnership;**
- **Political risk** (change of government, change in policies and priorities);

Some of these risks can be eliminated through insurance. This is especially true in the current market where competition among insurance companies has led to the emergence of new product lines, such as environmental or employment practices insurance. However, the cost associated with these products is often so high that it eliminates potential benefits they might provide.

Therefore, it is in the best interest of all parties to allocate risks to one or the other partner rather than incur the cost of eliminating them entirely. The structure of the PPP itself will dictate which partner is best suited to assume the greatest amount of risk. For example, if the service continues to be provided by municipal staff, employment practice risk should remain with the municipality. If ownership of a facility vests with the private partner, the risk associated with the value of the asset will likely remain with that partner.

Risk allocation can be complex, therefore the project team may wish to consider the assistance of an insurance advisor. Legal advice at this stage in the process may not be generally recommended as the role of the solicitor is to minimize or eliminate the risk to the client. Important legal concerns can and should be addressed at the contract negotiation stage.

C. Identifying preferred partnership structures

PPPs are defined by the various components of service provision allocated to each partner in the service contract (see *p. 7*). The first step in deciding which PPP structures are best suited to the service in question is to separate the service into components. Then the project team must decide which components can and should be transferred to the private sector under a PPP. Since the PPP policy may prevent the transfer of certain components to the private sector, this is the first place to look.

Things to consider when looking at each service component include:

⊗ **The decision to provide a service:** This is a municipal responsibility that can seldom be transferred to the private sector;

⊗ **Management and regulation:** Ultimate responsibility

for service provision and quality should remain with the municipality;

❁ **Project design:** This is an area where the private sector can bring significant benefits. The municipality can define the required outputs and allow the private sector to find creative ways of achieving them;

❁ **Procurement and construction:** The private sector can usually procure goods and services faster and cheaper than government. However, fairness and equity issues must be addressed.

There are significant advantages to combining design and construction in the hands of the private sector including faster implementation and transferring cost and scheduling overrun risks;

❁ **Finance:** Public sector financing is generally less expensive than private sector financing. But, the wider range of financing mechanisms and flexibility available to the private sector may negate this.

The municipality may be unwilling or unable to borrow for a project. **Municipalities in Nova Scotia are not currently permitted to borrow for assets which they will not own (under review);**

❁ **Ownership:** This is the most important factor in determining the structure of the partnership. Advantages of public ownership include control and accountability, tax advantages, and access to public financing.

Advantages of private ownership include ongoing maintenance and capital investment, expanded property tax base, and off-balance sheet capital financing.

The transfer of existing municipal assets to the private sector may not be permitted under existing legislation and regulations (under review);

❁ **Operations:** The private sector is often able to provide many services more efficiently than government. Municipal jobs and in-house expertise may be sacrificed and the risk of service interruption is also greater under private operators;

❁ **Maintenance:** If the private sector operates but does not own a facility, or if ownership reverts to the municipality following the contract, the private partner may not be motivated to perform adequate ongoing and preventative maintenance (unless it is regulated by the contract).

❁ **Marketing:** If marketing is a critical element of the partnership, the private partner may be in a better position to undertake this responsibility. There is a risk that certain socioeconomic segments of society will be neglected.

Although many of the above service elements go naturally together (e.g. finance and ownership, operations and maintenance, design and construction), a partnering arrangement can include any combination permitted under the PPP policy. If these categories need to be subdivided into further components, the project team should not feel constrained. They are only intended to provide a framework.

The decision on which components of service provision may be transferred to the private sector will narrow the range of potential PPP structures. For example, if public sector ownership is identified as a requirement, each of the PPP structures involving private ownership (Build-Own-Operate, Build-Own-Operate-Transfer, Build-Transfer-Operate and Lease-Purchase) can be eliminated from further consideration.

Other factors to consider when identifying preferred PPP structures include:

- Is the municipality able and willing to service additional debt?
- Does the municipality have an existing asset that it wishes to include in a partnership?
- Is speed of implementation a critical factor?
- Is the creation of new employment a key consideration?
- Is the municipality in need of design capabilities that lie outside its own abilities?
- Does the municipality have the in-house expertise to provide the service?
- Does the municipality wish to obtain a current or future asset?
- Is the municipality interested in creating new and innovative technologies?

By deciding which components of the service should be transferred to the private sector and by answering the above questions, the project team should have a fairly good idea of which PPP structures best match the service in question. As always, it is best to allow some flexibility for innovative suggestions from the private sector.

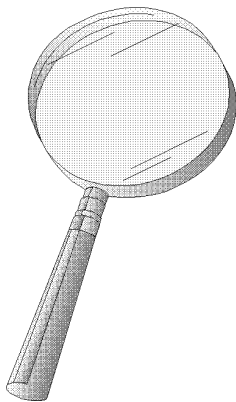
D. Specifying the basic conditions of the partnership

The last step in refining the scope of the project involves identifying the basic conditions of the partnership that have not been specified in the preceding three steps. These conditions will be detailed in the Request For Proposal document and may include the following:

- ❁ The preferred length of the partnership;
- ❁ Ownership of related assets during and after the partnership;
- ❁ Explicit performance specifications, standards, and expectations, including the roles and responsibilities of each partner;
- ❁ The process for measuring the partner's performance and monitoring those measurements for compliance;
- ❁ The terms and conditions under which confidential information is to be shared and the penalties for misuse;
- ❁ Treatment of existing employees (i.e. successor rights, fair wage and benefits policy);
- ❁ Profit and cost sharing provisions, and
- ❁ Performance bond requirements.

Some of these conditions may be subject to further discussion during the contract negotiation phase. The benefit of specifying them at this stage is that they communicate the type of partnership the municipality is seeking. The conditions should not be written in a manner that may discourage some eligible firms from bidding.

E. Preparing a conceptual budget



Once the scope of the project has been narrowed, the project team must find out how much it will cost to provide the service in-house. This process is commonly known as a "shadow bid". There are three basic reasons for conducting a shadow bid:

- A. To determine what the municipality can afford;
- B. To assess whether or not a PPP will result in real savings;
- C. To communicate to potential partners the in-house costs they must compete with.

Preliminary benchmark costs may already been known if the municipality conducted the 'Decision to Partner' stage

outlined in *Chapter 2*. A more detailed analysis must now be conducted by the project team. Outside consultants may be required if the project team or other municipal staff members do not possess the expertise required to calculate these costs.

The method used to calculate benchmark costs will differ depending upon whether the proposed partnership is an infrastructure project (e.g. a water treatment plant, a bridge or an arena) or a municipal service (e.g. water treatment plant operations and maintenance, bridge repair or a summer recreation program).

If the proposed partnership involves a new facility or infrastructure, the total capital and facility operating costs must be calculated as if the municipality was doing the work itself through traditional tendering practices. Costs can be estimated through the use of published data, industry standard costs or comparable costs incurred by other municipalities. The help of outside consultants may be required to calculate benchmark costs.

Some preliminary design work may be required at this stage. The purpose of this design work is simply to allow the project team to prepare its shadow bid. When the time comes to select a private partner, potential bidders will be encouraged to suggest innovative design alternatives.

It is important that the municipality outlines what it considers to be capital costs and that both parties understand the municipality's definition before the final agreement is signed, in order to avoid miscommunication later on.

E.(i) Capital costs:      The capital and facility operating costs which should be included in the shadow bid are:

- Land value
- Site preparation
- Design
- Construction costs
- Design and construction contingencies
- Consultants'/professional fees
- Other fees (tendering, advertising etc.)
- Inspection and testing

- Commissioning
  - Furniture and equipment
  - Interim financing costs
  - Cost of borrowing (MFC)
  - Insurance
  - Performance security
  - Start-up costs
  - Available capital funding programs
  - Taxes
- E. (ii) Facility operating costs:
- **Maintenance:** Including custodial, garbage removal, supplies, and general maintenance;
  - **Grounds:** Including snow removal and lawn or parking lot maintenance;
  - **Service and Maintenance:** Relating to mechanical, alarm, and communications systems;
  - **Utilities:** Including furnace oil, electricity, water, and sewer;
  - **General Expenses:** Including audit fees, salaries and benefits for maintenance staff, management fees, and insurance;
  - **Capital Repairs and Maintenance:** In the form of a reserve fund for facility maintenance and repair;
  - **Furniture and Equipment:** In the form of a reserve fund for furniture and equipment.

If the proposed partnership involves a service currently being provided by the municipality, the project team must calculate the 'true' cost of providing this service. True costing involves including all costs that a private service provider would incur if it was providing the service. Sometimes public sector operating budgets do not reflect true costs. For example, maintenance costs are covered in the public works budget so they don't appear in an individual department's accounts.

True costing includes the following:

- **Program Capital Costs** - facility lease or rental charges, equipment, and rolling stock;
- **Salaries** of all staff involved in delivering the service - instructional staff, human resources managers, medical staff, maintenance workers etc.;
- **Staff Benefits**;
- **Telephone** - costs associated with telephone, fax, conference calls, etc.;
- **Training** - ongoing, yearly training of existing and new staff;
- **Office Equipment** required on a yearly basis;
- **Postal/Courier** costs associated with the service;
- **Vehicle Rental and Maintenance** costs associated with vehicle purchases, rentals, and maintenance;
- **Travel** for staff, including meals, accommodation, mileage allowances, etc.;
- **Office Supplies** required to operate the facility on a day to day basis;
- **Advertising, Promotion, and Public Relations Activities**
- **Other Supplies** required to provide the service;
- **Overhead Costs** - a proportion of all costs (15 per cent for example) related to the use of such items that are currently provided by the municipality e.g. accounting and payroll systems, engineering, procurement, etc.;
- **Contracted Service** costs required to operate the facility.



True costs must also take into account revenues such as gate receipts or user fees for programs.

The purpose of the true costing exercise is not to provide a benchmark that the private sector must beat. Rather, the purpose of true costing is to allow the private sector to compete with the municipality's in-house operation on an even footing.

In some cases, a project team will be unable to refine the scope of the project enough to allow the calculation of these costs. This is especially true when the project deals with new or developing technologies or processes. The Cooperative

Business Solutions (CBS) approach adopted by the Province of Nova Scotia deals with such situations reasonably well.

### 3.3 Select procurement process

Prior to preparing a detailed implementation schedule, the project team must decide on the process it will employ to select a preferred private partner. In general, there are three processes that can be followed to select a private partner:

- A. Invitation to tender
- B. Request for proposals
- C. Cooperative Business Solutions (CBS) Process

The process that best suits a particular partnership will depend upon the number of potential partners interested in competing for the service, the municipality's time constraints, and the degree to which the project team has been able to define the its needs and the means to satisfy them.

#### A. Invitation to tender

Tendering is nothing new to municipalities in Nova Scotia. Also referred to as a request for bids or a request for quotations, the tender process awards the contract to the supplier meeting all the municipality's requirements **at the lowest cost**.

It is best used in situations where the municipality is able to define **exactly** what it requires and **exactly** how it should be provided. The tender document describes the specifications to be met and the terms and conditions that apply under a partnership. Bidders are not encouraged to suggest innovative alternatives to these specifications.

#### B. Request for proposals

When the project team is able to define exactly what it requires but detailed specifications are not available, a request for proposals (RFP) process should be used. The RFP invites responses from the private sector for evaluation against a preset list of criteria established by the project team. **Best value**, as opposed to lowest cost, is the key to selecting a partner in the RFP process. The RFP process is recommended in circumstances where:

- ⊗ Creative solutions are expected to be a key element of procurement;
- ⊗ The municipality expects the private sector to assume

substantial risk, such as financing risks or permitting risks;  
and

- ❁ The private partner will be expected to provide investment capital for the project.

The RFP process should not be used to select a private partner when the tender process will work (i.e. the exact specifications are known). Table 3.1 summarizes the conditions under which the invitation to tender and the RFP processes are best suited.

B. (i) One stage process

The RFP process can be conducted in one stage or two. The one-stage approach involves using a single, detailed RFP document that can be issued to all interested parties or to a select number of potential partners. A one-stage process is appropriate when:

- ❁ There are very few potential suppliers;
- ❁ The timing for implementation is tight;
- ❁ It is not obvious on what basis a potential partner would be pre-qualified

**Table 3.1: When to use the Invitation to Tender vs. the RFP process:**

	Issue Invitation to Tender	RFP Process
Scope of work clearly defined	X	
Scope of work unclear		X
Municipality has adequate in-house expertise to design specifications	X	
Municipality wants control over design	X	
Requirement for complex system with many components		X
Requirement for 'leading edge' technology and/or programs		X
Cost appears unaffordable and innovation is required		X

- ❁ The cost of the process is an issue (a two-stage process is generally more expensive than a one-stage process);
- ❁ All potential partners need to have an opportunity to submit a detailed proposal;; and
- ❁ The cost for a potential partner to prepare a proposal is relatively low.

B (ii) Two stage process

A two-stage approach is used when the project team wants to develop a short list of potential partners and issue the RFP only to this select group. It is appropriate when:

- ❁ Access to a wide audience of potential partners is important;
- ❁ The expense of preparing a proposal is relatively high;
- ❁ There is a concern that certain qualified potential partners will not incur the expense of writing a proposal if the number of eligible competitors is very high, and
- ❁ When it is desirable to restrict the circulation of detailed and possibly confidential data to a short list of candidates.

The two-stage process allows the project team to conduct a detailed evaluation of a limited number of proposals, rather than going through proposals from every company that shows an interest. This also prevents unqualified companies from devoting significant time and resources to drafting a full proposal and increases each of the short listed potential partner's chances of success.

In a two-stage process, the RFP can be preceded by either a request for expressions of interest (RFI), or a request for qualifications (RFQ) document. Despite the apparent similarity of these two approaches, each serves a unique purpose and should only be used only appropriate conditions exist.

As mentioned in *Chapter 2*, an RFI can be used to test the feasibility of a partnership by gauging the level of private sector interest. At the partner selection stage, an RFI can be used when the project team is unsure of its needs or the best way of fulfilling them. The RFI includes a brief description of the project's requirements and solicits responses from potential partners who believe they have the ability to do the job. Potential partners are then invited to a bidders' meeting where possible solutions are discussed and strategic alliances are encouraged.

The information gathered from the RFI process can then be used by the project team to draft the detailed RFP. In this respect, the RFI is an information-gathering tool for the project team and the potential partners as opposed to a pure short-listing tool.

The RFQ is used when the scope of the project is well defined but it is not known which potential partners, if any, have the skills required to complete the work in the specified time frame. Proposals are evaluated on their qualifications, experience, management approach, financial viability, and references as opposed to how they would provide the service in question. The RFQ proposals are used to develop a short list of potential partners which are subsequently issued with the full RFP document.

It is important to remember that responding to both RFIs and RFQs is a costly process for the private sector. Neither should require so much detail and effort that potential partners are discouraged from participating. **The municipality should never use an RFI or RFQ to simply ‘test the waters’ with no real commitment to entering into a partnership.**

In most cases, either the invitation to tender or the request for proposal approaches will meet the municipality’s needs. However, some problems have been identified with these selection methods, particularly in relation to the acquisition of services. These include:

- Poor planning in the initial stages by the project team may lead to issuing a tender call or RFP even though the project is not feasible;
- The requirement for the potential partner to meet the legal obligations of the tender or contract even though the municipality’s needs may change or evolve;
- Inadequate resources on the part of the project team in the area of project management;
- An inability to anticipate advances in technology because specifications or requirements are determined too far in advance, and
- A lack of commitment from top management to devote sufficient resources to assure adequate user input into the project solution.

Many of these problems can lead to an adversarial relationship between the municipality and its potential private part-

ner; to numerous changes in the original contract with no competitive opportunities; and, ultimately, to the abandoning of the project all together.

C. Cooperative Business Solutions (CBS) Process

The Cooperative Business Solutions (CBS) approach was designed to address many of the shortcomings in the invitation to tender and RFP processes. It is best suited to cases where a general need has been defined by the municipality but it is unclear as to the steps required for satisfying this need.

Under the CBS approach, the private partner is selected very early in the partnership building process. Both partners then work together to define the solution and institute an implementation plan. Periodic 'off ramps' are made available to both partners to end the relationship with no penalty.

The CBS approach should only be used in place of the invitation to tender or the RFP process when the municipality has a well defined need with no preconceived solution. This approach is somewhat risky as the municipality enters into the partnership without an indication of how much providing the service might cost or if it can even be provided at all.

If the project team decides that a CBS approach is appropriate for a particular project, it should consult the Government of Nova Scotia document *A Process to Develop Cooperative Business Solutions*, 1994. It is available at the Nova Scotia Government Bookstore, (902) 424-7580, or toll-free at 1-800-526-6575.

Since municipalities in Nova Scotia are generally familiar with the invitation to tender process, the remainder of this document (particularly *Chapter 4*) will assume that an RFP process has been chosen to select a private partner. However, this is not always the best or the most cost-efficient way to form a partnership.

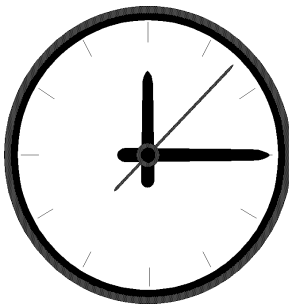
3.4 Preparing an implementation schedule

Once the project team has refined the project scope, prepared a conceptual budget, and selected a procurement process, it has the information required to prepare a detailed implementation schedule to guide the project team through the remainder of the PPP process.

Scheduling requirements will vary from project to project depending on the scope and the procurement process selected. In general, preparing an implementation schedule consists of the following steps:

- A. Identifying time constraints;
- B. Identifying remaining tasks and anticipated implementation times;
- C. Determining the critical path and confirming a schedule.
- D. Prepare and initiate a communications strategy

A. Identifying time constraints



Timing may be a critical consideration for the municipality. Regulatory requirements, deteriorating infrastructure, or public pressure may limit the amount of time the project team has to implement a partnership. Critical timings may also exist at different stages in the partnership building process.

If critical time constraints do not exist, the project team should still establish a preferred date for the commencement of a partnership. This date should be far enough away to allow a well thought-out implementation plan, but not so far off that it discourages prospective partners/consortia from taking an active interest in the project. Potential private sector partners may become concerned that the project schedule is unrealistic or poorly defined. This may jeopardize the successful completion of a partnership.

B. Identifying remaining tasks and timings

The project team must now identify the major tasks leading to a successful partnership and the amount of time required to complete each one. Tasks common to most partnerships include:

- ◆ Securing necessary approvals and permits (council, municipal, regulatory, provincial, or federal);
- ◆ Establishing a proposal evaluation team and evaluation criteria;
- ◆ Drafting, advertising, and issuing RFI/RFQ documents (allow 30-60 days for submission);
- ◆ Hosting bidders' meeting;
- ◆ Evaluating RFI/RFQ submissions and establishing a short list;
- ◆ Drafting and issuing RFP document (allow 60-90 days for completion);
- ◆ Evaluating proposals, including interviews with short listed

proponents, and selecting the preferred partner (within 30 days of proposal submission date);

- ◆ Debriefing unsuccessful proponents;
- ◆ Negotiating a draft service contract;
- ◆ Securing final approvals (council, legal, regulatory, provincial, federal); and

**Figure 3.1**

**Critical Path Elements**

Start: 01/01/XX	Establish evaluation team and criteria	Finish: 15/01/97
Start: 15/01/XX	Draft RFP document	Finish: 01/02/97
Start: 01/02/XX	Advertize RFP	Finish: 15/02/97
Start: 01/02/XX	Issue RFP document & required addenda <b>(Proposal Submission Deadline)</b>	Finish: 15/03/97
Start: 15/03/XX	Evaluate proposals and establish short list	Finish: 22/03/97
Start: 01/04/XX	Interview short listed proponents and select preferred partner	Finish: 08/04/97
Start: 08/04/XX	Negotiate draft contract	Finish: 08/05/97
Start: 08/05/XX	Secure final approvals and make required changes to draft contracts	Finish: 22/05/97
Start: 22/05/XX	Project roll out	Finish: 01/01/98

**Non-Critical Path Elements**

Start: 01/01/XX	Develop/initiate communications strategy	Finish: 08/01/97
Start: 01/01/XX	Secure necessary permits	Finish: 01/06/97
Start: 08/04/XX	Debrief unsuccessful proponents	Finish: 08/05/97

- ◆ Full project roll out, in phases if appropriate.

Contingencies should be used to offset the uncertainty associated with the timing of some of these tasks (e.g. approvals, contract negotiation, construction delays).

C. Determining critical path and finalizing the project schedule

The final step in preparing an implementation schedule is to identify those tasks in Step B that must take place in sequence, order them, and assign start and finish dates.

The project team is now provided with a timeline outlining each of the critical elements of the implementation process. Start and finish dates for other tasks not on the critical path can then be inserted, creating a comprehensive schedule. *Figure 3.1* provides a simplified example of what a PPP's implementation schedule might look like.

D. Preparing and initiating a communications strategy

History has shown that PPP initiatives are met with increased resistance in the absence of open and early consultation with affected parties. The importance of good communications cannot be overstated. Not only does it reduce the fear and uncertainty that typically comes with change, it is also a means of gathering good ideas and information from user groups that have an intimate knowledge of the service.

A municipality's PPP policy must contain a broad communications strategy that will apply to all partnering initiatives. At this stage, the project team must also develop a communications strategy related specifically to the project in question. Its purpose is to solicit input from and convey accurate information to the following:

- ⊗ Council and the PPP committee
- ⊗ Department managers
- ⊗ The public - users of the facility & the general public
- ⊗ Union leaders
- ⊗ Affected staff
- ⊗ Media
- ⊗ Other agencies or governments that regulate, fund, or benefit from the service in question

Communication with private sector proponents and the

selected private partner is discussed in *Chapters 5 and 6*.

The communications strategy can take many forms and have many possible components. In some cases the project team should use in-house expertise (where available) or they may wish to seek the support of a communications specialist to assist in its development.

In any case, the strategy should:

- ◆ Explain the reasons why the municipality is considering the PPP process and the benefits it anticipates will accrue;
- ◆ Clearly present the goals and objectives of the partnership;
- ◆ Outline the potential risks of adopting this new method of service delivery and the steps that the municipality is taking to eliminate or reduce them;
- ◆ Describe the decision-making process including the role of the PPP committee, the project team and any third party consultants;
- ◆ Outline the PPP structures under consideration and the broad implications of each;
- ◆ Include the implementation schedule and any other process information that is not confidential;
- ◆ Describe the opportunities for public involvement in the remaining process;
- ◆ Describe how the municipality will keep the public informed of progress towards selecting a partner and negotiating a contract,
- ◆ Allow public input so that there is a two-way flow of information.

