National Treasury PPP Practice Note issued in terms of the
**Public Finance Management Act**

SOUTH AFRICA

NATIONAL TREASURY

PPP unit

# PUBLIC PRIVATE PARTNERSHIP TOOLKIT FOR TOURISM

PUBLIC PRIVATE PARTNERSHIP
TOOLKIT FOR TOURISM

NATIONAL TREASURY

PPP unit

# NATIONAL TREASURY
# PPP TOOLKIT FOR TOURISM

## GETTING STARTED:
## 1. UNDERSTANDING THE PPP TOOLKIT FOR TOURISM

# CONTENTS

# SUMMARY OF THE CONTENTS OF THE TOOLKIT

| | |
|---|---|
| **Getting started** | **1. Understanding the Public Private Partnership Toolkit** gives an introduction to the Toolkit, defines a tourism PPP, describes the regulatory environment, introduces key concepts and introduces the PPP project cycle for tourism PPPs. |
| **Getting started** | **2. Clarifying some key policy issues** gives guidance on policy issues specifically relevant to tourism PPPs. |
| **Module 1** | **PPP inception and pre-feasibility phase for tourism PPPs** explains the steps to be followed in the inception and pre-feasibility phases and provides templates for key documents. |
| **Module 2** | **Feasibility study and procurement phases for small cap tourism PPPs** explains the steps to be followed in the feasibility and procurement phases for the small cap route, and provides templates for key documents. |
| **Module 3** | **Feasibility study and procurement phases for large cap tourism PPPs** explains the steps to be followed in the feasibility and procurement phases for the large cap route, and provides templates for key documents. |
| **Module 4** | **Managing the tourism PPP agreement** provides guidance to institutions for managing tourism PPP agreements. |

## Templates and annexures to the Toolkit

The templates that accompany each module of the Toolkit standardise the terms and conditions under which tourism PPPs are implemented. They are designed to help the project officer complete quality documentation. The annexures provide additional information or guidance.

While the templates and annexures are listed on each module's contents page, they are not part of the printed version of the Toolkit. Instead, each document can be downloaded, in Microsoft Word or Excel, from the CD accompanying the Toolkit and from the PPP Unit's website, www.ppp.gov.za. A summary of what is contained in each template and annexure is provided at the end of each module, or the relevant section within the module.

# INTRODUCTION

South Africa has established a firm regulatory framework for national and provincial institutions[1] to enter into public private partnerships[2] (PPPs). This is set out in Treasury Regulation 16[3] issued in terms of the Public Finance Management Act, 1999 (PFMA). Furthermore, National Treasury's *PPP Manual* and *Standardised PPP Provisions* have been issued as PPP practice notes in terms of section 76(4)(g) of the PFMA to make the application of the PFMA and its regulations easier. Municipal PPPs are regulated under the Municipal Finance Management Act, 2003 (MFMA) and its regulations, and similar PPP guidance is being devised for this sphere of government.

South Africa's tourism industry has experienced considerable growth in the last decade, but despite the many opportunities that exist, the development of tourism-based businesses on state-owned land has been slow. The *PPP Manual* and *Standardised PPP Provisions* cannot, however, be summarily applied to tourism PPP projects. National Treasury therefore seeks to boost this strategic sector of the economy by providing practical guidelines in the form of this *PPP Toolkit for Tourism*, referred to throughout as the Toolkit[4]. It makes the PPP process relevant to the particular characteristics of the country's nature and heritage tourism industry. The Toolkit should make it easier for institutions and the private sector to enter into tourism-related partnerships on state property[5] managed by national and provincial government institutions.

**Specifically, the Toolkit:**

- establishes appropriate systems, standards and contracting terms for a wide spectrum of tourism and tourism-related PPPs in compliance with the PFMA and Treasury Regulation 16
- streamlines the PPP process for the sector, creating consistency and certainty
- enables relevant institutions to build the necessary capacity to prepare for, procure and manage these PPPs
- furthers the drive to ensure black economic empowerment (BEE) in the tourism sector
- furthers the drive to support and promote the growth of small, medium and micro enterprises (SMMEs) in the tourism sector
- seeks to build private sector confidence in entering into tourism and tourism-related PPPs in South Africa.

---

1. See 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.
2. See 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.
3. See 'Annexure 1: Treasury Regulation 16'.
4. The Toolkit is National Treasury PPP Practice Note Number 01 of 2005.
5. See 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.

# WHAT IS A TOURISM PPP?

## PPPs in general

A PPP is clearly defined in Treasury Regulation 16 to the PFMA. It is essentially a contractual arrangement whereby a private party[6] performs an institution's functions[7], and/or makes use of state property for its own commercial purposes. The private party assumes substantial financial, technical and operational risks associated with those functions or the use of state property. In return, the private party receives a benefit according to pre-defined performance criteria. This benefit may be entirely from a service tariff or other user charges, an institution's budget, or a combination of the two.

