



Public Private Partnership

A Guide for Local Government

May 1999



**Ministry of
Municipal Affairs**

Message from the Minister of Municipal Affairs

This guidebook is designed to assist local governments who are considering taking advantage of 1998 amendments to the *Municipal Act* that expand opportunities for public private partnerships for the delivery of public facilities and services.

Public private partnership is an alternative model of service delivery that is becoming more common, both in BC and across Canada. It can, however, be complex for local elected officials and staff to negotiate and administer.

We have used the experience of other provinces in preparing this guide, and detailed each step of the process, including making the decision to partner, evaluating proposals, negotiating the contract and working with the private partner once an agreement has been reached.

I hope this publication proves to be a valuable addition to your policy tool kit. The guide is also available on the Ministry of Municipal Affairs web site at www.marh.gov.bc.ca. Please do not hesitate to contact ministry staff directly with questions or comments.

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Minister of Municipal Affairs

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Table of Contents

Section 1 – Introduction	1
Section 2 - The Dimensions of Public Private Partnership	
2.1 What is a Public Private Partnership?	5
2.2 When Should Public Private Partnerships be Considered	13
2.3 How to Proceed with Public Private Partnerships	19
2.4 Who Should be Involved in Public Private Partnership Policy Making?.....	21
Section 3 - The Legislative Framework and Authority for Public Private Partnership	
3.1 <i>Municipal Act</i> Authority.....	22
3.2 Granting Assistance to Business	23
3.3 Powers in Relation to Property.....	25
3.4 Contracting	28
Section 4 - Preparing for Service Delivery Through Public Private Partnership	
4.1 What Should Local Government Address Before Becoming Involved in Public Private Partnerships?.....	30
4.2 Assigning Responsibility for Public Private Partnerships Within the Organization.....	31
4.3 Adopting a Public Private Partnership Policy	34
4.4 Establishing Procedures	36
Section 5 – Determining When to Partner	
5.1 Reviewing Opportunities for Public Private Partnerships.....	37
5.2 Overall Criteria in Determining Public Private Partnership Opportunities.....	39
5.3 Do the Benefits of Public Private Partnership Outweigh the Costs?.....	43
5.4 Is this a Project the Private Sector will be Interested In?	44
5.5 The Decision to Begin the Implementation Process	45
Section 6 – Implementing Public Private Partnerships	
6.1 Establishing a Project Team	46
6.2 Refining the Scope of the Project	48
6.3 Selecting a Procurement Process.....	54
6.4 Establishing the Schedule	57
6.5 Stakeholder Involvement	58

Section 7 - Selecting a Preferred Partner	
7.1 Documenting and Recording the Selection Process	61
7.2 Issuing a Request for Expressions of Interest and Request for Qualifications.....	62
7.3 Evaluating the RFEI and RFQ Submission.....	65
7.4 Issuing a Request for Proposals.....	66
7.5 Evaluating the Proposals	74
Section 8 - Negotiating the Agreement	
8.1 Preparing for the Negotiations.....	78
Section 9 - Ratifying the Contract	
9.1 Procedural Requirements and Limitations	85
9.2 Ensuring Proper Authority to Enter into Contract.....	87
Section 10 - Working with a Partner	
10.1 Communications Strategy and Protocol	88
10.2 Accounting Treatment of Public Private Partnerships	89
10.3 Labour and Collective Agreement Issues	90
10.4 Performance Monitoring	90
10.5 External Evaluation	92
10.6 Conflict Resolution.....	92
10.7 Dissolving the Partnership	94
Appendix 1 - Other Financial Issues	96
Other Sources of Information	

Introduction

In June 1998, the provincial government enacted amendments to the *Municipal Act* to facilitate public private partnership (PPP or P3) arrangements between local governments in the province and the private sector. The new legislation will provide municipalities and regional districts in British Columbia the flexibility to enter into a wide range of partnership opportunities for the provision of services, facilities and infrastructure.

Prior to the amendments, the provisions of the *Municipal Act* permitted only a limited range of public private partnership arrangements, such as design-build.

With the enactment of new provisions, the constraints to other forms of public private partnership have been removed. However, many of these other forms carry more potential risk for local government and require a greater degree of expertise to negotiate successfully. This guide is intended to assist local governments evaluate the new forms of service delivery and help them establish partnership arrangements that are in the public interest.

The guide will also:

- provide clarification on the legislative authority for public private partnership in the province
- assist local government in determining when public private partnership should be considered in the delivery of services
- provide guidelines on how local governments can prepare themselves for delivery of services using public private partnership
- set out recommended guidelines for each stage of the partnership-building process

Contents of the Guide

The guide describes the characteristics of public private partnership and the various forms it can take, and addresses the following topics:

- the potential benefits and risks of public private partnership as well as common fallacies related to this form of service delivery
- broad guidelines as to when public private partnership should be considered
- the legislative changes as well as the legislative authority that local governments now have for involvement in public private partnerships
- the unique policy, procedural and organizational issues of public private partnerships compared to traditional approaches to service delivery and infrastructure projects
- ways local government can prepare for public private partnerships, including the adoption of policies, the revision or elaboration of existing procedures and identification of required organizational changes
- guidelines to help local governments select the appropriate approach for the delivery of services and infrastructure, including an evaluation of the types of projects and aspects of service delivery that lend themselves to public private partnerships
- overall criteria to help determine potential public private partnership opportunities
- the process of designing an effective implementation strategy for public private partnerships, including advice and guidelines on how to establish a project team, refine the scope of a project, select the preferred procurement process, establish a schedule for the delivery of the service, design an appropriate communications strategy and obtain the necessary approvals
- detailed guidelines on the selection of a private sector partner, including the evaluation of proposals and various options for selecting a private partner depending on the nature and scope of the project or service to be delivered
- advice and suggestions to help local governments negotiate effective contracts in the public interest
- the legislative requirements of the *Municipal Act* on the ratification of contracts to ensure that the public interest is maintained, including when and how local governments must involve electors in key decisions
- issues related to working with the private partner, such as communications, reporting, accounting and performance monitoring

Organization of the Guide

This guide is divided into ten sections. These are:

Section 1 - Introduction

Section 2 - The Dimensions of Public Private Partnership

This section provides an overview of public private partnership, including a description of its various forms, a look at situations when local government may wish to consider public private partnership arrangements, and insight into the process involved in a public private partnership for the delivery of services and infrastructure.

Section 3 - The Legislative Framework and Authority for Public Private Partnership

This section provides an overview of recent amendments to the *Municipal Act* regarding local government's ability to enter into public private partnership arrangements.

Section 4 - Preparing for Service Delivery Through Public Private Partnerships

Providing a service through a public private partnership may be new to many local governments in British Columbia. This section deals with the internal issues that a local government should address when preparing for service delivery through public private partnership.

Section 5 - Determining When to Partner

This section sets out the steps that local governments should follow in establishing evaluation criteria to determine when a public private partnership should be pursued.

Section 6 - Implementing Public Private Partnerships

This section describes the activities required for the successful implementation of public private partnerships.

Section 7 – Selecting the Private Partner

This section provides an in-depth description of how to go about preparing a request for expressions of interest, request for qualifications and request for proposals. This section also examines the evaluation process and the preparation of selection criteria.

Section 8 - Negotiating the Agreement

The negotiations of a partnership agreement is a critical step. This section provides guidance on how to negotiate an agreement with a private sector partner.

Section 9 - Ratifying the Contract

This section provides advice on the contract ratification process once an agreement has been reached between the local government and private sector partner.

Section 10 - Working with a Partner

Advice and information is provided to help local government work effectively with a private partner.

Other Resources

Other resources on public private partnerships that may be useful include:

- *Guide to the Preparation of Requests for Proposals* prepared by the Municipal Officers' Association
- Publications from the Canadian Council for Public Private Partnerships
- Publications from professional organizations, such as the Consulting Engineers of BC, the Architectural Institute of BC, Canadian and BC Institutes of Chartered Accountants, and Institute of Certified Management Consultants of BC

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The ministry would also like to acknowledge the assistance and experience of other provincial governments in the preparation of this guide, in particular the guide prepared by the Province of Nova Scotia entitled *Strategic Public-Private Partnering: A Guide for Nova Scotia Municipalities*.

A black square containing the word 'section' in white lowercase letters and a large white number '2' to its right.

The Dimensions of Public Private Partnership

This section provides an overview of public private partnership, when they should be considered, potential benefits and risks, how to proceed with these types of arrangements, and who should be involved.

2.1 What is a Public Private Partnership?

Characteristics of Public Private Partnership

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

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

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

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

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

Forms of Public Private Partnership

Public private partnerships can vary in:

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

The *Municipal Act* allows local governments to enter into partnering agreements that are broadly defined and can include various forms of public private partnership.

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

(Fig 2.1) Types of Public Private Partnerships

Type of PPP	Features	Local Government Applications	Advantages	Disadvantages
1 Operations and Maintenance	The local government contracts with a private partner to operate and maintain a publicly owned facility.	A broad range of municipal services including water and wastewater treatment plants, solid waste removal, road maintenance, parks maintenance/ landscape maintenance, arenas and other recreation facilities, parking facilities, sewer and storm sewer systems.	<ul style="list-style-type: none"> • potential service quality and efficiency improvements • cost savings • flexibility in structuring contracts • ownership vests with local government 	<ul style="list-style-type: none"> • collective agreements may not permit contracting out • costs to re-enter service if contractor defaults • reduced owner control and ability to respond to changing public demands
2 Design-Build	The local government contracts with a private partner to design and build a facility that conforms to the standards and performance requirements of the local government. Once the facility has been built, the local government takes ownership and is responsible for the operation of the facility.	Most public infrastructure and building projects, including roads, highways, water and wastewater treatment plants, sewer and water systems, arenas, swimming pools and other local government facilities.	<ul style="list-style-type: none"> • access to private sector experience • opportunities for innovation and cost savings • flexibility in procurement • opportunities for increased efficiency in construction • reduction in construction time • increased risk placed on private sector • single point accountability for the owner • fewer construction claims 	<ul style="list-style-type: none"> • reduced owner control • increased cost to incorporate desirable design features or change contract in other ways once it has been ratified • more complex award procedure • lower capital costs may be offset by higher operating and maintenance costs if life-cycle approach not taken
3 Turnkey Operation	The local government provides the financing for the project but engages a private partner to design, construct and operate the facility for a specified period of time. Performance objectives are established by the public sector and the public partner maintains ownership of the facility.	This form of public private partnership is applicable where the public sector maintains a strong interest in ownership but seeks to benefit from private construction and operation of a facility. This would include most infrastructure facilities, including water and wastewater treatment plants, arenas, swimming pools, golf courses and local government buildings.	<ul style="list-style-type: none"> • places construction risk on the private partner • proposal call can control design and location requirements as well as operational objectives • transfer of operating obligations can enhance construction quality • potential public sector benefits from increased efficiency in private sector construction • potential public sector benefits from increased efficiency in private sector operation of the facility • construction can occur faster through fast-track construction techniques such as design-build 	<ul style="list-style-type: none"> • reduced local government control over facility operations • more complex award procedure • increased cost to incorporate changes in design and operations once contract is completed • depending on the type of infrastructure, financing risk may be incurred by the local government

Type of PPP	Features	Local Government Applications	Advantages	Disadvantages
4 Wrap Around Addition	A private partner finances and constructs an addition to an existing public facility. The private partner may then operate the addition to the facility for a specified period of time or until the partner recovers the investment plus a reasonable return on the investment.	Most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, and recreation facilities such as ice arenas and swimming pools.	<ul style="list-style-type: none"> • public sector does not have to provide capital funding for the upgrade • financing risk rests with private partner • public partner benefits from the private partner's experience in construction • opportunity for fast-tracked construction using techniques such as design-build • flexibility for procurement • opportunities for increased efficiency in construction • time reduction in project implementation 	<ul style="list-style-type: none"> • future facility upgrades not included in the contract with the private partner may be difficult to incorporate at a later date • expense involved in alteration of existing contracts with the private partner • perceived loss of control • more complex contract award procedure
5 Lease-Purchase	The local government contracts with the private partner to design, finance and build a facility to provide a public service. The private partner then leases the facility to the local government for a specified period after which ownership vests with the local government. This approach can be taken where local government requires a new facility or service but may not be in a position to provide financing.	Can be used for capital assets such as buildings, vehicle fleets, water and wastewater treatment plants, solid waste facilities and computer equipment.	<ul style="list-style-type: none"> • improved efficiency in construction • opportunity for innovation • lease payments may be less than debt service costs • assignment of operational risks to private sector developer • improve services available to residents at a reduced cost • potential to develop a "pay for performance" lease 	<ul style="list-style-type: none"> • reductions in control over service or infrastructure
6 Temporary Privatization	Ownership of an existing public facility is transferred to a private partner who improves and/or expands the facility. The facility is then owned and operated by the private partner for a period specified in a contract or until the partner has recovered the investment plus a reasonable return.	This model can be used for most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, parking facilities, local government buildings, airports, and recreation facilities such as arenas and swimming pools.	<ul style="list-style-type: none"> • if a contract is well structured with the private partner, the municipality can retain some control over standards and performance without incurring the costs of ownership and operation • the transfer of an asset can result in a reduced cost of operations for the local government • private sector can potentially provide increased efficiency in construction and operation of the facility • access to private sector capital for construction and operations • operational risks rest with the private partner 	<ul style="list-style-type: none"> • perceived or actual loss of control • initial contract must be written well enough to address all future eventualities • private sector may be able to determine the level of user fees, which they may set higher than when under local government control • difficulty replacing private partner in the event of a bankruptcy or performance default • potential for local government to reemerge as the provider of a service or facility in the future • displacement of local government employees • labour issues in transfer of local government employees to the private partner

Type of PPP	Features	Local Government Applications	Advantages	Disadvantages
<p>7 Lease-Develop-Operate or Buy-Develop-Operate</p>	<p>The private partner leases or buys a facility from the local government, expands or modernizes it, then operates the facility under a contract with the local government. The private partner is expected to invest in facility expansion or improvement and is given a specified period of time in which to recover the investment and realize a return.</p>	<p>Most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, parking facilities, local government buildings, airports, and recreation facilities such as arenas and swimming pools.</p>	<ul style="list-style-type: none"> • if the private partner is purchasing a facility, a significant cash infusion can occur for the local government • public sector does not have to provide capital for upgrading • financing risk can rest with the private partner • opportunities exist for increased revenue generation for both partners • upgrades to facilities or infrastructure may result in service quality improvement for users • public partner benefits from the private partner's experience in construction • opportunity for fast-tracked construction using techniques such as design-build • flexibility for procurement • opportunities for increased efficiency in construction • time reduction in project implementation 	<ul style="list-style-type: none"> • perceived or actual loss of control of facility or infrastructure • difficulty valuing assets for sale or lease • issue of selling or leasing capital assets that have received grant funding • if a facility is sold to a private partner, failure risk exists—if failure occurs, the local government may need to reemerge as a provider of the service or facility • future upgrades to the facility may not be included in the contract and may be difficult to incorporate later
<p>8 Build-Transfer-Operate</p>	<p>The local government contracts with a private partner to finance and build a facility. Once completed, the private partner transfers ownership of the facility to the local government. The local government then leases the facility back to the private partner under a long-term lease during which the private partner has an opportunity to recover its investment and a reasonable rate of return.</p>	<p>Most infrastructure and other public facilities, including roads, water systems, sewer systems, water and wastewater treatment plants, parking facilities, local government buildings, airports, and recreation facilities such as arenas and swimming pools.</p>	<ul style="list-style-type: none"> • public sector obtains the benefit of private sector construction expertise • public sector obtains the potential benefits and cost savings of private sector operations • public sector maintains ownership of the asset • public sector ownership and contracting out of operations limits any provincial and federal tax requirements • public sector maintains authority over the levels of service(s) and fees charged • compared to a Build-Operate-Transfer model, avoids legal, regulatory and tort liability issues • under <i>Occupiers' Liability Act</i>, tort liability can be avoided • government control of operational performance, service standards and maintenance • ability to terminate agreements if service levels or performance standards not met, although facility would continue to permit repayment of capital contributions and loans and introduction of new private partner • construction, design and architectural savings, and likely long-term operational savings 	<ul style="list-style-type: none"> • possible difficulty in replacing private sector entity or terminating agreements in event of bankruptcy or performance default