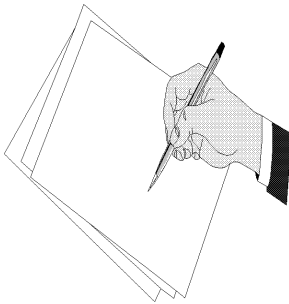
The communications strategy should be founded on this basic principle “if you want to build awareness, use the mass media; if you want to build trust, do it face-to face”. Therefore the communications strategy should include a mix of:

- News releases, radio and television interviews, and newspaper articles;
- Advertisements;
- Published phone numbers - voice mail, fax, 1-800, where the public can obtain information;

- Fact sheets, brochures, and information packages;
- Regularly scheduled newsletters;
- Regularly updated information on the municipality's web site, complete with an e-mail loop back to the municipality
- Open houses and public meetings, and
- Small, regularly scheduled briefing sessions for councillors and other stakeholders (employees, user groups, community groups, opinion leaders in the community).

The communications strategy must stress openness and transparency. **If there is bad news or the potential for negative implications, get it out in the open as early as possible.** By managing the flow of information to its different internal and external audiences, the municipality can take a proactive as opposed to a defensive position to problem solving.

### 3.8 Obtain necessary approvals



At this point, the project team may wish to report to council to obtain approval on the proposed implementation plan. Items which council may be most concerned about include:

- the proposed allocation of risk, preferred partnership structures;
- the basic conditions of the partnership;
- the proposed conceptual budget;
- the procurement process;
- the project's time line, and
- the communications strategy.

Changes to each may be required following this meeting.

Required permits and approvals from regulatory agencies should be sought at this stage, as these can take several months to obtain.

## BEST PRACTICES

- ◆ Comparing public and private costs requires a full understanding of all the current costs of service provision including direct and indirect costs.
- ◆ Project teams for specific PPP projects must be separate and distinct from the municipality's PPP committee. These teams must have adequate time, experience, and authority to successfully complete the project.
- ◆ Prepare a conceptual budget (or shadow bid) to determine:
  - what the municipality can afford;
  - whether a PPP can result in real savings and create the intended results sought by the municipality from both a cost and management point of view, and
  - to communicate to potential partners the in-house costs they are competing against.
- ◆ Employ the selection process that best suits the type of project being considered.
- ◆ Use the two-step selection process to select financially sound and technically qualified firms. The RFI/RFQ process helps narrow down the number of qualified firms and tests the feasibility of the PPP. The RFP process then gives the project team a manageable number of proposals to evaluate.
- ◆ Use a Request for Information (RFI) when objectives are known by the municipality but the solution is not.
- ◆ Make a detailed schedule to map out all phases of the PPP from beginning to end.
- ◆ Implementing an effective communications strategy helps reduce the fear and uncertainty that comes with change.
- ◆ Communicate, communicate, communicate.

## Chapter 4: Selecting a Preferred Partner

**The purpose of this chapter is** to outline the steps the municipality should take to select a preferred private partner. They include:

- ❁ Issue a Request For Expressions of Interest (RFI) or a Request For Qualifications (RFQ) and establish a short list (two-stage process only)
- ❁ Issue the Request for Proposals (RFP)
- ❁ Select a preferred partner
- ❁ Secure necessary approvals

Once the implementation plan is complete, the project team must focus its attention on selecting a preferred partner. The key word here is **preferred**. The selection of a preferred partner is basically a commitment to enter into negotiations with one party. If the project team is unable to negotiate an acceptable contract with this preferred partner, the entire process can be halted or initiated with another potential partner. The partnership does not legally begin until a contract has been signed.

### Stages of The Partnership Building Process

1. Establish the  
Internal  
Framework

2. The Decision to  
Partner

3. Develop the  
Implementation  
Plan

4. Selecting  
a Preferred  
Partner

5. Negotiating the  
Contract

6. Working With  
the Partner

#### 4.1 Record the selection process

To begin the selection process the project team should appoint one team member to keep a record of the procurement proceedings. This record should include the following:

- ◆ A listing of all potential partners that responded to the RFI/RFQ and RFP;
- ◆ The reasons for eliminating potential partners at each stage of the evaluation process;
- ◆ Minutes of all meetings;
- ◆ A review of how the proposals were compared and evaluated;
- ◆ A record of all requests for additional or clarifying information and a description of how these requests were handled, and
- ◆ A record of debriefing sessions with unsuccessful potential partners.

Keeping a record will help to assure the public and any unsuccessful companies that the selection process was fair, open, and transparent.

#### 4.2 Issue the Request for an Expression of Interest (RFI) / Request for Qualifications (RFQ) and establish a short list (two-stage process)

*Chapter 3* discussed the conditions for using a one-stage or two-stage procurement process (*See pages\*\**). If the project team has decided to follow a two-stage process, it must first draft and issue a RFI or a RFQ. While both these documents are similar in their content and submission requirements, each serves a unique purpose and should be used only when the proper conditions exist.

As described in the previous chapter, the RFI is used when the project team has a general idea of what it wants to achieve from a PPP, but is unsure of how to get there. It allows the project team to seek help from the private sector before drafting the RFP. The RFQ is used when the project is well defined but it is not known which firms, if any, have the skills and experience required to undertake the project in the specified time.

The RFQ is a short listing exercise whereas the RFI is a means of gathering enough information from the private sector to draft a full RFP.

**A. Drafting the RFI/RFQ document**

Both the RFI and the RFQ documents will include the following elements:

- The municipality's objectives in seeking a PPP;
- A description of the existing service and budget framework (if applicable);
- The nature of the partnership (if it is known), including the proposed contribution and skills of the preferred partner;
- Mandatory submission requirements and instructions to respondents;
- The complete evaluation scheme including relative weightings, points or other considerations that will be applied to each element of the evaluation, and
- The full selection process including timetables.

While neither of these documents should be extensive, the RFQ will contain more information than the RFI (remember - the purpose of the RFI is to gather needed information - information that the project team will already have if it is using an RFQ). Sample RFI and RFQ documents are included in *Appendix ? and ?* of this guide.

Communication between potential partners and the project team should be kept to a minimum. One project team member should be designated a contact person for all inquiries. A process should be established for written questions and answers ensuring that all potential partners have access to the same information.

**B. Advertising the RFI/RFQ**

Both the RFI and RFQ should be advertised as widely as possible to maximize response and promote fairness, and equity. Local and national newspapers, electronic media, the world wide web, professional journals, and personal contact with local firms are suggested means of communication.

Advertisements should include the following content:

- ⊗ A brief description of the project
- ⊗ The role of the successful private partner
- ⊗ The number of companies to be short listed
- ⊗ The location and deadline for submissions

- ❁ A contact name

- ❁ An address where the full RFI/RFQ document can be picked up.

A sample newspaper advertisement is provided in *Appendix ?*.

Potential partners should be given 30-60 days from the date of the advertisement to prepare their submissions.

C. Submission requirements

Since one of the reasons for using a two-stage process is to spare unqualified firms the expense of preparing a full proposal, the submission requirements for both the RFI and RFQ should be kept to a minimum. Submissions should include the following information:

- ❁ An understanding of the municipality's needs and the scope of the project;

- ❁ A profile of the potential partner (including members of a consortium - if one has been formed for the purpose of bidding on this PPP), its principal business, and how long it has been in operation;

- ❁ A statement of financial stability (evaluated on a pass/fail basis);

- ❁ A statement of financial capability including access to capital (debt and equity), and

- ❁ A statement of performance capability.

This will include an overview of the potential partner's experience, approach to similar projects, references, project methodology (RFI only), senior management's expertise, and ability to obtain necessary resources (i.e., insurance, bonding, subcontractors).

D. Evaluating the submissions

If an RFI has been used, the project team may wish to host one or a series of meetings with potential partners to allow the project team to gather the information required to draft a detailed RFP. Another purpose of bringing all potential partners together at one meeting is to promote strategic alliances. Following these meetings, the project team can use its stated evaluation criteria to establish a short list or it may allow each proponent to respond to the RFP.

If an RFQ has been used, the project team can move directly to the evaluation of the written proposals. There is no requirement to meet with potential partners at this stage in the process, although there may be benefits in doing so. The purpose of the RFQ is to reduce the number of potential partners to a manageable number - usually three. The project team is not seeking service delivery information at this stage, just information on their qualifications.

The first step in the evaluation process is to verify that each proposal contains the mandatory requirements detailed in the RFI/RFQ document. If proposals do not comply they may be disqualified at this stage.

The second step is to evaluate the remaining proposals on those criteria that have been defined as pass/fail, such as financial stability. Potential partners failing to meet the minimum requirements in these categories will be eliminated next.

The remaining proposals are then rated according to the evaluation criteria detailed in the RFI/RFQ. Individual rankings can be assigned by each member of the project team and then aggregated, or one ranking can be assigned through group consensus. A short list of the three highest rated submissions are then invited to respond to a detailed RFP.

Unsuccessful potential partners should be advised of the final outcome immediately following notification of the preferred partner. A debriefing session involving all the unsuccessful potential partners is advised.

### 4.3 Issue the Request for Proposals (RFP)

The RFP document is the foundation of the selection process. It is a comprehensive document providing detailed information on the municipality's goals, objectives, and requirements. It provides specific instructions on submitting a proposal and describes the evaluation process to be used in selecting a preferred partner. A well-drafted RFP document will ensure the following:

- ⊗ Proposals will be submitted in a standardized format that allows for equal and fair evaluation;
- ⊗ Enough flexibility to encourage innovative and lower cost service delivery alternatives from the private partner, and
- ⊗ A smooth transition from the RFP document to a draft contract.

A poorly drafted RFP will communicate to potential private

partners that the municipality is not entirely committed to going ahead with a partnership, thus discouraging potential partners from participating. It also has the potential to make the evaluation process more difficult, discourage innovation on the part of the private partner, and increase the level of effort required to negotiate a contract.

It's in the best interest of the project team to dedicate the time and resources required to do the job properly. Clarity of purpose and attention to detail will start the project off on the right foot and result in tangible benefits throughout the life of the partnership.

A. Drafting the RFP document

The information included in the RFP document will come from one of two sources. If the project team was able to refine the scope of the project, prepare a conceptual budget, and choose a selection process during the implementation planning stage (*Chapter 3*), it will have much of the information required to draft the RFP document. Alternatively, the project team may have relied upon an RFI and interviews with potential partners to gather this information.

In any event, the RFP document should contain the following categories of information (The sample RFP document in *Appendix ?* includes the subheadings for each category):

- Introduction
- Proposal format and mandatory submission requirements (*see Section C on submission requirements*)
- Design and construction requirements
- Management and operating requirements
- Proposed business plan
- Financial information and proposed financing plan
- Legal considerations
- Proposal evaluation process and contract award
- Instructions to proponents
- Appendices (municipality's PPP and Human Resources policy, shadow bid, previous studies etc.)

Keep in mind that much of the information contained in the RFP document will be subject to negotiation once the preferred

partner has been selected. The reason for including this information in the RFP is to establish the framework for contract negotiations. The first stage of the contract negotiation will concern areas where the successful proposal deviates from the contents of the RFP document.

Other issues to consider when drafting an RFP document include:

- ❁ If a one-stage selection process is being used, consider requiring a fee or deposit for the RFP documents. This will restrict the circulation of information to serious potential partners;
- ❁ Consider requiring a bid deposit at the time the proposal is submitted as security against the potential partner's not honouring its proposal;
- ❁ For large scale projects, consider compensating short listed potential partners for some or all of the cost of preparing their proposal. This may include purchasing intellectual property which can then be used by the successful private partner;
- ❁ Include safeguards in the RFP to ensure that consortia formed specifically to bid on a project remain together once it has been selected as the preferred partner, and
- ❁ For large scale and/or high profile projects, consider appointing a fairness commissioner who can assure both the public and unsuccessful potential partners that a fair, open, and transparent selection process was used.

**B. Advertising the RFP**

If the project team is using a one-stage selection process, the RFP should be advertised widely to allow broad access to the project (see section on advertising the RFI/RFQ). The RFP documents should be made available for pick up one week after the first advertisement is published. This will ensure that all potential partners are given the same amount of time to prepare their proposals.

A fee or deposit for the RFP documents can be used to limit competition to potential partner with a serious interest in the project. Be sure to keep a record of everyone who received the RFP documentation so that additional information or responses to questions can be made available to all potential partners.

If a two-stage process has been used, the RFP can be issued exclusively to the short listed potential partners, If

the RFP document contains sensitive or confidential information, safeguards should be included to restrict circulation to a limited number of individuals within each firm.

Depending upon the scope and complexity of the project, potential partners should be given anywhere from 45 to 90 days from the release date of the RFP documents to submit their proposals. Extensions should be granted only under extreme circumstances. If an extension is granted, it should be made available to all potential partners.

C. Submission requirements

If a one-stage selection process is being used, potential partners should be required to submit some of the information that would normally be included in an RFQ (such as a company profile, statement of financial stability, and capability). This information can be used to screen proposals if the number of proposals is very high.

If the RFP has been issued exclusively to a short list of potential partners, the proposal should focus on the potential partner's approach to the project as opposed to its general qualifications.

Each proposal should be required to include:

- **Covering letter** signed by the principals of firms comprising the proponent's team;
- **Table of contents**;
- **Executive summary** of the submission;
- **Potential partner's identification**: Member firms and legal structure;
- **Summary of proponent's qualifications** (not required for a two-stage process);
- **Design and construction delivery plan** (infrastructure projects only): Includes design work, scheduling, permitting, power requirements, commissioning, provisions for expansion, and modification;
- **Management and operations plan**: Includes staffing arrangements, maintenance, regulatory compliance, non-municipal users, operating manuals, training, accounting and reporting, audits and the relationship with municipal staff;
- **Business plan**: Includes partnership structure and

length, terms of payment, maintenance costs and reserves, risk management, force majeure, economic benefits, pro forma financial statements, tax expectations;

- **Financing plan:** Includes detailed cost schedule, financing structure, financial sources, mechanism for financing improvements;
- **Legal arrangements:** Includes structure of legal agreements, special terms and conditions, events of default, dispute resolution procedure, indemnities, and
- **Value engineering component:** Deviations from the project team's proposed approach and the resulting benefits.

The project team may wish to consider requiring potential partners to submit their financial offer separately from the main body of the proposal. This is known as a "two-envelope system" and is appropriate when there is a need to ensure that each proposal is reviewed objectively according to its technical merit. If the successful proposal meets the project team's technical criteria, the financial offer is then opened and assessed.

D. Compensating Unsuccessful Potential Partners

In a large scale partnership initiative, the municipality may choose to compensate unsuccessful short-listed potential partners. Considerable cost can be incurred by the potential partners in preparing detailed RFP proposals. Compensation is an indication of commitment by the municipality to PPP and may be necessary to attract well-qualified partners.

E. Managing the flow of information

The period between the release of the RFP document and the deadline for proposals is a critical one. Carefully planned and drafted RFP documents will reduce the need for clarifications and additional information, but it will not eliminate it entirely. The following are some guidelines to assist the project team in managing the flow of information to and from potential partners:

- ◆ Assign a single contact person from the project team to receive and respond to all queries;
- ◆ Consider a black out period when potential partners are not permitted to lobby or contact elected officials or municipal staff other than the official contact person.
- ◆ Explicitly prohibit potential partners from communicating with municipal staff and Council. **Communication with**

**anyone but the appointed contact person is grounds for disqualification;**

- ◆ Questions and responses should be in written form and circulated to all potential partners that received the RFP documents;
- ◆ If the number of questions or requests for clarifications is very high, consider hosting a bidder's meeting or offering a site tour;
- Consider providing each potential partner with access to a data room containing relevant background material, and
- While submitted proposals are not yet subject to the Freedom of Information and Protection of Privacy Act, it's best to abide by the municipality's policy on releasing information and, if at all possible, treat the submitted information as confidential.

If your municipality has access to the Internet, the posting of questions and answers on a homepage is a fast and cost-effective means of communicating with potential partners.

**4.4 Select a preferred partner**

The process of evaluating proposals and selecting a preferred partner is the one in which the project team is most vulnerable to claims of favouritism and abuse. In an effort to assure the public and the private sector that a fair, open and transparent process is being used, the project team should establish a separate and independent selection panel for this purpose.

**A. Composition of the selection panel**

The selection panel usually consists of seven members - if there are seven members, five should be voting members and two, nonvoting members. The five voting members should include two representatives of the municipality with related technical expertise (such as engineering and finance) and three independent members. The independent members can come from the private sector, user groups or the general public and should be knowledgeable of the service or infrastructure in question. Voting members should **not** come from the following groups:

- ⊗ Municipal council,
- ⊗ The project team,
- ⊗ Persons directly involved with administering the project,

- ❁ Individuals directly or indirectly involved with the preparation of the RFP document.

The two nonvoting members usually are the project team leader, who acts as chair of the panel, and an independent observer. It is the responsibility of the independent observer to ensure the integrity of the process and to record the decision and the reasons for that decision. If a fairness commissioner has been involved with the process to date, they could fulfil the role of independent observer. Other options include a well known and respected member of the community, a representative from the Department of Housing and Municipal Affairs, or a representative of the local business community. If a larger selection panel is deemed necessary, additional voting and nonvoting members can be added. Steps should also be taken to ensure that no members of the panel are in any type of a conflict of interest situation. In all cases, however, the number of independent voting members must outnumber those from the municipality. Again, this is to ensure that the process is, and is seen to be, impartial and fair.

#### B. Evaluating the written proposal

If the project team has selected a one-stage selection process, the written proposals can be used to establish a short list. As with the RFI/RFQ, proposals should be evaluated for the compliance with mandatory requirements first. Noncompliant proposals can be disqualified from further evaluation at this stage. Proposals failing to illustrate sufficient financial capability and experience, as outlined in the RFP documents, can also be eliminated. The remaining proposals will then be rated according to the evaluation criteria specified in the RFP.

The criteria used to evaluate written submissions will vary with the scope of the project and the municipality's objectives in seeking a partnership. A sample evaluation form is included in *Appendix ?* of this guide. Other important considerations when evaluating proposals include:

- Masking the identity of the potential partners when evaluating written proposals to eliminate the perception of bias;
- Making sure all proposals are being evaluated using standard assumptions (e.g. demand, inflation, cost of capital). Some of the potential partner's figures may have to be adjusted to meet these standard assumptions;
- Assessing both the financial capability of the potential partner and the attractiveness of the offer;
- Including sensitivity analysis to identify the financial risks

of each proposal;

- Assessing the value of proposals that exceed the minimum technical requirements. The municipality may wish to pay a higher price to obtain these benefits;
- Identifying the best combination of financial and non-financial benefits. Remember best value as opposed to lowest price should be the primary consideration.

Written proposals will be expected to meet a minimum qualifying score. This qualifying minimum will be detailed in the RFP document as part of the evaluation scheme. Of the proposals that meet this minimum, the top three will be selected for the short list. If fewer than three proposals meet the minimum, the evaluation panel may choose to proceed with the oral presentations, or, as a last resort, cancel the competition.

The evaluation of written proposals should be completed within 14 days of the closing date for the competition. All respondents to the RFP will be notified by letter of the results of the written evaluations. The short list of potential partners will be presented in alphabetical order. Scores should not be included.

Potential partners that fail to make the short list should be debriefed on an as-requested basis. Copies of the potential partner's aggregate score sheet and relevant comments should be made available, if requested. Score sheets from individual members of the selection team should not be made available to the proponent.

If a two-stage selection process is being used, a short list will already have been established at the RFI/RFQ stage. In this case, the evaluation of written proposals is used to ensure that the short listed proponents meet the minimum criteria set out in the RFP document.

The selection panel can select a preferred partner based entirely on the contents of the written proposal or it can require all short-listed potential partners to make an oral presentation. If time and available resources permit, selection based on an oral presentation is recommended.

C. Oral presentations

The objective of the oral presentation is to allow short-listed potential partners a chance to communicate their proposal more effectively to the selection panel. It also provides the evaluation panel with the opportunity to ask specific questions regarding the written proposal.

The oral presentation should take place within seven calendar days of the short-listing decision. The times and order of oral presentations should be determined by random selection and all potential partners should be notified of the complete schedule. If possible, all presentations should take place on a single working day. If this is not possible, the presentations should be spread out over two consecutive working days with no weekend in between.

In some cases, the selection panel hearing the oral presentations is totally different from the panel that evaluated the written documents. This adds an extra element of fairness to the procedure.

The presentations should generally be limited to 30 minutes, with an additional 30 minutes set aside for questions and answers. Potential partners should be required to provide all equipment and materials for their presentation. This is their insurance against malfunctioning equipment.

Any commitments made during the presentation or question and answer period become part of that potential partner's proposal and may be included in any contract negotiations. Therefore, it may be worthwhile to video-tape each of the sessions.

- D.            Site Visit            Members of the selection panel, the project team, and technical advisors may find a site visit useful or necessary. Costs of such a visit should be the responsibility of the municipality to maintain the integrity of the process.
- E.            Evaluation criteria            Selection of the preferred partner can be based solely on the results of the oral presentation or on a combination of the written and oral proposals and site visit. While the selection panel may decide to rank the written proposals by group consensus, the oral presentations should be ranked by each voting members and then added together.
- Potential evaluation criteria include:
- Project manager's suitability
  - Project team dynamics and interaction. Does the team work well as a unit? Do all members understand their roles?
  - Proposed solution for the municipality's needs
  - Proponent's experience and commitment to the project

- Any other priorities of the municipality - local content, use of existing employees, as spelled out in the PPP policy

As an example of how the preferred partner might be selected, assume one voting member of the selection panel ranked each of the short-listed proponents on the above criteria as follows:

Proponent A:	1st, 2nd, 1st, 1st, 2nd	= 7
Proponent B :	2nd, 1st, 3rd, 2nd, 1st	= 9
Proponent C:	3rd, 3rd, 2nd, 3rd, 3rd	= 14

These totals would then be added to those generated by the other voting members to reach the final total. The lowest scoring potential partner (i.e., highest combined ranking) will be announced as the preferred partner.

If a two-envelope process has been selected, the highest ranking potential partner's financial bid would be opened. If the bid is acceptable, that potential partner becomes the preferred partner. If the bid is not acceptable, the selection panel could attempt to negotiate a lower bid, or move to the second ranked potential partner.