The private party's responsibilities typically include the financing, design and construction of a facility, as well as its operation and maintenance, for a specified period of time. Where substantial capital investments are made by the private party under such arrangements, the PPP agreements[8] tend to be of long duration. A distinct characteristic of a PPP is that it is for a fixed period, during which time ownership of the immovable assets typically vests with the state, and control over these assets reverts to the state at the termination of the PPP agreement.

**It is just as important to define what a PPP is not.**

- A PPP is not a simple outsourcing of functions with substantial financial, technical and operational risk retained by the institution (such as a service contract).
- A PPP is not a donation by a private party for the public good.
- A PPP is not the privatisation or divestiture of state assets and/or liabilities.
- A PPP is not the commercialisation of a public function by the creation of a state-owned enterprise.
- A PPP does not constitute borrowing by the state.

## The benefits of tourism PPPs

South Africa's tourism industry has been described as the country's 'new gold'. It is one of the largest contributors to the country's gross domestic product (GDP), and has a significant impact on job creation. A number of national and provincial government institutions control an array of protected areas and associated state assets that are, in many ways, under-utilised and which

6. See 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.
7. See 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.
8. See 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.

offer significant opportunity for investment. These institutions are subject to the provisions of Treasury Regulation 16 and some have already succeeded in attracting private sector investment in these assets.

The transactions have generally involved private parties bidding for the right to invest in and commercially use state property in support of conservation, in return for the payment of a concession fee to the institution. The PPP agreement is for a fixed term, after which the assets revert to the institution.

The benefits from these deals for the private party are that it gets access to unique tourism sites and is able to get a competitive return on its investment. The benefits for the institution are that it gets revenue, savings and an assets upgrade. At the same time, it facilitates BEE, stimulates SMMEs, job creation and skills in the local economy, and encourages growth in the tourism industry. There is clearly considerable benefit to be realised for the country in tourism-related PPP transactions.

## Defining a tourism PPP

Tourism PPPs fall firmly within the Treasury Regulation 16 definition of a PPP, in that they entail a commercial transaction between an institution and a private party, in terms of which the private party:

- performs an institutional function on behalf of an institution (if applicable) and/or
- acquires the use of state property for its own commercial purposes and
- assumes substantial financial, technical and operational risks in relation to the use of the state property and
- receives a benefit from performing the function and/or using the state property by way of charges or fees collected by the private party from users or customers of a service provided to them[9].

**The *PPP Toolkit for Tourism* is principally based on the application of the PPP definition: a private party acquires the use of state property for its own commercial purposes, assuming substantial risk, and receives a benefit from charges collected from users.**

All conservation institutions have enabling statutes, many of which include various provisions for the institution to operate commercial ventures or provide tourism amenities in protected areas. Therefore, if the institution grants rights to a private party to operate commercially on land managed by the institution (even if it is not state property), this could constitute the private party performing an institutional function. This aspect of the definition of a PPP in Treasury Regulation 16 therefore applies, implying that the private party undertakes commercial activities ‘on behalf of’ the institution.

9. Paraphrased from Treasury Regulation 16.1 Definitions, “PPP”. See Annexure 1.

Most conservation institutions, however, view their core function as managing conservation rather than operating commercial businesses. Their policies increasingly reflect the intention not to operate commercial ventures themselves, but to facilitate proactively private parties being granted rights to use state property for private commercial purposes via PPP agreements.

There are circumstances involving communal land, or private land which is under state conservation management, over which conservation institutions have acquired explicit commercial rights which they seek to exercise via a PPP. These are special circumstances, requiring the application of land rights legislation and policy in appropriate conjunction with Treasury Regulation 16[10].

## Typical tourism PPP products

To date, the following typical tourism products have either been offered to the market on national and provincial state conservation land or have been considered as possible PPPs. The categories and products point to the range of opportunities to which the Toolkit can be applied. This is not a closed list – tourism PPPs may involve any combination or variation of these.

- **Accommodation**. This includes hotels, lodges, self-catering resorts, camping and caravan accommodation, houseboat accommodation, corporate lodges and health spas/healing centres, sometimes including conference facilities. The Tourism Grading Council categorises accommodation to establish the level of service these facilities offer to tourists, providing a useful set of benchmarks for PPPs[11].
- **Food, beverage and retail**. This includes restaurants, take-away outlets, supermarkets, craft/curio outlets, catering businesses and picnic sites.
- **Activity-based tourism**. This includes open-vehicle safaris, hiking trails, mountain bike trails, hot-air ballooning, aerial walkways, 4x4 routes, elephant-back safaris, bungee jumping, abseiling, and activity-based water sports. This category can include commercialised hunting and fishing activities. It can also include airstrips. But it excludes airports, harbours and other multipurpose transport-related complexes, which are not covered in the Toolkit.
- **Heritage and culture**. This includes museums, interpretation and exhibition centres, and may also include conferencing facilities and specialist cultural tour guiding operators.