Type of PPP	Features	Local Government Applications	Advantages	Disadvantages
9 Build-Own-Operate-Transfer	The private developer obtains exclusive franchise to finance, build, operate, maintain, manage and collect user fees for a fixed period to amortize investment. At the end of the franchise, title reverts to a public authority.	Most public infrastructure services and facilities, including water and wastewater systems, recreation facilities, airports, local government administration and operations buildings, parking facilities and solid waste management facilities.	<ul style="list-style-type: none"> • maximizes private sector financial resources, including capital cost allowance • ensures the most efficient and effective facility is constructed, based on life-cycle costs • allows for a private sector operator for a predetermined period of time • the community is provided with a facility, without large up-front capital outlay and/or incurring of long-term debt • all "start-up" problems are addressed by the private sector operator • access to private sector experience, management, equipment, innovation and labour relationships may result in cost savings • risk shared with private sector 	<ul style="list-style-type: none"> • facility may transfer back to the public sector at a period when the facility is "work" and operating costs are increasing • public sector loses control over the capital construction and initial mode of operations • initial contract must be written sufficiently well to address all future eventualities • the private sector can determine the level(s) of user fees (unless the public sector subsidizes use) • less public control compared to Build-Transfer-Operate structure • possible difficulty in replacing private sector partner or determining agreements if bankruptcy or performance default
10 Build-Own-Operate	The local government either transfers ownership and responsibility for an existing facility or contracts with a private partner to build, own and operate a new facility in perpetuity. The private partner generally provides the financing.	Most public infrastructure and facilities, including water and wastewater systems, parking facilities, recreation facilities, airports, local government administration and operations buildings.	<ul style="list-style-type: none"> • no public sector involvement in either providing or operating the facility • public sector can "regulate" the private sector's delivery of a "regulated/ monopolistic" service area • private sector operates the service in the most efficient manner, both short-term and long-term • no public sector financing is required • income tax and property tax revenues are generated on private facilities, delivering a "public good" • long-term entitlement to operate facility is incentive for developer to invest significant capital 	<ul style="list-style-type: none"> • the private sector may not operate/construct the building and/or service "in the public good" • the public sector has no mechanism to regulate the "price" of the service, unless it is a specifically regulated commodity • the good/service being delivered is subject to all federal, provincial and municipal tax regulations • no competition, therefore necessary to make rules and regulations for operations and to control pricing

Common Misconceptions About Public Private Partnerships

Given the numerous forms of public private partnership potentially available to local government, there is some confusion as to what constitutes a public private partnership. Public private partnerships are often not considered due to erroneous information based on misconceptions. The most common of these misconceptions are:

- ***Public private partnerships are the same as privatization***
Only one form of public private partnership, known as Build-Own-Operate (BOO) can be described as coming close to privatization. All other forms require an ongoing partnership between the private and public sectors. Even Build-Own-Operate involves a form of partnership in that the public sector can place conditions and regulations on the private partner. One of the key reasons for considering public private partnership is the ability to introduce competition in the provision of local government services, either between private firms or between the private and public sectors. Full privatization merely transforms a public monopoly to a private monopoly such that the benefits of public private partnership are not realized.
- ***By entering into a public private partnership, local government loses control over the provision of services***
By entering into a public private partnership, local government does **not** give up its ability to implement its policies or regulate the provision of services. The local government establishes the ground rules and has the ability to shape the public private partnership to reflect its own objectives, policies and regulations. It can be argued that the local government actually has more control, in that it has well-defined contractual remedies in a public private partnership arrangement that it may not have with its own management and staff.
- ***Public private partnerships apply only to infrastructure projects***
Public private partnerships can be an effective and innovative way of delivering a range of local government services and facilities. While large infrastructure projects tend to capture the most public attention, public private partnerships can also be used to deliver services that do not involve capital projects. Examples include provision of data services, refuse collection and road maintenance.
- ***The principal reason for local governments entering into public private partnerships is to avoid debt***
The principal reasons for local government becoming involved in public private partnerships are to benefit from increased efficiency, shorter implementation time, greater innovation and ultimately better value in the delivery of services brought about by increased competition. The ability to finance a project so that the debt is “off book” should not be the prime motivation for entering into a public private partnership in that the

local government and the ultimate users of the service are still responsible for servicing the debt in one way or another. The emphasis should be on structuring creative and cost-effective ways of delivering services, not on creative accounting.

- ***The quality of service will decline under public private partnerships***

Quality of service does not depend on whether the service is delivered in a traditional manner or through public private partnerships. The local government has the ability to stipulate the quality of service to be provided and ensure it can enforce provisions of the contract dealing with quality control. The nature of public private partnerships suggests that the quality of service would not only be maintained, but enhanced. It is in the private partner's interest to invest in the service, become more efficient, enhance the quality of service to attract more customers or provide additional services to customers.

- ***Local government staff will lose under public private partnerships***

Both union and non-union staff sometimes fear public private partnerships because of potential job loss or reduced wages and salaries. In British Columbia, labour laws provide for the succession of labour contracts. Any public private partnership agreement will need to reflect the labour laws of the province and existing collective agreements. Often, the labour representatives are invited at an early stage of the process to discuss options for service delivery.

Most partnership agreements that have been negotiated in Canada require the private partner to take on public staff and guarantee job security and salary levels. Any changes in staffing levels are generally consistent with labour contracts and occur through attrition rather than layoffs. Many of the benefits of public private partnerships, such as increased efficiency and higher quality of service, have been accomplished through former employees of government. Reasons for increased productivity include increased investment in employees through training, technology transfer and skill diversification.

- ***The cost of service will increase to pay for the private partner's profit***

Governments sometimes resist public private partnerships because they believe that the cost of providing the service will increase to reflect the profits the private partner must realize to stay in business. While the private partner will need to make a profit, the profit must be earned within the existing or a lower price for the service. Presumably, the local government would only enter into a public private partnership if the price of providing a given service was lower than if provided by the local government, or if a higher level of service could be provided for the same price by the private partner. (This assumes that the local

government is not subsidizing the cost of providing the service.) The private partner's profit can only be realized through increased productivity or expansion of service, not through higher prices

- ***Local government can finance the cost of services at a lower cost than the private sector***

By borrowing through the Municipal Finance Authority, local government can often finance projects at a lower cost than the private sector can. However, this may not always be the case. The objective of local government should be to focus on the overall advantages of the public private partnership arrangement.

- ***There are only two partners in a public private partnership***

From the narrow perspective of the public private partnership contract, there are only two partners. In reality, there are additional parties and interests that need to be on board as “partners” for the public private partnership to succeed. These include the customers of the service and the employees who will operate or deliver the service. Public private partnerships cannot succeed without the support of the end user of the service or the agreement of those who will ultimately deliver the service. A four-way partnership is required to successfully move service provision from the public sector to a partnership arrangement.

2.2 When Should Public Private Partnerships be Considered?

A public private partnership may not be the best option for delivering a public service or project. Local government should undertake a cautious approach and examine all relevant factors and issues when considering this type of arrangement. The different forms of public private partnership vary in terms of how risks and responsibilities are allocated. They also vary in complexity and the degree of expertise required to successfully negotiate required contracts.

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

What are the Potential Benefits of Public Private Partnerships?

Public private partnerships are not the solution for the delivery of all services. There are risks in proceeding with public private partnerships without critically examining their suitability to specific circumstances. However, local government can realize important benefits when public private partnerships are used in the appropriate context.

Potential benefits include:

- ***Cost savings***

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

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

- ***Risk sharing***

With public private partnership, local government can share the risks with a private partner. Risks could include cost overruns, inability to meet schedules for service delivery, difficulty in complying with environmental and other regulations, or the risk that revenues may not be sufficient to pay operating and capital costs.

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

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

- ***Enhancement of revenues***

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

- ***More efficient implementation***

Efficiencies may be realized through combining various activities such as design and construction, and through more flexible contracting and procurement, quicker approvals for capital financing and a more efficient decision-making process. More efficient service delivery not only allows quicker provision of services, but also reduces costs.

- ***Economic benefits***

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

What are the Potential Risks of Public Private Partnerships?

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

Potential risks include:

- ***Loss of control by local government***

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

- ***Increased costs***

Not all local governments consider the true costs of providing services when establishing their pricing policies for fees for services. For example, the costs of overhead or administration and depreciation of assets are often not included in the pricing of individual services. In some cases, there are explicit subsidies for specific services. The delivery of services through public private partnerships requires pricing policies and fees to reflect all relevant costs. This can have the effect of increasing user fees for specific services.

The cost of managing public controversy over increased fees or developing complex policies for staging fee increases can often negate the value of public private partnerships for specific services.

- ***Political risks***

Few local governments in British Columbia have extensive experience with public private partnerships. The combination of inexperience by local government and stakeholder unfamiliarity with public private partnerships may result in higher political risks. Local governments may wish to reduce potential risks by initially entering into less complex and better understood public private partnership contracts.

- ***Unacceptable levels of accountability***

Certain local government services are more sensitive than others in terms of public demand for accountability and responsiveness. With public private partnerships, the lines of accountability for the provision of services are less clear to the public than under conventional service delivery. This may result in public criticism of the partnership arrangement and the private partner, or require increased involvement of the local government in ensuring compliance and responding to public demands.

- ***Unreliable service***

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

- ***Inability to benefit from competition***

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

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

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

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

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

- ***Labour issues***

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

When Should Local Government Consider Public Private Partnerships?

Public private partnerships are a suitable method of delivering most services commonly provided by local government and are generally applicable to most components of service delivery.

Application of public private partnerships to various types of local government services

The types of services that could be provided through public private partnerships will vary from local government to local government based on the policies of their Councils or Boards. Generally, most services provided by local government could benefit from bringing the strengths of the private and public sectors together. Public private partnerships may be less suitable for local government services to which access cannot be restricted (such as services with “public good” characteristics, including bylaw enforcement, environment protection and social services). They may also be less suitable for essential services (such as policing, fire protection and other emergency services).

Local government officials and public groups tend to be more receptive to the provision of more specialized recreation facilities, solid and liquid waste management or utilities through public private partnerships.

Aspects of service delivery that lend themselves to public private partnerships

Virtually all aspects of service delivery lend themselves to public private partnership, including:

- project design
- project management
- construction and procurement
- financing
- operations and management
- maintenance
- marketing of services
- communications

When to partner with the private sector

Local governments can consider partnerships with the private sector where any of the following circumstances exist:

- the service or project cannot be provided with the financial resources or expertise of the local government alone
- a private partner would increase the quality or level of service from that which the local government could provide on its own
- a private partner would allow the service or project to be implemented sooner than if only the local government were involved
- there is support from the users of the service for the involvement of a private partner
- there is an opportunity for competition among prospective private partners
- there are no regulatory or legislative prohibitions to involving a private partner in the provision of services or a project
- the output of the service can be measured and priced easily
- the cost of the service or project can be recovered through the implementation of user fees
- the project or service provides an opportunity for innovation
- there is a track record of partnerships between local government and the private sector
- there are opportunities to foster economic development

If none of the above conditions exist, public private partnerships should not be considered.

2.3 How to Proceed with Public Private Partnerships

One of the key responsibilities of local government is the provision of services to its constituents. To carry out this responsibility, local governments have established the required institutional framework, including policies, regulations, standards and procedures, as well as required staffing and organizational resources. Many of the existing policies, standards and procedures developed by local governments are relevant to public private partnerships. However, public private partnerships also introduce new variables into the process. These variables will require local governments to:

- revise existing service delivery and financing policies
- ensure that public private partnership has a “home” within the local

develop new procedures to ensure that public private partnership arrangements are conducted in a fair and transparent manner, minimizing the risks to local government and protecting the public interest

While local governments will need to make adjustments if they wish to become involved in public private partnerships, this should be done in a manner that does not require major organizational restructuring. Suggestions are provided later in this guide as to how local governments can prepare for service delivery through public private partnerships.

A greater challenge for local governments wishing to enter into public private partnerships will be in dealing with prevailing attitudes—both within local governments as well as outside of them. Without effort devoted to educating stakeholders on the risks and benefits of public private partnerships, it is doubtful that public private partnerships will have a prominent role in the delivery of services.

Stages in the Partnership-Building Process

Much of this guide is dedicated to providing advice on how local government can develop successful partnerships with the private sector. The process of developing successful partnerships can be complex and involve various types of expertise. All stages of the partnership-building process are important. Failure to give proper attention to one stage can undermine all of the good work performed in the other stages.

Most guides prepared for provincial or local governments identify a five- or six-stage process for establishing successful partnerships. The *Best Practices Guide for Public Private Partnerships* prepared for the Province of BC identifies a five-stage process:

- Stage 1 - Pre-planning, Planning and Approvals*
- Stage 2 - Request for Proposals*
- Stage 3 - Evaluating Proposals and Selecting a Proponent*
- Stage 4 - Negotiations and Contract Award*
- Stage 5 - Project Implementation*

Pre-qualification of potential private partners can also be a valuable step and is preferred by the private sector.

This guide follows the general partnership-building process outlined in the provincial guide, but makes the necessary changes to reflect the local government context. The guide also assumes that local governments have prepared themselves from the perspective of policy, procedures and organizational changes to accommodate a successful partnership-building process.

A five-stage partnership building process is recommended to local government. These five stages are:

Stage 1 - Assessing service delivery options, including public private partnership

During this stage, local government identifies candidate services or projects for delivery through public private partnerships. Evaluations are carried out to determine which new or existing services or projects are suitable for public private partnerships based on the local government's own policies and criteria.

Stage 2 - Preparing for delivery of a service or project through public private partnership

The second stage involves preparation for successful partnership building. Activities include defining the project or service to be delivered, selecting a project management team, selecting the preferred method of choosing a private partner, obtaining the necessary approvals, defining and determining evaluation criteria, and establishing a communications or public involvement strategy.

Stage 3 - Selecting a partner

During the third stage, local government issues proposal calls, evaluates the proposals and selects the preferred proposal and proponent.

Stage 4 - Negotiating and entering into a contract

Once a preferred partner is chosen, the two parties enter into negotiations. The scope of the negotiations is defined and both partners select a negotiating team. Once a draft contract has been prepared and the parties have come to an agreement, a memorandum of understanding is prepared and the formal process of ratifying the contract begins. Negotiations are concluded when Council or the Board and duly authorized representatives of the private partner authorize the contract. Once the contract is negotiated, the local government debriefs the other proponents.

Stage 5 - Implementation and monitoring of the contract

On approval of the contract by both parties, implementation of the agreement begins. Local government activities include monitoring performance and ensuring compliance of the private partner to the provisions of the contract.

2.4 Who Should be Involved in Public Private Partnership Policy Making?

Local government may wish to involve various stakeholders in the preparation of their public private partnership policies and procedures, as well as in individual projects or service delivery initiatives and organizational changes. Developing consensus with key stakeholders at the outset on policies and procedures will allow individual initiatives to be evaluated on their own terms, rather than on overall ideology or policy.

Stakeholders include local government staff and organizations such as unions. Private sector organizations and other interest groups with a stake in the outcome of such policies and procedures should also be involved. Two key stakeholders are the ultimate consumers of the service and the elected Council or Board.



The Legislative Framework and Authority for Public Private Partnerships

This section contains information on provisions in the *Municipal Act* that relate to public private partnerships. Guidelines are provided on:

- granting assistance to business
- local government powers in relation to property
- local government ability to make contracts regarding the provision and operation of activities, services and works

3.1 *Municipal Act* Authority

The *Municipal Act* currently contains a number of sections that must be considered by local governments when entering into public private partnership arrangements.

Amendments to the *Municipal Act*

In the past, local governments who attempted to enter into arrangements with private or public entities to provide or manage a facility or work for the local government, or provide a service on behalf of the local government, found that many of the opportunities were constrained by numerous provisions of the *Municipal Act*. In September, 1998 the Province amended the Act.

The amendments enable the following:

- granting of assistance to a business in a partnering context
- acquisition or disposition of an interest in property necessary for a partnering arrangement
- contracting in a manner that is more like private corporate contracting

3.2 Granting Assistance to Business

General Authority

Section 176(1)(c) of the amended Act empowers a local government to provide assistance to benefit the community or any aspect of it. *Assistance* is defined as:

- providing a grant, benefit, advantage or other form of assistance, including:
 - an exemption from a tax, fee or charge, including waiving of a charge normally associated with use of local government property or services provided by local government employees
 - disposal of land or improvements, or any interest or right in them, for less than market value
 - lending money
 - guaranteeing repayment of borrowing or providing security for borrowing

Section 182 prohibits granting assistance to an industrial, commercial or business undertaking. An exception to the prohibition against assistance to business, Section 183 provides that a local government may provide assistance under a *partnering agreement* (which is defined as an agreement between a local government and a public or private entity under which the entity agrees to provide or manage a facility or work for the local government or provide a service on behalf of the local government).

General Limitations

Although granting assistance to business is permitted in the context of a partnering agreement, there are a number of essential limitations:

- Granting assistance to a business does not permit the granting of an exception from a local government regulation (e.g., zoning, subdivision or building regulation).
- Assistance granted to a business cannot be in the form of a reduction of a development cost charge that would otherwise be payable.
- If a local government intends to provide assistance by guaranteeing the borrowing of, or lending to, a partner and needs to borrow for these purposes, it must do so by loan authorization bylaw. The bylaw is subject to the same procedural requirements as other loan authorizations, including borrowing power restrictions, requirements for inspector's approval and counter petition opportunities or assent requirements.
- The local government must publish in a newspaper its intention to grant any assistance under a partnering agreement. The notice must be published prior

to the granting of the assistance and include the intended recipient and the nature, term and extent of the proposed assistance.