All proponents should be notified of the panel's decision and are entitled to a debriefing on the application of the evaluation criteria to the written proposal and the oral presentation.

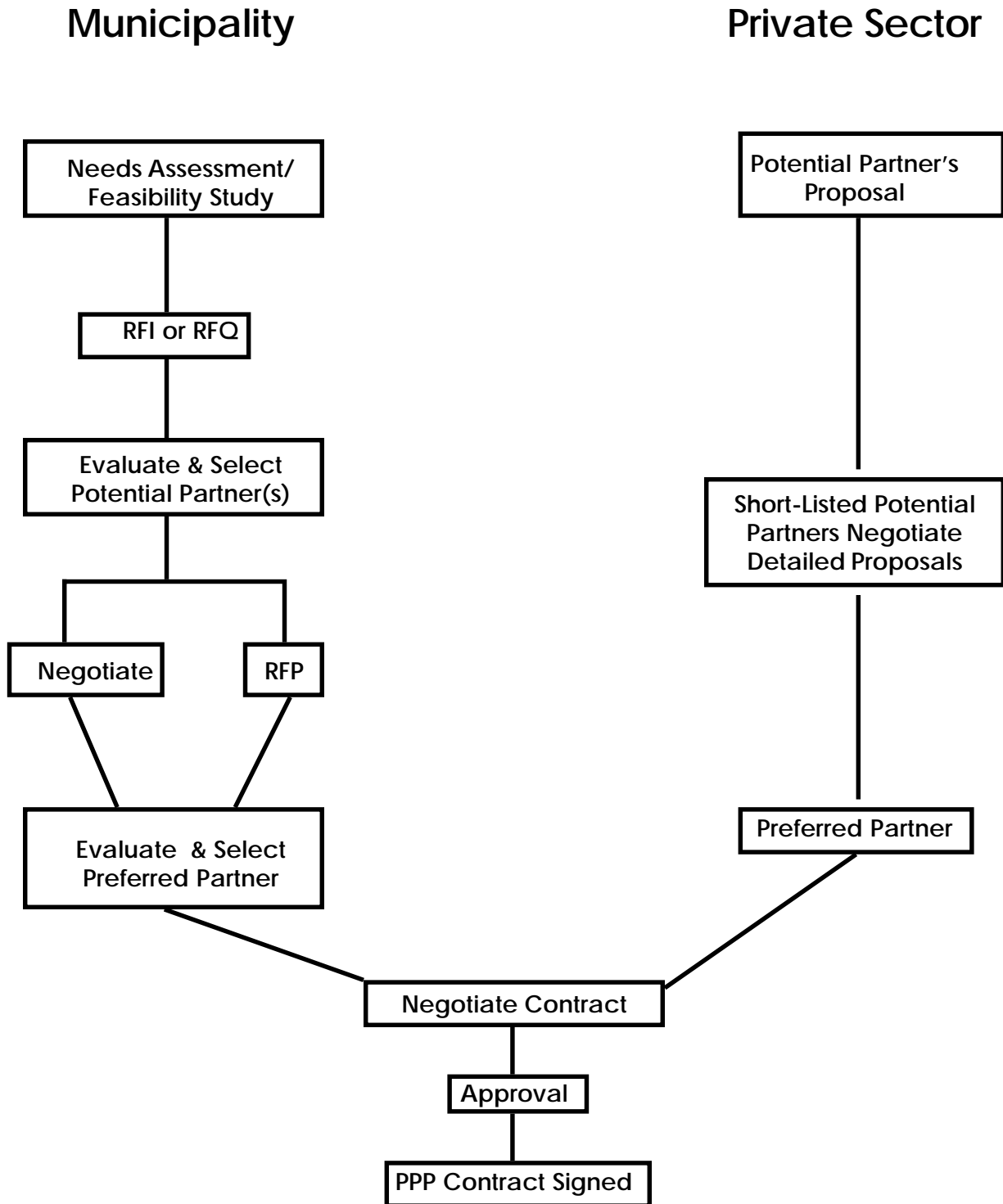
E. Obtain necessary approvals

Prior to notifying the successful potential partner, it may be necessary to report to council, or a committee thereof, on the results of the evaluation process. Council should be notified of the results of the selection process prior to entering into detailed negotiations with the preferred partner.

N.B. The Procurement Branch, Nova Scotia Dept. of Finance publishes 3 guides which may be of some benefit to municipalities engaging in PPPs:

1. Guide to Preparation of a Request for Proposal
2. Guide for the Evaluation of a Request for Proposal
3. A Process to Develop Co-operative Business Solutions

Figure 4. 1: The PPP Process



## Best Practices

- ◆ Widely distribute and advertise notices of RFI/RFPs .
- ◆ Describe the evaluation criteria in the RFP documentation.
- ◆ Do not permit advisors acting for the municipality to have any role in the projects's execution and delivery.
- ◆ Decide how the final outcome will be determined - whether the proposal presenting the best value or the best solution will be chosen. The factors chosen to determine this should be objective, quantified, and weighted.
- ◆ A pass/fail system works best when combined with weighting.
- ◆ Make sure the evaluation process is full of conflict of interest.
- ◆ Use a black out period to stop potential partners from lobbying elected officials and municipal staff.
- ◆ Keep a record of procurement proceedings to ensure fairness and transparency of the process.
- ◆ Compensating unsuccessful potential partners is a sign of commitment to PPP by the municipality.
- ◆ Use the services of a fairness commissioner in more complex PPPs.
- ◆ Specify service requirements in terms of results not inputs.
- ◆ Specify what the service requirement is, not how it is to be performed. Operational flexibility is essential for the contractor to be innovative in performing the activity. Results should be specified as fully as possible, and should include appropriate service quality measures.

## Chapter 5: Negotiating the Contract

The purpose of this chapter is to outline the steps the municipality should take in approaching the negotiation process and drafting a contract with the selected preferred partner.

They include:

- ❁ Getting Started
- ❁ Establishing the Framework
- ❁ Negotiating the Deal
- ❁ Drafting the Contract and the Transfer Agreement

The Collins English Dictionary defines a contract as “a formal document recording an agreement; an agreement enforceable by law”.

Throughout the whole process of deciding whether to enter into a PPP and the procurement process, getting to the stage where negotiations can begin and a final contract is in sight is one of the significant milestones.

### Stages of The Partnership Building Process

1. Establish the  
Internal  
Framework

2. The Decision to  
Partner

3. Develop the  
Implementation  
Plan

4. Selecting a  
Preferred Partner

5.  
**Negotiating  
the  
Contract**

6. Working With  
the Partner

## 5.1 Getting started

Within the final agreement there may be several different contracts, depending on the complexity of the project. The key to negotiating a successful PPP contract is to keep the municipality's main goals in the forefront, while at the same time maintaining a great deal of flexibility in order to write a final contract that benefits both the municipality and its new partner.

Before the partners sit down to begin the negotiations, they should each attempt to convey their understanding of the nature and extent of the PPP they will be negotiating. They should also outline their expectations for the project, in order to clarify any differences between the public sector approach and the private sector approach right from the beginning.

### A. Goals for negotiating a contract

Goals for a successfully negotiated contract include:

- ❁ Making sure that the preferred partner has a clear understanding of the concept of public-private partnering and the type of agreements involved in the final contract, the allocation and assumption of risks, and the scope of work required to complete the contract;
- ❁ Determining that the preferred partner will make the necessary personnel and facilities available to perform the services within the required time, and
- ❁ Agreeing on compensation which is fair and reasonable and takes into account the estimated value, scope, complexity, and nature of the required services.

### B. Types of contracts involved in a PPP

The types of contracts involved in a PPP typically include:

- **Privatization/Build-Own-Operate:** Ownership and responsibility for a particular asset or service is transferred from the municipality to the private partner or is built by the private partner in cooperation with the municipality.
- **Build-Own-Operate-Transfer:** The private partner designs and builds a required public service facility and operates it for the municipality for a specified period after which ownership reverts to the municipality
- **Build-Transfer-Operate:** Same as above except ownership of the facility reverts to the municipality prior to the commencement of operations.
- **Lease/Purchase:** The private partner designs and builds

a facility to meet public needs and leases it to the government for a specified period after which ownership vests in the government.

- **Turnkey:** The municipality provides the financing for the project, but engages the private partner to design, construct, and operate it for a specified period of time.
- **Developer Financing:** The private partner assists in financing a project in return for development concessions.
- **Operations and Maintenance:** The municipality engages the private partner to operate and maintain a particular facility or service.

## 5.2 Types of agreements

Each PPP will require a number of legal agreements, depending on the nature of the partnership.

Types of agreements that can be involved in a PPP include:

- development
- purchase/sale agreement
- operation and maintenance agreement
- corporate or personnel services
- transfer
- lease

Negotiating a contract for a PPP can be complex. However, every contract negotiated will exhibit characteristics of one or more of these contracting options:

### A. Fixed price contract

This type of contract is used when managing and operating the facility and/or service is relatively straightforward and changes are unlikely. Every aspect of the work is laid out in drawings or specifications, so the private partner's performance can be measured relatively easily. The benefit of this type of contract is that the municipality is able to benefit from the private partner's unique expertise at a competitive price.

If this type of contract is employed, it is important to monitor the private partner's progress throughout the life of the contract to ensure that any alterations, adaptations, or changes can be made quickly to ensure the on-time delivery of the final product.

- B. Unit price Contract** This type of contract ties compensation to measurable units of service, where a minimum level of service has been determined. These are typically used for service and/or operation types of agreements.
- C. Cost plus fee contract** These contracts are used when the scope of work is not well defined. They can also be used if new or unproven technology will be installed or when the full quantity of the work is unknown at the time the RFP is issued. The private partner presents a fee or profit margin, while the municipality handles all other costs directly or as pass-throughs.
- D. Phased contract** This type of contract can be used as an alternative to a Cost Plus Fee contract in the case of a complex project or one that has not been well defined. The private partner provides the municipality with a fixed price or unit price, combined with details of the work to be performed for each phase of the project.
- If the information provided by the private partner is not acceptable, then the municipality can renegotiate the price, the description of work or both, either with the private partner or with another firm.
- E. Transfer Agreement** A contract must be developed outlining the steps involved in transferring the service or infrastructure from the public sector to the private sector at the beginning of the PPP and back again at the conclusion of the contract. This includes:
- Timing of the transfer;
  - Appointing a contract administrator and allocating the resources required to effect the transfer;
- E.(i) Human Resources Issues**
- Arranging for the relocation of staff to the private partner or to other departments in the municipality (for the transfer from the municipality to the PPP);
  - Ensuring that succession rights for union contracts are properly addressed and that employees transferring to the private partner have wage and benefit guarantees in place;
  - Determining who will bear the cost of staff reductions, and
  - Determining the treatment of employees when the contract is terminated.

**Figure 5:1 Type of Contracts Involved in a PPP**

	<b>Development</b>	<b>Purchase</b>	<b>Operations &amp; Maintenance</b>	<b>Transfer</b>	<b>Lease</b>
Privatization /B-O-O	X			X	
B-O-O-T	X		X	X	
Lease/ Purchase	X	X		X	X
Turnkey	X		X		
Developer Financing	X				
Operations & Maintenance			X		

No matter what type of agreement is being negotiated, the negotiation process should be a team effort between the municipality and the private partner.

### 5.3 Establish the framework

The purpose of the negotiation process is to arrive at a reasonable price and agreement on the other terms and conditions of the contract. A reasonable price is defined as the best estimate of the actual allowable costs incurred during the life of the contract, plus a reasonable profit.

It is always wise to maintain the option of negotiating with the private partner who came second in the RFP round. This can be a worthwhile exercise if the original private partner has to withdraw, for some reason, from the negotiation process.

#### A. Who is negotiating?

Who has control of the contract? Is it the municipality or will the private partner provide a draft contract? (If the private partner provides a draft, it must be given to the municipality's legal advisor for comment.)

If the private partner has been involved in PPPs previously, the municipality should take advantage of that prior

experience by allowing them to submit first drafts of the contract. This provides a jumping-off place for a thorough negotiation process and allows both parties to benefit from the experience the private partner has gained.

**Usually the one who has control of the contract has the greatest strength.**

Establishing the negotiating teams:

- ❁ On behalf of the municipality (is it a single municipality or is it a number of municipalities working together).
- ❁ On behalf of the private partner (is it a single firm or a consortium).
- ❁ Financial institutions may wish to be involved if the project is privately financed.

Ideally, the chief negotiators for both parties should have the sole authority to bind each party. That way negotiations can proceed smoothly without the negotiator having to leave the room to obtain permission from others in the municipality or in the private partnership in order to proceed to the next step.

It would also be prudent to ensure that there is a second person involved in the negotiation process - someone who, while not directly involved in the day-to-day process, knows exactly what is going on and is able to step in immediately if the senior negotiator is unable to perform their duties.

Identify any external evaluators that may have to be called in during the negotiating process. Depending on the nature of the contract, these advisors may be from the following fields:

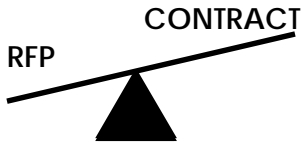
- ◆ Legal, financial, value engineering, insurance, or risk management. (**N.B.** If at all possible, it is advisable to do the majority of the negotiating without having legal advisors present. They can be used as external advisors, but to keep the costs of the negotiating process down, use them only when absolutely necessary.)

When the negotiations have been completed and the contract is ready to be written, then legal counsel should be called in.

**B. What are they negotiating?**

Determine the non-negotiable and negotiable thresholds in both the general and project specific contract provisions by:

- Identifying similarities between the RFP and the successful proposal;
- Identifying and understanding the differences between the RFP and the proposal. It would be beneficial to clearly summarize these differences and circulate them to all parties prior to sitting down at the negotiating table, especially if the differences related to project structure and risk allocation.



The goal is not to rigidly insist that the proposal be changed to mirror the RFP. Instead, both parties should think of coming together and negotiating a compromise solution that reflects the flexibility and creativity the PPP process is designed to encourage;

- ◆ Identifying obstacles which either party feels might impede the project;
- ◆ Identifying factors which have changed since the RFP was issued and the preferred partner was selected, and
- ◆ Developing a risk management strategy - identify, quantify, and prioritize the issues of variance between the RFP and the proposal under the issues of general contract provisions and project specific contract provisions.

C. Risk management

A risk management strategy is essential so that the chief negotiator for the municipality knows what is negotiable, what is non-negotiable, and the reasonable amount of risk the municipality is willing to take.

The strategy contains three parts. First the municipality identifies what can possibly go wrong - the causes and the results. Then it needs to test potential combinations of loss exposures and determine the impact of these events on design, the construction process, service delivery, partners, and financing.

Secondly, it should evaluate the risks - to determine the cost of the losses. By developing a list of best to worst case scenarios, the municipality can determine the probability of when and the type of losses which might occur. If any of those incidents does occur, then it can forecast the impact on the financial status of the project, on the private partners or on their financial backers.

The final part of the risk management strategy is to plan to negotiate the contract so that risks are avoided, the chances of the identified events occurring have been minimised, and

determine if the municipality will retain or bear the risk, or transfer it to another party, either the private partner or a commercial insurer.

Ideally, the municipality and the private partner should exhibit a willingness to be ready to develop and consider innovative solutions to deal with any differences between the RFP and the winning proposal.

There may be an occasion when trade-offs may have to be made on lesser items, in order to reach agreement on a major element in the contract. The municipality should know beforehand what it is and isn't willing to ease back on.

## 5.4 Negotiating the deal

It is helpful, before beginning the negotiating process to know the type of contract which will emerge at the other end. Depending on the nature of the PPP, the final document could be a straightforward service agreement or it could be a complex document containing any or all combinations of a development agreement, an operation and maintenance agreement, or a transfer agreement.

The objectives to be achieved during the negotiation process should include:

- ❁ A contract that balances risks and benefits (in terms of financial savings, return on investment, increased service) equitably between the municipality and the private partner;
- ❁ A contract that is negotiated with commitments beforehand from both parties that every effort will be made to complete the contract in a timely fashion.
- ❁ A contract that outlines the responsibilities of both the municipality and the private partner;
- ❁ A contract that clearly states the legal liabilities of the municipality and the private partner;
- ❁ A contract that contains clear standards of performance in a description of the work to be performed which address quality of performance; goods to be delivered or services performed, and delivery or performance dates.
- ❁ A contract that may be structured using incentive and penalty provisions to cover such things as on-time performance, quality, safety, cost control, community relations, compliance, operating, and maintenance requirements.

- ❁ A contract that includes guidelines for performance measuring; monitoring, quality of service delivery, and conflict resolution;
- ❁ A contract that provides off-ramps where either partner can divest themselves from the arrangement, including arrangements for the municipality to buy back facilities if the partnership has to be dissolved.

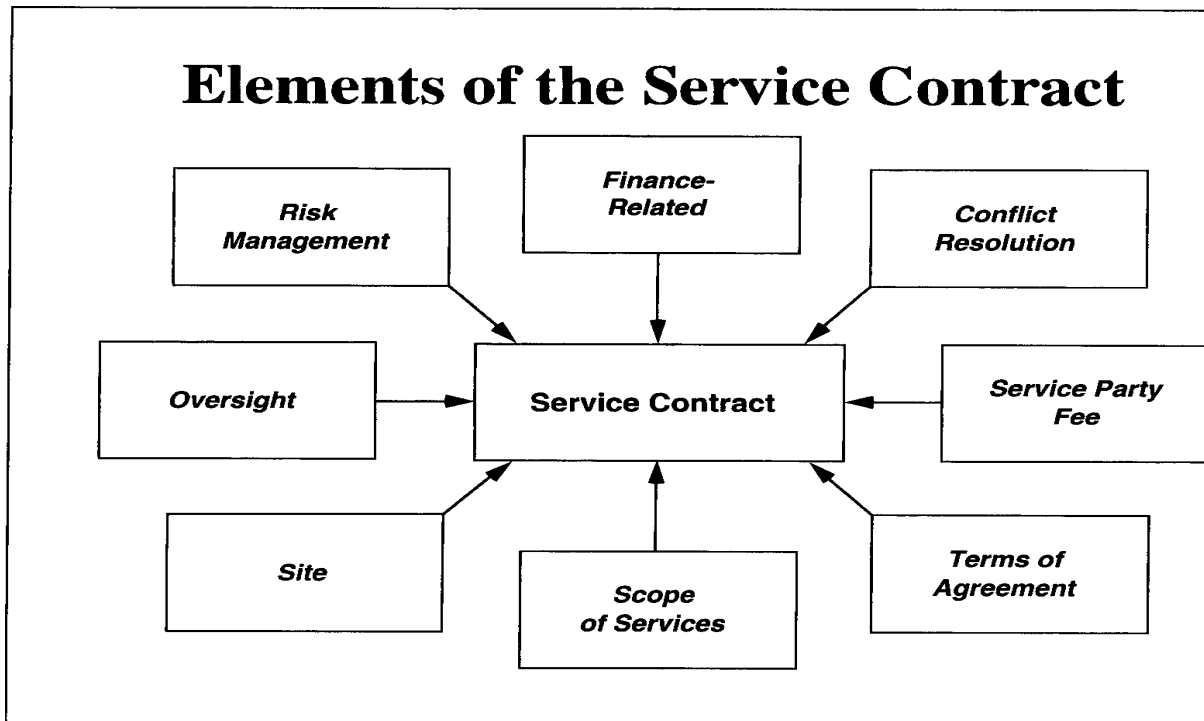
The private partner must agree that a buy-back clause will be included in the contract before negotiations begin.

### 5.5 Drafting the contract

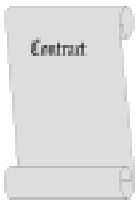
Once the negotiators have completely formulated the deal, then the next step is to draft the final contract. While each contract negotiated for a PPP is specific to that partnership, there are standard components which make up the contract.

These can be broken down into clauses which are project specific and clauses which are general in nature. (The components of an actual contract can be found in Appendix ?.)