10. Specific guidance is therefore given by National Treasury in the information on communal and private land in *Getting started: 2. Clarifying some key policy issues.*
11. The categories and criteria can be viewed at www.tourismgrading.co.za.

## PPPs in relation to land incorporations and co-management plans for extended protected areas

**A co-management agreement does not itself constitute a PPP.**

A land incorporation involves private or communal land being voluntarily incorporated, through an agreement (possibly involving the dropping of fences), into a state-owned protected area and being declared a nature reserve, special nature reserve or protected environment in terms of the National Environmental Management: Protected Areas Act, 2003. This co-management agreement does not itself constitute a PPP. This is because it does not involve substantial risk transfer from the institution to a private party, nor does it always involve the use of state property by a private party for commercial purposes, nor does it always involve the private party obtaining a benefit by charging customers who use state property. Because of the neighbour-like relationship, a land incorporation and co-management agreement also cannot be achieved through competitive procurement. The declaration of private (or communal) land to be a special nature reserve, nature reserve or protected area is expressly regulated under the National Environmental Management: Protected Areas Act, 2003. Planning, implementing and managing these land incorporations will thus be guided by the Department of Environmental Affairs and Tourism (DEAT).

**A co-management agreement may make provision for some division of revenue generated by a PPP.**

Section 42 of the National Environmental Management: Protected Areas Act, 2003 provides for co-management of a protected area in which the management authority may enter into an agreement with another organ of state, local community or individual or other party to co-manage the area and regulate human activities that affect the area. The co-management agreement may make express provision for developing economic opportunities within and adjacent to a protected area. A co-management agreement, for example, could make provision for the revenue generated by a PPP on the state's portion of the co-managed land to be shared with the other parties to the co-management agreement because of their role in the success of the PPP[12].

Furthermore, a co-management agreement could, for example, expressly provide that the development of commercial activities on the privately owned land in the protected area must follow the Toolkit. Similarly, the National Water Act, 1998 allows for the creation of water management institutions, which provide for co-management and which control commercial development

12. See the guidance on communal and private land in *Getting started: 2. Clarifying some key policy issues*, for how the Toolkit applies to investments by third parties in land that is managed by an institution but is not state land.

opportunities on dams. The agreements regulating these institutions may also provide for the division of revenue from PPPs, where the co-operation of parties other than the Department of Water Affairs and Forestry (DWAF) is essential for the success of the PPP. Other statutory institutions which provide for the combining of state institutions and non-state entities in co-management structures can deal with PPPs in a similar manner.

**Examples of co-management agreements**[13]

1. Part of a protected area has been the subject of a successful land claim. The new owners may enter into a co-management agreement with the management authority, which sets the basis for any commercial development to take place. (For example, who will run the tender procedure and adjudicate bids and what standards of conservation will apply.) The agreement will also determine the division of revenue so that the management authority is compensated for costs incurred in managing the land and the owners receive a return from the commercial use of their asset.
2. DWAF wishes to offer houseboat PPP opportunities on a dam. The neighbouring properties are private game farms and their owners have entered into a co-management agreement with the department for conservation purposes. The presence of game adds to the value of the houseboat PPP opportunities, and the private owners will allow access to the dam from their land. The co-management agreement may therefore provide for an appropriate division of revenue from the PPPs between DWAF and the private landowners.

## PPPs in relation to other uses of state property and licence systems

**The Toolkit gives guidance for PPPs involving the use of state property by private parties for commercial purposes. The Toolkit is not designed to be a guide for all private uses of state property.**

A number of institutions apply legislation, regulations and procedures that deal with other uses of state property. For example, such provisions allow members of the public to use state property for recreational purposes or communities to gather natural resources from protected areas. These laws, regulations and procedures are still applicable, whether or not the use of the state property concerned constitutes a PPP.

Some institutions operate licence systems which authorise private individuals to make use of state assets. An example is the licence system operated by DWAF which allows members of the public to make use of dams (for example, to sail a boat on a dam). Licence fees are payable and certain conditions, such as safety and

13. See the guidance on communal and private land in *Getting started: 2. Clarifying some key policy issues*, for how the Toolkit applies to investments by third parties in land that is managed by an institution but is not state land.

which areas can be used, accompany the issuing of the licence. The Toolkit does not replace this licence system. Individuals who use a dam for purely recreational purposes are not subject to PPP regulation but will have to apply to the relevant authority for a licence and comply with its provisions. However, where a private party wishes to conduct a commercial enterprise on a dam (for example, to offer houseboat accommodation to tourists), involving both commercial and use rights, the institution responsible will need to follow the Toolkit in awarding commercial rights in terms of a PPP agreement. Similarly, the private party will also have to apply for a licence for the specific use rights. The licence and PPP agreement therefore work together and complement each other.