Property Tax Exemptions

In addition to these general limitations, sections 344.1 and 845.3 also provide a number of limitations and procedural requirements in relation to assistance granted by way of property tax exemptions:

- The exemption must be made by bylaw, and the authority relates only to exemptions from municipal or regional district taxation, as applicable (i.e., the *Municipal Act* does not provide authority for local governments to exempt property under a partnering agreement from school or other provincial property taxes).
- The bylaw may provide for an exemption for all or part of the land, improvements, or both, owned or held by a party to a partnering agreement with the local government, during all or part of the term of the agreement.
- A property tax exemption under a partnering agreement is only available, however, for the part of the land or improvements used for a public purpose (e.g., not a private concession, restaurant, licensed facility, etc. that is located in the public facility).
- If the term of the exemption authorized in the bylaw is greater than five years (including renewals), then the Council or Board must provide a counter petition opportunity in relation to the bylaw.
- In order to provide a tax exemption under a partnering agreement, Council must adopt the exemption bylaw by October 31 of the year prior to the calendar year during which the exemption takes effect (that is, if the bylaw is adopted after October 31 in a calendar year, the exemption takes effect the year *following* the next calendar year).
- A tax exemption under a partnering agreement ceases to apply to property the use or ownership of which no longer conforms to the conditions necessary to qualify for exemption.

Unlike other *Municipal Act* property tax exemptions, a municipal or regional district exemption does not automatically provide an exemption for the property from school or other provincial property taxes. An exemption for some or all of the property exempted locally **may** be available for school and other provincial property taxes, but that exemption is only applicable if the property has been exempted by a Regulation or Order under section 131 of the *School Act*.

The Ministry of Finance and Corporate Relations is currently developing a regulation under that provision, but will consider providing an exemption for individual properties through an Order, prior to the passing of the Regulation.

For information about how to apply for a provincial property tax exemption, please contact the Ministry of Finance and Corporate Relations, Tax Policy Branch, by phone at (250) 387-9011, or by fax at (250) 387-5071.

Negotiating Assistance

It is important to note that this exception to the general prohibition against granting assistance to business will enable local governments that are entering into partnering arrangements to have more leverage when negotiating. Assistance opportunities will be on the table but local governments should only consider granting assistance if the local government is obtaining some valuable concession in return. The cost to the community of the assistance must be weighed against the concessions achieved from the partner.

3.3 Powers in Relation to Property

General Authority

Local governments now have the authority, generally, to acquire, hold, manage and dispose of an interest in land, improvements, personal property and other property.

While the transfer, lease or licence of land does not necessarily constitute a public private partnership or other partnership arrangement, the disposition of real property is an integral part of many partnering arrangements. Local governments have unrestricted authority to acquire and dispose of any property whatsoever, including unrestricted lease terms, so long as the procedural requirements set out in the *Municipal Act* are followed.

General Procedural Requirements

Section 188 provides that all money received by a local government from the sale of land or improvements must be placed to the credit of a special fund and that money to repay an outstanding debt on the property must be set aside for that purpose.

A local government may accept any property, subject to any trusts on which the property is transferred. If the sale of the property is necessary to carry out the terms of a trust under which it was transferred, a local government may sell the property despite any limitations or restrictions in the *Municipal Act*. All money held by a local government subject to a trust, until required for the

purposes of the trust, must be invested in the same manner as authorized for sinking funds.

Local governments are no longer prohibited from granting options to purchase property owned by the local government. Options are now treated as a form of disposal, with the same procedural requirements as are applicable to the sale or lease of local government real property. This will be advantageous when public private partners are interested in acquiring land or improvements in addition to the real property initially acquired in the partnering agreement. However, local governments need to ensure that the option is subject to the same forms of competitive processes as are other disposals (e.g., advertising requirements and offering property for sale to the public).

Advertising and Public Acquisition Requirements

If a local government proposes to dispose of land or improvements, it must make the land or improvements available to the public for acquisition. There are a number of exceptions to this general rule, including if the disposal is to a company or individual under a partnering agreement that is subject to a competitive process (e.g., tendering, request for proposals, etc.).

All disposals of land and improvements require advertising, and in the case of disposals under a partnering agreement that was competitively bid, the advertisement must contain:

- a description of the land or improvements
- the nature and duration of the disposition, and
- the consideration to be received by the local government

It is important to note that the exception to making land and improvements available to the public for acquisition **does not** apply in circumstances where a partnering agreement was not part of a competitive process (e.g., unsolicited proposals). Dispositions of this sort must meet different advertising requirements, including a requirement that indicates the process by which the land or improvement may be acquired.

Thus, all disposals of land and improvements must have some form of competitive process—that process will either be as part of the partnering agreement itself, or as part of the disposal of the property. It is anticipated that most partnering agreements which contemplate disposal of local government land or improvements would be competitively sought through such processes as requests for qualifications, requests for expressions of interest and/or requests for proposals. In addition to the other positive benefits of these processes, they will ensure that a property disposition to a potential partner will not be subject to a requirement for a public offering after months of negotiation with the potential partner.

Disposition of Water, Sewer and Other “Utility” Systems

A water system, sewer system, gas or electrical supply and distribution system, or works for a transportation, telephone, closed circuit television or television rebroadcasting system may only be disposed of by a local government if one or more of the following four conditions exist:

- the works are no longer required for the original purpose (e.g., conveyance of water)
- the works are disposed of to another local government in the same regional district
- in the case of works used to provide a sewer or water service, there is an agreement under which the water or sewer service will continue and the intended disposition receives the assent of the electors
- in the case of the other classes of works (i.e., not used for a sewer or water service), the local government has provided a counter petition opportunity prior to the disposition

The assent of the electors is required prior to disposal of a sewer or water system and the notice for the assent process must include a description of the agreement under which the water or sewer service will continue. This assent requirement recognizes the likely significance to the elector of continuation of the service (i.e., if a local government currently provides either of these services, there is likely to be an expectation on the part of electors that the service be continued).

Disposal of Property Acquired with Provincial Grants

A local government must notify the Inspector of Municipalities before it disposes of land, improvements or works that were funded by provincial grants (and the Inspector may require repayment of these grants) unless:

- the first payment of the grant was provided at least 20 years before the proposed disposition *and* the local government no longer receives grants with respect to that item; **OR**
- the item proposed to be disposed of will be used for the public purpose for which it was acquired or constructed for at least 20 years after the date of the first payment of the grant

These provisions apply to grants made before the new legislation was enacted, but repayment is not always required. Where it is required, repayment is subject to the terms and conditions imposed by the Inspector and regulations made by Cabinet.

Any local government proposing to dispose of assets acquired with provincial grants should communicate with the office of the Inspector of Municipalities to discuss whether there may be a repayment requirement. They should also ascertain from the Inspector whether there are any Cabinet regulations that might apply to the process.

3.4 Contracting

General Authority

A local government may make agreements (or contracts) respecting the local government's activities, works or services, including agreements respecting the undertaking, provision and operation of its activities, works and services.

Procedural Requirements

Section 177 applies if an agreement is proposed or made in relation to a matter that requires the assent of the electors or a counter petition opportunity. If either of those conditions apply:

- the local government must make available for public inspection the final agreement and all records relating to the agreement that are in the custody or control of the local government (to the extent the agreement and records can be disclosed under the *Freedom of Information and Protection of Privacy Act*)
- the records relating to the agreement must remain available for public inspection from the time notice of "other voting" is given until general voting day or from the time notice of the counter petition opportunity is given until the deadline for submitting counter petitions

If an agreement relates to a matter that requires the assent of the electors or counter petition, the requirement also applies to an amendment to the agreement in relation to that matter. That is, if a local government wishes to amend something that originally required a counter petition opportunity or assent of the electors, then assent or counter petition must also be provided for the amendment. If the amendment relates to something that did not originally need counter petition or assent, then counter petition or assent for the amendment is not needed.

Some agreements to provide or operate works and services require approval. Such an agreement must be approved by the Minister of Municipal Affairs if it is made with a public authority in another province, and must be approved by Cabinet if it is made with a public authority in another country.

Agreements Where a Liability is Incurred

Liabilities are generally restricted by Part 12 and Part 24 of the *Municipal Act*, but section 448 and 819 provide authority to incur certain current year liabilities (i.e., expenditures) and section 451 and 828 provide authority to incur certain future year liabilities. Under these latter two sections, local governments are provided with the authority to incur any liability payable after the end of the current year so long as it is incurred under an agreement (contract), is not a debenture debt, and the period of the liability is not longer than the reasonable life expectancy of the activity, work or service under the agreement. For example, a local government may enter into an agreement to acquire community ice time from a private arena operator in each year of a 50-year agreement.

The provisions authorizing liabilities under agreements restrict the liability to non-debenture debts, since debenture debts are authorized under the loan authorization provisions of sections 455 and 831.

Liabilities that are incurred under agreements may be subject to counter petition or assent requirements. If the term of the contract, including all renewals, is greater than five years, the contract must receive the assent of the electors, or the Council or Board must provide a counter petition opportunity in relation to the liability. A notice of the counter petition or vote would include information such as:

- the length of the term of the contract
- the nature of the liability created
- an estimate of the total potential liability

If a partnering agreement provides for more than one matter requiring counter petition or assent (e.g., a liability and a tax exemption which both exceed five years), then the local government may seek assent to the agreement as a whole, rather than individual matters in the agreement, thus avoiding the possibility that electors accept one component of the agreement while rejecting another.

Preparing for Service Delivery Through Public Private Partnership

Most local governments have adopted plans, policies and procedures as well as the organizational resources and support required for the delivery of services. A critical component of effective service delivery is the clear identification of roles and responsibilities for specific services.

Local governments will need to prepare for the unique requirements of public private partnerships. This does not necessarily mean increasing the size or the complexity of the organization or changing the way in which local government presently makes decisions on service delivery. Rather, it means making the necessary adjustments to existing processes and arrangements for effective public private partnerships.

4.1 What Should Local Government Address Before Becoming Involved in Public Private Partnerships?

There are four areas that local government should address before becoming involved in public private partnerships. These are:

- identifying who in the organization is responsible for public private partnerships and who has authority for the ultimate decision (noting the power to delegate local government authority under sections 191 to 194 of the *Municipal Act*)
- developing or accessing the expertise necessary to evaluate, negotiate and implement public private partnerships
- establishing policies to guide decisions on public private partnerships
- establishing procedures that enable effective evaluation and delivery of services through public private partnerships

4.2 Assigning Responsibility for Public Private Partnerships Within the Organization

Local government will need to prepare itself for service delivery through public private partnerships by:

- preparing the necessary policies and procedures
- evaluating opportunities for public private partnerships
- planning and implementing individual public private partnership initiatives

As well, a number of factors need to be considered in establishing responsibility within the organization for public private partnerships. These include:

- The existing organizational structure and responsibilities of staff need not be altered in a significant way to accommodate public private partnership. The evaluation, negotiation and implementation of public private partnerships will draw heavily on existing expertise and resources within the organization.
- Most local governments have established line departments on the basis of specific types of services and established staff functions on the basis of specific types of expertise. Given that public private partnerships are applicable for most services provided by local government and that public private partnerships require a range of expertise, it is to local government's advantage to assign responsibility for public private partnerships to a single department or individual within the organization. This is to ensure that:
 - there is a consistent message concerning the local government's policies and procedures concerning public private partnership
 - there is no ambiguity in who is responsible and accountable for public private partnerships in the organization
 - there is a single point of contact for private sector interests

Local governments have a number of options in choosing who in the organization will be responsible for public private partnerships. To the greatest extent possible, the options and choices should reflect the present organizational structure and decision-making process for service delivery.

Recognizing that Council or the Board has the ultimate authority and responsibility for entering into a public private partnership contract, most local governments have established procedures that allow servicing initiatives to be reviewed before they are brought to Council or the Board for consideration. Initiatives and recommendations come from either staff or committees established by Council and the Board. Responsibility for public private partnership could be vested in one committee or department. If the local government has a system of standing committees, it could delegate the

responsibility to a new standing committee or expand the mandate of an existing committee.

It is also advisable to assign responsibility for public private partnerships to a. This would provide a central source of expertise and support within the local government and provide for effective implementation of public private partnerships.

Mandate of Committees or Departments

The mandate of committees or departments charged with responsibility for public private partnerships must be broad. It includes making recommendations to Council or the Board on:

- the policy of the local government regarding the use of public private partnerships for the delivery of services (The recommended scope of the policy is described in a later section of this guide.)
- the procedures to be followed in responding to or initiating public private partnerships, including proposal calls, public and stakeholder involvement, approvals, negotiations and implementation
- ensuring that the policy and procedures for public private partnerships have been developed in consultation with labour unions, private sector interest groups, the public and with the involvement of Council
- selecting and providing direction to teams established to implement individual public private partnerships
- reviewing memoranda of understanding and draft contracts and making recommendations to Council or the Board on individual public private partnerships
- establishing the criteria for monitoring and auditing existing public private partnerships
- ensuring that approved public private partnerships are being monitored for compliance with the contract and initiating action in cases of non-compliance
- reviewing and monitoring approved public private partnerships to determine whether the local government is getting value for money
- ensuring that individual public private partnerships comply with the other policies and procedures established by the local government

Establishing the Required Expertise for Public Private Partnerships

Depending on the size of the local government, it may not have many of the areas of expertise required for a public private partnership. In such cases, it is important to secure trusted advisors from outside of the organization. The types of expertise required for a public private partnership include:

- overall expertise in public private partnerships
- process management
- public finance, including cost recovery
- private finance
- taxation policy and regulations
- accounting
- contract law
- engineering
- architecture
- facility operations
- real estate appraisal
- marketing and market analysis
- real estate development
- asset evaluation
- quantity surveying
- communications and public involvement

Required In-House Skills

While many of the required areas of expertise may be represented within the organization of local government, staff may require additional training in key areas to allow them to be effective in initiating, negotiating and implementing public private partnerships. These areas include:

- negotiation skills
- mediation
- arbitration
- contract law
- project management
- performance auditing and quality control
- public process
- private sector finance
- risk management

The most important consideration for local government is the development of a leader within the organization who has the ability to understand and manage the complexities and dimensions of public private partnerships. While many other types of expertise can be secured from outside the organization, the

development of leadership for public private partnerships must come from within the organization.

4.3 Adopting a Public Private Partnership Policy

Why Adopt a Public Private Partnership Policy?

The delivery of services through public private partnerships will impact many existing policies of local government. It will also require the establishment of new policies to address issues unique to public private partnerships. There are many reasons for local governments to establish policies for public private partnerships, as well as to identify the objectives which they hope to achieve through their involvement in public private partnerships.

Important reasons include:

- There is a need for a formal policy to provide guidance to local government staff in initiating and evaluating public private partnership proposals. A formal policy adopted by Council or the Board will set out the broad direction as well as some of the ground rules to guide staff in achieving the local government's objectives as they relate to service delivery.

A formal policy will allow local government to communicate its position on public private partnership to other interested parties, including potential partners, labour unions, other interest groups and the public.

What Topics Should be Covered in a Public Private Partnership Policy?

The scope and content of a formal policy on public private partnership will vary from one local government to another. It is conceivable that some local governments may adopt policies that do not promote public private partnerships as an option for service delivery. Others may embrace the concept enthusiastically. If a local government is considering service delivery through public private partnerships, it should consider:

- the types of services or projects for which it will consider public private partnership
- the forms of public private partnership it will consider
- the degree of risk it is prepared to accept as well as how it intends to manage the risk
- risks it is not prepared to accept under any circumstances

- its criteria for determining whether public private partnerships are a viable method of service delivery
- its position on conflict of interest for those involved in public private partnerships
- its policy on the involvement of stakeholders throughout the process consistent with legislation, as well as on fundamental principles such as transparency, accountability and inclusiveness
- how its other policies will impact on the involvement in public private partnerships, including labour, staff, finance, etc.
- the types of partners that are eligible to become involved in public private partnerships with the local government

Preparing the Public Private Partnership Policy

The preparation of a public private partnership policy should be the responsibility of the committee or the department that will be charged with implementing it. As a formal policy of the local government, it should be considered and adopted by Council or the Board.

An important consideration in preparing the policy is the need for considerable consultation with affected stakeholders. Given that the policy may impact various existing policies and agreements, it is essential that stakeholders affected by the new policy be given an opportunity to be involved in its preparation. Groups and agencies that might be involved in the preparation of the policy include:

- local government staff
- local chambers of commerce
- the local construction industry
- potential private partners
- local representatives of professional organizations
- residents, taxpayers and voters
- labour unions
- other interest groups

Various techniques could be used for consulting with these interest groups. The scope and extent of the consultation process should reflect the degree of interest and the importance of the issue in the community or region.