Figure 5.1: Elements of A Service Contract



- A. Project specific
- Opening statement: identifying the parties involved in the contract and the objectives of the contract;
  - Definitions: defining the terms used in this agreement;
  - Description of the project: includes information on the scope of the project; deliverables; the date that the agreement is effective and the term of the contract;
  - Ownership of intellectual property, facilities, or new technologies developed during the contract;
  - Management structure and administrative details including:
    - roles and responsibilities of the contract managers, both the municipality's and the private partner's;
    - office administration - if a representative of the municipality is required to be on the site, then the responsibilities for such things as office administration and office space, and the party responsible for covering these expenses (generally the private partner) are covered in this clause;
    - replacement of personnel - clauses to ensure that if key personnel on both sides move away from the project, that they will be succeeded by persons having equivalent qualifications, experience, and authority;
    - schedules of meetings, parties who should attend, and provisions for attendance if key team members are unable to attend;
    - naming of the official spokesperson(s) for the project;
    - setting out the requirements for due diligence on behalf of both parties; monitoring requirements, including manuals, a reporting structure for reports to the project manager, senior municipal officials (i.e. town/city/county managers) and to council;
  - Use of premises (if a facility is involved) including responsibilities for security, plant and equipment and revenue from programs or events ;
  - Variations due to changes in situations, changes in technology, introduction of new/less costly but equivalent in quality materials, health, safety or environmental issues, natural disasters and other unforeseen circumstances;
  - Acceptance of deliverables;



- Financing arrangements - invoicing procedures, rates, adjustments and renegotiation;
- Payment;
- Insurance;
- Contract amendments;
- Conditions for termination in case of breach of contract, business failure, termination by the municipality and consequences of termination including provisions for a buy-back (or return of assets) on behalf of the municipality, transfer of the project to another private partner, or for closing it down altogether;
- Method for engaging other private partners;
- Risk management strategy - including identification, risk allocation, insurance, strategies for dealing with force majeure incidents, guarantees and, warranties;
- Off ramps - where either partner can remove themselves from the project;
- Legislative and regulatory requirements;
- Provisions to renegotiate should changes in legislation affect its execution;
- Employment requirements - whether municipal employees will be given first chance at jobs with the private partner, termination of employees (and the payment of severance fees); union and employment equity issues;
- Life of the facility and transfer at the end of the contract - this includes specific criteria for maintenance while the building/road etc. is under the control of the partnership and warranties after it has been transferred back to the municipality;
- User Fees - if they are to be used to generate revenue for the private partner;
- Use of subcontractors;
- Guidelines concerning confidential information, and
- Force majeure - events or circumstances beyond the control of the private partner, including acts of God, war, natural disasters, sabotage, court orders, inability to obtain/curtailment of services and utilities required to construct or oper-

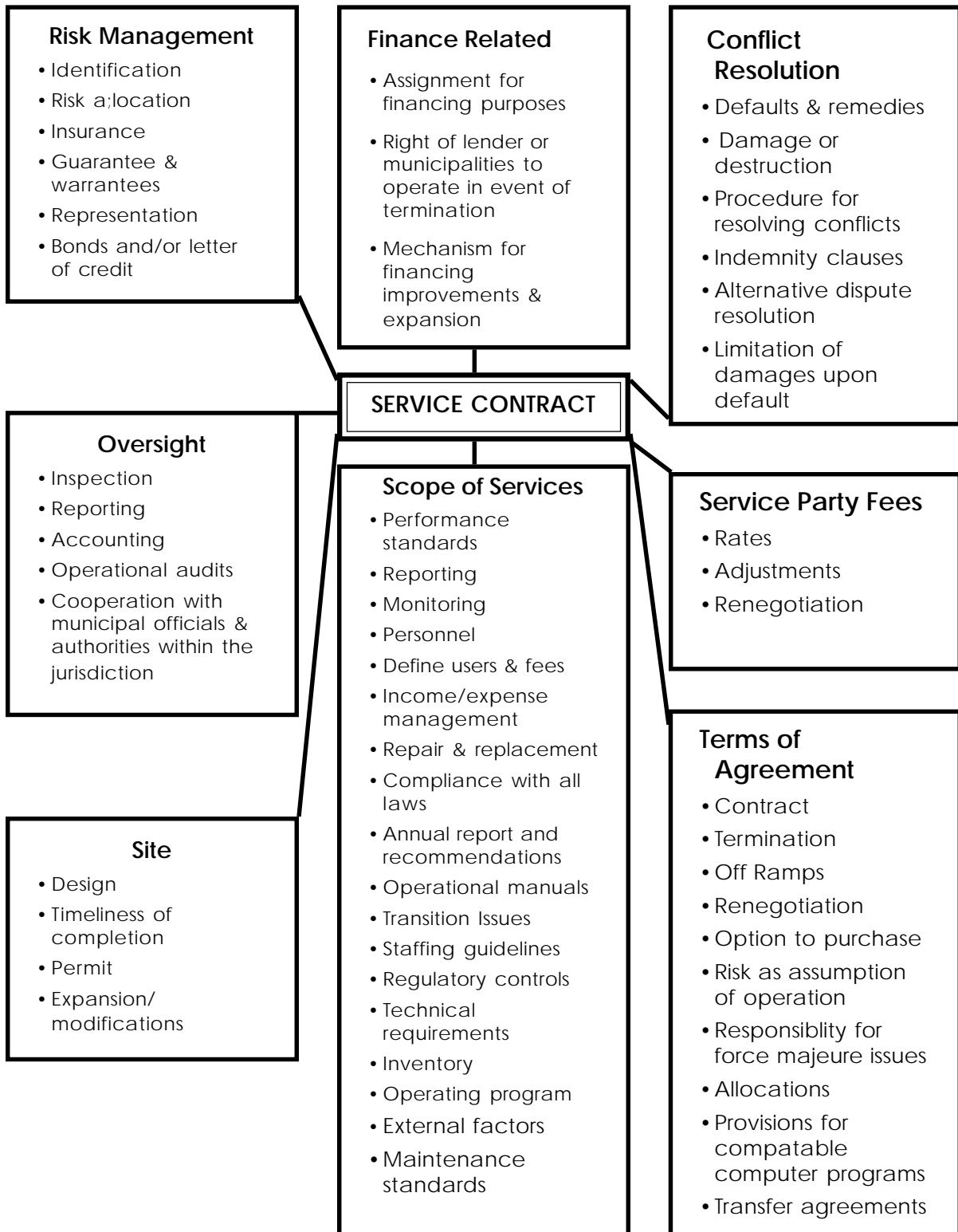
ate the project; or other causes which are beyond the control of the private partner.

- B.           General conditions
- Guidelines for conflict resolution which could include defining alternate dispute resolution strategies to be used to resolve conflicts and to lay out a process which must be followed for dispute resolution before either party is allowed to seek recourse through the legal system;
  - Publicity - governs the use of either party's trademarks, logos or other identifying information without prior written consent;
  - Confidentiality - protecting confidential information from third parties and restricting the use of confidential information to the PPP alone;
  - Notices - gives addresses where information is to be sent and conditions setting out when information is deemed to have been received by the other party (via electronic communications, courier or mail delivery);
  - Waivers - defining how rights can or cannot be waived during the length of the agreement;
  - Survival - this clause ensures that any warranties or indemnities in the contract will survive its termination (for any reason);
  - Governing law - states that the contract is governed by the laws of the province and the country;
  - Amending process - states that any amendment of the agreement must be signed by both parties, and
  - Complete agreement between parties - states that the contract is a document that has the complete agreement of both parties.

The final step is to examine the draft of the negotiated contract to ensure that it complies with existing legislation.

## 5.6 Memorandum of understanding

Once the contract has been fully negotiated, a Memorandum of Understanding can be presented to council. Once that has been given approval in principle by council, the contract can be drafted by the legal advisors for signature by the mayor and chief administrative officer or clerk of the municipality.



## BEST PRACTICES

- ◆ The key to negotiating is to achieve the cost/benefits associated with the traditional tender process while preserving the flexibility required to produce the most appropriate mix of facilities and administrative arrangements to solve problems.
- ◆ To avoid contract and payment disputes once service has begun, establish and agree on a comprehensive range of performance measures including reporting requirements and acceptable levels of performance (targets and benefits).
- ◆ Include buy-back options in the contract to permit the municipality to resume operating the facility itself under specified conditions.
- ◆ Incorporate provisions in the contract covering contractor non-performance, dispute resolution mechanisms, and provisions for the smooth hand-over of the activity to another contractor .
- ◆ Give consideration to the applicability of incentive payments in the contract, either by structuring payments in such a way that they are contingent on the achievement of certain levels of service or by offering bonus payments for achievement of service levels above a pre-determined baseline.

## Chapter 6: Working With the Partner

The purpose of this chapter is to describe the steps the municipality should take to work effectively with a private partner. The chapter has been divided into the following subheadings:

- ⚙ Accountability
- ⚙ Communications Strategy
- ⚙ Conflict Resolution
- ⚙ Exercise Off Ramps
- ⚙ Dissolving the Partnership

### **Stages of The Partnership**

#### **Building Process**

##### **1. Establish the Internal Framework**

##### **2. The Decision to Partner**

##### **3. Develop the Implementation Plan**

##### **4. Selecting a Preferred Partner**

##### **5. Negotiating the Contract**

##### **6. Working With the Partner**

Management of a PPP requires acquiring a whole new set of skills - the municipality has to remove itself from hands-on service delivery and become a manager focussing on service, products or outcomes.

At the same time, the municipality must endeavour to keep abreast of developments in the industry or service which is being contracted out. This is essential for three reasons:

- ❁ To ensure smooth communication between the private partner and the municipality
- ❁ To be able to fully comprehend the information being provided by the private partner, and
- ❁ To retain corporate memory to assist with future decision-making:
  - sole sourcing,
  - sending out a new RFP, or
  - bringing the service back into the municipality at the end of the PPP.

The first PPP will be a learning process, so much care should be taken to stress flexibility.

In order for the PPP relationship to succeed, the following points should be remembered:

- ❁ Contracting out via a PPP does not diminish the municipality's responsibility for providing services and infrastructure for its residents;
- ❁ The municipality must formally and regularly monitor the performance of the private partner to ensure performance standards are being met. When the private partner supplies performance data, the municipality must be able to carry out an independent audit to verify the accuracy of the data;
- ❁ Both partners need to recognize their mutual dependence on one another during the life of the contract and try to work cooperatively rather than as adversaries, and
- ❁ Non-performance by the private partner, dispute resolution mechanisms and arrangements for smooth transfer, either back to the municipality or to another private partner must be provided for in the contract.

## 6.1 Accountability

Once the contract has been signed, the final task of the project team is to assign a contract manager. This individual will provide the private partner with a single point of contact within the municipality.

The contract manager must have both the authority and knowledge base to manage the contract. This is essential so that they can properly evaluate the information received from the private partner prior to signing off at the various end points during the contract. (Ideally this person would have a second-in-command to ensure continuity throughout the life of the contract.)

Failure to have a contract manager with appropriate qualifications can lead to disorganization, a lack of accountability, and the potential that the private partner will not properly meet the specifications outlined in the contract.

The contract manager's role is to be responsible for the day-to-day management by:

- ◆ Monitoring the private partner's performance;
- ◆ Ensuring that there are adequate, regular, formal reporting mechanisms;
- ◆ Using information from external sources (benchmarking) to chart the partnership's progress, and
- ◆ Dealing with complaints from citizens/users of the facility.

The contract manager will also play the lead role in settling disputes and dissolving the partnership should the need arise.

A PPP has a better chance of being successful when both partners are comfortable with the roles they are to play (the municipality as the contract's manager and the private partner as the provider.)

This happens when both the municipality and the private partner:

- ⊗ Approach the PPP with corporate objectives that encourage flexibility, innovation, and risk-taking and that do not stifle creativity;
- ⊗ Take advantage of the strengths each partner brings to the project, in terms of human and financial resources, and standing in the community, and
- ⊗ Keep service to the final customer, the citizen, foremost in their sights.

**A. Performance monitoring**

The contract manager has two major responsibilities: establishing targets for measurement, and monitoring to ensure that they are being met.

Generally, the project manager monitors the PPP for:

- ◆ Economy
- ◆ Efficiency
- ◆ Effectiveness
- ◆ Quality of service
- ◆ Financial results
- ◆ Customer satisfaction

The approach taken by the municipality in monitoring the PPP is crucial - there has to be a close, honest, and trusting working relationship between the project manager for the municipality and their equivalent in the PPP. This should be encouraged right from the beginning.

In fact, it might be helpful for both partners to meet after the contract has been signed to review the mutually-agreed upon targets for performance.

These targets should be focused more towards results, not inputs (as has been the traditional way of measurement in government.) The final results should be specified as clearly as possible but the municipality must allow a measure of flexibility to enable the private partner to come up with innovative and creative solutions to situations that arise.

The types of performance measurement include establishing:

- Parameters;
- Benchmarks;
- Performance goals;
- Minimum and maximum tolerances, and
- Deciding on the triggers for service level adjustment, and then keeping those measurement criteria in place over time so that trends can easily be spotted.

**B. Reporting mechanisms**

Depending on the type of partnership structure, contact between the partners may be daily. In some PPPs, it's possible that the contract manager will have a permanent office on site.

No matter how often there is contact between partners, it is essential that the private partner provides the municipality with regularly scheduled formal monthly, quarterly and annual reports. An annual report is to be submitted to council and should be made available to the public.

The elements of a good reporting system include:

- Details of work completed to date;
- Comparisons of performance with the provisions of the contract and the previous period's performance or with industry standards for similar projects;
- In some partnerships, lists of expenditures - services, materials, labour and equipment, and revenues to date;
- If the contract is a cost-plus agreement, then audited financial statements may be required;
- Forecasts for the entire contract period;
- A narrative of problems encountered and the solutions employed to overcome them; and
- Indicating any adjustments to the contract that are necessary.

Such reports can be considered the private partner's formal statement of compliance with the contract.

In addition, the municipality should conduct on-site inspections frequently. These should be a combination of scheduled and unscheduled visits so that the municipality can compare accomplishments with the contract's specifications.

**C. External evaluation**

In keeping with its role as a servant of the residents within its boundaries, the municipality must be constantly watching and listening for issues that are of concern.

Tracking complaints from members of the public - frequency, the subject of the complaint, trends - is one effective method of determining the public's satisfaction with the services being delivered through the PPP.

The key to minimizing customer complaints is to set up a

cohesive system for dealing with them by:

- ◆ Identifying who is responsible for dealing with complaints. (In all likelihood it will be the contract manager.) Make sure councillors and municipal staff are aware that this is the person who should be contacted.
- ◆ Making it easy to complain: publish local telephone numbers, 1-800 numbers, fax numbers, e-mail and street addresses. Have customer comment cards available if appropriate.
- ◆ Endeavouring to resolve complaints at the first contact. Quick resolution builds customer confidence.
- ◆ Maintaining a data base of complaints so that trends can be investigated and recurring problems fixed.
- ◆ Commissioning a customer service survey might be an appropriate activity in certain PPPs to monitor the public's satisfaction with the services being provided and use the results as a set of guidelines for fine-tuning the PPP contract.
- ◆ Both parties to the PPP must place the citizen/customer satisfaction with a service as the highest performance measurement. Feedback is necessary so that the service provider can be assessed.

Being a steward of the public's money also involves carrying out independent audits to ensure financial accountability throughout all phases of the PPP.

If the contract contains bonus or penalty clauses based on performance, reports, on-site inspections, and external evaluations are crucial for the municipality to track whether incentives must be awarded or penalties be incurred.

## 6.2 Communications

The Government and Competitiveness Project at Queens University has determined that lack of communications between partners is a major cause of failure in a PPP.

A PPP brings together two completely different cultures so it may take time for each partner to become familiar with the other's corporate language, culture, and approach to the business at hand.

In addition to having to learn to communicate within the partnership, other audiences may need to be addressed during the PPP's lifetime. Therefore the communications strategy

should form an important part of the implementation plan.

In many municipalities, the responsibility for communications falls on the shoulders of the mayor/warden and senior staff members. If resources are available, it is ideal to have the communications process managed by a professional communicator - preferably a staff person. If that is not possible, there are two alternatives - contract with an independent communications consultant or a full-service public relations/advertising agency.

**A. Communications strategy**

A complete communications strategy for the life of the PPP should address:

- ❁ Internal communications
- ❁ External communications
- ❁ Media relations
- ❁ Crisis communications
- ❁ Evaluation

**A.(i) Internal communications**

Developing an internal communications network so that all members of the PPP can share in the flow of information is imperative. The project manager should guide internal communications, with assistance, as required, from a communications professional.

The operation must be transparent so that all members of the partnership are operating from the same set of guidelines, principles, and goals, without hidden agendas.

Communications vehicles that could be used include:

- Regular meetings
- Secondments between members of the partnership
- An internal newsletter
- E-mail, intranets, faxes, and other electronic communications tools
- A communications committee made up of representatives from both the public and private partner
- Reports to municipal council

A. (ii). External communication      Depending on the nature of the PPP, there may be a need for regular communication with external audiences - the users of a facility or service, politicians from all levels of government, and the public at large.

This can be accomplished using a number of pro-active vehicles including:

- Open houses or tours of the facility
- Brochures
- Newsletters
- Websites (which must be updated on a regular basis and include an e-mail link back to the municipality)
- Toll free numbers/voice mail systems
- Advertisements - newspapers, television, radio, bus shelters, buses (interior and exterior ads)
- Annual reports

A. (iii) Media relations      It is essential to have a media relations strategy for pro-active public relations activities (coverage of activities, feature articles, television and radio coverage) as well as to deal with emergency or crisis situations.

Ideally, good relations with the local media are established by the PPP either on a fairly informal basis through personal contact or through more formal mechanisms - news releases, news conferences, site tours and meetings with senior staff.

A.(iv) Crisis communications      The initial response is critical if a crisis occurs. An unprepared remark or failure to respond to reporters' calls can wipe out years of diligent relationship building between the PPP and the media in an instant.

There are two elements to a crisis communications plan - the first is the message, the second is the team that is in place to deliver it.

### **The Message**

The foundation for almost every crisis message should contain these elements:

1. Acknowledge that the problem has occurred and relate

what has transpired;

2. Cautiously acknowledge fault and express regret (when and if appropriate) - cover-ups don't work;
3. Express sympathy towards any persons who have been affected (if appropriate);
4. Tell what steps are being taken immediately to assist with the immediate situation;
5. Report on the actions that will be taken to make amends, if that applies to the situation, and
6. Stress actions that will be taken in future so the incident will not be repeated.

### **The Communications Team**

A team should be assembled to develop and regularly review a crisis communications plan. It should be coordinated by the communications manager and include:

- ❁ The CEO of the PPP or the CAO of the municipality
- ❁ Operations manager
- ❁ Legal advisors
- ❁ Human resources personnel
- ❁ Financial representative
- ❁ Technical assistance

#### **A.(v) Evaluation**

The communications strategy must also be subjected to regular evaluation to determine:

- ❁ The effectiveness of key messages, programs, and materials
- ❁ The frequency of and types of requests for information
- ❁ Benchmarks for future evaluation
- ❁ Future communications planning

The evaluation should focus on both internal and external audiences and can be done using a variety of techniques including:

- ◆ Interviews with senior management to determine their

concept of the PPP's key message(s);

- ◆ Focus groups with internal and external stakeholders;
- ◆ Analysis of media coverage, and
- ◆ Evaluation of printed materials to assess their effectiveness.

### 6.3 Conflict resolution

Human nature being what it is, there will be conflicts arising throughout the life of the PPP. How they are resolved will have a significant impact on the success or failure of the PPP. The ultimate goal is to resolve any difficulties quickly, in privacy, without disruption in the operation of the PPP, in a manner that opens channels of communications and reduces the potential for disputes further on in the life of the PPP. Therefore, it is imperative that the contract contain a step-by-step guide for resolving conflicts laying out the procedures that should be followed before the partners consider legal action.

There are many forms of alternate dispute resolution including negotiation between the partners or their representatives; neutral arbitration where an impartial expert listens to the facts; mediation, and arbitration.

Deciding on the type of alternate dispute mechanism to use depends on a variety of factors including the nature of the dispute, the relationship between the two partners, the sensitivity of the issues involved, and the likely outcome and cost of litigation. When these factors are considered, mediation and/or arbitration are the most commonly chosen options.

#### A. Mediation

Mediation serves to satisfy the needs of the two disputing partners, while at the same time, preserving or strengthening their future relationship. A mediator sits down with the two partners and guides their discussion. They are a neutral third party, with no independent authority or ability to impose a settlement - their role is **not** to make the final decision but to guide the partners to a mutually agreed-upon solution.

Mediation works best when the partners want to retain control over the outcome of the conflict resolution process.

#### B. Arbitration

Arbitration differs from mediation in that partners argue their case (with or without legal counsel) in front of a neutral third person. In most cases, the arbitrator's decision is final (unless the partners have agreed otherwise beforehand) and the awards are enforceable and cannot be appealed.

In addition to saving time and money, the advantages of using either of these methods include:

- Confidentiality - discussions to remedy the dispute are conducted in private, in front of a mediator or arbitrator, not in a public courtroom;
- The business relationship which might be lost in the acrimonious environment of the courthouse can be preserved;
- The dispute can be resolved privately and by using terms that both partners have agreed to in advance;
- Complicated facts can be considered, with the advice of outside experts from the field, if necessary, rather than by a judge or jury composed of lay people, and
- The distractions that can be caused among employees when litigation is involved are minimized.

C. Conflict resolution goals and objectives

In order to resolve a problem, using either mediation or arbitration, the partners should:

- ◆ Create an atmosphere - find neutral territory where the problem can be discussed civilly;
- ◆ Clarify perceptions - determine where each partner is coming from - perception is often stronger than the reality of the situation;
- ◆ Focus on individual and shared needs;
- ◆ Build shared power - find out what needs to be done so that both partners can work together rather than working against each other;
- ◆ Look to the future, then learn from the past by discussing how you have solved problems in the past;
- ◆ Generate options - brainstorm to find many options to solving the problem;
- ◆ Develop actual methods and tasks to solve the problem based on the solutions that came from the brainstorming session, and
- ◆ Make mutual benefit agreements to create the best solutions for both partners.

If using alternate dispute mechanisms fails, then the partners have two options - take the dispute to court or agree to exercise the off ramps in the contract and dissolve the partnership. Taking the case to court is the least preferred option - it increases the acrimony; it turns the conflict into a situation where the final outcome is a win-loss one, and pursuing legal action can be a drain on time and resources.

#### 6.4 Exercise off ramps

Rather than taking the other party to court, it might be better for all concerned to realize that things aren't going to be resolved and fall back on the Off Ramp clauses that the contract contains to formally dissolve the partnership.

The reasons for invoking Off Ramp clauses must be spelled out in the contract and should cover such factors as dissolving the partnership because:

- ❁ Either partner feels that it should not continue in the relationship;
- ❁ The financial situation of the private partner;
- ❁ The scope of work or the price of subsequent phases of the project have been assessed as unrealistic;
- ❁ The private partner may not be able to successfully complete the project, or
- ❁ The municipality may be unable to achieve satisfactory participation from the private partner.

The municipality should have a backup plan at the ready, as a precaution, so that delivery of the program or service is not disrupted as a result of the dissolution of the partnership. Before an off ramp is exercised, a cost-benefit analysis should be conducted.

#### 6.5 Dissolving the partnership

Dissolving a partnership is a formal, legal process which must be guided by the provisions of the contract and statutory law.

There are various elements which have been laid out in the original contract to deal with:

- ❁ The method of allocating net earnings or losses;
- ❁ Repayment of capital;

❁ Disposal of assets. If the assets are being returned to the public sector, i.e. in the case of a Build-Operate-Transfer or Build-Own-Operate-Transfer, there have to be assurances built in vis a vis the condition of the assets being returned and warranties to cover part, if not all, of the remaining life of the structure, and

❁ The method for paying liabilities.

Depending on the nature of the PPP, a variety of scenarios will be played out at the end of the contract:

- ◆ The infrastructure, facility or service will be returned to the municipality;
- ◆ The private partner will be sole-sourced to continue operating the facility or delivering the service;
- ◆ The contract will once again be put out to RFI and RFP; or
- ◆ The program, service, or facility may be totally closed down.

The transfer agreement in the contract should cover both the transfer from the municipality at the beginning and the probable outcome (given that time and circumstances have intervened in the meantime) at the conclusion of the contract. The ultimate goal is to have a smooth transition, with no breaks in service, back to the municipality or to another private partner at that time.