# THE PPP REGULATORY ENVIRONMENT

## The Public Finance Management Act

The PFMA approach to financial management focuses on outputs and responsibilities, and is a cornerstone of government's strategy to improve financial management in the public sector and to ensure that, in spending taxpayers' money, it produces the intended result. The PFMA makes the heads of department of national and provincial departments (the accounting officers) and the boards of schedule 3 public entities (the accounting authorities) responsible for its implementation. They are directly accountable to Parliament or the provincial legislature for the effective and efficient management of their budgets and the state property under their care to achieve their public mandates. These responsible officials need to evaluate constantly value-for-money[14] choices. A PPP choice for the use of state property for private commercial purposes (such as a tourism PPP) warrants this kind of evaluation.

By its nature, a tourism PPP entails:

- leveraging private sector finance and efficiencies
- allocating risks to the party best able to manage them.

The PFMA stipulates[15] (among other obligations) that an accounting officer/ authority must:

- ensure that there is an effective, efficient and transparent system of financial and risk management and internal control of these systems
- be responsible for the effective, efficient, economical and transparent use of the resources of the institution
- be responsible for the management, including the safeguarding and the maintenance, of assets of the institution.

The various phases of a PPP are designed to ensure that an accounting officer or accounting authority complies with his or her PFMA obligations. The Toolkit provides specific guidance to an accounting officer/authority in conducting tourism PPPs.

14. See 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.
15. Section 38.

## Treasury Regulation 16

Section 76 of the PFMA provides that National Treasury must make regulations for a range of matters to do with the effective and efficient management and use of financial resources. Many of these matters are relevant to PPPs and Treasury Regulation 16 to the PFMA provides precise and detailed instructions for PPPs. Treasury Regulation 16 defines a PPP and sets out the phases and tests it will have to go through.

Treasury Regulation 16 envisages three key tests for a PPP:

- affordability
- value for money
- appropriate risk transfer.

The PPP project cycle, which is clearly set out, involves the following phases:

- inception
- feasibility
- procurement
- PPP agreement management.

Treasury Regulation 16 requires that the relevant treasury give various approvals at certain crucial stages which ensure that the three tests have been passed and that the PPP project cycle has been complied with.

## The role of national and provincial treasuries in PPPs

### The relevant treasury

At present, all PPP processes and approvals are given by National Treasury. However, Treasury Regulation 16 allows this authority to be delegated to provincial treasuries. Reference is therefore made throughout the Toolkit to the relevant treasury[16] when directing an institution to the PPP approval process to be followed.

### The role of National Treasury's PPP Unit

National Treasury has established a dedicated PPP Unit with the following functions:

- to provide technical assistance to institutions embarking on PPPs, throughout the PPP project cycle, to help them achieve a quality PPP project and comply with Treasury Regulation 16
- to recommend to National Treasury whether treasury approvals for the various phases in a PPP project cycle should be granted or declined
- to develop and disseminate PPP policy, manuals, standardisation and sectoral toolkits

16. See 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.

- to disseminate accurate and up-to-date information on PPP projects
- to build PPP capacity
- to build confidence and integrity in South Africa's PPP market.

Where Treasury Regulation 16 approvals are delegated to provincial treasuries, the provincial treasuries will establish similar PPP units. South Africa's PPP policy is reflected in National Treasury's *PPP Manual, Standardised PPP Provisions*, and sectoral Toolkits as updated by National Treasury from time to time, and will continue to apply through the provincial treasuries to all PPPs undertaken in terms of the PFMA.

## Institutions to which the Toolkit applies

The Toolkit is issued by National Treasury as a PPP Practice Note in terms of section 76(4)(g) of the PFMA. This Practice Note, which will be updated from time to time, constitutes instructions in terms of section 76 of the PFMA aimed at facilitating the application of the PFMA and its regulations.

Treasury Regulation 16 and this Toolkit apply to national and provincial departments, constitutional institutions, and public entities listed or required to be listed in schedules 3A, 3B, 3C and 3D of the PFMA, and any subsidiary of such public entities which is undertaking or intends to undertake tourism PPPs.

Treasury Regulation 16 does not apply to the major public entities listed in schedule 2 to the PFMA, and therefore the Toolkit does not apply to tourism PPP opportunities that may be offered on property owned by these state-owned enterprises.

The PFMA and Treasury Regulation 16 do not apply to municipalities. The Toolkit therefore does not apply to tourism PPPs on municipal property. Municipal PPPs are conducted in accordance with regulations issued in terms of the MFMA, giving effect to the PPP provisions of the MFMA, the Municipal Systems Act, 2002, and the Municipal Systems Amendments Act, 2003. The PPP Unit will be issuing specific guidance for municipal PPPs.