Councils and Boards should be kept informed of the progress in preparing the policy and should be invited to all meetings and open houses involving the public.

4.4 Establishing Procedures

The policy on public private partnership will guide local government staff as well as external stakeholders as to how the local government intends to become involved in public private partnerships in the delivery of services. In addition to establishing a policy, it is also suggested that the local government establish more detailed procedures to provide guidance for local government staff and potential private partners. The procedures should address the following topics:

- an overview of stages the local government intends to follow in the process of establishing public private partnerships
- identification of key persons, committees and stakeholders involved in the various stages of the public private partnership process and a description of the roles and responsibilities of those involved
- an indication of the key decisions required at various stages in the public private partnership process and identification of who is empowered to make those decisions
- the requirement for involvement of stakeholder groups, the public and electors at various stages in the public private partnership process, including the requirements for notification and advertising, disclosure of information, procedures for counter petition and assent of electors consistent with the *Municipal Act*
- guidelines for managing the paper flow with particular reference to *Freedom of Information and Protection of Privacy Act* considerations

Determining When to Partner

This section contains guidelines to assist local governments in making the decision on whether to enter into public private partnerships, and to prevent them from expending considerable resources on public private partnerships that have little chance of succeeding.

In addition, advice is included on how to proceed to a more detailed analysis of those servicing opportunities that show potential for delivery through public private partnerships.

5.1 Reviewing Opportunities for Public Private Partnerships

The potential for service delivery through public private partnerships will reflect local government policy and expectations. For example, a local government may take a policy position that states public private partnerships should not be considered at all or considered only in special circumstances. At the other end of the spectrum, the local government may undertake a systematic review of how it presently delivers services to assess the relevance of public private partnerships to both existing and future service delivery.

Irrespective of the position they ultimately take, local governments need to carefully consider the relevance of public private partnerships to the delivery of services in their communities, in particular, to:

- services currently being provided
- future services the local government is contemplating
- unsolicited proposals advanced by the private sector

Current services and public private partnerships

Local governments may encounter resistance when considering public private partnerships to change the way existing services are delivered. There may be general public resistance to change, particularly if a local government has provided high quality and efficient service. Those benefitting from the service may fear a decrease in service, an increase in the price of the service, or both with the involvement of a private partner. There may also be resistance from local government staff and labour unions threatened by potential changes and the possible impact on job security, wages and benefits.

On the other hand, if the local government's performance has fallen short of expectations there could be public support for changes to the method of existing service delivery. There may also be greater support for expansion or upgrading of existing services to provide a higher quality service.

A key issue local government must address before considering public private partnerships is the true cost of providing existing services. Many local governments lack benchmarking tools, such as accurate accounting for unit costs and other costs associated with providing a service. This issue is discussed in more detail later in this section.

Future services and public private partnerships

Local governments may also consider public private partnerships for the delivery of future services, for example:

- new types of services not presently provided in the community
- modification of existing services to provide a higher level of servicing (e.g., water treatment)

Future servicing initiatives will generally be identified in:

- long-range financial plans
- strategic servicing plans where these have been prepared
- official community plans
- servicing studies or strategies related to specific types of services

The public and other stakeholders may be more prepared to consider public private partnerships for services that are not presently provided or for modification and upgrading of existing services. This would be particularly evident in cases where the provision of new or upgraded services may not be possible or feasible under conventional service delivery.

Unsolicited proposals and public private partnerships

Private sector proponents may submit unsolicited proposals when they believe that they can provide a service to the benefit of the public, the local government and to themselves.

It is recommended that local governments not consider unsolicited proposals for the following reasons:

- The benefits of public private partnerships is that they take advantage of competition among private sector partners. Unsolicited proposals cannot be compared to proposals from other potential private partners.
- The potential for perception of bias and unfair procurement procedures is greater with unsolicited proposals.

- The *Municipal Act* requires public accountability and transparency in structuring public private partnerships. Unsolicited proposals may not fare well in the public process.

5.2 Overall Criteria in Determining Public Private Partnership Opportunities

In reviewing the potential for public private partnerships, the key variable is the local government's policy as it relates to service delivery in general and public private partnership specifically. The policy will determine the criteria to be applied, the weighting of the various criteria and the extensiveness of the review itself. In addition to the policy of local government, it is clear that some services lend themselves more easily to public private partnerships than others.

After determining which services show promise for public private partnerships, local government will need to assess the forms of public private partnership best suited to these opportunities. Specific questions to address include:

- What are the potential obstacles and constraints for these public private partnership opportunities?
- What are the experiences of other local governments?
- Would the private sector be interested in these opportunities?
- Is public private partnership the best method to deliver these services or facilities?

Considerations, Obstacles and Constraints

To determine the potential for a public private partnership, local government will need to address various considerations. These include:

- local government policy
- the legislative authority
- the taxation framework
- reporting and accounting
- financial issues

- ***Local government policy***

As stated earlier, the local government's policy for the provision, financing and cost recovery of services will be a key factor in assessing whether public private partnerships are seen as an accepted approach to service delivery.

The policies established by local government will be based on the values and objectives of the community and the elected Council or Board. They will also

form the basis for the local government's plans and strategies for the provision and financing of services.

If public private partnerships are not seen as a viable or accepted approach to service delivery based on fundamental values and policies, it is clearly not in the community's best interest to proceed with individual public private partnerships. More commonly, local governments will establish policies that identify the circumstances (e.g., type of service, component of the service system) under which public private partnerships may be considered.

In addition to local government's servicing and financing policies, they must also consider the implications for other policies, including land use and development, human resources and economic development. Efforts should only be directed toward advancing proposals that are consistent with established local government policies.

- ***Legislative authority***

The legislative framework set out in the *Municipal Act* provides considerable flexibility for local government to enter into public private partnerships. There are, nevertheless, constraints and procedural requirements that will impact the ability of local governments to enter into public private partnerships. (The legislative authority for public private partnerships was discussed in section 3 of this guide.) Local government must also adhere to other provincial and federal statutes.

- ***Taxation framework***

In determining whether an opportunity is suited to a public private partnership, the local government should recognize the interests of the possible private sector partner. One of the incentives that will attract private partners is the ability to minimize the amount of tax they are required to pay.

Local government has the authority to exempt from municipal property taxes the "public use" portion of property subject to a public private partnership agreement. In cases where the local government provides an exemption, it can request a matching provincial property tax exemption.

Also to be considered is whether any or all partners are subject to the federal Goods and Services Tax (GST) and the BC Provincial Sales Tax (PST). The private sector partner will want to ensure that it is entitled to input tax credits (ITCs) for GST purposes as they relate to the project. If goods and services are for an "exempt supply," ITCs would not be available. Examples of exempt supplies, as they may relate to local government partnerships, includes certain supplies for drainage, sewage and water supply systems.

In cases where the private sector partner finances an infrastructure project, interest incurred as a result of this financing is generally deductible for tax purposes. Interest incurred during the construction period must generally be

capitalized for tax purposes. Property taxes paid are generally considered to be a component of construction period soft costs for that period, therefore requiring that those amounts be capitalized.

Financing costs, such as commitment fees and guarantee fees, are deductible on a straight-line basis over a period not exceeding five years.

If the private sector partner is the owner of the project, or has a leasehold interest in the project for income tax purposes, capital cost allowance (CCA), a form of depreciation, is likely deductible in computing income for tax purposes.

- ***Reporting and accounting***

In addition to taxation considerations, local government should also consider accounting and financial reporting considerations that apply to public private partnerships.

Public sector accounting standards are still evolving in the area of public private partnerships. The specific accounting treatment should be determined by the entity's accountant at the time any arrangement is proposed.

For more information on financial reporting and accounting, please refer to Appendix 1. Please note that the following accounting implementation issues are current as of the date of this guide.

The Accounting Recommendations issued by the Canadian Institute of Chartered Accountants (CICA) are the primary source of "generally accepted accounting principles" (GAAP) and apply to profit oriented and not-for-profit organizations (NFPs).

The public sector (federal, provincial/territorial and local governments, and entities accountable to them and which they own or control) is expected to follow the Accounting Recommendations issued by CICA's Public Sector Accounting Board (PSAB). *The Public Sector Accounting and Auditing Handbook* does not yet have the authority of GAAP; but implementation of its accounting recommendations is being encouraged at the local government level by the Ministry of Municipal Affairs.

Loosely defined, public private partnership arrangements range from leases, contracts of services and infrastructure financing, to government partnerships involving jointly controlled operations, assets or organizations. The nature of the arrangements will dictate the appropriate accounting treatment in the financial statements of the local government. The specific arrangements in each case will need to be tested against the relevant accounting pronouncements to determine whether the local government's financial reporting objectives are achievable.

In structuring these kinds of arrangements, care must be exercised to ensure that there is a business purpose to involving the private sector and that the arrangements reflect substance over form.

The relevant accounting treatment for various types of public private partnership arrangements (broad definition) is as follows. Readers are cautioned that the information is general in nature and subject to the specific characteristics of the various forms of arrangements, including capital and operating leases, service contracts, government partnerships and government business partnerships. These arrangements are set out in Appendix 1.

- For executory contracts such as operating leases and build-own-operate agreements with unrelated parties, the local government's costs will be recorded as incurred without any balance sheet impact. Capital leases and certain arrangements, such as Build-Own-Operate-Transfer (BOOT) contracts, involve asset ownership that may have balance sheet accounting requirements. Commitments and contingencies associated with these arrangements would be disclosed in the notes to the financial statements.
- For exchange transactions such as management contracts, outsourcing of services and privatization, and for shared-cost arrangements, costs are recorded as incurred, with appropriate disclosure of commitments and contingencies.
- For government partnerships involving joint control by the local government, the local government will proportionately consolidate the assets, liabilities, revenues and expenses, other than for government business partnerships that will be accounted for on the modified equity basis, using the local government's share of the partnership.

Financial issues

Local government needs to consider a range of financing issues before proceeding with a public private partnership. Financial issues that should be considered prior to implementing a public private partnership project include:

- Can private sector financing compete with public sector financing for the type of service or project being considered?
- What is the effective cost of borrowing?
- Can private sector companies be bonded for a project of this type and magnitude?
- Are there any senior government grants available for projects of this type? Are partnerships eligible for such grants?
- Is the project financially self-sufficient or can it become self-sufficient?
- What support mechanisms are the public sector prepared to make available (e.g., recourse financing, subsidies, supplies, equipment)?

- Is it possible to define an equitable and appropriate rate-setting mechanism?
- Is the financing structure without recourse to the local government?

5.3 Do the Benefits of Public Private Partnership Outweigh the Costs?

A review of the possible obstacles and constraints to public private partnership may eliminate it as an option for delivery of a particular service or infrastructure. If the obstacles and constraints can be satisfactorily addressed, there are still a number of other considerations before proceeding to implementation. The first of these is whether the benefits of public private partnership outweigh the costs.

There are two steps that should be followed in assessing the benefits and costs for the use of public private partnerships:

1. The local government should establish the true cost of providing a service (either existing or proposed). This is called benchmarking or shadow bidding.
2. The benefits and costs should be systematically analyzed considering both quantifiable costs and benefits, and other non-quantifiable measures.

The establishment of benchmark costs requires that the true costs of providing the service by the local government are quantified. These include both capital and operating costs, such as:

- direct costs of providing the service, including salaries, wages, benefits, office space, equipment, capital equipment and insurance
- indirect costs, such as corporate overhead
- financing costs, including debt service costs and interim financing

The benchmark costs should reflect all relevant costs so that the public private partnership option can be compared fairly.

Where the local government is considering provision of a new service where cost information does not exist, benchmark costs must be projected. The projected costs for in-house delivery of a new service should be based on the costs of providing similar services by the local government and cost data from other local governments already providing the service.

Once the benchmark cost of providing a service has been established, the local government has a number of choices. It can adjust its approach based on the analysis and continue to provide the service without a private partner. If it

believes that the potential for a public private partnership is high, it can undertake a more systematic review of the benefits and costs of proceeding with a public private partnership.

Until the private sector responds to a proposal call for a particular service, the true costs of a public private partnership will not be known. These costs include:

- the cost of establishing the partnership, including all internal and external costs (e.g., outside expertise, legal fees)
- the cost associated with managing the contract including performance audits

As public private partnerships become more prevalent, cost data may become more readily available to local governments.

Costs and benefits other than strictly financial ones should also be considered in the analysis. These include:

- the transfer of risk (that could be both a benefit or a cost)
- loss of control
- loss of efficiencies during the transfer

5.4 Is this a Project the Private Sector will be Interested In?

Another important consideration for local government is the potential interest of the private sector in the proposed public private partnership. The private sector will be interested in providing some services more than others, and taxation and financial considerations will be fundamental issues for the potential private partner.

Generally, the private sector will be most interested in those services with:

- unmet demand
- revenue generating capability
- revenue development potential
- demonstrated project viability
- demonstrated strong political commitment to the project by local government

Also important, but less critical, are opportunities for:

- technology development
- expansion of service

An important issue in attracting a private sector partner is how the local government intends to deal with risk transfer.

The degree of risk to be transferred to the private partner will determine the extent of the return or reward required by the private partner. The more risk, the higher the expected return. The private sector will not be interested in opportunities in which the local government is unable or unwilling to offer rewards that are commensurate with risks the private sector may be required to accept. Proposals for public private partnerships that do not balance risks and rewards between the prospective partners have limited prospects for proceeding. The issue of balance to the private sector is based on market conditions and other opportunities for investment.

Another consideration for the private sector is the bottom line. Ultimately, the private sector will need to confirm that the financial rewards are consistent with the degree of risk that it is being asked to assume.

Various market factors will need to be considered, including existing and future demand for the service (price, future market conditions and the scale of the project). Simple cash-flow analysis can be used initially to determine whether there may be private sector interest in specific projects.

There are various types of financial analysis used to determine potential interest on the part of the private partner, such as net present value, return on equity or return on investment. The basis of the analysis should be life-cycle costs.

The most critical issue from the perspective of the potential private partner will be whether there is an adequate return to cover the potential risk.

5.5 The Decision to Begin the Implementation Process

Through systematic analysis, local governments will be able to identify the existing services or proposed servicing initiatives they can consider for delivery through public private partnerships.

Given the results of the analysis, there may be numerous servicing initiatives that could proceed as public private partnerships. Local governments should assess their capabilities and set priorities based on their capabilities to manage numerous initiatives and to respond to public demands for success.

Implementing Public Private Partnerships

The previous sections provided an overview of public private partnerships, identified how local government should establish an internal framework for involvement in public private partnerships, and set out procedures for identifying potential public private partnership opportunities.

This section provides guidelines to assist local government in preparing for those public private partnerships selected for implementation. Guidelines are provided for the following:

- establishing the project team
- refining the scope of the project
- selecting the preferred procurement process and evaluation criteria
- establishing a schedule for delivery of the service
- designing a public involvement or communications strategy
- obtaining the necessary approvals

6.1 Establishing a Project Team

The first step to implementing a public private partnership is the establishment of a project team. The project team will be responsible for the public private partnership from its planning stage, through the development of a Request for Proposals (RFP), to the award and completion of a contract and finally, could also be involved in monitoring the performance of the private partner. Note, however, that the project team should not be directly involved in the selection of the successful proponent. This issue is discussed in section 7.5 of this guide.

The project team should consist of local government staff with a direct interest in the project. The leader of the project team should be someone who has a thorough understanding of public private partnerships and the process to be followed. It is also important to have someone as part of the team who has a thorough understanding (technical or otherwise) of the service to be delivered.

In some cases, it may be beneficial for the local government to engage expertise from outside the local government to lead the process. This ensures that the individual responsible for the public private partnership has an arm's length relationship to the local government with no bias. It is important for the local government to ensure that this person and the project team have the necessary authority to undertake the project. Lack of authority will delay completion and can lead to a lack of respect and confidence on the part of the private sector.

Requirements for establishing the project team include:

- A **process manager** must be chosen to lead the team.
- The necessary **technical expertise** must be available to guide the project team. This becomes extremely important for the local government and the private sector in the development of the RFP, evaluation criteria and negotiation of the public private partnership later on in the process.
- All project team members must be able to devote enough **time** to the project to guarantee that it stays on track.
- There must be no **conflicts of interest** on the part of any members of the project team.
- A **communications protocol** and the **reporting** relationships with senior local government staff and the Council or Board must be established.
- The need and type of **outside technical advisors** required throughout the process must be determined.