The final step may be to undertake an evaluation of the private partner. The objectives of this report/audit should be to:

- Assess the capabilities of the private partner for future opportunities;
- Identify areas where improvement would be required before that private partner would be used again;
- Identify obstacles which arose during the PPP;
- Explain changes to project schedule and in the quality or quantity of the products or services;
- Review the original RFP and contract vis a vis the above; and
- Make recommendations regarding specifications for future PPPs.

The report should contain information on:

- The original schedule for the PPP project as compared to the actual schedule;
- Reports from inspections, outside evaluations, and complaints;
- Information from the private partner explaining deviations from the original quality or quantity specified in the contract;
- Views of municipal officials on these deviations;
- There must be mechanisms for the public to indicate whether or not the partnered service is operating at an acceptable level;
- Future needs for the service and implications rising from this evaluation, and
- A list of contact names - people who have been involved in the PPP and their role in it.

## Best Practices

- ◆ The municipality's responsibilities for providing services, facilities, or infrastructure are not diminished because of a PPP.
- ◆ Establish and agree on a comprehensive range of performance measures, reporting requirements and acceptable levels of performance - both targets to achieve and benefits resulting from achieving these targets - to avoid contract and payment disputes.
- ◆ Assess the implications of non-performance or financial default, provide remedies in the contract, take steps to minimize these risks, and have contingency plans in place.
- ◆ Remember that a PPP is a learning process and the knowledge gained during the life of the contract will provide a foundation for future PPPs.
- ◆ Communicate, communicate, communicate.

## Appendix A - Glossary



## Glossary

**Accountability:** Responsibility for performance and results; holding the private partner or the municipality responsible for results against agreed upon performance standards.

**Alternate Dispute Resolution:** Use of consensual techniques to resolve disputes. The appropriate method to resolve the dispute should be chosen based on the interests of the parties involved, the nature of the dispute, and any statutory or policy restrictions governing the use of a particular dispute resolution process.

**Arbitration:** A method of resolving disputes where parties argue their case (with or without legal representation) and the arbitrator renders a decision or award.

**Build-Own-Operate-Transfer:** The private sector designs and builds a required public service facility and operates it for the government for a specified period after which ownership reverts to the municipality.

**Build-Transfer-Operate:** Same as above except ownership of the facility reverts to the municipality prior to the commencement of operations.

**Developer Financing:** The private sector assists in the financing of a project in return for development concessions.

**Inputs:** The resources that are used to provide services - human, financial, facility, or material.

**Lease/Purchase:** The private sector designs and builds a facility to meet public needs and leases it to the municipality for a specified period after which ownership vests in the government.

**Mediation:** A confidential problem-solving process where the two disputing parties meet with a neutral third party who assists them to negotiate their own settlement.

**Operations and Maintenance:** The municipality engages the private sector to operate and maintain a particular facility or service.

**Outcomes:** Quantified results or impacts of the PPP.

**Privatization/Build-Own-Operate:** Ownership and responsibility for a particular asset or service is transferred from the municipality to the private sector or is built by the private sector in cooperation with the municipality.

**Public Private Partnership:** A tool that fits into the broad spectrum of alternate service delivery. Public Private Partnerships leverage private investment to meet public needs and can range from an operations and maintenance agreement for a facility to complete privatization.

**Requests for Expressions of Interest (RFI):** This method of procurement can be used to test the feasibility of a partnership by gauging the level of private sector interest. At the partner selection stage, the RFI can be used when the project team is unsure of its needs or the best way of achieving them. The RFI includes a brief description of the project requirements and solicits a response from suppliers who believe they have the ability to do the job. Respondents are then invited to a bidders' meeting where potential solutions are discussed and strategic alliances are encouraged. The information gathered from the RFI process can then be used by the project team to draft the detailed RFP. In this respect, the RFI is an information gathering tool for the Project Team and the potential partners as opposed to a pure short listing tool.

**Request for Qualifications (RFQ):** This method of procurement is used when the scope of the project is well defined but it is not known which private sector partners, if any, have the skills required to complete the work in the specified time frame. Submissions are evaluated on their qualifications, experience, management approach, financial viability and references as opposed to how they would provide the service in question. The RFQ submissions are used to develop a short list of candidate firms which are then issued with the full RFP document.

**Request for Proposals (RFP):** A method of procurement used when the municipality knows what needs to be done but is looking for input from the private sector on the actual methodology. The municipality then invites responses from the private sector that will be evaluated against a preset list of criteria established by the project team. *Best value*, as opposed to lowest cost is the key to selecting a partner in the RFP process.

**Risk Transfer:** Where some portion of the responsibility for finance, design, construction, permitting, ownership, or operation is transferred from the public to the private sector (or vice versa) based on a determination of which partner is best equipped to handle that risk.

**Shadow Bid:** Carrying out a detailed analysis/needs assessment to determine how much it costs to provide a service in-house.

**Turnkey:** The government provides the financing for the project, but engages the private sector to design, construct and operate it for a specified period of time.

## Appendix B - Sample Advertisements





## Request for Qualifications - Sample Advertisement

### **Municipality of Yourtown**

#### **Public Private Partnership - Request for Qualifications - Water Treatment Plant**

The Municipality of Yourtown wishes to construct a water treatment plant to provide its customers with highly potable water. The primary objective of the Request for Qualifications is to identify private sector companies that can design, build, finance, and operate a 16 MIGD treatment plant that will meet the utility's needs for the next 20 years. If favourable responses are received, then a Request for Proposals will follow.

The Municipality of Yourtown's Council has directed that the concept of privatization of the existing water utilities be explored. The primary purpose is to determine interest in the private ownership and operation of a regional water utility. Any innovative approaches to providing regional services will be considered. A subsequent Request for Qualifications of Proposals may follow.

Responses will be accepted until **12:00 Noon** on Wednesday, May 20, 199X. An information package may be obtained from the Municipality of Yourtown for a non-refundable deposit of \$100 from:

**J.P. Smith, Purchasing Agent**  
**Telephone: 902-555-0001**  
**Facsimile: 902-555-0002**  
**Email: [jpsmith@yourtown.ns.ca](mailto:jpsmith@yourtown.ns.ca)**

**Website: <http://www.yourtown.ns.ca>**

## Request for Expressions of Interest - Sample Advertisement

### **Request for Expressions of Interest - Municipality of Yourtown Housing Corporation**

The Municipality of Yourtown Housing Corporation owns and operates the Yourtown View Lodge and the Yourtown Adult Residential Centre. The Municipality is interested in partnerships with the private sector, not-for-profit organizations, and other entities to participate in long-term care service delivery in the municipality. Partnership approaches are being sought for outreach and residential programming for seniors; mentally challenged and disabled individuals; development of seniors' housing adjacent to the existing facilities, and the delivery of other services.

The Municipality will accept written submissions from interested parties by close of business Wed., **May 20, 199X**. Copies of the detailed Request for Expression of Interest may be obtained for a non-refundable deposit of \$50.00 per copy from:

**J.P. Smith, Purchasing Agent**  
**Telephone: 902-555-0001**  
**Facsimile: 902-555-0002**  
**Email: [jpsmith@yourtown.ns.ca](mailto:jpsmith@yourtown.ns.ca)**

Website: <http://www.yourtown.ns.ca>

## **Appendix C: Sample Request for Qualifications**

**THE CITY OF DARTMOUTH  
DARTMOUTH WATER UTILITY DIVISION**

**Request for Qualifications  
For the Design, Construction, Financing, Ownership and Operation  
of a New Municipal Water Treatment Plant**

**Request for Letters of Interest  
For the Ownership and Operation  
of a Regional Water Utility**

**March 1995**

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**Appendices**

Appendix A - Definition of Terms

Appendix B - Lake Major Water Quality Summary

Appendix C - Pre-design Study - UMA Engineering Limited

Appendix D - Current State of Approvals

Appendix E - Plan A - Location of Proposed Works

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## **Foreword**

The documentation provided herein describes two separate opportunities for interested parties to participate in the supply of municipal water. The first opportunity is defined by the request for qualifications ("RFQ") for the design, construction, financing, ownership and operation of a new water treatment plant for the City of Dartmouth. The second opportunity is defined by the request for letters of interest ("RFI") for the ownership and operation of a regional water utility for the Halifax area municipalities.

The City of Dartmouth's foremost need is to develop a new water treatment plant. This document is devoted primarily to the RFQ for the new water treatment plant.

The Halifax area municipalities are in the midst of an amalgamation process scheduled to take effect by April 1996. C. William Hayward, Co-ordinator - Metro Amalgamation, has directed that the concept of privatization of the existing water utilities in the Halifax area be explored, in addition to the RFQ for the new water treatment plant in Dartmouth. A copy of Mr. Hayward's letter to Chief Administrative Officers of the Metro Municipalities is reproduced in Appendix G, along with the RFI related to a regional water utility.

Interested parties are invited to respond to **one or both** of the opportunities described herein.

## **I. Objectives**

The City of Dartmouth (hereinafter referred to as the City) is in need of a municipal water treatment plant with the capacity to produce 16 MIGD on an average day with 20 MIGD on a maximum day. Based on existing pre-design studies, the City is confident that it can deliver such a plant using a traditional call for tenders approach at a cost estimated herein. The City is, however, open to public-private partnerships and is willing to pursue such an approach if the private sector can demonstrate substantial benefits over the traditional approach.

The purpose of this RFQ is to receive statements from parties in the private sector interested in the opportunity to design, construct, finance and operate the proposed municipal water treatment plant, which is more particularly described herein. It is intended that this RFQ will identify qualified and experienced Proponents that have the ability to undertake the water treatment plant project.

Statements of Qualifications received in response to this RFQ will be used by the City and its Review Committee to:

- identify experienced and qualified Proponents that are interested in undertaking this work;
- determine the benefits of pursuing a public-private partnership approach in light of the "City approach" and associated cost estimates set out herein; and
- possibly qualify at least two, but not more than three, firms to submit a proposal provided they meet the selection criteria set out herein.

## **II. Project Background**

The Dartmouth Water Utility ("DWU") serves the City and certain defined areas of Halifax County. Raw water is currently obtained from Lake Major and pumped to Topsail Lake from where it flows through to Lake Lamont. DWU withdraws the system supply from Lake Lamont and conditions and disinfects the water using chlorine, lime, corrosion control chemicals and fluoride on a continuous basis. The conditioned water is then either pumped directly into a portion of the 150 miles of distribution system or flows by gravity to the remainder of the system.

The current raw water source has a safe yield of 27.5 MIGD<sup>1</sup> which includes 23 MIGD from Lake Major and the remaining 4.5 MIGD from the tributary areas of Topsail Lake and Lake Lamont. The yield from Lake Major could be improved to 32 MIGD with the construction of a new dam and a new water intake.

In the 12-month period from April 1993 to March 1994, the DWU delivered a total volume of 18,900 million litres (11.4 MIGD) to the distribution system, 35.2% of which could be considered sold to

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<sup>1</sup> Based on information contained in the Pre-design Study - Appendix C.

commercial and industrial customers; 35.4% to residential customers; 13.2% for municipal requirements and 16.2% of the water produced unaccounted for. That volume represents the demand of 25,400 metered water connections estimated to provide water for 101,200 persons in 1994.

The DWU has determined that despite future water conservation programs the proposed water treatment plant should have an initial average day capacity of 16 MIGD with a capability of treating a maximum throughput of at least 20 MIGD for periods not exceeding 72 hours.

The peak balancing requirements from storage are estimated at only 4.2 MIG by 2011 with an emergency storage requirement of 16.1 MIG for a total of 20.3 MIG, slightly in excess of existing storage volumes (see Table 1 below).

**Table 1 - Available Storage**

Mount Edward Road Reservoir	5.0 MIG
Wright Avenue Reservoir	5.0 MIG
Akerley Reservoir	8.3 MIG
<b>TOTAL STORAGE</b>	<b>18.3 MIG</b>

Raw water quality and proposed finished water quality for the new plant are set out in Appendix B. Raw water quality is dictated by the actual quality of water in Lake Major which is considered to supply 95% of the source water under the current scheme. In Appendix B, the concentration of the various elements in the Lake Major water supply are listed showing their range against Objective Concentrations.

Those conventional quality parameters that currently do not satisfy the Objective Concentrations and approach or exceed Maximum Acceptable Concentrations are stated in Table 2 below.

**Table 2 - Quality Parameters in Excess of Objective Concentrations  
as Set Out in the Canadian Drinking Water Guidelines**

Parameter	Maximum Allowable Concentration	Objective Concentration	Raw Water Range	Lake Major Avg.
Colour (TCU)	15	<15	5 - 52	22
Manganese ( $\mu\text{g/l}$ )	0.05	<0.01	0.02 - 0.27	0.07
Turbidity (NTU)	5	<1	0.05 - 5	0.7
pH	6.5 - 8.5	-	4.3 - 6.5	4.8
Hardness ( $\mu\text{g/l}$ as $\text{CaCO}_3$ )	--	-	2.6 - 18.5	6.8
Alkalinity ( $\mu\text{g/l}$ as $\text{CaCO}_3$ )	-	-	<1 - 2.2	<1
Iron ( $\mu\text{g/l}$ )	0.3	<0.05	0.02 - 0.23	0.06

Bacteriologically there have been significant excesses of coliforms present in DWU's finished water causing the City to order residents to boil water in the summer of 1994. Canadian bacteriological standards for finished water are currently under review by the Committee of Deputy Ministers for Health. Under current Canadian Drinking Water Guidelines, it will be necessary that the new plant be designed to produce a finished water that will meet the key requirements as set out in Table 3.

**Table 3 - Finished Water Key Requirements**

Parameter	Requirement
Bacteriological	Total coliforms per 100 ml - no more than 1 positive sample per month. Fecal coliforms per 100 ml - 0 at all times
Trihalomethanes	Less than 100 $\mu\text{g/l}$ based on the average of 4 quarterly samples
Lead	Less than 0.01 mg/l at all times

The 1988 pre-design report prepared by UMA Engineering Ltd. (Appendix C) demonstrates a number of treatment alternatives that might be considered to meet the foregoing standards. Each

one has a different capital cost, a facilities replacement cost, as well as an operation and maintenance cost.

The Proponents will be permitted to use imaginative and ingenious approaches to treatment but certain limitations/requirements may be imposed in the context of approvals yet to be received.

At this time, the preferred site for the proposed plant, shown in Plan A, is a tract of land located near Riley Road between the Cherry Brook community and Lake Major. The site is outside the City's limits and is currently under negotiation for purchase. Its development will be controlled by the eventual health and environmental approvals and the results of a future geotechnical study of the site that will be made available by the City at the time that a Request for Proposal ("RFP") is issued.

### **III. The Preferred Arrangement Under a Public-Private Partnership Approach**

The Proponent will be required to design, construct, finance, own and operate over a period of 20 years the new water treatment plant and all works constructed within the designated site limits plus the replacement of the Lake Major intake and pumping station and the construction of approximately 3,300 feet of 42-inch diameter raw water line to transmit raw water from the new pumping station to the new water treatment plant.

The new water treatment plant must provide satisfactorily treated water to DWU's system on a continuous basis at such rates, quantities and pressures as DWU may require, not to exceed a rate of 20 MIGD in any 72-hour period including the booster pumping rate.

The new pumping station will be sized to deliver 20 MIGD through four electrically driven pumping units with any three capable of delivering the station rating. The power requirements at the new pumping station, when pumping 20 MIGD through the existing 24-inch diameter raw water line as well as the new 42 inch diameter raw water line, are estimated at approximately 1,500 horsepower. Pumping quantities and pressures should be sufficient to fill the highest reservoir (Akerley reservoir at elevation 119.3 m).

The new water intake will extend into Lake Major to draw 16 feet of water over the pipe obvert from the normal lake level and will have a maximum capacity of 32 MIGD.

The Proponent will be responsible for:

- (a) Site excavation and development.
- (b) Provision of all structures needed to improve water quality to the standards indicated in Appendix B including:

pre-filtration treatment facilities including chemical storage and feeding systems;

one has a different capital cost, a facilities replacement cost, as well as an operation and maintenance cost.

The Proponents will be permitted to use imaginative and ingenious approaches to treatment but certain limitations/requirements may be imposed in the context of approvals yet to be received.

At this time, the preferred site for the proposed plant, shown in Plan A, is a tract of land located near Riley Road between the Cherry Brook community and Lake Major. The site is outside the City's limits and is currently under negotiation for purchase. Its development will be controlled by the eventual health and environmental approvals and the results of a future geotechnical study of the site that will be made available by the City at the time that a Request for Proposal ("RFP") is issued.

### **III. The Preferred Arrangement Under a Public-Private Partnership Approach**

The Proponent will be required to design, construct, finance, own and operate over a period of 20 years the new water treatment plant and all works constructed within the designated site limits plus the replacement of the Lake Major intake and pumping station and the construction of approximately 3,300 feet of 42-inch diameter raw water line to transmit raw water from the new pumping station to the new water treatment plant.

The new water treatment plant must provide satisfactorily treated water to DWU's system on a continuous basis at such rates, quantities and pressures as DWU may require, not to exceed a rate of 20 MIGD in any 72-hour period including the booster pumping rate.

The new pumping station will be sized to deliver 20 MIGD through four electrically driven pumping units with any three capable of delivering the station rating. The power requirements at the new pumping station, when pumping 20 MIGD through the existing 24-inch diameter raw water line as well as the new 42 inch diameter raw water line, are estimated at approximately 1,500 horsepower. Pumping quantities and pressures should be sufficient to fill the highest reservoir (Akerley reservoir at elevation 119.3 m).

The new water intake will extend into Lake Major to draw 16 feet of water over the pipe obvert from the normal lake level and will have a maximum capacity of 32 MIGD.

The Proponent will be responsible for:

- (a) Site excavation and development.
- (b) Provision of all structures needed to improve water quality to the standards indicated in Appendix B including:

pre-filtration treatment facilities including chemical storage and feeding systems;

- water filtration system;
  - filter backwash system;
  - site storage capacity for finished water of not less than 5 MIGD;
  - disinfection and fluoridation facilities including chemical storage;
  - sludge treatment and disposal system; and
  - booster pumping facilities within the new plant with a firm capacity of 20 MIGD spread over four pumping units and based on the largest unit being out of service.
- (c) Construct new intake, new raw water pumping station and 42-inch diameter raw water line.
- (d) Connection to DWU's transmission system at the site limits.
- (e) All mechanical and electrical works needed to make the plant and pumping station functional.
- (f) Provision of sewage disposal and site drainage.
- (g) Site grading and landscaping.
- (h) All architectural superstructures to provide for operation, laboratory and personnel accommodation.
- (i) All electric power requirements to operate the facilities.
- (j) All other associated works within the site limits which are particularly described within the pre-design report attached hereto as Appendix C.

In general, the City's requirements are that the project be designed and constructed on a low-maintenance budget with a life for structural elements of at least 60 years, mechanical components of 25 years and electrical/instrumentation items of at least 15 years with no major maintenance required in the first 15 years.

The Proponent will be responsible for obtaining all provincial and municipal approvals regulating the building and operation of such a facility under the laws of the Government of Canada, Province of Nova Scotia and the bylaws of the City of Dartmouth and Halifax County Municipality.

The City will be responsible for leasing or transferring the property (Plan A) at nominal cost to the Proponent and for designing, constructing and financing:

- all connections to the DWU transmission system at plant site limits;

- all works needed to maintain operation of the DWU during the construction period;
- the relocation of any existing utilities affected by plant construction; and
- the provision of a power supply to the plant site limits.

Further, the City will be responsible for all health and environmental approvals but will require the support of the Proponent in gaining such approvals. The City will also be responsible for obtaining necessary approvals from the Nova Scotia Utility and Review Board but will require the Proponent to provide all documentation in support of the approval. All other approvals will be the responsibility of the Proponent but the City will assist in obtaining these approvals as the Proponent may require. All approvals will be subject to the conditions contained therein and the Proponent will be responsible for ensuring compliance with all approvals.

With respect to the regulatory approvals related to the Nova Scotia Department of Health, Environment and the Utility and Review Board, the City anticipates that it will achieve final approvals within three months of receiving a process pre-design submission from the successful Proponent. Should that period be exceeded, the successful Proponent will have cause to negotiate additional payment for unanticipated delays based on reasonable proof of the costs incurred. The current state of the approval process with the province is as set out in Appendix D.

#### **IV. Cost Estimate of the City Approach**

If the City does not receive attractive responses to this RFQ, it will proceed with a traditional tender call for either separate or combined engineering and construction contracts.

The City has determined that the best estimate for carrying out the works proposed herein, as a regular capital works project under a traditional tender call with municipal financing, ownership and operation, is as follows:

- all works needed to maintain operation of the DWU during the construction period;
- the relocation of any existing utilities affected by plant construction; and
- the provision of a power supply to the plant site limits.

Further, the City will be responsible for all health and environmental approvals but will require the support of the Proponent in gaining such approvals. The City will also be responsible for obtaining necessary approvals from the Nova Scotia Utility and Review Board but will require the Proponent to provide all documentation in support of the approval. All other approvals will be the responsibility of the Proponent but the City will assist in obtaining these approvals as the Proponent may require. All approvals will be subject to the conditions contained therein and the Proponent will be responsible for ensuring compliance with all approvals.

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If the City does not receive attractive responses to this RFQ, it will proceed with a traditional tender call for either separate or combined engineering and construction contracts.

The City has determined that the best estimate for carrying out the works proposed herein, as a regular capital works project under a traditional tender call with municipal financing, ownership and operation, is as follows:

Capital cost of providing a 16 MIGD water treatment plant, a 20 MIGD pumping station, a new water intake and a new 42-inch diameter 3,300 feet raw water line including contractor's overhead and profit (9%), engineering fees (10%), plus legal costs and interim financing over 36 months: **\$31,588,000** (excludes all taxes, includes 15% contingency).

**Table 4 - Capital Cost Estimate**

Treatment Plant With all Process Units	\$ 20,273,000
Lake Major Intake and Pumping Station	2,500,000
Raw Water Line	1,462,000
Site Development, Yard Piping, Roads	1,800,000
Subsurface Conditions	0
Standby Power	0
Sludge Lagoons	300,000
<b>TOTAL CONSTRUCTION COST</b>	<b>26,335,000</b>
Contractor's Overhead and Profit (9%)	2,370,000
Engineering fees (10%)	2,633,000
Legal, Fiscal, Administrative	100,000
Interim Financing	150,000
<b>TOTAL CAPITAL COST</b>	<b>\$31,588,000</b>

Initial operating costs for the proposed plant based on an average 16 MIGD plant throughput and a total operating staff equivalent of five persons plus operational costs of the two pumping stations: **\$1,568,000** (excludes all taxes).