## Other important legislation and regulations

In addition to the PFMA and Treasury Regulation 16 there are many other laws and regulations which are relevant to tourism PPPs. Examples of these are the specific statutes which govern the particular institution (such as the World Heritage Convention Act, 1999, which applies, among others, to the Greater St Lucia Wetland Park; and the Western Cape Nature Conservation Board Act, 1998, which applies to CapeNature). Other statutes are of general application, such as the National Environmental Management: Protected Areas Act, 2003, as well as a range of heritage and environmental legislation. The Toolkit will provide guidance on applicable legislation as far as possible. However, an institution conducting a PPP must always take cognisance of all applicable legislation.

### Tax treatment of PPPs

The Revenue Laws Amendment Act, 2005 provides that improvements to state property that are funded by a private party in a PPP may be written off over the duration of the PPP agreement, and that any residual value at the termination of the PPP agreement may also be written off. Also, where an institution makes a capital grant in a PPP for improvements to the state property, the grant is not treated as private party revenue. These are significant tax benefits in a tourism PPP.

NATIONAL TREASURY

PPP unit

# PPP PROJECT CYCLE FOR TOURISM PPPs

**Reflecting Treasury Regulation 16 to the Public Finance Management Act, 1999**

## PROJECT PREPARATION PERIOD

### Phase I

## INCEPTION

- Prepare strategic plan for commercialisation
- Apply for project registration

## PRE-FEASIBILITY

- Pre-feasibility study
- Motivation for small cap route or large cap route
- Possible application for exemption from treasury approvals

### Phase II

| SMALL CAP ROUTE | LARGE CAP ROUTE |
|---|---|
| **FEASIBILITY** | **FEASIBILITY** |
| **Institution Approval: I*** | **Treasury Approval: I**** |
| • Issue-based feasibility | • Comprehensive feasibility |

### Phase III

| SMALL CAP ROUTE | LARGE CAP ROUTE |
|---|---|
| **PROCUREMENT** | **PROCUREMENT** |
| • Prepare bid documents | • Prepare bid documents |
| **Institution Approval: IIA*** | **Treasury Approval: IIA**** |
| • Issue bid documents<br>• Evaluate bids<br>• Select preferred bidder | • Issue bid documents<br>• Evaluate bids<br>• Select preferred bidder |
| **Institution Approval: IIB*** | **Treasury Approval: IIB**** |
| • Negotiation<br>• Management plan | • Negotiation<br>• Management plan |
| **Institution Approval: III*** | **Treasury Approval: III**** |
| • Sign PPP agreement | • Sign PPP agreement |

## PROJECT TERM

### Phase IV

## DEVELOPMENT

### Phase V

## OPERATIONS

### Phase VI

## EXIT

- Measure outputs, monitor and regulate performance, liaise effectively, settle disputes
- Report progress in the Annual Report
- Scrutiny by the Auditor-General

*** If exemption from treasury approvals is granted.**

**** Unless exemption from treasury approvals is granted.**

# THE PROCESS FOR TOURISM PPPs

## The Toolkit's approach

South Africa's experience in tourism PPPs to date has shown that:

- for many of the high-value assets that have been developed through tourism PPPs, the current regulations are sound. However, clear guidance is needed on how best to apply these regulations in such tourism PPPs.
- in cases where lower-value assets have been commercialised, the four phases of the PPP project cycle (inception, feasibility, procurement and PPP agreement management) and tests (affordability, risk transfer and value for money) have been applied in complex, expensive and onerous ways. These are not conducive to the SMMEs they are typically seeking to attract. While the cycle and the tests are sound, it is necessary to tailor them to the scale and risk profile of the project.
- conservation institutions manage state assets that could conceivably be used in a wide range of tourism PPPs, but there is no simple fit between each of the categories of tourism products and the type of PPP process to follow. For example, a 120-bed hotel with a capital value of R40 million and a four-bed rondavel with a capital value of R20,000 both fall into the category of tourism accommodation. Activity-based tourism products may vary from a cable car up a mountain to guided walks in a nature reserve.

**The Toolkit's approach is therefore that the value of the capital investment to be made by the private party, and an assessment of project risks, should be used by the institution to determine the PPP route to be followed.**

### Two critical building blocks

- **Strategic fit.** PPPs must always be grounded in the statutory mandate, mission and strategic objectives of the institution, such as its conservation, empowerment and development priorities, and its mandate to ensure a range of visitor experiences. The institution's PPP projects must complement these objectives and be reflected in its reserve management plans or equivalent.
- **Capacity.** Often institutions start PPPs before they have either the internal capacity to manage them or the ability to manage consultants or transaction advisors. This is manifested in poor communication, slow and inconsistent decision-making, and limited commercial insight.

The steps required in the inception phase for the registration of a tourism PPP with the relevant treasury are designed to ensure that institutions have addressed these critical building blocks for successful PPP projects. Guidance is given in Module 1.