The Canadian Council on Public Private Partnerships indicates that acquiring the services of outside technical advice is a best practice for local government looking to enter into a public private partnership, for a number of reasons:

- Consultants can offer arm's length advice. A consultant cannot become a potential partner placing a bid on the project after the RFP has been developed, therefore the advice will come with no vested interest.
- Outside technical advisors can keep the local government apprised of the evolving legal, financial, policy and other aspects of public private partnerships. This type of expertise may not be available from within a local government.
- Strong outside advisors can assist the local government in the development of the RFP and in the negotiation process. This brings credibility to the local government's commitment to the public private partnership.

Technical advisors can ultimately save the local government time and money due to their expertise in these types of arrangements. They know what to watch for in developing an RFP as well as in contract negotiations. This expertise leads to respect and a balanced negotiation situation that can often lead to the "best deal" for a local government with a private sector partner.

6.2 Refining the Scope of the Project

Once the project team has been established, its first task is to refine the scope of the proposed public private partnership project. This will allow for a full accounting of the expected project costs (usually calculated based on the local government completing the project on its own) and will form the basis for the development of the RFP. The following sections discuss how the project team can refine the scope of the project.

Conducting a Needs Assessment

The project team's main focus in a needs assessment is to define the service needs and to determine the objectives to be achieved through the public private partnership. These objectives must be quantifiable, measurable and specific in order to assist in analysis and the future preparation of an RFP.

When the project team has completed the needs assessment, the objectives to be achieved through the public private partnership should be clearly established.

In the end, the needs assessment will guide the development of the RFP to which potential partners will respond. For this purpose and for future monitoring after the completion of the project, it is extremely important that the local government's needs and objectives are clearly stated.

Risk Allocation

A major component of any public private partnership is risk allocation. Who will assume risks in the delivery of a service or in the construction, operation and maintenance of infrastructure is often the central question in a public private partnership. The project team should attempt to reduce risks to the best of its ability. However, risks are inherent in most local government projects and servicing initiatives.

There is some debate as to how much risk should be transferred from the public to the private sector in these types of partnerships. Generally, the more risk transferred to the private sector partner, the more financial reward the private partner will demand. Risk should be allocated to the party who can best assume it.

From the standpoint of the local government, there are several political risks that need to be addressed. These include:

- loss of control in the provision of infrastructure or in the delivery of a service
- potential reduced service quality for service users

There are also a number of other risks inherent with infrastructure or service delivery projects that need to be analyzed and understood by both public and private sector partners. Examples include risk associated with:

- fire, flood, etc.
- changes in financing costs
- reduced demand for service or failure of demand to increase as projected
- design errors
- construction-related problems, including failure to meet the schedule and/or quality issues
- ownership transfer
- environmental liability
- non-compliance with regulations and permits, or changes in regulations
- employment practices and changes in labour legislation
- performance monitoring
- technology issues (failure of existing technology, inappropriate choice of technology)
- force majeure (that is, dealing with major change arising beyond the control of either party, including acts of God, natural disasters, court orders, war)
- insolvency of private sector partner
- inflation/currency strength
- value of assets at end of partnership, change of ownership

This list of risks is not exhaustive. It is intended for local government to understand that there are a number of risks that can be shared between the public and private sector partner. How these risks are shared will be largely determined by who is best able to assume these risks at the least cost.

Components of Service Delivery to Include in Public Private Partnerships

As indicated earlier in this guide, the various forms of public private partnership are components of the service delivery they address. For example, design-build does not encompass the operation and maintenance of the service. The project team must decide which components of a servicing initiative are best addressed through a public private partnership and which are best undertaken by the local government. The project team should consider the following questions:

- **Project design** - Can the private sector bring more innovation and efficiency to the design process than the local government? This is an important consideration. The objective should be to develop designs that provide value for money and lower overall life-cycle costs of the project, not only the capital cost.

- **Procurement and construction** - Who can secure goods and services required for the project or servicing initiative most quickly and competitively? Who is in the best position to construct the facility?
- **Financing** - Who can secure the most competitive financing?
- **Ownership** - Who should own the facility or service? Do the benefits of public ownership outweigh the benefits of private ownership?
- **Operations and maintenance** - Who is in the position to operate the service cheaper and more efficiently? Will the inclusion of operations or maintenance as part of the public private partnership enhance the original objectives of the local government?
- **Marketing** - Who would do a better job promoting the use of the service?

Many of the components of service delivery are logically bundled together, such as design-construction, ownership-financing, and operations and maintenance. It is important to consider bundling to determine whether combining various components leads to greater value for money than providing individual components. However, the project team should investigate each component of service delivery on its own terms.

The choice of which components of service delivery should be provided will determine the form of public private partnership to be used.

In selecting the preferred form, it is always important for the project team to confirm that the approach is consistent with the overall policies of the local government relating to:

- ownership of services and facilities
- impact on local government staff
- risk management
- financial policies (e.g., debt)
- economic development

The project team should also bring other considerations to the discussions, including:

- opportunities for land swaps
- opportunities for projects to serve multiple objectives (e.g., multi-use facilities)

Budget Refinement

Before a proposal call is issued, the project team needs to determine or refine the project's budget. In many cases, this is completed by determining what the project would cost if it were built strictly by the local government. This process is used for a number of reasons:

- It will determine if a public private partnership will actually save money for the local government. Unless a proponent's solution is innovative and would result in a significant improvement in service or cost savings, it is unlikely that a local government will participate in a public private partnership arrangement.
- It will provide potential partners with a "benchmark" on which they need to improve in their proposals. Again, if the proposal comes in at a higher cost than proposed by the local government, the expectation is that the private partner will provide an improvement in quality of infrastructure or service for users.
- It will determine if the local government can afford to be involved. If the local government cannot build a much-needed project on its own, assistance from the private sector may be required.

The preparation of benchmark costs would build on the preliminary benchmarking of costs described in the previous section. In preparing a "shadow bid," the project team may wish to undertake additional work to provide a sound cost estimate for the project or servicing initiative. This may mean undertaking some preliminary design work, valuation of property (where land is required), research on recent construction costs and operating costs for similar facilities in other communities, or other activities depending on the nature of the service.

A clear delineation should be made between what are considered capital costs and operating/maintenance costs to avoid confusion later in the process.

Costs are not the only consideration. The local government must also benchmark quality of service, technology and implementation time.

The preparation of a "shadow bid" will allow the project team to evaluate and compare proposals from potential private partners on a fair and equitable basis. More often than not, local governments do not make a full accounting of the cost involved in providing a service. Administration, overhead and maintenance costs can often be separate budget items. These costs are then not directly attributed to the services that create them.

When the true or actual cost of an infrastructure project or a service is being analyzed for benchmarking, the following components need to be examined in detail:

- program-associated capital costs
- salaries and benefits of all employees directly involved in the provision of the service
- allocation of the salaries and benefits paid to administrators, accountants and human resources employees who deal with the specific service
- proportion of overhead incurred by the service through space needed in the local government building, use of a central accounting system, payroll, engineering department, procurement, clerical staff
- telephone, fax, courier, Internet, computer network costs
- training
- utilities
- office equipment
- postal costs/courier expenses
- cost of office supplies used
- advertising and promotion costs
- public relations costs
- travel, meals and accommodation allowances
- cost of outside consulting contracts

In infrastructure projects, both capital and operating costs must be considered in developing a benchmark cost. These costs are presented in the following table.

(Fig. 6.2.1) Infrastructure Capital and Operating Costs Required for Benchmarking

Capital Costs	Operating Costs
<ul style="list-style-type: none"> • land value • preparation of the site • pre-design of the infrastructure • detailed design of the infrastructure • construction costs • contingencies • professional fees • advertising fees • tendering fees • inspection and testing • commissioning • furniture and equipment • interim finance costs • cost of borrowing through Municipal Finance Authority • insurance • performance security • start-up costs • available capital funding programs • taxation 	<ul style="list-style-type: none"> • maintenance • grounds • mechanical systems servicing • communication system servicing • utility costs • audit fees • administration fees • salaries and benefits for associated municipal employees • insurance • capital repairs • capital upgrades • reserve fund required for facility • furniture and equipment reserve

Basic Conditions Expected in a Partnership

The basic conditions expected in a partnership must be included in the RFP document. They will form one of the building blocks on which proponents will build their submissions. The project team should consider the following aspects of the proposed public private partnership and establish the requirements of the local government:

- preferred length of the partnership
 - ownership of assets during and after the partnership
 - treatment of public employees who may be displaced by the partnership
 - performance specifications, standards and expectations, including the roles and responsibilities of both partners
 - how both partners' performance will be measured
- a definition of an “adequate rate of return”

- profit and cost sharing provisions
- performance bond requirements

It is important for the local government to keep in mind that these conditions are not set in stone. Rather, they are subject to change in the negotiation process with the preferred partner. These conditions provide an indication to prospective partners of what the local government is seeking in the partnership arrangement. The project team must give serious thought to how these conditions are worded. The wording can encourage private sector partners to respond and submit a proposal, but can also dissuade some prospective partners from submitting proposals. Wording should be conducive to achieving the goals of the local government in terms of soliciting proposals.

6.3 Selecting a Procurement Process

In this guide, two procurement processes will be examined and compared in situations where a public private partnership is proposed for implementation:

- Request for Proposals
- Invitation to Tender

Request for Proposals

A Request for Proposals (RFP) can be used when the project team knows what it wants to achieve, but would like prospective partners to use their experience, technical capabilities and creativity to identify how the local government's objectives can best be met. One of the main differences between an RFP and an invitation to tender is that in an RFP, the lowest bidder does not always gain the contract. Rather, the local government is seeking **value** in the proposal. Value comes in a number of forms. In the case of submissions to an RFP, value can come through the creation of operating efficiency, cost-saving measures, or innovations that alter existing processes to create better efficiency and cost savings.

The Request for Proposals can be issued through either a one-stage or two-stage process.

- ***One-Stage Process***

A one-stage RFP process for selecting a private partner can be issued to select parties known to the local government to have the capability to be successful partners.

A one-stage process may be appropriate for a local government in a number of circumstances, including:

- When only a limited number of suppliers have the resources and capabilities to be a successful partner.
- The project must be implemented under a tight timeframe.
- A limited number of potential private partners means that proponents have a better chance of gaining the contract. This provides incentive for private partners to undertake the considerable expense of submitting a proposal.
- The local government is not able to spend a large amount of funds on the process.

- ***Two-Stage Process***

The two-stage RFP process involves an initial stage that screens potential partners. Generally, this first stage involves the issuance of a **Request for Expressions of Interest (RFEI)** or a **Request for Qualifications (RFQ)**. This screening allows the project team and the evaluation committee a chance to initially consider a wide range of proponents and then to narrow the field to those most qualified.

The RFEI approach is used where local government has identified its objectives but may not have fully defined the project or service to be delivered. The RFEI is intended to provide local government with sufficient information to draft a clear RFP. After expressions of interest have been received, the project team may decide to hold a meeting with proponents where the proposed public private partnership is discussed in more detail. Partnerships and alliances between private sector firms could form at these meetings. This reduces the potential number of submissions received at the RFP stage.

The use of RFEIs can assist local government in two ways:

- it reduces the time and expense involved in evaluating a larger number of proposals
- it improves the quality of proposals

Following the meeting with potential partners and using the submissions received in response to the RFEI, the project team is in a good position to draft a clear, well thought-out RFP. In this sense, the RFEI is used to gain information to help in drafting the RFP.

A RFQ is used for different reasons and in response to different circumstances than an RFEI. The RFQ is used in situations where the local government and the project team have a more defined project but do not know if there are any private sector partners with the resources, experience or interest to undertake the project.

The RFQ document is more specific than the RFEI document. The RFQ document generally seeks information pertaining to a potential partner's:

- name
- qualifications
- relevant experience
- management experience
- project management track record
- financial resources
- long-term financial stability and company viability
- references

The RFQ process is not designed to gain answers as to how the project will be completed. Rather, the RFQ process is used as a shortlisting tool to pre-qualify selected potential partners who will then receive the RFP.

Local governments should use the two-step process in the following situations:

- where qualified firms would not take the time and expense of preparing a response to an RFP if there were too many other firms submitting
- there is an advantage to initially inviting a large number of firms and then narrowing the field to those most qualified
- the required proposal will be time-consuming and expensive for the proponent to prepare
- the project is large and complex and the local government's evaluation panel will need time to fully examine and evaluate the proposals
- the RFP process will involve the divulgence of information that is sensitive or even confidential—with a limited number of firms receiving the RFP, the number of people with access to this information can be limited and monitored

The Canadian Council for Public-Private Partnerships notes that responses to RFPs (as well as RFEIs and RFQs) are costly in terms of time and expenditures for the private sector. As such, **local government should never use the RFP process when there is no real commitment to delivering a project through the use of a public private partnership.**

More information about the RFP process can be found in section 7 of this guide.

Invitation to Tender

When an invitation to tender is issued, the local government generally knows exactly what it wants and how it wants to achieve its goals. Most often the tender is issued and the lowest bidder is awarded the contract.

In the process of establishing goals and objectives and determining the costs of providing infrastructure, the project team can sometimes define exactly what needs to be accomplished. This determination usually includes a definition of the needs of the local government and how these needs are to be met. In these instances, it may be advantageous for the local government to consider an invitation to tender. This will reduce the cost involved in developing a public private partnership. However, this may limit the local government's opportunities to view other, more efficient cost-saving options for delivery of the service.

6.4 Establishing the Schedule

Before requesting proposals, the project team should establish the schedule for the project or servicing initiative as well as establishing key milestones. The schedule should clearly reflect the local government's own timeframe for completion of the project or initiation of a service.

The schedule should include the following key milestones:

- *Activities to be carried out by the local government in requesting and evaluating proposals*
 - securing required approvals prior to the proposal call (e.g., by Council or the Board)
 - selecting the evaluation team
 - drafting and advertising the RFEI/RFQ
 - drafting and advertising the RFP
 - evaluation of the RFP
 - information meetings with proponents
 - public meetings
 - meetings with Council or the Board
 - selection and notification of successful partner
 - debriefing of non-successful partners
- *Activities related to negotiation of contract*
 - selection of negotiating team
 - drafting and finalization of Memorandum of Understanding
 - public process including advertising, notification, disclosure of agreements, counter petition process and assent of electors

- preparation of contract documents
- ratification of draft contract
- securing of financial approvals (Council, the Board, regulatory agencies)
- *Project rollout*
 - project/service initiation
 - construction milestones (if applicable)
 - completion of construction (if applicable)
 - commissioning of service

6.5 Stakeholder Involvement

One of the more important considerations the project team must address is the preparation of a well-conceived consultation program with key stakeholders. The potential for successful implementation of a public private partnership is greatly diminished if such a program is poorly conceived and executed. The benefits of involving the stakeholders early, as well as throughout, the process are many.

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

The project team should prepare a consultation and communications strategy that involves all of the key stakeholders at appropriate times in the process. Key stakeholders include:

- Councils or Boards
- local government staff
- the public or end users of the service
- specific user groups
- unions
- approval agencies
- other agencies involved in the provision of the service (e.g., lending institutions)

The strategy should facilitate two-way communication between the local government and the affected stakeholders. Various methods of disseminating information and receiving responses should be provided in the strategy. The strategy should include the following:

- objectives of the consultation and communications strategy
- identification of key stakeholder groups and their interests in the project/servicing initiative
- the key milestones in the project/servicing initiative where consultation and communication is required or desirable
- the timeframe and points in the process where the involvement of various stakeholders is required
- the overall approach and methods to be used for informing the stakeholders as well as receiving input from them (an overview of possible methods is provided in Figure 6.5.1)
- the involvement of the media in the communications process
- how statutory requirements will be met, including notification, advertising, disclosure of agreements, counter petition and elector assent

The extent of the consultation program should reflect the scope of the project and the existing or expected interest in it by stakeholder groups. Larger, more controversial projects should be accompanied by an extensive consultation program that incorporates a variety of approaches and methods over an extended period of time. Smaller or less controversial projects may not require the same level of effort.

Stakeholders should be involved as early as possible in the process to avoid difficulties at later stages.

(Fig. 6.5.1) Methods of Public Involvement

Communication	Consultation
<ul style="list-style-type: none">• print media (newspaper advertisements, flyers, direct mailings, newsletters)• radio advertisements• TV advertisements, cable access TV programs• public meetings• dedicated phone line• Internet web site• information centre• open houses	<ul style="list-style-type: none">• surveys (questionnaire, telephone)• Internet web site• dedicated phone line• open houses• workshops/seminars• public meetings

Selecting a Preferred Partner

Once the project team has prepared the strategy for implementing the public private partnership, its attention focuses on selecting the preferred private partner. The steps required to select the private partner include:

- issuing a Request for Expressions of Interest (RFEI) or Request for Qualifications (RFQ)
- evaluating the RFEI and RFQ submissions
- issuing a Request for Proposals (RFP)
- evaluating the RFP submissions
- selecting the preferred partner

7.1 Documenting and Recording the Selection Process

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

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

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

7.2 Issuing a Request for Expressions of Interest and Request for Qualifications

Once it is determined that a project or servicing initiative could be attractive to both the private and the public sector, the local government must undergo a process of determining a suitable partner. In these situations, the local government may wish to consider issuing an RFEI or RFQ. (This topic was introduced in section 6.4 of this guide.)