**Table 5 - Operating Cost Estimate**

Labour (stand-alone plant)	\$ 225,000
Maintenance (plant and pumping station)	240,000
Chemicals (including fluoride)	451,000
Power (plant and pumping station)	574,000
General Supplies (heating fuel, etc. )	18,000
<b>TOTAL OPERATING COST</b>	<b>1,508,000</b>
Overhead (4% of total operating cost)	60,000
<b>TOTAL ANNUAL COST</b>	<b>\$1,568,000</b>

The foregoing represents works to be carried out within the plant site limits plus the intake, raw water low lift pumping station and raw water line. They **do not** include supplementary capital costs relating to works needed to accommodate the new plant within the DWU system. As well, **no provision** has been made in the foregoing for the facility replacement considering the useful life of the various components of the plant. Monies relating to replacement costs should theoretically be accumulated by the City in a reserve fund that will be used to pay for the replacement of the plant as required. Finally the cost estimates **do not** consider any tax rebates available to the City nor do they include the administrative and overhead costs of the City in its responsibilities with respect to this project.

## **V. Proposed Payment Terms**

The Proponent should respond to this RFQ assuming that payment for the provision of the proposed works, their operation, maintenance and the discharge of treated water in acceptable quantity and quality will be made over the 20-year contract by the City or its successors as:

- an annual fixed payment, payable in 12 equal monthly instalments, one month in advance to cover all costs of capital in financing the works;
- an annual payment for fixed components in the operating and maintenance of the plant including direct salaries, wages and related benefits, maintenance supplies and equipment, operating supplies (excluding chemicals), communications, motor vehicle costs, contractual services, all insurance and liability coverage overhead and administrative charges, etc.; and

a monthly payment based on a unit rate applied to the actual volume of water delivered to the DWU at the plant site limits, covering electric power, chemicals, sludge and refuse disposal, etc.

The annual payments for capital financing will not vary throughout the contract period unless additional capital works should be authorized. The annual payment for fixed components of operation will be varied on some agreed basis relating to an appropriate index. Variations to the unit rate will be considered annually according to evidence of actual changes in charges to the Proponent by its/their suppliers.

The City would work with the Proponent to minimize the impact of taxation not presently borne by the ratepayers.

The foregoing represents tentative definitions to give respondents evidence of the City's intent. The City is open to alternative terms of payment and reserves the right to adjust the proposed payment terms at the time proposals are requested.

## **VI. Submission Requirements**

The Proponent should respond to this RFQ assuming that it/they will design, construct, finance own and operate the water treatment plant and related works described in Section III over a 20-year period. The Proponents who are short-listed, if any, will be expected to specify the proposed ownership and turnover terms in their responses to the City's RFP that may be issued at a later date. Proponents shall provide a written submission responding in detail to each and every point set out below:

### **A. Identification of the Proponent**

1. Identify the form of **business structure** expected to be used throughout the life cycle of this project (e.g., corporation, partnership, joint venture, etc.).
2. Provide the name, address and telephone number of the **specific firm** that is proposed to be the Proponent for this project.
3. Provide the names, addresses and telephone numbers of the firms, if the submission is being made by a **consortium**, that are proposed to be the Proponent for this project.
4. If the Proponent is proposed to be a **corporation or corporations**, provide the names, addresses and telephone numbers of all persons (i.e., individuals or corporations) holding or expected to hold shares in the Proponent corporation or corporations together with the number of shares held or to be held by each person. Identify the principal or lead corporation if the Proponent is proposed to be a group of corporations.

a monthly payment based on a unit rate applied to the actual volume of water delivered to the DWU at the plant site limits, covering electric power, chemicals, sludge and refuse disposal, etc.

The annual payments for capital financing will not vary throughout the contract period unless additional capital works should be authorized. The annual payment for fixed components of operation will be varied on some agreed basis relating to an appropriate index. Variations to the unit rate will be considered annually according to evidence of actual changes in charges to the Proponent by its/their suppliers.

The City would work with the Proponent to minimize the impact of taxation not presently borne by the ratepayers.

The foregoing represents tentative definitions to give respondents evidence of the City's intent. The City is open to alternative terms of payment and reserves the right to adjust the proposed payment terms at the time proposals are requested.

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2. Provide the name, address and telephone number of the **specific firm** that is proposed to be the Proponent for this project.
3. Provide the names, addresses and telephone numbers of the firms, if the submission is being made by a **consortium**, that are proposed to be the Proponent for this project.
4. If the Proponent is proposed to be a **corporation or corporations**, provide the names, addresses and telephone numbers of all persons (i.e., individuals or corporations) holding or expected to hold shares in the Proponent corporation or corporations together with the number of shares held or to be held by each person. Identify the principal or lead corporation if the Proponent is proposed to be a group of corporations.

5. If the Proponent is proposed to be a **partnership** provide:
  - (a) details of the nature of the partnership (e.g., individual or corporate; general or limited);
  - (b) the names, addresses and telephone numbers of all partners;
  - (c) the names, addresses and telephone numbers of all persons (i.e., individuals or corporations) holding or expected to hold shares in a corporation making up the partnership where the partnership is made up of, or proposes to include, one or more corporate partners;
  - (d) a summary of each partner's interest or proposed interest in the partnership together with a summary of all persons (i.e., individuals or corporations) holding or expected to hold shares in a corporate partner together with the number of shares held or to be held by each person;
  - (e) the name of the principal or lead partner in the case of a partnership that is not a limited partnership.
6. If the Proponent is proposed to be a **consortium**, identify each member of the consortium, provide the information requested in points 2, 3, 4 or 5 above for each member of the consortium, and indicate what role each member of the consortium will play in the project. In particular, provide an organization chart or charts depicting roles, responsibilities, and authority of the members of the Proponent consortium and key individuals identified in 8 below. Current resumes of individuals must be included in the response.
7. If the Proponent is proposed to be a **consortium**, identify the principal or lead firm.
8. Identify the **role and experience of key firms** and individuals in the Proponent or in the Proponent's team, including environmental and design engineers, water treatment specialists, superstructure and landscaping architects, construction contractors, financial and economic advisors, and other key consultants, accompanied by the consent of the individuals to disclose their resumes.
9. Provide a brief **business history** of the Proponent and each person (i.e., individuals or corporations) making up the Proponent's team both in Nova Scotia and elsewhere.
10. Identify which, if any, persons comprising the Proponent or members of the Proponent's team are expected to have a direct or indirect **equity interest** in the proposed project and the expected level or percentage of equity interest throughout the life of the project.

**B. Proponent Experience**

1. Provide a detailed description of the relevant experience of the Proponent and of the members of the Proponent's team in the **engineering design** of a water treatment plant and related works similar in scope and value to the project. Specifically, provide the name of the engineering firm(s) and the names of the individuals within the firm(s) together with a summary of each party's relevant experience.
2. Provide a detailed description of the relevant experience of the Proponent and of the members of the Proponent's team in the **design of plant architectural features and landscaping aesthetic features** similar in scope and value to the project. Specifically, provide the name of the architectural and/or engineering firm(s) and the names of the individuals within the firm(s) together with a summary of each party's relevant experience.
3. Provide a detailed description of the relevant experience of the Proponent and of the members of the Proponent's team in the **construction** of a water treatment plant and related works similar in scope and value to the project. Specifically, provide the name of the construction contractor(s) together with a summary of each party's relevant experience.
4. Provide a detailed description of the relevant experience of the Proponent and of the members of the Proponent's team in the **operation and maintenance** of a water treatment plant or similar facility in scope and value to the project. Specifically, provide the name of the operation and maintenance contractor(s) together with a summary of each party's relevant experience.
5. Provide a detailed description of the relevant experience of the Proponent and members of the Proponent's team in **financing** a major development similar in scope and value to the project. The City recognizes that this project is unique and that the Proponent and members of the Proponent's team likely will not have financed a water treatment plant and related works on a long term nor on an ownership basis. Specifically, Proponents are therefore required to provide a detailed description of the types of major developments that the Proponent or members of the Proponent's team have financed that are within the \$30 million range.
6. Provide the name of the **law firm(s)** and of the individual lawyer(s) within the firm(s) that will be representing the Proponent and members of the Proponent's team regarding the legal work that will be required for the project.
7. Provide a detailed description of the experience of the Proponent and members of the Proponent's team in **managing a project team** responsible for designing and constructing a plant and related works similar in scope and value to the project and in financing a major development similar in scope and value to the project.

8. Provide a description of the Proponent's approach and experience in dealing with employees in the transition to a privately contracted facility.

**C. Financial Capacity**

1. Provide a **business plan** indicating how, in general terms, the Proponent, if selected, proposes to finance the design and construction of the project, including debt and equity financing. As part of the business plan, the Proponent will describe its preferred arrangement under a public-private partnership approach and **identify potential benefits** by comparison to the "City approach."

**Specific dollar amounts should not be included in the business plan; however, potential benefits may be indicated by a range of cost savings.**

2. Provide copies of the **audited financial statements** of the Proponent and each member of the Proponent's team for the past five years in order to demonstrate financial strength. Unaudited interim statements for 1994 should also be provided if the final statements are not available.
3. Specify the **largest single loan** and the **largest single project-oriented loan** ever secured by the Proponent and each member of the Proponent's team and the source or sources of the loan(s). Specify the level of equity the Proponent and each member of the Proponent's team will contribute to the project and the source of the equity.
4. Provide **letters from past and/or present financial partners or lenders** evidencing a willingness to work with the Proponent and the Proponent's team members on the project.
5. Provide a list of names, addresses, and telephone numbers of **responsible officers of current or former lenders** of the Proponent and of the Proponent's team as references.

**D. Verification**

1. The Proponent and each member of the Proponent's team must execute a Letter of Authorization in the form attached as Appendix H to this RFQ and must include those letters in its/their submission authorizing the City to verify the information set out in the submission.

## **VII. Selection Criteria**

The City will evaluate all submissions received in response to this RFQ strictly in accordance with the criteria set out below:

1. Experience of the Proponent and of members of the Proponent's team in the design (both engineering and architectural), construction, and operation of a water treatment plant and related works similar in scope and value to the project.
2. Experience of the Proponent and of members of the Proponent's team in the financing of a major development or developments similar in scope and value to the project.
3. Qualifications of the key individuals in the Proponent's team.
4. Organizational and management approach proposed by the Proponent including the approach in dealing with employees in the transition to a privately contracted facility.
5. Overall viability of the Proponent's business plan including its/their financing plan and identification of potential benefits by comparison to the "City approach."
6. Record of the financial capacity and strength of the Proponent and of members of the Proponent's team.
7. Degree and type of equity participation of the Proponent and members of the Proponent's team.
8. Demonstrated ability to work cooperatively with a broad range of civic departments, provincial and federal government agencies and the public (references required).
9. The degree to which the Proponent, and specifically the members of the Proponent's team are Nova Scotia based entities and/or the degree to which Nova Scotians will be employed on this project.

The submissions will be reviewed and evaluated by the Review Committee who will be assisted by a team of consultants led by Price Waterhouse. All of the foregoing selection criteria will be of **equal weight**.

Note that it may be necessary for the respondent to attend one or more meetings with the Review Committee during the evaluation period.

Provided that the submissions received meet the selection criteria set out above, the Review Committee shall short-list two, but no more than three Proponents, and shall invite only those Proponents to submit a proposal in response to a formal RFP for the Project.

## **VIII. Qualifications Submission**

The City will consider all submissions as proprietary.

All requests for clarification or inquiries concerning this RFQ should be forwarded in writing no later than April 5, 1995, to the City representative set out below:

**Mr. Russell Fougere, Director of Engineering and Public Works**  
The City of Dartmouth  
P.O. Box 817  
Dartmouth, Nova Scotia B2Y 3Z3

Responses to all requests for clarification will be provided by the City in writing to all Proponents no later than April 14, 1995.

Responses to all inquiries where the inquiry does not amount to a clarification will be provided by the City in writing to only the Proponent making the inquiry no later than April 14, 1995 (e.g., inquiry as to whether proprietary technology proposed to be used by the Proponent is acceptable to the City).

Proponents participating in the qualification process must deliver the required five (5) copies of their signed submissions to the address set out below by no later than 12:00 noon Nova Scotian time on May 3, 1995 to:

**Mr. Harry George, Purchasing Agent**  
The City of Dartmouth  
P.O. Box 817  
Dartmouth, Nova Scotia B2Y 3Z3

All submissions must be signed by an authorized representative of each Proponent and member of the Proponent's consortium or team. The submissions will be opened privately by the Review Committee following the time and date for the Final Receipt of Proposals at 12:00 noon on May 3, 1995 and evaluated in accordance with the selection criteria set out in Section VII of this RFQ. Late submissions will not be considered and will be returned unopened.

The Director of Engineering and Works will notify all, if any, Proponents which Proponents have been short listed and which Proponents will be invited to submit a Proposal in response to the City's formal RFP for the project.

The Proponents understand and agree that the City may verify any information provided in its/their submission and accordingly have executed a Letter of Authorization in the form attached as Appendix H to this RFQ. It must be clearly understood that if there is any evidence of misleading or false information having been given, the City may, at its sole discretion, reject that Proponent's submission.

The issuance of this RFQ constitutes only an invitation to present qualifications. The City reserves the right to determine, at its sole discretion, whether any aspects of the Statement of Qualifications satisfactorily meet the selection criteria established in this RFQ, the right to seek clarification from any Proponent or Proponents submitting qualifications, and the right to reject any or all responses with or without cause.

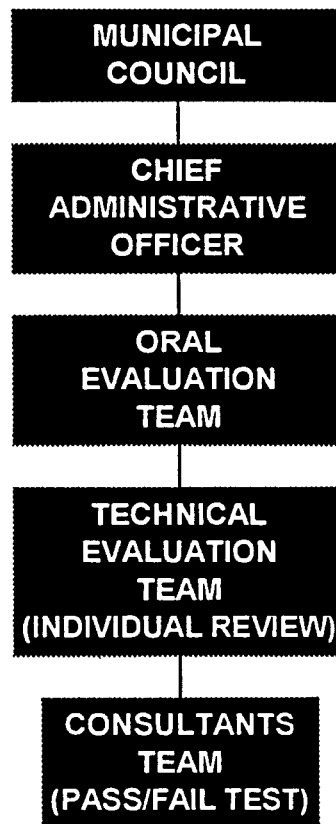
In the event that this RFQ is withdrawn by the City, or the City decides not to proceed to a Proposal Request for any reason, including but not limited to the failure of any of the events herein set out, the City shall have no liability to any Proponent or Proponents for any costs or expenses incurred in the preparation and submission of a response to this RFQ.

\* \* \*

## **Appendix D - Sample Evaluation RFQ**



## **RFQ EVALUATION AND BIDDER SELECTION PROCESS**



**EVALUATION OF CALL FOR PROPOSALS  
DEVELOPMENT AND IMPLEMENTATION OF WASTE MANAGEMENT SYSTEM**

Evaluator:

Date:

Proponent:

---

ITEM	RATING	SCORE	COMMENTS
4.1 Financial Stability	<u>Pass/Fail</u>		
<b>4.2 Proponent Profile</b>			
• correct legal names of the entity(ies)			
• principal business(es) and corporate directions of the entity			
• description of the corporate organization of the proposing entity, including all members of the consortia and/or sub-contractors			
• number of years in business for each consortia member			
TOTAL	<u>Pass/Fail</u>		
<b>4.3 Proponent Capability</b>			
<b>4.3.1</b>			
• ability to manage teamed organizations	2		
• areas of expertise that apply to the project (in addition to those described in Section 4.3.2)	8		
• ability to be flexible to adapt to changing goals, standards and methods	2		
• other information which the Proponent deems appropriate	3		
<b>4.3.2</b>			
• development of waste diversion programs	20		
• waste recovery facilities design and operation	20		
• landfill operation	<u>20</u>		
TOTAL	<u>75</u>		
4.4 Proponent's References			to validate points for section 4.3

ITEM	RATING	SCORE	COMMENTS
<b>4.5 Senior Management Expertise</b>			
<b>4.5.2</b>			
• résumés of senior managers and executives who will be providing direction and support to the project	2		
• the senior management escalation/integration process for dealing with difficult issues	5		
• examples of issues for which proposed senior involvement is anticipated	<u>3</u>		
TOTAL	<u>10</u>		
<b>4.6 Project Organization</b>			
<b>4.6.1</b>			
• The Proponent shall clearly demonstrate how the Proponent's team will be structured, including roles, responsibilities and proposed location (on-site or elsewhere in the Halifax County area) of the Project Manager and other key staff	5		
<b>4.6.2</b>			
• The Proponent shall provide its vision on the role and responsibilities of the County Project Authority and the project team members from the County and how they will be integrated into the Proponent's project team to form an integrated project office.	8		
<b>4.6.3</b>			
• The Proponent shall clearly outline how it is proposed to handle any change of key project personnel during the course of the project	<u>7</u>		
TOTAL		<u>20</u>	

ITEM	RATING	SCORE	COMMENTS
<b>4.7.1 Project Management Expertise</b>			
• provide the proposed Project Manager's résumé identifying relevant skills and knowledge	7		
• identifying the proposed Project Manager's commitment to the project (full time or part time)	7		
• describe the project management responsibilities carried out by the proposed Project Manager for projects of similar nature	<u>6</u>		
TOTAL		<u>20</u>	
<b>4.7.2 Project Manager's References</b>			to validate points for section 4.7.1
<b>4.8 Project Team Personnel</b>			
<b>4.8.1</b>			
• The Proponent must show key members of the Project Team will work in Halifax County for the duration of the project	0		
<b>4.8.2</b>			
• résumés for all key project personnel identifying relevant skills and knowledge	8		
• explanation of the proposed function of the Project Team members	5		
• commitment of the proposed Project Team members (full or part time)	6		
• identification of additional relevant resources that can be provided	<u>6</u>		
TOTAL		<u>25</u>	

HALIFAX COUNTY MUNICIPALITY WASTE MANAGEMENT SYSTEM  
Written/Technical Evaluation Results

Section	Total Available	Average Score	Qualities the Technical Evaluation Team were looking for.
4.3 Proponent Capability	75		<ul style="list-style-type: none"> <li>• Financial stability</li> <li>• The ability to bring the expertise to fulfill all components of the project, in terms of both size and complexity.</li> <li>• Relevant and direct experience in a project of this size and scope (applicable to all project team members; commensurate with the individuals role in the project).</li> <li>• Clear identification of project team members, their roles, responsibilities, and working relationships.</li> <li>• Project team members with the appropriate skills and expertise to complete the project. (Diversified, relevant experience preferably linked to proponent capability.)</li> <li>• Clear and understandable approach to solving the "problem" as identified in the CFP.</li> <li>• Demonstrated understanding of the project objectives, scope, and issues. (By addressing the issues in the CFP without reiterating the CFP.)</li> </ul>
4.5 Senior Management Expertise	10		
4.6 Project Organization	20		
4.7 Project Management Expertise	20		
4.8 Project Team Personnel	25		
4.9 Solution Methodology	20		
4.10 Project Objectives and Scope	50		
<b>TOTALS</b>	<b>220</b>		

**HALIFAX COUNTY MUNICIPALITY WASTE MANAGEMENT SYSTEM**

**SUMMARY OF RATINGS**

**COMPANY:**

Section	Total Available	1	2	3	4	5	6	7	8	9	10	Gross Total
<b>4.3 Proponent Capability</b>	<b>75</b>											
<b>4.5 Senior Management Expertise</b>	<b>10</b>											
<b>4.6 Project Organization</b>	<b>20</b>											
<b>4.7 Project Management Expertise</b>	<b>20</b>											
<b>4.8 Project Team Personnel</b>	<b>25</b>											
<b>4.9 Solution Methodology</b>	<b>20</b>											
<b>4.10 Project Objectives and Scope</b>	<b>50</b>											
<b>TOTALS</b>	<b>220</b>											

**HALIFAX COUNTY WASTE MANAGEMENT PROJECT  
Selection of the Preferred Partner  
July 11, 1995**

**EVALUATION OF ORAL PRESENTATIONS**

Qualities in the Oral Presentations that the Evaluators Were Looking For.

<b>CATEGORY</b>	<b>COMMENTS</b>
Demonstrated understanding of the project's objectives and scope	Understanding of the Integrated Waste Resource Management Strategy. Appreciation for the priority of siting a landfill by the Dec. 1996 deadline.
Proposed problem solving approach and methodology	Clear methodology. "Easy to understand" approach.
Project organization and integration of the Project team with the County staff	Well integrated team. Able to make decisions when needed. Clear concept of how to work with County staff.
Project Manager's suitability	Direct experience in managing a project of this size and complexity. Clear authority to make decisions at a local level. Strong coordination skills. Demonstrated ability and willingness to work with stakeholders.
Team dynamics and interaction	Chemistry of team. Easily identifiable roles and responsibilities. Clearly demonstrates role by speaking to issues which affect that person during the presentation of questions.
Proponent's experience and capability	Comprehensive team. All interests ("core competencies") in place.
How proponent's approach addresses section 1.2.1 in recognizing the objective outlined in subsection 2.3.3	Understanding of the financial constraints of this project. Realistic approach to costing. Evidence that costs have already been given consideration.
<b>TOTAL SCORE</b>	

**Oral Evaluation Question  
Halifax County Waste Management Project**

**Oral Evaluation Questions**

1. Do you have any doubts or concerns about the implementation of the Integrated Waste Management Strategy?
2. The County intends to share both the risks and rewards of this project. Would you elaborate on the financial risks you foresee and your preferred approach to rewards.
3. In projects you have completed in other jurisdictions, what types economic benefits and technology transfer benefits have been realized?
4. Define how you see your business relationship evolving with:
  - a) the County, b) the community, c) the Community Stakeholder Committee (CSC).
5. What has been your experience in operating a system that features a dry residuals disposal facility? What technology and management approach did you use to achieve this 'dry' status? What is the maximum diversion rate of organics, recyclables, and reusables from a landfill, in percentage terms, that you have achieved to date?
6. The strategy has set out a number of facilities and costed them. Can you identify any innovative ways of establishing the facilities at less cost than outlined in the strategy?
7. Halifax County Municipality is committed to closing the Sackville landfill by December 31, 1996. Do you believe a new landfill can be operational by then, and what contingencies can you offer in the case of a new facility not being ready by that date?
8. The strategy developed by the Community Stakeholder Committee is an integrated one. Tell us of other work you have done in implementing integrated waste management strategies.
9. What do you feel are the highest risks of this project? What do you think would be the "off-ramps"?
10. How do you see your relationship with the County's Project Manager evolving?
11. For the lead member of the consortium. What criteria did you use in choosing the other consortium members?  
For consortium members. Why did you decide to join the consortium?