## The small cap and large cap routes

In order to simplify tourism PPP processes and make them applicable to the range of tourism PPP opportunities, the Toolkit provides for two main scenarios.

- **The small cap route**[17]. The business opportunities targeted for these PPPs will be characterised by **relatively small capital investments of up to R10 million, few employees, and relatively low turnover,** typically activity-based or making use of existing infrastructure or requiring relatively small infrastructure investments. The PPP feasibility and procurement mechanisms are therefore simplified, quick and appropriate, and the standard PPP agreement terms are tailored specifically for SMMEs. The purpose is to make these opportunities both attractive and easy to pursue. **Module 2**[18] of the Toolkit deals specifically with the feasibility and procurement phases of the PPP cycle for small cap projects.
- **The large cap route**. The business opportunities targeted will entail sizeable investments in accommodation, retail, restaurants and conferencing (with associated activity-based exclusive components), characterised by substantial private party **capital investment of R10 million or more, sizable turnover, relatively high project risks, and will have suitably long contract periods**. Consequently, the PPP feasibility and procurement mechanisms, and the terms of the PPP agreements provided for these large cap projects in **Module 3**[19] of the Toolkit are robust but clear. The purpose is to make the PPP opportunities attractive to both parties and, at the same time, to provide protection, both for the institution and for the private party, against very costly mistakes.

An institution will therefore have to assess whether the tourism PPP it is planning falls into the small cap or large cap route in order to determine the path it must follow. Guidance for this assessment is given in **Module 1**[20].

17. Used throughout the Toolkit for easy reference, the colloquial term 'small cap' stands for 'small capital expenditure' and 'large cap' stands for 'large capital expenditure'.
18. *Module 2: Feasibility study and procurement phases for small cap tourism PPPs.*
19. *Module 3: Feasibility study and procurement phases for large cap tourism PPPs.*
20. *Module 1: PPP inception and pre-feasibility phase for tourism PPPs.*

**Take note**

**The small cap route allows an institution to follow a simpler form of the same PPP project cycle prescribed in Treasury Regulation 16.**

**Where the institution has the capacity to manage the PPP process – either the small cap route or the large cap route – it may obtain exemption from treasury approvals.**

The relevant treasury may, in terms of Treasury Regulation 16.10.1, exempt the institution in advance from having to get the various treasury approvals, provided that the institution can show it has the capacity to manage the process in accordance with the standards set out in Treasury Regulation 16, and will internally apply and monitor the requirements of affordability, value for money and substantial risk transfer in the manner set out in the Toolkit. In the case of such exemption, the institution concerned will run an in-house approvals process that follows the guidelines of the Toolkit.

The Toolkit sets out the criteria for determining whether a particular PPP opportunity falls into the small cap route or large cap route. Exemption from treasury approvals (but with equivalent institution approvals built in) can be obtained for either process if the necessary institutional capacity exists to manage these in-house. There are, therefore, two crucial decisions to be made that determine the process to be followed for a tourism PPP.

- **First, is the PPP opportunity suited to the small cap route or the large cap route?**[21] This involves an assessment of both quantitative and qualitative factors.
- **Second, has the institution sufficient capacity to conduct the approvals in-house?**[22] An institution's capacity and experience in running similar projects will determine whether it will be granted exemption from obtaining treasury approvals for the phases of the PPP project cycle.

21. Guidance on how to assess whether the small cap route should be followed is set out in *Module 1: PPP inception and pre-feasibility phase for tourism PPPs:* Stage 2: Choosing the small cap or large cap route.
22. Guidance on applying for exemption from treasury approvals is set out in *Module 1:PPP inception and pre-feasibility phase for tourism PPPs:* Stage 3: Applying to the relevant treasury for exemption from treasury approvals.

# ANNEXURE

## ANNEXURE 1

### Treasury Regulation 16 to the PFMA

Treasury Regulation 16 constitutes the institution's legal responsibilities in PPPs, in all the phases of the PPP project cycle, providing definitions of key terms.

**Annexure**

The annexure for this module, listed on the contents page, can be downloaded, in Microsoft Word from the CD accompanying the Toolkit and from the PPP Unit's website, www.ppp.gov.za.

# NATIONAL TREASURY
# PPP TOOLKIT FOR TOURISM

## GETTING STARTED:
## 2. CLARIFYING SOME KEY POLICY ISSUES

# CONTENTS

# INTRODUCTION

| Policy areas specifically affecting tourism PPPs |
|---|
| • Black economic empowerment (BEE)<br>• Communal and private land<br>• Unsolicited proposals<br>• Environment and heritage |

# BLACK ECONOMIC EMPOWERMENT IN TOURISM PPPs

## Tourism BEE policy within the BEE and PPP policy context

South Africa has adopted a policy of black economic empowerment which is broad-based, inclusive and part of the country's overall growth strategy. It is articulated in the 2003 *Strategy for Broad-based BEE* (*BBBEE Strategy)* and is given effect in the Broad-based Black Economic Empowerment Act, 2003 (BBBEE Act).