At this stage the local government can use either an RFEI, an RFQ, or both. The selection of the process will be contingent on the local government's knowledge and understanding of the issue at hand.

- An RFEI is used when the local government has a general idea of what it hopes to achieve through a public private partnership, but does not know how to achieve the end goal. In this case, the local government is looking to the private sector for innovative and cost-saving ideas before drafting the Request for Proposals.
- An RFQ is used when the project goals are well-defined by the local government but there is some uncertainty as to whether there are any private sector partners who may be interested and have the skills to undertake the initiative.

Generally, the main difference between the two processes is that the RFEI can be used as an information-gathering tool prior to drafting an RFP, whereas an RFQ is used to shortlist qualified private sector partners.

Depending on the nature of the project, a combined RFEI and RFQ can be used to achieve both the goals described above.

The RFEI or RFQ process is important for local government because it can serve to screen potential partners. In many situations, it would be extremely time-consuming and costly for local governments to evaluate all proposals received after an RFP. The RFEI or RFQ process allows the local government to narrow the field prior to issuing an RFP to the selected potential partners. These processes may also allow the local government to prepare more insightful RFP documents that will be beneficial to both the potential partners and to the achievement of the local government's goals.

The screening process is also a courtesy to the private sector. If three bidders are chosen and issued an RFP, the selected private sector bidders are much more likely to invest time, resources and innovation into preparing a proposal than if ten proponents are selected. A select few bidders at the RFP stage gives those preparing proposals a reasonable chance of being selected. The RFQ process is much shorter than preparing a full RFP and can save considerable financial and time expenditure by unqualified private sector respondents.

Drafting and Content of the RFEI or RFQ

The Canadian Council for Public-Private Partnerships (C2P3) has completed a publication entitled “Best Practices Guidelines for Initiating Contracts and Contracting with the Private Sector”. In this publication, C2P3 recommends that in developing the RFQ, RFEI and RFP, local government should generally engage outside technical, legal and financial advisors.

A variety of reasons are cited for this measure:

- many of the issues involved will be new to local governments and host governments will benefit from the advice of impartial outside third-party advisors
- project bidders will be advised by experienced, specialized counsel (legal, financial, technical and process consultants) throughout the process
- the presence of advisors will lend credibility to the host government’s negotiating position as the proposal evolves
- the presence of experienced independent advisors with sufficient stature will bring credibility and reputation to the process and allow host governments to meet criticisms relating to fairness or otherwise

Following consultation between the local government and experienced professional advisors, the RFQ or RFEI can be drafted. Generally, these documents include:

- the local government’s objectives in seeking a public private partnership
a description of the existing service and the budget framework (if applicable)
- the nature of the proposed partnership (if it is known to the local government)
- the contribution and expectation of the skills the preferred partner will bring to the partnership
- mandatory submission requirements and instructions to respondents

- the evaluation scheme including weightings, points or other considerations that will be applied to each element of the evaluation
- the full extent of the selection process, including timetables

Advertising the RFQ or RFEI

The RFQ and RFEI should be as widely advertised as possible. This will encourage participation in the process and ensure fairness and equity. Advertising can be conducted through a number of media, including print, the Internet, professional journals and personal contact.

The advertisement of the RFQ or RFEI should include:

- a brief description of the project
- the role that will be played by the successful private sector partner
- the number of companies that will be shortlisted and receive the Request for Proposals
- the location and deadline for submissions
- the expected format of submissions
- a contact name
- an address where the full RFEI/RFQ document can be obtained

As a general rule, potential partners in the process should have between 30 and 60 days from the date of the advertisement to prepare their submissions.

Submission Requirements

The RFEI or RFQ process is used to screen qualified candidates for a public private partnership. This process spares many private sector parties the expense of preparing a full proposal. These processes also allow qualified partners the opportunity to compete with fewer candidates, ensuring a greater possibility of earning a partnership with the local government. In many cases, the local government will have to evaluate more submissions at the RFEI or RFQ stage. To ensure quality and to reduce the time required in the evaluation process, submissions from interested parties need to be kept brief. Generally, they should include the following information:

- a clear understanding of the scope of the project and the local government's needs

- a profile of the potential partner making the application (If the partner is to be a consortium formed for the purpose of providing a proposal, each person or firm in the consortium should provide information on its principal business and the length of time that it has been in operation.)
- the identification of the contact person for the private partner
- a statement of financial stability (that can be evaluated on a pass/fail basis)
- a statement of financial capability including access to capital (debt and equity)
- a statement of performance capability that includes an overview of overall experience, experience in similar projects, senior management expertise, expertise of those staff members who will work on the project, ability to obtain necessary resources, references, and in the case of an RFEI, the methodology for the project
- a rule of thumb would be a maximum of 15-30 pages for an RFEI or RFQ depending on the scale and complexity of the project

Communication with Proponents

In order to encourage participation in the RFEI or the RFQ, the local government should be clear in its intentions. The local government should also be prepared to provide clarification and answers to any questions from bidders. In the interest of fairness, when information is provided to one potential bidder, the same information should be provided to all potential bidders. In order to limit contact with the project team, one team member should be assigned the responsibility of providing information to all parties.

7.3 Evaluating the RFEI and RFQ Submissions

In cases where an RFEI is used, the evaluation procedure will differ from that of evaluating an RFQ. When an RFEI has been used, the local government's project team may wish to hold meetings with potential partners who have submitted an expression of interest. The main reason behind these meetings is to bring all information forward, enabling the draft of a detailed RFP. Following these meetings, potential partners may all be allowed to respond to an RFP. Conversely, the local government may choose to use evaluation criteria to screen the submissions to the RFP and only permit a select few potential partners to respond to the RFP.

- ***Criteria***

Generally, if an RFQ has been used, the local government has a detailed understanding of the goals that need to be achieved in the project. Once the RFQs have been received, the project team may use its established criteria to begin evaluating the proposals.

- ***Process and decision making***

Perhaps the simplest part of the decision-making process is ensuring the potential partners have included all mandatory requirements listed in the Request for Qualifications. If the submission does not contain all elements, it may be disqualified in this first phase. The project team may also decide to contact the potential partner to ask why a requirement was omitted. When this courtesy is extended to one submission, it should be extended to all in the interest of fairness.

In the second phase, all submissions can be ranked on the pass or fail questions such as financial stability. If the submission fails any of these tests, it may be disqualified.

The proposals that have not been disqualified in the first two phases will be evaluated by the criteria set out in the RFQ or RFEI. Members of the project team may score the projects individually, then aggregate the scores, or they may score each project together by consensus.

As set out in the RFEI or RFQ, a specific number of the highest ranked submissions will be shortlisted to receive a Request for Proposals.

As a matter of courtesy to potential partners eliminated in the RFEI or RFQ process, meetings with unsuccessful proponents should be held on request to discuss why they were not shortlisted. This session is important as it provides access and answers to questions for unsuccessful applicants, as well as providing them with a better understanding of the process for the next time the local government issues a RFEI or RFQ. It will also improve the quality of submissions received by the local government in the future as more participants will have a greater understanding of the process and its requirements.

7.4 Issuing a Request for Proposals

A major reason for considering public private partnerships is that the competitive marketplace can bring operating efficiency, innovation and cost savings to a project. The goal of local government in issuing an RFP for a public private partnership is to provide clear guidelines for submissions resulting in innovative and cost-efficient proposals.

There must be a balance between flexibility and mandatory requirements in an RFP. An inflexible RFP stifles private sector creativity and may also reduce potential cost savings. An overly flexible RFP may yield innovation and cost

savings but may not satisfy the specific requirements of the local government. Regardless of how inflexible or flexible RFP documents are, private sector faith in a potential partnership is diminished substantially by a poorly constructed RFP. This may in turn limit quality participants from responding to the RFP.

A good RFP is one where the specific requirements of the local government and areas where innovation is encouraged are clearly outlined. This type of RFP helps the private sector achieve the goal of developing a quality proposal incorporating innovation and cost-saving measures while also satisfying the goals and objectives of the local government. Clarity in purpose and attention to detail from the outset of the RFP process will make the entire public private partnership process run smoother. It will also build local government credibility to the private sector to the benefit of future projects.

Drafting an RFP

Much like an RFEI or RFQ, professionals with experience in public policy and process, engineering, finance, accounting and law, among other disciplines, should be retained to assist the local government in drafting an RFP.

A two-stage process where an RFEI or RFQ is used first can often facilitate the drafting of an RFP. For example, the potential partners may have expressed innovative or cost-saving ideas in the RFEI process. The local government project team can use these ideas to develop the RFP, provided that they are not protected or proprietary.

If an RFQ has been used to shortlist qualified candidates, the local government should already have a strong indication of the information required to draft the RFP. This information would include goals, how goals are to be achieved, budgets, and cost savings and efficiencies expected to occur through the public private partnership.

The RFP document should contain at least the following:

- introduction
- description of the proposed relationship between the local government and the selected partner
- proposal format and mandatory submission requirements
- detailed description of risks the local government will not assume under any circumstances, as well as how the risks will be shared in general
- explicit performance specifications, standards and expectations of both the potential partner and the local government
- design and construction requirements (if applicable)
- management and operating requirements (if applicable)
- proposed business plan

- detailed financial information and a proposed financing plan and pro forma for the project
- transfer plan for any capital assets including a description of a proposed lease if applicable
- limitations on mortgaging and assigning rents
- legal considerations
- considerations for employees who may be displaced by a partnership
- permit requirements
- proposal evaluation criteria (see recommended evaluation criteria in section 7.5 of this guide)
- proposal evaluation process
- form of discussions permitted between the local government and potential partners in relation to their proposals prior to selection of a preferred partner
- bonding requirements
- contract award process
- process for measuring performance
- statutory requirements the local government must comply with relating to disclosure of intentions, counter petition (if applicable) and assent of electors (if applicable)
- deadlines for preparation and delivery of submissions
- communication channels—the means by which potential partners may seek clarification of the RFP document
- the identity of a local government officer who is authorized to discuss and present information to prospective partners
- appeal and rights of review
- restrictions of potential partners to discuss the RFP with third parties
- appendices (with other relevant information, such as labour contracts and the local government's policies with respect to public private partnerships)

Some of the information provided by bidders will be subject to copyright or may be proprietary information. As such, the RFP should expressly state the treatment of such information by the local government. Bidders should also be advised of the application of privacy laws and access to information laws.

Generally, depending on the scale of the project, potential partners are given 45 to 90 days to present their submissions. If it is a large-scale project (i.e., a major sewer system or water treatment facility), the period to receive submissions can be extended at the discretion of the local government. The local government should only consider extensions to the deadline in extreme cases. Much like disclosure of information, if an extension is granted to one potential partner, it should be extended to all potential partners.

Advertising

If a one-stage RFP process is being used (i.e., no RFQ or RFEI), the advertising methods discussed for an RFEI and RFQ would also be sufficient for an RFP. The local government may wish to advertise more broadly through print media in a larger geographic area to attract more interest and potential partners in a one-stage project, especially if the project is large in scale.

If a two-stage process has been used (i.e., an RFQ or RFEI), the local government has likely already shortlisted candidates to receive the RFP. This can be beneficial to both the local government and private sector proponents. In this case, extensive advertising is not required, as the RFP is only distributed to shortlisted candidates.

Items to Keep in Mind

- In both a one-stage and two-stage process, it is important to record and keep track of all potential partners who have received the RFP and have access to information contained in it.
- If the RFP document contains information that may be sensitive to the local government, circulation can be restricted to a limited number of members in each bidding firm.

Submission Requirements

Requirements for a one-stage process

If the local government has opted to use a one-stage selection process, it is possible that a number of detailed and complex proposals will be received. Evaluating these proposals is a difficult and time-consuming task. In order to establish an initial screen of submissions, information that is required in an RFQ process should be included in the mandatory requirements for the RFP. These elements would include:

- a profile of the potential partner making the application (if the partner is to be a consortium formed for the purpose of providing a proposal, each person or firm in the consortium should provide information on its principal business and the length of time that it has been in operation)
- a statement of financial stability (that can be evaluated on a pass/fail basis)
- a statement of financial capability, including access to capital (debt and equity)

- a statement of performance capability that includes an overview of overall experience, experience in similar projects, senior management expertise, expertise of those staff members who will work on the project, ability to obtain necessary resources, and references

If the information provided in this initial portion of the proposal is not satisfactory to the project team, potential partners can be eliminated. This initial screening will save time and allow the project team to give their full evaluation attention to fewer potential partners. The submissions in the one-stage RFP process will also have to include the requirements listed in the following section on two-stage processes.

Requirements for a two-stage process

In a two-stage process, the RFQ or RFEI is used to shortlist potential partners. Only the selected partners will be issued the RFP document. As such, information that is required in the RFQ or RFEI need not be included in the RFP requirements.

The information required in all submissions will vary depending on the needs and requirements of the project and of the local government. The RFP must stipulate the format of the proposal and each submission should be submitted in that format. This will enable the project team to evaluate the proposals in an “apples to apples” comparison. If all submissions are received in the same format, a “checklist” scoring system can be used for each component, which will reduce the time required to evaluate the submissions.

The submissions should generally include the following:

- a **covering letter** signed by the principals of all firms that make up the potential partner’s team
- a **table of contents**
- an **executive summary** of the submission
- **identification of the potential partners**, including the names of all firms involved in the submission and the legal structure between them
- details mentioned previously, if this is a one-stage RFP process
- for infrastructure projects, a **design and construction plan**, including:
 - design work
 - timeframes and timetables
 - permit requirements
 - power requirements
 - provisions for expanding and modifying the proposed infrastructure
 - details on commissioning

- a **management plan**, including:
 - operations
 - treatment and development of operating manuals
 - maintenance
 - compliance with existing regulations
 - staffing
 - training of staff
 - accounting, reporting and auditing procedures
 - proposed relationship with local government staff

- a **business plan**, including:
 - partnership structure
 - duration of the proposed partnership
 - ownership (present and future)
 - terms of payment
 - maintenance costs
 - reserves that need to be kept by the private partner
 - risk management, including that of force majeure

 - risk transfer from the local government to the private sector partner
 - economic benefits to the local government

- a **financial plan**, including:
 - detailed cost schedule
 - financial structure
 - potential partner's sources of funding
 - expectation of funding from the municipal government in terms of equity or annual operations
 - how improvements, upgrades and modifications will be financed
 - pro forma financial statements
 - for infrastructure or service delivery partnerships where user fees will be a source of revenue, a detailed year-by-year description of future user fees
 - definition of an "acceptable rate of return"
 - expected return to the proposed private sector partner

- **tax expectations**, including:
 - tax deductions
 - capital cost allowance
 - transfer to the public sector partner
 - Goods and Services tax
 - land transfer tax
 - property and business tax

- **legal arrangements**, including:
 - legal structure of the partnership between firms or persons in a consortium
 - proposed legal structure between potential partner and local government
 - special terms and conditions that will be required
 - compensation if project is cancelled by local government
 - compensation if project is cancelled by potential partner
 - dispute resolution mechanisms
 - indemnities

- a **value engineering component**, providing details as to how the proponent's engineering component of the project (if applicable) varies from that proposed by the local government (This component is evaluated on innovation, benefits and cost savings.)

Using a Two-Envelope System

Project teams may wish to use a two-envelope system in the evaluation of an RFP. The first envelope would contain all required submission contents except for the financial plan. The second envelope would contain the financial plan. Project teams have used this system in the past to avoid being swayed mainly by the financial aspects of the project. While these aspects are extremely important, proposals must also be evaluated on technical merit including innovation, value engineering and cost savings components.

The two-envelope system can also be used as an added screen in the evaluating the proposal. If the proposal meets the technical criteria established by the project team, then the second envelope detailing the financial plan can be opened and evaluated. If the proposal does not meet the technical criteria, the project team can be spared the time-consuming task of analyzing the financial plan.

Circulating a Draft RFP

It is in the local government's interest to circulate a draft request for proposal to shortlisted proponents. This will enable the prospective private partner and local government to:

- discuss requirements that are unclear or ambiguous
- resolve other issues that may result in the private partner misunderstanding the local government's objectives

Communicating with Proponents

As mentioned previously, a carefully developed and clear RFP document is important not only for future contract negotiations, but also for building the trust of the private sector. A well-developed RFP document will demonstrate to the private sector that the local government is serious about the partnership and has the ability to complete the transaction.

A solid RFP that clearly states the intentions and requirements of the local government in a public private partnership can reduce the amount of questions received by the project team from proponents. However, this does not mean that questions will be eliminated altogether. There are a number of considerations for communications with proponents.