\*\*\*\*\*

## Appendix E: Sample Request for Proposals





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**Request for Proposals  
for the  
Renovation and Operation  
of the  
Yourtown High School Auditorium**

**May 20, 199X**

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NB This sample document was chosen because it represents a clear, concise means of constructing an RFP. It is intended solely as a representation and a guide, not for use as a template for writing RFPs.

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## 1.0 Introduction

### 1.1 Project Background

The Yourtown Municipal High School Audio Visual Room (Auditorium) was built as part of the extension to the High School in 1967-68. Its primary uses have been to serve the needs of the school and the broader Yourtown community as a public performance space and lecture/public speaking facility. The Auditorium is the only major performing arts facility of its kind in the municipality.

Upgrading the facility and finding a solution to the management of the Auditorium has been an ongoing concern dating back to the early 1980s. About 100 bookings are scheduled per year.

### 1.2 Purpose of the Request for Proposals

The facility shows signs of serious neglect and as such, is not operating as an effective facility for either the school or the community. The Auditorium requires physical maintenance and theatrical upgrading to bring the facility into good working order.

Proposals are being solicited from the private sector to upgrade the facility and establish an effective and professional management of operations.

### 1.3 Definitions

The Auditorium has the potential to be a self-contained facility within the Yourtown High School, located at 123 Main Street, in Yourtown, N.S. The building is owned by the municipality's school board.

The Auditorium seats 1096 fixed seats with upper and lower seating. The stage is 36 feet wide by 32 feet deep. There is no fly tower. Details of the facility are provided in the Partnership Study documents.

## 2.0 Project Description

### 2.1 Renovation Objectives

The minimum criteria are the strategy, implementation, and operation of renovations which allow the facility to operate effectively as the major performing arts facility in Yourtown. Once renovated, the Auditorium should serve as a catalyst to local producers. The facility should also be an economic, social, and cultural benefit to the municipality.

### 2.2 Operation Objectives

The successful proposal will tangibly address the needs of the facility to operate to the best advantage of the school during its designated times and for community presentations including rentals and self promotions.

Criteria would include:

- Booking & scheduling
- School Coordination
- Marketing
- Maintenance
- Promotions and Presentations

### 2.3 Management Objectives

Criteria would include as a minimum:

- Proposed staffing and management structure
- An effective training programme for all staffing
- Learning experiences and training for Yourtown High School students
- Method of coordination between the needs of all users
- An effective marketing strategy for the Auditorium

## 3.0 Auditorium Renovation Requirements

### 3.1 General Requirements

Renovations including carpeting, seating, electrical supply, cleaning ventilation, carpentry on the stage front must be addressed.

### 3.2 Physical and Structural Requirements

Physical and Structural improvements include increasing the back stage areas, performer facilities, public amenities, increasing space on stage, improved access for loading and technical set up, and electrical supply.

### 3.3 Theatrical Requirements

Theatrical improvements such as the installation of lighting and sound equipment and installation of new draperies are integral to the successful proponent.

### 3.5 General Maintenance Requirements

The criteria includes the proposed method of addressing the need for ongoing maintenance of Auditorium facilities, both physical and theatrical, and the janitorial requirements that are at a minimum, on par with the standards now established by the School Board.

## 4.0 Auditorium Operations

### 4.1 Scheduling

The criteria would include:

A method of scheduling that will allow for the effective use by the school and the community.

### 4.2 Revenue Sources

The criteria would include:

Projected revenues from all sources

A proposed strategy for securing these revenues

### 4.3 Maintenance Fund

The criteria would include:

A strategy for establishing and maintaining an ongoing source of funds to be used for the upkeep, upgrading, and maintenance of the facility.

### 4.4 Operational Issues

The criteria for the assessment of an independent operator would be based on the effectiveness of the plan, experience, and commitment to achieving a mutually-beneficial day-to-day operation of the Auditorium.

## 5.0 Management Requirements

### 5.1 General Requirements

The successful Proponent would have an understanding of the unique nature of the participants associated with this project. The foremost association is with Yourtown High School. The Proponent would demonstrate interest and ability to work within this environment.

### 5.2 Management & Operating Plan

Criteria would include:

How the operator proposes to operate and manage the day to day operations of the Auditorium

Level of experience in:

Facility management

The live entertainment field

Community experience

Stage craft skills

Ability and experience working with volunteers

Ability and experience working with students.

### 5.3 Reporting and Dispute Resolution

Criteria would include:

How the operator proposes to manage internal communications between the owners, school, students, and community;

A proposed method of dispute resolution.

## 6.0 Capital Investment

### 6.1 Terms and Conditions

A minimum financial commitment of \$XXX,XXX toward capital improvements is required. This amount is to be financed by the operator. All operating costs associated with the Auditorium, including utilities, business operations, capital financing, staffing, insurance liabilities, are to be borne by the operator.

The submission of detailed financial plans is recommended.

### 6.2 Shadow Bid

An Information Package is available as per section 9.1. It contains cost estimates for the renovations and an assessment of the marketability and operations of the Auditorium. These figures reflect the Board's best cost estimates of the project. The Proponent is not bound by these figures if the desired results can be achieved by other means.

## 7.0 Contractual Agreement

The components would include:

a proposed type of agreement

type of agreement

method of operation

operational responsibilities

financial commitment from the operator

a dispute resolution mechanism

default & enforcement

## 7.2 Insurance

The minimum required would be \$X million liability insurance. All costs associated of securing and maintaining the necessary coverage would be the responsibility of the operator.

## 8.0 Submissions

### 8.1 Format

The submission may be in any format as long as it meets all of the requirements of this Request for Proposal. To facilitate comparison and evaluation the submission may wish to follow the format below:

Cover letter, including signatures and principal contact:

Table of Contents

Executive Summary

Identification of Applicant

Summary of Qualifications

Operational Plan

Management Plan

Financial Plan

Legal Arrangements

Alternatives

All proposals must be in hard copy form. Facsimile submissions will not be accepted.

### 8.2 Evaluation

A Proposal Review Committee will be coordinated through the Superintendent of the Yourtown Municipal School Board. The Committee will make recommendations to the Board of Trustees based on the results of the proposal evaluation. The final decision will be made by the School Board Trustees.

After the selection of a Proposal, the School Board has the right to negotiate with

the successful Proponent. As part of that negotiation, the School Board may negotiate, in good faith, any changes or amendments. A legal agreement will be duly executed on terms and conditions that are mutually acceptable.

The Board reserves the right to reject any or all proposals.

All proponents will receive written notice of the outcome of the School Board's decision.

### 8.3 Clarification

The Proposal Review Committee reserves the right to request that a submission clarify and/or make revisions. The Review Committee may choose to meet with the Proponent to discuss aspects of the Proposal.

### 8.4 Deadline

The deadline for submission is 3:00 p.m. Wednesday, May 20, 199X at the School Board Office, 235 Main Street, Yourtown, NS B9Z 1Z0

**A. B. LeBlanc, Superintendent of Schools**  
**Telephone: 902-555-0004**  
**Facsimile: 902-555-0005**  
**Email: [ableblanc@schools.yourtown.ns.ca](mailto:ableblanc@schools.yourtown.ns.ca)**

## 9.0 Information Package

### 9.1 Fee for Documents

A non-refundable fee of \$XX.00 is required to acquire the Information Package which includes the Yourtown High School Auditorium Public/Private Partnership Study. The Study contains Part 1 - Auditorium Assessment Study, Part 2 - Business Plan and Appendices.

Requests for this information should be made to:

**A. B. LeBlanc, Superintendent of Schools**  
**Telephone: 902-555-0004**  
**Facsimile: 902-555-0005**  
**Email: [ableblanc@schools.yourtown.ns.ca](mailto:ableblanc@schools.yourtown.ns.ca)**

and be accompanied by certified cheque or money order payable to the Yourtown Municipal School Board.

## **Appendix F Sample RFP Scoring**



## RFP Criteria Scoring

<b>Component</b>	<b>Requirements</b>	<b>Value</b>	<b>Score</b>
<b>1. Methodology</b>		<b>25</b>	
	1.1 Does the proposal offer an attractive alternative to the current situation?	5	
	1.2 Does the overall methodology offered build confidence in the proponent?	5	
	1.3 Is there a comprehensive assessment of the current delivery model?	3	
	1.4 Is there a sensitive and realistic appraisal of the human resources aspect?	3	
	1.5 Project specific question	2	
	1.6 Project specific question	1	
	1.7 Has the data provided in the RFP (including appendices) been considered/carefully analysed?	1	
	1.8 Are there indications that current municipal policies have been taken into consideration	1	
	1.9 Does the proponent indicate an ongoing plan of change and refinement which can lead to operating efficiencies (cost reductions?)	1	

<b>Component</b>	<b>Requirements</b>	<b>Value</b>	<b>Score</b>
<b>2. Resources Assigned to the Project</b>		<b>15</b>	
	2.1 Does the proponent demonstrate a good understanding of the range of resources required?	5	
	2.2 Do the resources described meet the challenges described in the RFP	5	
	2.3 Project specific question regarding resources	5	
<b>3. Staff Expertise Assigned to the Project</b>		<b>15</b>	
	3.1 Are proponent's staff allocations (person days) in agreement with time lines for activities/milestones?	8	
	3.2 If the above includes a computerized system, is staff allocation realistic to achieve data collection, input and successful operations within the time frame indicated	5	
	3.3 Project specific questions regarding Staff Expertise?	1	
	3.4 What management/clerical position(s) does the proponent expect the municipality to retain?	1	
<b>4. Transitional Schedule</b>		<b>15</b>	
	4.1 Is there a realistic schedule of events/tasks to be accomplished in moving from the municipality to the proponent?	5	

<b>Component</b>	<b>Requirements</b>	<b>Value</b>	<b>Score</b>
	4.2 Are the maintenance of facilities/staff addressed?	5	
	4.3 Is the schedule described in sufficient detail and clarity to establish confidence in the proponent's ability and understanding of the issues?	5	
<b>5. Cost</b>		<b>15</b>	
	5.1 Do the costing proposals offer a balanced and viable approach?	3	
	5.2 Are upfront capital proceeds matched by ongoing operating cost savings?	3	
	5.3 Are the savings indicated reasonable and backed by analysis?	3	
	5.4 Are the savings material in relation to the budget data forwarded?	3	
	5.5 What length and terms of the contract are proposed?	3	
<b>References</b>		<b>15</b>	
	6.1 Are references validated (requires investigation/site visits)	8	
	6.2 Project specific question re references	3	
	6.3 Completeness of client information provided	2	
	6.4 Are references provided appropriate to the type of project being undertaken?	2	
<b>TOTAL SCORE</b>			

## Appendix F: Sample Contract





**MUNICIPALITY**

**OF THE**

**COUNTY OF KINGS**

**STANDARD ROAD MAINTENANCE**

**AGREEMENT**

**SERVICE AREA:** \_\_\_\_\_

THIS AGREEMENT dated for reference the day of \_\_\_\_\_,  
199\_\_\_\_.

BETWEEN:

THE MUNICIPALITY OF THE COUNTY OF KINGS, a body  
corporate pursuant to the provisions of the Municipal Act RSNS, 1989, Chapter  
295 (the Municipality)

OF THE FIRST PART

AND:

@COMPANY-NAME, a body corporate, incorporated under the laws  
of the Province of \_\_\_\_\_ and having its registered office at @ADDRESS,  
@CITY, Nova Scotia @ Province, @POSTAL CODE (the "Contractor")

OF THE SECOND PART

### **SCOPE OF SERVICES**

- A. The Municipality has agreed to appoint and retain the Contractor to provide certain highways maintenance services; and
- B. The Contractor has agreed to provide such services for the Municipality on the terms of this Agreement.

NOW THEREFORE in consideration of the premises and the covenants, agreements, representations, warranties and payments hereinafter contained the parties agree as follows:

**INDEX**

1.	Article "I"	Definitions	Page 1
2.	Article "II"	Representations and Warranties	Page 4
3.	Article "III"	Appointment and Term	Page 5
4.	Article "IV"		Legal Relationship Page 5
5.	Article "V"	Service Area	Page 5
6.	Article "VI"	Services	Page 6
7.	Article "VII"	Modification to Maintenance Services	Page 6
8.	Article "VIII"	Municipal Materials	Page 7
9.	Article "IX"	Insurance and Indemnity	Page 8
10.	Article "X"	Bonds	Page 9
11.	Article "XI"	Contractor's Covenants	Page 10
12.	Article "XII"	Contract Price and Fees	Page 11
13.	Article "XIII"	Assignment, and Subcontracting	Page 11
14.	Article "XVII"	Quality Assurance Program	Page 12
15.	Article "XVIII"	Default and Remedies	Page 12
16.	Article "XIX"	Arbitration	Page 14
17.	Article "XX"	Miscellaneous	Page 14
	Schedule 1	List of Roads	
	Schedule 2	Annual Maintenance Services	
	Schedule 3	Cost Schedule	

**ARTICLE I:**

**DEFINITIONS**

1.01 In this Agreement, unless the context otherwise requires:

- (a) “Act” means the Municipal Act and the Municipal Reform (1994) Act.
- (b) “Additional Maintenance Services” means the provision of all labour, materials and equipment for the purpose of maintaining highways at the request of the Municipal Engineer beyond the level of services required for Maintenance Services;
- (c) “Annual Maintenance Plan” means a plan that specifies the scheduling, location and quantity for completion of Annual Maintenance Services;
- (d) “Annual Maintenance Services” means those annual maintenance activities described as such in Schedule “2”;
- (e) “Bonds” means the performance bond and labour and materials bond as set out in Article X issued by a properly licensed surety company authorized to transact business in the Province of Nova Scotia in a form acceptable to the Engineer.
- (f) “Claim” means any demand, commencement of legal proceedings, settlement discussions or alternative dispute resolution mechanisms and any termination, suspension, abandonment, discontinuance, appeal or review thereof;
- (g) “Contract Price” means the amount payable by the Municipality to the Contractor in respect of the Maintenance Services as may be adjusted from time to time in accordance with the terms of this Agreement;
- (h) “Contractor” means the person, firm or corporation identified as such in the Agreement. The term Contractor means the Contractor or an authorized representative as designated in writing.
- (i) “Contractor’s Expenses” means for the purpose of Article IX, amounts, based on the fees set out in Part II of Schedule “3”, payable to the Contractor under this Agreement for repairs or restorations made by or on behalf of the Contractor with respect to damage to Municipal Property caused by persons other than the Contractor or the Controlled Persons;
- (j) “Controlled Persons” means the Contractor’s subcontractors,

servants, employees, agents, management, shareholders, directors and suppliers;

(k) “Cost Schedule” means the schedule of fees for the provision of Services attached as Schedule “3”;

(l) “Emergency” means any of the events or conditions described in the Maintenance Services for “Flood Control and Washout Response”, Earth and Rock Slide Response” and “Structural Damage Response” that may entitle the Contractor to receive payment for excess work performed by the Contractor;

(m) “Emergency Services” means the provision of all labour, materials and equipment for the purpose of maintaining the Highways beyond the level of services required for Maintenance Services in an Emergency;

(n) “Engineer” means the Municipal Engineer or other persons authorized to represent the Municipality in the administration of this Agreement.

(o) “Equipment” means the maintenance equipment used in providing the Services by the Contractor;

(p) “Event of Default” means any event described in section 18.01;

(q) “Force Majeure” means acts of God, wars (declared or undeclared), revolution, riot, insurrection, strikes or lockouts, provided that any such event is a major disabling event or circumstance in relation to the normal operations of the party concerned as a whole which is beyond the reasonable control of the party directly affected and results in a material delay, interruption or failure by such party in carrying out its duties, covenants or obligations under this Agreement, provided always that lack of money, financing or credit to resolve such contingencies will not be deemed an event by force majeure;

(r) “Government Property” means Roads and all structures and other property appurtenant thereto owned by the Municipality, including without limiting the generality of the foregoing all signs, guardrails, pavement, roadbeds, shoulders, culverts, tunnels, bridges, fences and posts, which the Contractor is obligated to replace, repair or maintain under this Agreement;

(s) “Extraction Permit” means the permit to extract gravels issued by Nova Scotia Department of Environment;

(t) “Local Roads” means all roads, as defined in the Act, under the administration of the Municipality, and without limiting the generality of

the foregoing includes

- (i) all ancillary works, excavation, embankments and improvements reasonably related to the operation of the local roads,
  - (ii) all licenses, properties, rights of way and easements ancillary to roads existing as of the date of the Agreement as determined by reference to the records of the Province, and/or Municipality
  - (iii) any roads added, deleted or changed in classification
- (u) “Maintenance Services” means the provision of all labour, materials and equipment for the purpose of providing the services described in Schedule “2” as may be amended from time to time in accordance with Article VII;
- (v) “Municipality” means the Municipality of the County of Kings as defined in the Municipal Act.
- (w) “Municipal Material” means any and all materials, equipment, components, supplies and personal property of any nature or kind whatever that are provided by or on behalf of the Municipality to the Contractor prior to or during the Term of this agreement;
- (x) “Quality Assurance Program” means the Quality Assurance Program approved by the Engineer as amended from time to time by the Engineer in the Engineer’s sole discretion by notice to the Contractor;
- (y) “Signs” means any highways signs required to be erected by the Contractor as part of the Maintenance Services excluding traffic control signs and temporary signs required to perform the Work of this Contract. Temporary signage required to perform the work will be in accordance with Temporary Workplace Traffic Control Manual as prepared by Nova Scotia Department of Transportation & Public Works.
- (z) “Subcontractors” means persons, firms, or corporation having a direct contact with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Contract Documents, but does not include one who merely supplies products not so worked.
- (aa) “Term” means the term of this Agreement described in section 3.02.

**ARTICLE II: REPRESENTATIONS AND WARRANTIES**

2.01 The Contractor represents and warrants to the Municipality on the execution of this Agreement and at all times thereafter during the Term that:

- (a) it is a corporation duly organized and validly existing under the laws of Nova Scotia;
- (b) it has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable it to fully perform the Services; and
- (c) this Agreement has been legally and properly executed by the Contractor and is legally binding upon and enforceable against the Contractor in accordance with its terms;
- (d) all information, statements, documents and reports furnished or submitted by the Contractor to the Municipality in connection with this Agreement, and any other agreement referred to in subsection 2.01 (f) are true and correct;
- (e) it has no knowledge of any fact that materially adversely affects or, so far as it can foresee, might materially adversely affect its properties, assets, condition (financial or otherwise), business or operations or its ability to fulfil its obligations under this Agreement;
- (f) the Contractor is not a party to or threatened with any litigation and has no knowledge of any claims against it that would materially affect its undertaking or financial condition;
- (g) the Contractor is not in breach of any statute, regulation or by-law applicable to the Contractor or its operations;
- (h) the Contractor holds all permits, licences, consents and authorities issued by any federal, provincial, regional or municipal government or an agency of any of them, that are necessary in connection with the operations of the Contractor;

2.02 All representations, warranties, covenants and agreements made in this Agreement and all certificates and other documents delivered by or on behalf of the Contractor are material and will conclusively be deemed to have been relied upon by the Municipality.

**ARTICLE III: APPOINTMENT AND TERM**

3.01 The Municipality retains the Contractor to provide the Services in accordance with the terms of this Agreement.

3.02 The Contractor will provide the Services during the term of the Agreement which term will, notwithstanding the date of execution and delivery of the Agreement, be conclusively deemed to commence on \_\_\_\_\_ and will end on \_\_\_\_\_ unless earlier terminated pursuant to Article XVIII.

3.03 The Municipality will be under no obligation to renew, extend or renegotiate the terms of this Agreement following its termination or expiration.

3.04 The Contractor will use its best efforts to co-operate with the Municipality and any other interested parties to effect a reasonable transition in performance of the Services on the expiration or termination of the Agreement and this obligation will survive such expiration or termination.

**ARTICLE IV LEGAL RELATIONSHIP**

**INDEPENDENT CONTRACTOR**

4.01 The Contractor is an independent contractor and not the servant, employee, partner or agent of the Municipality.

4.02 The Contractor will not, in any manner whatsoever, commit or purport to commit the Municipality to the payment of any money to any person.

4.03 The Engineer may, from time to time, give such instructions to the Contractor as the Engineer considers necessary in connection with provision of the Services, which instructions the Contractor will comply with, but the Contractor will not be subject to the control of the Engineer with respect to the

manner in which such instructions are carried out.

4.04 No partnership, joint venture or agency will be created or will be deemed to be created by this Agreement or any action of the parties under this Agreement.

## **ARTICLE V: SERVICE AREA**

5.01 The Contractor will provide the Maintenance Services covered by this Agreement to the Municipality on all local roads listed in Schedule 1 of this Agreement.

## **ARTICLE VI: SERVICES**

6.01 The Contractor will provide the Maintenance Services, as defined on the Schedule of Services, to the Municipality in accordance with the terms and conditions of the Agreement.

6.02 In addition to the services under section 6.01, the Contractor will provide Emergency Services to the Province at the request of the Engineer.

6.03 The Engineer may direct the Contractor to provide Additional Maintenance Services to the Municipality.

6.04 The Contractor will perform the Annual Maintenance Services in accordance with this Agreement and the Annual Maintenance Plan as prepared by the Engineer.

6.05 The Engineer may re-allocate specific items within the Annual Maintenance Services on 30 days written notice to the Contractor. Costs will be adjusted based on the fees and unit prices set out in Schedule "3".

6.06 Decisions of the Engineer under section 6.05 will be final and binding on the parties.

6.07 Any materials, equipment or improvements installed or deposited on the Highways by the Contractor during the Term as part of the Services will immediately become the sole property of the Municipality and the Contractor will, at the request of the Engineer, assign or transfer to the Municipality any warranties available with respect to the same.

## **ARTICLE VII: MODIFICATION TO MAINTENANCE SERVICES**

7.01 In order to promote and enhance public safety and efficiency, the Contractor will:

- (a) in consultation with the Engineer, continually review and re-evaluate the Maintenance Services and in conducting that review will take into account changing technology in the maintenance industry, changing economic and environmental conditions and changing public requirements;
- (b) advise the Engineer if the Contractor considers that any part of the Maintenance Services should be altered in a material way, and submit the proposed alteration to the Engineer for its consideration; and
- (c) reasonably co-operate with the Municipality in tests to accommodate new maintenance technology.