**Of relevance to the *PPP Toolkit for Tourism*, the *BBBEE Strategy* specifically notes that BEE criteria will be applied whenever government 'grants a concession to a private enterprise to operate an asset or enterprise on behalf of the state' or 'enters into a public private partnership'.**

Following the further provisions of the BBBEE Act, 2003 and the relevant provisions of Treasury Regulation 16 to the Public Finance Management Act, 1999 (PFMA) National Treasury issued the *Code of Good Practice for BEE in PPPs* (*Code for BEE in PPPs*) as National Treasury PPP Practice Note Number 03 of 2004. This is published as Module 2 of National Treasury's *PPP Manual*. Consistent BEE terms for project-financed, service-type PPP agreements are contained in National Treasury's *Standardised PPP Provisions*.

In addition to providing for codes of good practice for BEE, the BBBEE Act, 2003 also provides that the Minister of Trade and Industry may publish and promote 'a transformation charter for a particular sector of the economy' if he or she is satisfied that such a charter 'has been developed by major stakeholders in that sector; and advances the objectives of the [BBBEE Act]'. In May 2005 the Minister of Environmental Affairs and Tourism launched the *Tourism BEE Charter and Scorecard.*

This Toolkit is a sector-specific refinement of National Treasury's *PPP Manual* (including the *Code for BEE in PPPs)* and *Standardised PPP Provisions*. It tailors the application of PPP regulations to commercial tourism opportunities on state property, typically in protected areas. In relation to BEE it therefore takes particular direction from achievements and challenges experienced in tourism PPPs to date and from the *Tourism BEE Charter and Scorecard,* 2005.

For the practical implementation of BEE in the tourism sector to be as consistent as possible, the Toolkit's BEE approach is based explicitly on the *Tourism BEE Charter and Scorecard,* 2005. However, it has been adapted in two specific ways for private parties wishing to bid for tourism PPP opportunities:

- to accommodate the option of including community trust ownership[1] in the private party to a PPP
- to target specifically the local[2] impacts of the PPP in relation to strategic representation, employment (and hence local skills development), preferential procurement, and enterprise development.

## Tourism BEE scorecards

Tourism PPPs require that the private party to the PPP agreement is a special purpose vehicle which has the sole purpose of conducting the relevant PPP project. The private party to a tourism PPP agreement therefore has to be formed to meet targets of the 2009 Tourism BEE Scorecard and to increase these targets over time to meet those set in the 2014 Tourism BEE Scorecard.[3]

To qualify in the pre-qualification phase of the large cap PPP bid process, the lead companies of the bidding consortia must demonstrate that they are good BEE contributors[4], according to the classification given in the *Tourism BEE Charter and Scorecard*, 2005 measured by the 2009 scorecard to end 2009, or by the 2014 scorecard after 2009.

The Toolkit's BEE scorecards[5] are applicable to both the small cap route and the large cap route[6] scenarios (with certain specified exemptions in relation to private parties with an annual turnover of less than R5 million). The scorecard applies to the wide product range and scale of projects that can be procured by institutions[7] as tourism PPPs.

The feasibility study sections of the Toolkit give guidance on how to plan for BEE in a tourism PPP, the procurement sections and template procurement documents show how to apply the scorecard in bid evaluation, and the template PPP agreements include consistent BEE provisions to hold private parties to their BEE commitments over the term of the PPP agreements.

1. See definition of community trust ownership on next page.
2. See definition of local on next page.
3. These two scorecards form part of the *Tourism BEE Charter and Scorecard,* 2005, a joint initiative of the Department of Environmental Affairs and Tourism and the Tourism Business Council of South Africa. They can be found at www.tbcsa.org.za/bee/
4. As defined in the *Tourism BEE Charter and Scorecard*, 2005.
5. The Toolkit scorecards have been adapted slightly from those presented in the *Tourism BEE Charter and Scorecard,* 2005. See 'BEE scorecards for tourism PPPs' further on, in this section.
6. Used throughout the Toolkit for easy reference, the colloquial term 'small cap' stands for 'small capital expenditure' and 'large cap' stands for'large capital expenditure'.
7. See 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.

All BEE components of the bids will be scored out of 100 points, and bidders must score at least 65 points to be considered by the institution. The BEE score achieved by a bidder is weighted 10 per cent of the overall bid evaluation, with the remaining 90 per cent allocated between functionality and price, as required by the Preferential Procurement Policy Framework Act, 2000.