These considerations include:

- An option available to the project team is to hold a meeting of potential partners who have received the RFP. This forum would allow proponents' questions to be addressed.
- Background information should be provided to all potential partners. If this is too costly, the local government should consider charging a fee for the information or developing a background information centre where proponents may view relevant background information. An option would be to develop a virtual project background room on the Internet. All background information would be available to project proponents who would be issued a password to gain access to the Internet site.
- Submissions from the potential partners may contain large quantities of sensitive financial or other privileged information, and the local government should receive the materials and use them in the strictest confidence. This commitment to confidentiality will build trust for future RFP processes.
- The project team should appoint a contact person. All potential partners would be required to receive information from the contact person only. This limits lobbying efforts. It also ensures that all information will come from one person. This person will be responsible for disseminating the information to all potential partners.
- Information provided by the contact person should be in a written format. This would ensure that all proponents receive exactly the same information.
- The project team should consider having a "black out" on proponents' contact of local government staff and elected officials. In this instance, proponents would face disqualification for contacting any party other than the designated contact person.
- The potential partners should be informed of the no-lobbying provisions.

7.5 Evaluating the Proposals

As evaluations and negotiations are most often closed to the public, it is at this stage that claims of favouritism, patronage politics and other general abuses of the process may occur. The Canadian Council for Public-Private Partnerships notes that the process must be fair, open and transparent. This does not mean that the public becomes involved in evaluation and negotiation. Rather, the local government's project team must establish an evaluation process that is perceived to be fair and free of favouritism. Many local governments have established a selection panel to evaluate the proposals that is separate and independent from the project team and the local government.

Developing Evaluation Criteria

Evaluation criteria can vary depending on the type of project and end users.

Evaluation criteria can include the following:

- proposed solution to the needs of the local government (Has innovation been incorporated in the proposal? If so, is it valuable to the process?)
- previous experience of the potential partner
- commitment of the proposed partner to achieving a solution that will benefit all parties
- understanding of the needs of the local government
- management capacity of the potential partner
- compliance with the non-negotiable requirements of the local government
- staff capability
- financial stability of the potential partner
- financial capability and ability to deliver infrastructure or services
- municipal priorities
- municipal policies
- proposed solutions for dealing with labour unions and local government employees affected by the arrangement
- legality of the proposed solution
- likelihood that the potential partner can achieve the proposed solution
- final basis for making the decision, including value for money and life-cycle costs

Appointing a Selection Panel

There are a number of different ways that a selection panel may be appointed. This is at the discretion of the project team and the local government. However, an evaluation panel can be established to ensure the integrity and fairness of the evaluation process.

In all cases, there should be a close examination of all members of the independent evaluation panel to ensure that no conflict of interest situation will arise. The following people should **not** be included on an independent selection committee:

- Council or Board members, or any other individual or committee members that will make the final decision
- members of the project team (whenever possible)
- any professionals who have assisted the local government in the preparation of RFQ, RFEI or RFP documents
- anyone who will be involved in the administration of the project

This will help the local government avoid or mitigate charges by the public of an unfair process.

The Evaluation Process

In a one-stage proposal evaluation, the same process that is used in a RFEI or RFQ evaluation may be used.

- Proposals are evaluated for their mandatory requirements. If any of these requirements have not been included, the potential partner can be eliminated from the shortlist.
- Proposals that do not adequately and clearly demonstrate financial or managerial capability or previous experience can also be eliminated, further reducing the shortlist.

Once the proposals have been through these two screens, a shortlist will have been created. The proposals that remain can then be evaluated based on the criteria set out in the RFP.

In a two-stage proposal evaluation, all of the submissions will have been received from participants who have been shortlisted through the RFEI or RFQ process. As such, all proposals will be evaluated.

Oral Presentation

If an oral presentation is required as part of the RFP process, it should be stated in the RFP requirements. The oral presentation can be beneficial for both the proponent and the evaluation panel. It allows proponents to clearly express the ideas in their proposal and to gauge the sentiments of the evaluation panel. And it allows the evaluation panel to ask questions of the potential partners. For this reason, oral presentations are strongly recommended.

If possible, give all potential partners the opportunity to present on the same day. The time allotted for presentations and question-and-answer sessions should be the same for all proponents and will vary depending on the complexity of the project. Generally, if there are more than five shortlisted proponents, it is advisable that the presentations be limited to one hour.

Also, if possible, video-tape the oral presentation and question-and-answer sessions. All verbal agreements or commitments made in the presentation and question-and-answer session become a part of the proposal.

Site Visit

A site visit with each potential partner may be warranted. This may help the evaluation panel gain a full understanding of the mechanics and the ability of the proponent to complete the project.

Analysis and Ranking of Proposals

The analysis and ranking of proposals can usually be effectively accomplished through the use of a standardized checklist. If all proposals were submitted in the same format, the checklist becomes an even more effective comparative and analytic tool. It should be noted that the assumptions of the potential partners should be the same in order to make an effective comparison. This is especially important when the financial plan is being examined. Assumptions such as future interest rates and inflation should be taken into account and brought up to a standardized level to make a sound comparison of all proposals.

The selection panel can score the potential partners in a number of ways:

- ***Individual Member Scoring***

Each member of the selection panel is presented with a checklist. The member then scores each of the evaluation criteria for all proposals. At the end, the scores from all members are added up for each proposal. The proposal with the highest score becomes the preferred partner. Instead, the

selection panel may rank the proposals. Each member's ranking score would be added and the potential partner with the best score would be the preferred partner. Both scoring systems can also be applied to oral presentations.

- ***Scoring by Consensus***

In this method, only one evaluation score is generated by the entire evaluation panel, through a process of developing consensus in the evaluation. The total score would include points awarded for the presentation and for answers to panel questions. Again, the team with the best score would become the preferred partner. It is also appropriate to divide responsibilities for evaluating the proposals based on expertise of the members of the evaluation team. For example, the technical components could be reviewed by members of the team with technical expertise, while the financial and business components be reviewed by those with financial and business expertise.

Compensating Unsuccessful Proponents

When a project is delivered using a method such as the traditional tender method, private sector bidders are usually willing to submit proposals at their own cost. This is because the design work, standards and specifications have already been determined by the local government.

As the amount of work required to submit a proposal increases, the private sector bidders are more likely to request an honorarium from the public sector owner as partial compensation for their costs in creating a complete proposal. Honoraria, when paid, are generally paid only to unsuccessful proponents.

The advantages of paying an honorarium include increasing the likelihood of:

- receiving better quality submissions
- the public sector partner clearly 'owning' the proposal contents
waivers being signed by proponents on receipt of payment to not instigate any future legal action with regards to the project's procurement process

Paying honoraria also demonstrates to prospective private partners that the local government is committed to the project.

Traditional disadvantages of paying an honorarium include:

- poor public opinion about paying the private sector for preparing proposals
- the likelihood that acceptable submissions would be received regardless

The issue of paying honoraria should be addressed in the local governments' policy statement on public private partnerships



Negotiating the Public Private Partnership Agreement

Once the selection team has chosen the preferred private partner, the public private partnership agreement must be negotiated. This section contains guidelines for:

- reaffirming local government objectives
- establishing a negotiating team
- determining the type of agreement and what it should include
- addressing labour law and statutory regulations

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

8.1 Preparing for the Negotiations

Approval Prior to Contract Negotiations

The results of the evaluation process should be presented to Council and the Board for a decision prior to the start of contract negotiations with the successful proponent.

The following guidelines should be taken into account in the negotiation of a public private partnership.

Local Government Objectives

Local government objectives should be reaffirmed, including:

- ensuring the agreements contain all necessary controls over quality, excellence and effectiveness of the service or facility, since these matters generally cannot be regulated unilaterally by the local government after the long-term agreements are made
- clearly allocating the risks between the local government and the private partner

- ensuring the combination of benefits afforded by the public private partnership will be better than if only the local government provided the facility or service (e.g., cost, service, implementation time)
- ensuring the public is protected in the event the private partner becomes insolvent, bankrupt or walks away during the term of the agreement
- ensuring the local government is obtaining value for money—the consideration provided by the local government must be balanced by the benefits received by the community

Establishing a Local Government Negotiating Team

It is important to have a leader or point person to lead the negotiations. There can only be one leader, so the other side does not “divide and conquer” and so that one individual takes responsibility and accountability for the process and results. The point person leads the preparation and the negotiations.

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

The advantages of having a team negotiate a public private partnership are:

- more expertise
- more minds to notice opportunities
- to make notes to be relied on for future meetings
- better preparation
- collegiality

The negotiating team must prepare by establishing objectives, strategically planning, ascertaining the facts and conducting due diligence regarding the private partner.

It is important to establish *objectives* as opposed to *positions*. This is the key to the success of the negotiations. The objectives must be based on the strong commitment of the team, be the result of significant preparation, have the support of the local government elected body and be realistic in light of the powers of the local government.

Strategic planning deals with long-range objectives and is more important than tactics. Generally, the best-prepared team is the more successful team in the negotiations.

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

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

A local government has more power during the negotiations if it has more time (i.e., it can afford to wait longer than the private partner). It is important to plan tactics to achieve local government objectives and strategies. All strategies and tactics should be vetted with the local government elected body so there are no surprises.

Objectives to be Achieved During the Negotiation Process

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

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

Contract Building Blocks

Depending on the nature of the public private partnership, there may be a need to negotiate a number of agreements. These include:

- a development agreement that defines the successful proponent's obligations and rights regarding the design and construction aspects of the projects
- a management and operations agreement that defines the successful proponent's obligations and rights regarding the management and operations of the facility
- a transfer agreement, which may be required where an interest in property is being transferred. Some forms of public private partnership may involve more than one transfer (e.g., transfer to private partner at outset and transfer back to local government at the end of the term).

In addition to the types of agreements that relate to specific aspects of the public private partnership, there are also different types of contracts relating to how payment is determined. Options include:

- fixed price contracts
- unit price contracts
- cost-plus fee contracts
- phased contracts

A ***fixed price contract*** is used when management and operation of a facility or service is comparatively simple, predictable and certain. The details of the work must be prescribed in the standards, specifications and drawings attached to the contract. There must also be performance measurement mechanisms built into the agreement. Local governments use fixed price contracts to take advantage of the private partner's experience and expertise at a competitive price.

A ***unit price contract*** relates consideration to units of service or materials. The standards and specifications identify the level of service or description of materials. Local governments use these contracts for service, operating or maintenance agreements, or a combination of these. In this type of contract, the local government is able to benefit from a competitive price.

A ***cost-plus fee contract*** is used when the scope of the work or service is not well-defined at the outset, for example, if new or untried technology will be installed or if the quantity of the work or service is not known at the outset. Normally, the private partner negotiates a fee or profit margin while the local government controls all other costs directly or as passthroughs. Local governments benefit because the private partner can provide unique expertise or experience.

A phased contract is used as an alternative to a cost-plus fee contract in the case of a complex facility development or where the proposed facility or service has not been well-defined. The private partner agrees to a fixed price or unit price, combined with details of work to be performed at each phase.

Labour Law Issues

Before the public private partnership agreements are negotiated, it is necessary for the local government to address labour law issues. These issues include:

- successorship for union members
- honouring “contracting out” provisions of collective agreements determining whether any staff will be relocated to the private partner
- dealing with the treatment of individual employees at the end of the contract term

Statutory Authority

Before completing negotiations, it is important to ensure that the elements of the arrangements are authorized by the *Municipal Act* or other statute or regulation, and that nothing contemplated in the arrangements is prohibited by statute or regulation.

Agreement Contents Checklist

The agreements relating to every public private partnership arrangement should deal with the following:

- a description of the project (including information on the scope of the project), deliverables, the term and the effective date of the agreement
- payment provisions, including the time, amount and currency
- identification of the private partner’s management team, including:
 - identification of key individuals and covenants relating to their participation
 - identification of the contract manager
 - provisions for the replacement of key individuals or contract managers
 - requirements for private partner representatives, officers or employees to be on site or in the community
- administrative relationships of the parties, including:
 - identification of the parties’ contract manager
 - clarification as to whether the local government may inspect, attend on the site, monitor, measure results or otherwise administer the terms and conditions of the agreement
 - a review process, pursuant to which the parties assess performance

- schedules of meetings and who should attend, in relation to contract administration
- transfer, lease, licence or use of local government premises or facilities, including responsibilities for insurance, liability, security, operation and maintenance
- allocation of revenue from services or facilities
- acceptance of deliverables
- contract revision arising from material change (e.g., changes in technology, equivalent materials, applicable laws, acts of God or other unforeseen circumstances)
- lending, borrowing and financing arrangements, including payments, rates, security and notice
- indemnity, release and insurance provisions
- due diligence of the parties
- applicable manuals, including their preparation, approvals and amendment
- risk management strategy, including risk allocation, guarantees and warranties
- dealing with statutory and regulatory requirements
- “re-openers” to deal with major change

process, including approvals, related to engaging subcontractors or other private partners

- termination provisions, including:
 - business failure
 - insolvency or bankruptcy
 - breach of contract
 - major change, including provision for re-entry or buy-back by the local government, transfer to another private partner or shutting down the project
- labour relations provisions, including:
 - successor rates
 - wage and benefit guarantees
 - dealing with the cost of staff reduction
 - treatment of employees on contract termination
 - relocation of identified employees to the private partner
 - Workers’ Compensation Board provisions
 - employment equity, if applicable
 - fair wages, if applicable
 - local preference for hiring

- user fees regulation
- general matters, including:
 - conflict or dispute resolution mechanisms, such as commercial arbitration, alternate dispute resolution or other remedies or recourses
 - confidentiality and privacy, subject to the *Freedom of Information and Protection of Privacy Act*
 - force majeure
 - notices where information is to be sent and conditions governing transfer of information between or among the parties
 - termination provisions that identify which clauses survive termination
 - clarification that the contract is governed by the laws of the Province of British Columbia and Canada
 - establishment of a contract amendment process
 - clarification that the set of agreements constitutes the entire agreement between the parties and supersedes any prior communications
 - identification of how rights may or may not be waived or acquiesced to during the term
 - publicity
 - ownership of intellectual property, facilities or new technologies developed

Ratifying the Contract

The process of ratifying a contract with a private sector partner is a key step given the procedural requirements established in the *Municipal Act*. To this point, the negotiations with the private partner may have taken place without significant involvement of the public or other stakeholders. If the contract involves elements that require advertising, elector assent or the opportunity for counter petition, the local government must ensure that the required steps are taken. The procedural requirements can be undertaken at any time after the local government has determined:

- the type and extent of assistance to be granted
- the extent of land or property disposition
- the nature and extent of liabilities to be incurred

However, they are best met when local government has identified with reasonable certainty the extent of the cost, the exemption or benefit to be provided, or the liability to be incurred. This avoids having to repeat the requirements should negotiations result in changes.

9.1 Procedural Requirements and Limitations

While authority for local governments to enter into partnership agreements is broad, there are procedural limitations that are imposed by the *Municipal Act* for individual matters that may be incorporated in the agreement. Procedural limitations apply where a partnership agreement:

- grants assistance to an industrial, commercial or business undertaking (e.g., tax exemption)
- involves the disposition of property owned by the local government
- requires a local government to incur a liability for a period that exceeds five years

Figure 9.1 provides an overview of the procedural limitations that apply to the granting of assistance, disposition of property and incurring a liability.

(Figure 9.1)

Procedural Limitations for Components of Partnering Agreements

Components of Partnering Agreements	Required Advertising	Limitations	Elector Assent/Counter Petition Opportunity
Granting assistance	Notice of proposed assistance must be published in a newspaper (section 185) Counter petition notice (if required)	Granting of assistance to industrial, commercial, or business undertaking is prohibited unless assistance is under partnering agreement. Prohibition against waiving of development cost charges. Tax exemptions limited to those authorized under Part 10 or Part 24 of the <i>Municipal Act</i> . Tax exemptions can only be provided for that portion of land or improvements used for a public purpose if owned or held by a party to a partnering agreement. Exemption from school and other provincial property taxes requires an exemption from the Lieutenant Governor in Council.	Local government must provide a counter petition opportunity for tax exemptions which exceed a period of five years. This can be carried out through counter petition for the agreement as a whole (section 178)
Disposition of local government property	Notice of intended disposal Counter petition notice (if required)	In disposal of water, sewer, and other utility systems, local government may be required to repay all or some of a provincial grant, unless the grant was given 20 years before disposition and there are no further grants to be paid for the property OR property will be used for the public purpose for which it was acquired or constructed for at least 20 years.	Disposal of water, sewer or utility systems require local government to provide a counter petition opportunity except: <ul style="list-style-type: none">• where the property is surplus to needs, or• disposition is to another local government in the same regional district If the disposal of property relates to an operating water or sewer system, local government must enter into an agreement which continues the water or sewer services, and requires the assent of electors.
Incurring long-term liabilities	Counter petition notice (if required)	Debenture debt cannot be incurred under an agreement and must be incurred under a loan authorization bylaw. Loan authorization bylaw authority has been broadened to include borrowing for the purpose of lending to or guaranteeing the borrowing of any person or public authority to which the local government is authorized to provide assistance.	Counter petition opportunity required for any incurred liability that exceeds five years. Counter petition opportunity required for loan authorization bylaw (replaces elector assent requirement).