7.02 The Engineer may, change the Maintenance Services by delivery of written notice thereof to the Contractor specifying the change and the Contractor will forthwith perform the Maintenance Services, as so changed.

7.03 If a notice is delivered under section 7.02, then the Engineer will determine the cost adjustment which is the total pro-rated amount from the Cost Schedule applicable from the effective date of the notice under section 7.02 to the end of the term;

7.04 If the Contractor should disagree with a determination of the Engineer under sections 7.03, it may;

- (a) within 30 days of delivery of the notice under subsection 7.02 advise the Municipality in writing of its disagreement, specifying the reasons therefore; and
- (b) if the parties have not resolved the disagreement disclosed under subsection 7.04(a) within 60 days of delivery of the notice under subsection 7.02, the unresolved issues under sections 7.03 may be referred by either party to arbitration pursuant to Article XVI.

## **ARTICLE VIII: MUNICIPAL MATERIALS**

8.01 The Municipality will sell or cause to be sold to the Contractor Signs on the terms and conditions set out in this Agreement and the Contractor will purchase such signs on such terms excluding signs required for traffic control and temporary signage required to perform the Work of the Contract.

8.02 The specifications of any Signs to be acquired by the Contractor for the purpose of this Agreement, other than those described in section 8.01, will be determined by the Engineer.

8.03 The Municipality will provide certain Materials as described in the Schedule of Services. The Contractor will at no expense to the Municipalities:

- (a) receive, unload, store and be responsible for the Municipal Material; and
- (b) provide an accounting for and inventory of the Municipal Material satisfactory to the Engineer, and
- (c) allow persons specified by the Engineer access to the Municipal Material.

8.04 The Municipal Material will, remain the exclusive property of the Municipality, and the Municipality may, in its sole discretion, dispose of the same to the Contractor.

**ARTICLE IX: INSURANCE AND INDEMNITY**

9.01 The Contractor will obtain and maintain in force during the Term:

(a) comprehensive general liability insurance providing coverage of not less than \$2 million inclusive per occurrence for bodily injury, death and property damage and including loss of use thereof, which may arise directly or indirectly out of the acts or omissions of the Contractor and the Controlled Persons or any of them under this Agreement, such insurance to include the Municipality as an additional named insured;

(b) automobile liability insurance in an amount not less than \$2 million and automobile physical damage insurance including collision and comprehensive coverage, covering all automobiles owned, rented or leased by the Contractor, that are required by law to be licensed; and

(c) equipment insurance covering all equipment owned, rented or leased (with policy limits and conditions that may be applicable to any rental or lease agreements) by the Contractor utilized in the performance of the Services by the Contractor, and the Controlled Persons or any of them against “all risks” of loss or damage;

all in form and content and with an insurer or insurers acceptable to the Engineer.

9.02 Evidence satisfactory to the Engineer that the insurance required under section 9.01 has been obtained will be submitted by the Contractor on execution of this Agreement by the parties, and the Contractor will, upon the request of the Engineer submit evidence, that the insurance remains in force and effect.

9.03 The Contractor will ensure that the insurance described in section 9.01 may not be cancelled or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days prior written notice to the Municipality.

9.04 The Contractor will indemnify and save harmless the Municipality and the Engineer from and against all claims, liabilities, demands, losses, damages, costs and expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by the Municipality, Engineer or either of them at any time or times (whether before or after the expiration or sooner

termination of the Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by the Contractor and the Controlled Persons or any of them pursuant to this Agreement including any claim against the Municipality for failure to supervise or inspect the work which is performed by the Contractor pursuant to this Agreement which indemnity will survive the expiration or sooner termination of the Agreement.

9.05 The Contractor will be responsible for compliance with all conditions and regulations under the *Workers Compensation Act* and for all assessments and levies which may be made thereunder.

9.06 Subject to section 9.07, the Municipality will reimburse the Contractor for any Contractor's Expenses if the Engineer is satisfied that:

- (a) the Contractor's Expenses have been solely and properly incurred for the purpose of repairing or restoring Municipal Property damaged by persons other than the Contractor or the Controlled Persons; and
- (b) all such repairs or restorations of Municipal Property damaged by persons other than the Contractor or the Controlled Persons have been repaired or restored in accordance with the Agreement.

9.07 The Contractor will co-operate with the Municipality and its counsel in any and all investigation, settlement and judicial determination of any claims made against the Municipality or the Contractor and any claims relating to damage to Municipal Property relating directly or indirectly to the Agreement and will cause the Controlled Persons to be similarly bound.

## **ARTICLE X: BONDS**

10.01 The Contractor will obtain and maintain the Bonds in full force and effect during the Term.

- (a) a performance bond in an amount that is equal to not less than 50% of the Contract Price.
- (b) a labour and materials bond in an amount that is not less than 50% of the Contract Price.

10.02 Bonds will be in a form and be issued by a bonding company approved by the Engineer and will be delivered to the Engineer within 15 working days of contract award.

## **ARTICLE XI: CONTRACTORS COVENANTS**

11.10 The Contractor will:

- (a) observe, abide by and comply with all laws, by-laws, orders, directions, rules and regulations of any competent government authority or branch or agency thereof directly or indirectly applicable to the Contractor or this Agreement;
- (b) ensure that the representations and warranties set forth in Article II are true and correct at all times during the Term and provide evidence to that effect to the Province on the written request of the Minister;
- (c) maintain its corporate existence and carry on and conduct its business in a proper business-like manner in accordance with good business practice and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles applied on a consistent basis;
- (d) punctually pay as they become due all accounts, expenses, wages, salaries, taxes, levies, rates, fees, contributions and assessments required to be paid by it on any of its undertaking;
- (e) co-operate with the Municipality and any other contractors providing services to the Municipality in the Service Area and in areas adjacent to the Service Area;
- (f) at all times promptly respond to road maintenance complaints from Municipality;
- (g) perform the Services in a good workmanlike manner to the satisfaction of the Minister;
- (h) continually train its staff in the safe operation of road maintenance equipment and facilities to the satisfaction of the Engineer; provide personnel properly trained to the requirements of the Temporary Workplace Traffic Control Manual.
- (i) provide and maintain at all times sufficient staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to it to fully perform the Services; and

- (j) paint, identify and light the Equipment in accordance with the policy directives of the Department of Transportation and Communication.

## **ARTICLE XII: CONTRACT PRICE AND FEES**

12.01 In consideration of the Contractor providing to the Municipality the Maintenance Services and performing all other obligations of the Contractor under this Agreement, except Emergency Services and Additional Maintenance Services, the Municipality will, subject to the terms of this Agreement and without limiting the generality of the foregoing, sections 15.02 and 17.13, pay to the Contractor the Contract Price in the manner set out in the Cost Schedule “3”;

12.02 The Municipality will, subject to the terms of this Agreement, pay to the Contractor for Additional Maintenance Services and Emergency Services in the amounts and in the manner set out in Schedule “3”; and

12.03 The amounts described in Section 12.01 constitute the maximum amounts payable to the Contractor for its performance of the Services, and the Contractor will not be entitled to any additional compensation for its performance as described in this Agreement. Without limiting the generality of the foregoing, the Contractor will not be entitled to any compensation beyond the Contract Price unless:

- (a) the Contract Price is adjusted in accordance with the Agreement; or
- (b) the Contractor performs Emergency Services or Additional Maintenance Services at the request of the Engineer in accordance with this Agreement.

12.04 The Municipality certifies the property and/or services ordered and purchased under this Agreement are for the use of, and are being purchased by, the Municipality with and are therefore subject to the Goods and Services Tax.

## **ARTICLE XIII: ASSIGNMENT AND SUBCONTRACTING**

13.01 The Contractor will not without the prior written consent of the Engineer assign, either directly or indirectly, the Agreement or any right of the Contractor under this Agreement.

13.02 The Contractor will not subcontract any obligation of the Contractor under this Agreement to any person without the prior written consent of the Engineer.

13.03 The appointment of subcontractors by the Contractor will not relieve the Contractor of its responsibility hereunder or for the quality of work, materials and services provided by it.

13.04 The Contractor will at all times be held fully responsible to the Municipality for the acts and omissions of its subcontractors and persons employed by them and no subcontract entered into by the Contractor will impose any obligation or liability upon the Municipality to any such subcontractor or any of its employees.

13.05 The Contractor will cause every subcontractor to be bound by the terms of the Agreement so far as they apply to the work to be performed by each subcontractor.

13.06 Nothing in this Agreement will create any contractual relationship between the Municipality and a subcontractor of the Contractor.

#### **ARTICLE XIV: QUALITY ASSURANCE PROGRAM**

14.01 The Contractor acknowledges and agrees that the performance of the Contractor's obligations under this Agreement, will be subject to review by the Municipality in accordance with the terms of the Quality Assurance Program;

14.02 All quality assurance inspection reports will be forwarded to the Engineer.

14.03 All work determined to be deficient will be corrected or replaced at the Contractors' sole expense.

## **ARTICLE XV: DEFAULT AND REMEDIES**

15.01 Any of the following events will constitute an event of default whether any such event be voluntary, involuntary or result from the operation of law or any judgment or order of any court or administrative or government body:

- (a) the Contractor fails to observe, perform or comply with any provision of this Agreement, on the part of the Contractor to be observed, performed or complied with;
- (b) any representative or warranty made by the Contractor in this Agreement is materially untrue or incorrect;
- (c) any information, statement, document, certificate or report furnished or submitted by or on behalf the Contractor under or as a result of this Agreement, is materially untrue or incorrect;
- (d) the Contractor fails to furnish and give to the Municipality notice that there has occurred or is continuing a default under the Agreement, and specifying particulars of the same;
- (e) a change occurs with respect to any one or more, including all, of the properties, assets, condition (financial or otherwise), business or operations of the Contractor which, in the reasonable opinion of the Engineer, materially adversely affects the ability of the Contractor to fulfil any of its obligations under this Agreement;
- (f) the Contractor becomes insolvent, commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (g) the Contractor permits any sum which is not disputed to remain unpaid after legal proceedings have been commenced to enforce payment thereof;
- (h) the Contractor ceases, in the reasonable opinion of the Engineer, to carry on business as a going concern;
- (i) the Contractor, without the prior written approval of the Engineer, assigns, sells or in any manner disposes of or encumbers all or any of its interest in, or rights acquired under this Agreement;

15.02 On the happening of an Event of Default, or at any time thereafter, the Engineer may deliver written notice to the Contractor, specifying the Event of Default and the Municipality may, at its option, elect to do any one or more of the following:

- (a) pursue any remedy available to it at law or in equity;
- (b) holdback from each payment due to the Contractor under section 12.01 (a) up to 5% of each such payment until the Event of Default is resolved to the satisfaction of the Engineer;
- (c) take all actions in its own name or in the name of the Contractor that may reasonably be required to cure the Event of Default in which case all payments, costs and expenses incurred therefor will be payable by the Contractor to the Municipality on demand and set-off against any sums owing by the Municipality to the Contractor present or future including any holdback maintained pursuant to subsection 15.02 (b);
- (d) require that the Event of Default be remedied within a time period specified by the Engineer;
- (e) forfeit, any holdback maintained pursuant to subsection 15.02 (b);
- (f) waive the Event of Default; and
- (g) terminate this Agreement, subject to the expiration of any time period specified by a notice delivered pursuant to subsection 15.02 (d).

15.03 The rights, powers and remedies conferred on the Municipality under this Agreement are not intended to be exclusive and each will be cumulative and in addition to and not in substitution for every other right, power and remedy existing or available to the Municipality under this Agreement, any other agreement, at law or in equity and the exercise by the Municipality of any right, power or remedy will not preclude the simultaneous or later exercise by the Municipality of any other right, power or remedy.

15.04 No failure or delay on the part of either party to complain of any act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure to act will continue, will constitute a waiver by such party of its rights hereunder.

**ARTICLE XVI: ARBITRATION**

16.01 All disputes arising out of or in connection with subsection 7.04 (b) shall be submitted to arbitration in accordance with the provisions of the Nova Scotia Arbitration Act.

16.02 In recognition of the obligation by the Contractor to perform the disputed work in connection with subsection 7.04, settlement of dispute proceeding may be commercial immediately following the dispute in accordance with Section 16.01.

16.03 The place of arbitration will be Kentville, Nova Scotia.

**ARTICLE XVII: MISCELLANEOUS**

17.01 Any property, including Municipal Material, whatsoever provided by or on behalf of the Municipality to the Contractor as a result of this Agreement will be the exclusive property of the Municipality and will be delivered by the Contractor to the Engineer forthwith following the expiration or sooner termination of this Agreement. The Engineer may, at any time or times prior to the expiration or sooner termination of this Agreement, give written notice to the Contractor requesting delivery by the Contractor to the Engineer of all or any part of such property in which event the Contractor will forthwith comply with such request.

17.02 The Contractor will not, during the Term, perform a service for or provide advice to any person, firm or corporation or other legal entity where the performance of the service or the provision of the advice may or does, in the reasonable opinion of the Engineer, give rise to a conflict of interest between the obligations of the Contractor to the Municipality under this Agreement and the obligations of the Contractor to such other person, firm or corporation or other legal entity.

17.03 Any notice, document, statement, report, demand or payment desired or required to be given or made under this Agreement, will be in writing and may

be given or made by personal delivery to the party to whom it is to be given or made, or by mailing in Canada with postage prepaid addressed,

if to the Municipality of the County of Kings or the Engineer (or both of them):

Municipality of the County of Kings  
Environment Department  
P.O. Box 100  
87 Cornwallis Street  
Kentville, Nova Scotia  
B3N 3W3  
Attention: Mr. Ken Redden, Operations Manager

with a copy to: the Chief Administrative Officer

and if to the Contractor:

@NAME-INFULL  
@ADDRESS  
@CITY-AN-PROV  
@POSTAL-CODE

Attention: @NAME

Any such notice, document, statement, report, demand or payment so mailed will be deemed given to and received by the addressee on the third business day after the mailing of the same except in the event of disruption of postal services in Canada in which case it will be deemed given to and received by the addressee when actually delivered to the particular address set out above.

17.04 In addition to section 17.03, any notice, report, document, statement or demand transmitted by facsimile transmission from either party or the Engineer will be conclusively deemed validly given to and received by the intended recipient when so transmitted if transmitted to the following numbers:

If to the Municipality or the Engineer: (902) 679-2820

If to the Contractor: (902) \_\_\_\_\_

17.05 Either party may, from time to time, advise the other by notice in writing of any change of address or facsimile number of the party giving such notice and from and after the giving of such notice the address or facsimile number therein specified will, for purposes of this Agreement, be deemed to be the address of facsimile number of the party giving such notice.

17.06 A reference in this Agreement:

(a) to a statute whether or not that statute has been defined, means a statute of the Province of Nova Scotia unless otherwise stated and includes every amendment to it, every regulation made under it and any enactment passed in substitution therefor or in replacement thereof; and

(b) to any other agreement between the parties means that other agreement as it may be amended from time to time by the parties.

17.07 Each Schedule attached to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.

17.08 This Agreement constitutes the entire agreement between the parties and no understandings, representations or agreements, oral or otherwise, exist between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement.

17.09 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever

for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

17.10 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.

17.11 All dollar amounts expressed in this Agreement refer to lawful currency of Canada.

17.12 No waiver by either party of a breach or default by the other party in the observance, performance or compliance of any of its obligations under this Agreement will be effective unless it is in writing and no such waiver will be deemed or construed to be a waiver of any other breach or default and failure or delay on the part of either party to complain of any act or failure of the other party or to declare such other party in default, irrespective of how long such failure or delay continues, will not constitute a waiver by such party of any of its rights against the other party.

17.13 If any event of Force Majeure occurs or is likely to occur, the party directly affected will notify the other party forthwith, and will use its best efforts to remove, curtail or contain the cause of the delay, interruption or failure and to resume with the least possible delay compliance with its duties, covenants and obligations under this Agreement; and

17.14 Time will be of the essence of this Agreement.

17.15 This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of Nova Scotia.

Duly executed by the Municipality of the County of Kings and @ COMPANY-NAME, each by their duly authorized officers or representatives on the \_\_\_\_ day of \_\_\_\_\_, 199 \_\_\_\_.

SIGNED on behalf of Municipality )  
of the County of Kings )  
)  
)  
)  
)  
)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
For the Municipality of the  
County of Kings

THE common seal of )  
@ COMPANY NAME )  
was hereunto affixed )  
in the presence of: )  
)  
)  
\_\_\_\_\_)

\_\_\_\_\_  
Authorized Signature

Signature )  
)  
)  
\_\_\_\_\_)

Title

**SCHEDULE 1**

**LIST OF ROADS**

**ID Number   Road Name   Subdivision Name   Surface Type   Length**

**SCHEDULE 2**

**ANNUAL MAINTENANCE SERVICES**

<b>Maintenance Activity</b>	<b>Unit of Measure</b>	<b>Estimated Quantity</b>
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**PART II - EMERGENCY SERVICES and ADDITIONAL MAINTENANCE SERVICES**

<b>Maintenance Services</b>	<b>Unit of Measure</b>	<b>Unit Cost</b>
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## Resources





## Resources

“Alternate Dispute Resolution”, 1996 MacMillan Lytle Fisher (<http://www.ironclad.com/adr.html>)

“Alternatives to Trial”, State Bar of Arizona (<http://www.aznvlaw.com/faqadr.html>)

Best Practice Guidelines: Initiating Contracts and Contracting with the Private Sector, June 1996, The Canadian Council for Public Private Partnering

Best Practice Guidelines for Contracting Out Government Services, OECD (<http://www.oecd.org>)

Common Purpose Procurement Framework, Government Services Canada

Contracting Out, Gordon Cassidy, Government and Competitiveness, School of Policy Studies Queen’s University, 1994

Contracting with Provincial and Municipal Governments, Their Crown Agencies, Local Boards, and Other Special Purpose Bodies in the 90s, 1997, Dennis Y. Perlin & Andre J. Moniz, Minden, Gross, Grafstein \* Greenstein

Designing an Effective Bidding and Monitoring System to Minimize Problems in Competitive Contracting, John Rehfuss, The Reason Foundation & the Mackinac Center for Public Policy

Designing Comprehensive Privatization Programs for Cities, 1993, John Stainback, Reason Foundation

Evaluating Privatization, An AMSA Checklist, 1996, the Association of Metropolitan Sewage Agencies

Formulating a Corporate Policy on Partnering, Region of Halton, 1995, KPMG

The Franklin Ohio Wastewater Treatment Plan Privatization - A Pilot Project, Samuel L. Coxson, City Manager of Franklin Ohio

A Guide to Best Practices for Performance-Based Service Contracting, 1996, Office of Federal Procurement Policy, Office of Management and Budget, Executive Office of the President, Government of the United States of America

Guide to Preparing a Business Case of Alternate Service Delivery, 1996, Management Board Secretariat, Government of Ontario

A Guide to Public-Private Partnerships in Infrastructure - Bridging the Gap Between Infrastructure Needs and Public Resources, 1994 edition, Price Waterhouse

A Guide to Public-Private Partnerships in Infrastructure - Bridging the Gap Between Infrastructure Needs and Public Resources, 1995 edition, Price Waterhouse

A Guide to Public-Private Partnerships for Solid Waste/Resource Management in Nova Scotia, 1996, the Nova Scotia Department of Housing and Municipal Affairs, under the auspices of the Canada/Nova Scotia COOPERATION Agreement to Promote Private Sector Participation in Municipal Infrastructure

Initiating Contracts and Contracting With the Private Sector, Blair Cowper-Smith, The Canadian Council for Public-Private Partnerships (no date)

Making it Happen, The Role of External Advisors to Government, 1995, Lambton-Thomson Associates Inc.

“Managing Partnerships”, Winter 1993, Alti Rodal. Optimum - The Journal of Public Sector Management

Outcomes and Performance - A Glossary, Alliance for Redesigning Government, National Academy of Public Administration (<http://www.clearlak.../op.glossary.6.html>)

“Outcomes and Performance Measurement Systems: An Overview”, Michael D. Campbell, Ph.D. Alliance for Redesigning Government, National Academy of Public Administration (<http://www.clearlak.../op.glossary.6.html>)

“Overcoming Public Employee Opposition to Privatization”, 1994, William D. Eggers & John O’Leary, Business Forum

Performance Measurement, PUMA Key Performance Management Issues, OECD (<http://www.oecd.org...mgmtres/pac/key.htm>)

“Performance Measurement in the Public Sector”, 1993, Wayne C. Parker, Governor’s Office of Planning and Budget, State of Utah

Private Finance for Municipal Infrastructure, 1997, Stephen Beatty & Will Lipson, KPMG Canada

Privatization Policy, 1994, Province of New Brunswick

Procurement and Requests for Proposals in a Public-Private Partnership Setting, G. Blair Cowper-Smith, McCarthy Tetrault

Productivity Increasing Approaches to Producing Government Services: The Incentives and Implications of Outsourcing, 1996, Robert L. Bish, School of Public Administration, University of Victoria

Public-Private Partnering Discussion Paper, August 1995, Province of Nova Scotia, Deputies' Committee Public-Private Partnering

"Public-Private Partnerships", April 1996, Amy Shanker & Len Rodman, Journal AWAA

Public- Private Partnerships: Beyond the Theory, 1995, The Atlantic Provinces Economic Council

Public Private Partnerships - Draft Proposal, 1996, Nova Scotia Dept. Of Transportation & Public Works

Reinventing Government, 1993, David Osborne & Ted Gaebler, Plume Books

Report of the Task Force on Public Private Partnerships, October 1996, Province of British Columbia

"Selection of a Contract Operator in Ottawa-Carleton", 1994, Dave McCartney, P.Eng. & Mark Sanderson, Municipal World

Tactics - Issue Highlights produced by the Public Relations Society of America, June-December 1996, January 1997 (<http://www.prsa.org>)

"What Are the Benefits to Alternative Dispute Resolution", 1995, Robert E. Woods, A Guide to Dispute Resolution, Briggs & Morgan (<http://www.briggs.com/adr.html>)

Writing and Negotiating Contracts for Highway 104 Western Alignment: A Case Study, 1996, Rocco M. Sebastiano, Osler, Hoskin & Harcourt