Disclosure Requirements

Electors must be given sufficient information to make an informed decision when voting or petitioning on the content of a partnering agreement, prior to the vote or during the counter petition period. Section 177 of the *Municipal Act* requires the disclosure of the agreement and records relating to the agreement to the extent that these documents would be available under the *Freedom of Information and Protection of Privacy Act*. The local government must ensure that all relevant documents and agreements are publicly available. They may also wish to consult with their solicitors to ensure that the requirements of the *Freedom of Information and Protection of Privacy Act* are being met.

Voting or Petitioning on the Agreement as a Whole

Where a partnering agreement involves more than one matter that is subject to procedural limitation, section 178 of the *Municipal Act* provides authority for local governments to seek the assent of the electors or provide a counter petition opportunity in relationship to the agreement as a whole, rather than on individual matters that require such assent or counter petition.

It is recommended that local governments establish counter petitions or elector assent opportunities in relationship to the agreement as a whole, in order to avoid situations where electors may agree to one matter but turn down another in the same agreement.

9.2 Ensuring Proper Authority to Enter into Contract

The signatories to the contract must have the authority to enter into the contract on behalf of the partners. In the case of the local government, this will have been determined by Council or the Board. The contract should be reviewed with Council or the Board before ratification.

Local government should also ensure that the signatory for the private sector partner has the authority to sign the contract. This is of particular concern where a consortium, joint venture or similar arrangement has been established by the private partner.

section 10

Working with a Partner

It is important that an effective communications strategy and protocol be established to ensure communication through the duration of the public private partnership arrangement.

10.1 Communications Strategy and Protocol

Communications Among the Partners

Local government and the private partner must keep in mind that a public private partnership is just that—a partnership. As such, the partners in the agreement should develop an internal communications network that facilitates the exchange of information. This network will ensure that both the public and private partner are privy to all information.

External Communications

All public private partnership arrangements involve end users, and in some cases may involve all of the residents in a local government. In this regard, communications with the local government and the end users is required. Much of the external communications can be accomplished through:

- radio advertisements
- open line radio shows
- cable access television shows
- television advertising—community events bulletin
Internet web page
- public open houses
- direct mailings
- direct phone lines equipped with staff to provide information
- annual reports
- brochures

Freedom of Information and Protection of Privacy Act

Information in the contract between the local government and the private sector partner is subject to the *Freedom of Information and Protection of Privacy Act*. In some cases, the local government may be required to disclose information to the public regarding the contract between the parties.

The local government and the private partner must be aware of the extent of the information that can be disclosed in this regard. Generally, the local government will be required to release information, except in cases where:

- significant prejudice may occur to the private partner's competitive advantage
- interference with contract or other negotiations may occur
- information may result in undue loss or gain to any person, group, committee or financial institution or agency
- information will contravene or harm the public interest

Reporting Requirements

One of the most important aspects of a public private partnership is communication between the private and public sector partners. During contract negotiations, the local government should ensure that appropriate reporting requirements are established with the private sector partner. These requirements would include reports related to progress, operations, management and financial details. Depending on the scale of the project and its end users, the reporting requirements may differ. In most cases, reporting is done on a scheduled basis (i.e., weekly, monthly, quarterly, yearly or a combination of these depending on what is being reported). Reporting is important for the local government as it allows for effective monitoring of the progress, successes and failures of a public private partnership project.

10.2 Accounting Treatment of Public Private Partnerships

The method of accounting for the public private partnership should be clarified and resolved to ensure that both parties understand and accept the proposed approach. The accounting requirements for public private partnership and other associated issues are discussed in section 5.2 and appendix 1 of this guide.

10.3 Labour and Collective Agreement Issues

In some cases, public private partnerships can result in situations where local government employees may be displaced. The key concerns of many employees will be maintenance of seniority, pensions, wages, benefits and collective bargaining rights. These are all issues that must be dealt with carefully throughout the public private partnership process.

A carefully designed stakeholder and communications process whereby employees and affected labour unions are consulted on a regular basis can help to ease the transition. Poorly designed communications programs can result in resistance by employees and labour unions to service delivery through public private partnership arrangements.

In public private partnerships in other provinces, private sector partners have generally respected the terms and conditions of the existing collective bargaining agreement—either because it was stipulated in the contract with the local government or due to successor's rights. When employees can be guaranteed the same rights and opportunities as when they worked for the local government, the transition between local government provision of a service and service delivery by public private partnership can be eased.

The *Labour Relations Code* takes precedence over the *Municipal Act* for labour relation matters in BC. When a business or part of a business is sold, the employer must provide the employee with successor rights. These rights and obligations may apply when a local government shifts from traditional self-delivery of services to non-traditional delivery via a public private partnership. Local governments must be aware of the provisions in the *Labour Relations Code* that could impact them, their employees and a private sector partner in a public private partnership arrangement.

10.4 Performance Monitoring

Performance monitoring can be one of the most important facets of a public private partnership. It allows the local government to ensure that services and infrastructure are being built and provided consistent with the contract. Performance monitoring can be broken down into two components: capital projects and operations.

- ***Capital Projects***

When infrastructure and facilities are being constructed, performance monitoring is crucial for the local government. This is especially true in any situation where the project will be transferred back to the local government.

The local government must ensure that all capital projects are constructed to specifications.

An RFP document for these facilities is often developed to encourage flexibility in design by the private sector partner. This innovation is what creates cost savings and efficiencies in the project. However, once the innovative design has been confirmed, the private sector partner will not necessarily be able to construct it as they see fit. Rather, local governments should ensure that capital projects are built to specifications and that the project provides the service that was agreed to by both public and private sector partners. This can be done through periodic inspections by an engineer or architect or other qualified individual who is either on staff or retained by the local government.

- ***Operations***

Where the partnership arrangement involves operations, the public private partnership contract should include provisions for performance in operations. These provisions will cover not only the operations and maintenance of infrastructure and services but also the performance of the private sector partner in the delivery to the end user.

Weekly or monthly reporting structures allow the local government to monitor the performance of the private sector partner. Once the public private partnership project has been completed, a number of reports will allow the local government to discern trends and respond to problems and issues quickly. The local government should include targets, benchmarks and performance parameters in the public private partnership contract.

Another factor in operations monitoring is the quality of service received by end users. The provision of the service by the private sector partner should always have the end user's satisfaction in mind. The local government can establish phone lines for complaints, circulate surveys or have an Internet web page and e-mail address for users to voice their comments or concerns. This will allow the local government to monitor the performance of the private sector partner in terms of actual service delivery.

10.5 External Evaluation

Once the contractual arrangements have been implemented, the local government should consider a post-implementation review. This review may be performed by individuals who were directly involved in the project, or preferably, by individuals who were not directly involved in the pre-implementation phase of the project. A post-implementation review will allow the local government the opportunity to determine whether its initial partnership objectives were achieved and allows for the opportunity to assess what worked and what did not to help in the planning phase for future projects.

Value for Money

A key criteria of assessing the potential success of a public private partnership project is the determination of value for money: Does the project design allow for successful construction and service delivery that meets the needs of the end users at the lowest cost for capital, operations and maintenance over the duration of the agreement?

A number of factors need to be considered when assessing value for money:

- project design
- project construction
- project/service delivery
- management
- operating system

The post-implementation review permits the assessment of the project in terms of cost and service delivery effectiveness.

When evaluating value for money, the analysis will require:

- a cost/benefit analysis of the public private partnership arrangement
- an allocation of risks between partners
- project finance requirements resulting in a need for taxpayer support
- duration of taxpayer support required for project finance

10.6 Conflict Resolution

Public private partnerships can involve a myriad of complex legal arrangements. The interpretation—or in some cases misinterpretation—of these arrangements can lead to conflict between the parties to these agreements.

Public private partnerships can involve long-term arrangements between two or more parties. The ultimate goal in conflict resolution is to ensure that any differences are resolved quickly and with no disruption in service to the end user.

However, this is not always possible. It is therefore imperative that the public private partnership contract set out dispute resolution mechanisms to help both parties come to a solution.

Two of the most commonly selected forms of dispute resolution in these cases are *mediation* and *arbitration*.

Mediation

The goal of mediation is to come to a solution to problems that will be amenable to both parties. A mediator is generally a neutral third party who meets with the parties in dispute and mediates or directs their discussion. The mediator **does not** have the power to render a ruling that is binding on both parties. The mediator is there to help the parties come to a solution together, rather than to hand down a verdict.

Arbitration

Arbitration differs significantly from mediation. While the arbitrator is a neutral third party, the parties to the public private partnership both argue their side of the dispute, and do not work together to come to a solution as in mediation. The arbitrator then renders a final binding decision related to the dispute. This is the case, unless otherwise stated in the public private partnership contract.

Off Ramps

In some situations, rather than creating a battle in the courts, both parties may agree that the public private partnership cannot proceed. In some of these cases, the parties may be able to use an “off ramp” clause or provision from the public private partnership contract to dissolve the partnership.

There are many reasons why an off ramp can be used to dissolve a public private partnership. However, these reasons need to be explicitly stated in the public private partnership contract. Off ramp clauses may be included to provide for:

- the deterioration of the private partner’s financial ability to complete the project

- the private partner not being able to complete the project
- the initial financial assessment of the project being substantially inaccurate
- the initial financial assessment of the project being no longer relevant or materially unattainable

Much like the decision to partner, the local government should know the costs and benefits associated with the use of off ramp provisions before they are used. The local government should also have a contingency plan to mitigate service interruption should a public private partnership off ramp be used.

10.7 Dissolving the Partnership

Dissolving a partnership at the end of the contract term is a legal process. This process is subject to both contract and statutory law. The original public private partnership contract between the parties should contain provisions to deal with dissolving the partnership.

Provisions to this effect may include:

- provision for disposal or transfer of assets (In cases where infrastructure or facilities are being transferred to the local government from the private sector partner, assurances of the state of the infrastructure or facilities need to be explicit in the contract.)
- allocation of net earnings or losses
- repayment of capital
- payment of liabilities

Depending on the complexity of the agreement or the infrastructure or services that it covers, the list of clauses that concern dissolving the partnership may vary considerably.

Next Steps

Once a contract has ended and the partnership has been dissolved, the local government may find itself responsible for the provision of a service or infrastructure. The local government should have a plan at the outset of how service will continue to be provided to users. This plan may include:

- The local government provides the service or infrastructure for users.

- A new public private partnership arrangement is developed and is “sole-sourced” to the existing private partner. This strategy will depend largely on a local government’s policies relating to procurement, and inviting proposals for certain projects.
- The local government can issue an RFEI or RFP to determine if there are others interested in providing the service or infrastructure after the initial contract is dissolved.

Other Financial Issues

Following are examples of public private partnerships and the criteria that must be satisfied to achieve local government's financial reporting objectives. Readers are cautioned that the following comments are current as of the date of this guide and are general in nature.

Operating versus capital leases

Recent revisions to the *Municipal Act* relating to the term of liabilities under agreements, including leases involving public private partnership projects (section 451), may result in the increased use of leasing as a means of financing infrastructure and its operation.

In an operating lease situation, the lessor retains substantially all of the benefits and risks of ownership. The local government would record the lease payments as an operating cost as they are made over the term of the lease; no leased asset or obligation would be recorded by the local government.

CICA Handbook 3065 defines a capital lease as a lease that transfers substantially all the benefits and risks incident to ownership of property to the lessee (local government). Under a capital lease, the local government would record the asset and an obligation at the present value of the minimum lease payments over the lease term. The asset would be depreciated over the period of its expected use and the obligation reduced by repayments less imputed interest that is also charged to operations.

If one or more of the following conditions are met, the presumption is that the lease is a capital lease:

- there is reasonable assurance that the local government will obtain ownership of the leased property by the end of the lease term (e.g., when the lease provides for the transfer of the property to the local government on expiration, there is a bargain purchase option, or other facts and economic circumstances provide assurance that the local government will acquire the asset by the end of the lease term)
- the lease term is of such a duration that the local government will receive substantially all of the economic benefits expected to be derived from the use of the leased property over its life span (e.g., when the lease term constitutes 75% or more of the economic life of the asset)

- the lessor (private sector partner) would be assured of recovering the investment in the leased property and of earning a return on the investment as a result of the lease agreement (e.g., the present value of the minimum lease payments at the inception of the lease is 90% or more of the asset's fair value). The retention by the lessor of substantial risks in connection with the leased property (e.g., non-reimbursable costs, performance guarantees, and obsolescence) may mean that no such assurance exists.

Service contracts

Contracts for the supply of services normally do not create long-term obligations recorded on the balance sheet. However, where such contracts also involve the supply or use of tangible capital assets, they may meet the *CICA Handbook* definition of a lease and the arrangements should be reviewed in accordance with the guidelines set out above to determine whether a liability is assumed as a result of the use and beneficial ownership of the assets.

Other arrangements

Arrangements in which the public sector contracts with private sector organizations to provide some combination of services involving the design, construction, financing and operation of facilities or infrastructure, as well as the rights of ownership or transfer of ownership at some point in time, warrant special consideration in evaluating the appropriate accounting treatment. Again, it is the presumption that the party having the right to ownership of the assets and the risks and rewards from their use would also be responsible for the obligations incurred in putting the assets in place.

Government Partnerships

Government Partnerships comprise jointly controlled operations, assets or organizations and are distinguished from the other types of contractual arrangements that governments enter into (commonly referred to as “alternate service delivery”) in having the following characteristics:

Significant common goals, both financial and non-financial

Common goals are those that all partners share. When goals are mutually beneficial, but not common to both parties to the contract, the arrangement does not qualify as a Government Partnership.

- *Shared control*

Shared control of a Government Partnership on an equitable basis means that the partners make decisions related to the financial and operating activities of the partnership by consensus; none of the partners is in a position to exercise unilateral control.

- *Shared risks and benefits*

In a Government Partnership, each partner is exposed to a share of the combined risk and shares in the benefits related to the common goals of the partnership.

A Government **Business** Partnership is defined as a Government Partnership that has all of the following characteristics:

- it is a separate legal entity with the power to contract in its own name, that can sue and be sued
- it has been delegated the financial and operational authority to carry on a business
- it sells goods and services to individuals and organizations other than the partners as its principal activity
- it can, in the normal course of its operations, maintain itself and meet its liabilities from revenues received from sources other than the partners

Government financial statements should proportionately consolidate the financial statements of Government Partnerships, except for Government **Business** Partnerships.

Government Business Partnerships should be accounted for by the modified equity method applied proportionately based on the government's share of the partnership.

Other Sources of Information

For information on the *Municipal Act* reform initiative, a multi-year phase-in of legislative changes to the *Municipal Act*, refer to the Ministry of Municipal Affairs staff or the *Municipal Act* reform web site.

Municipal Advice and Approvals Branch
Planning and Governance Division
Ministry of Municipal Affairs
PO Box 9490 Stn Prov Govt
Victoria BC V8W 9N7

E-mail: ppp@hq.marh.gov.bc.ca
Phone: 250 356-7377
Fax: 250 356-1873

For related information on the implementation of the *1998 Local Government Statutes Amendment Act (Bill 31, 1998)* refer to:

- *Using the (Reformed) Municipal Act (URMA)* resource manual. Limited quantities are available from Crown Publications. The manual is available on the *Municipal Act* reform web site
www.marh.gov.bc.ca/LGPOLICY/MAR/URMA

For related information on Model Bylaws:

The Municipal Officers' Association has contracted with various firms to prepare the following sample documents, to be available for distribution to all local governments by April 1999. Other samples may be prepared and other firms retained in subsequent phases of this ongoing implementation project.

- Agreements and Explanatory Notes – Staples McDannold, Stewart
- Delegation Bylaw and Explanatory Notes – Lidstone, Young, Anderson
- Officers and Employees Bylaw and Explanatory Notes – Murdy & McAllister
- Request for Proposals and Explanatory Notes – Urban Systems & Lidstone, Young, Anderson

These documents will also be on Municipal Officers' Association (MOA) web site
www.vvv.com/~moabc/

Contact Crown Publications for copies of *Public Private Partnership: A Guide for Local Government*.

Crown Publications automatically places the purchaser on the distribution list for future updates; phone 250 386-4636 or fax 250 386-0221.

Public Private Partnership: A Guide for Local Government is also available on the *Municipal Act* reform web site **www.marh.gov.bc.ca/LGPOLICY/MAR/PPP**