All BEE definitions in the Toolkit are consistent with those used in the *Tourism BEE Charter and Scorecard*, 2005 with the following additions, where applicable[8]:

| | |
|---|---|
| Community trust | A not-for-profit trust created in terms of applicable law by volunteer members for the purpose of channelling the proceeds of various activities and investments for the common good of persons ordinarily resident within a specific town, village or settlement. |
| Local | A geographic area specified by the institution in the request for proposals (RFP), being either within a specified kilometre radius of the proposed project site or named village(s) or town(s), or settlement(s) within such radius, village(s) or town(s). |
| Community trust ownership | Ownership in the private party, which, as a provision of the PPP, will be acquired by a specific community trust named by the institution in the RFP. The means by which such ownership will be acquired will be specified in the RFP, being either via own purchase, loans, shareholder loans, donor or state grants, donations, or a combination thereof. |

## Why tourism PPPs are good for BEE

Tourism PPPs, involving the commercial use of state property, provide excellent opportunities for BEE. A number of these are listed below.

- Tourism PPPs typically take place on state land that is protected for conservation or heritage purposes or both. In remote rural and economically marginal locations, these PPPs bring new infrastructure investment, new trade in goods and services, new jobs and new skills. This kind of development is unlikely in such locations without projects like these and gives black people, and particularly poor households within local areas, the opportunity to benefit.

8. Community trust ownership may be a requirement in some tourism PPPs, but not all.

- A central principle of 21st-century management of parks, conservation reserves and heritage sites is that people living within the vicinity of these protected areas must receive direct benefits from the protection of the natural and heritage resources. Further, it is widely acknowledged that if people – particularly the poor – do not receive these benefits, conservation efforts cannot be sustained in the long term. The terms and structure of PPP agreements provide ample opportunity to ensure that such benefits accrue.
- Tourism PPPs provide the opportunity for black people and black enterprises to be in the mainstream of tourism activity without having to buy land at the outset. This considerably lowers the financial barrier to entry.
- The long-term nature of most PPPs provides an opportune instrument, not only to grow black equity, community trust equity, black management, and skills over time, but also to create permanent jobs and sustainable downstream enterprises.
- The formation of private consortia in the form of special purpose vehicles (SPVs) for PPPs facilitates long-term beneficial partnerships between new black enterprises, community trusts, and experienced, resourced tourism investors and operators – both as equity partners and in project management.
- PPPs have far-reaching, broad-based BEE potential: through sub-contracting and procurement mechanisms they can involve a full spectrum of large, medium and small enterprises, bringing tangible, local, economic development benefits to targeted groups of people through project cash flows early in the project term.
- The PPP opportunities envisaged in this Toolkit range from very small enterprises (requiring low capital investment and limited enterprise experience) to large-scale developments (involving higher risk and significant operator experience), providing entrepreneurial avenues for a full spectrum of black enterprises.
- PPPs provide a valuable vehicle for co-ordinating government's various small, medium and micro enterprise (SMME) support efforts, galvanising and committing these at the feasibility study phase, and focusing the inputs where they are needed, especially in private party financing, legal and business advice, and skills development.

## Challenges for BEE in tourism PPPs

Lessons from South Africa's early tourism PPP projects also point to some significant obstacles to achieving sustainable BEE in tourism PPPs. A number of these obstacles are listed below.

- Access to debt financing for tourism enterprises generally (including PPPs) is usually limited to approximately 50 per cent of the venture's financing requirements, placing a heavy burden on shareholders to raise high levels of equity. This reflects the general volatility of the tourism market and is a serious constraint to achieving black ownership.

- Black enterprises' access to reasonably priced capital for buying equity is also a constraining factor. Historically, black people have not accumulated capital. Sources of BEE funding are generally expensive and, in the tourism sector, usually also require own matching funds (or grant equivalents). This reflects lenders' assessment of the risks – not only those risks associated with new enterprises whose balance sheets may be relatively small, or whose tourism experience may be relatively limited, but the risks associated with tourism enterprises generally.
- Established companies in bidding consortia often become obliged to provide sponsor security for committed BEE capital or to guarantee performance by black partners. This contributes to the already uneven playing field for consortium members.
- The cost of independent financial and legal advice to black enterprises and community trusts is another inhibiting factor in the preparation of bids during contract negotiation and during start-up. They often leave black partners and community interests in a consortium vulnerable to entering into disadvantageous arrangements.
- South African black enterprises' strength, skill and experience in the tourism industry are generally limited: there are few sizeable black investors or operators able to compete with the long-established tourism companies.
- Community trusts (in towns, villages and settlements within the vicinity of the state property identified for a tourism PPP) usually have little to no commercial experience and limited knowledge of the tourism market. They depend on advisors from non-governmental organisations (NGOs) and government, which may have limited entrepreneurial ability or experience.
- The education and skills base, as well as entrepreneurial initiative, in rural South Africa is known to be limited, reflecting a long legacy of apartheid deprivation and neglect.
- Government's various support measures for tourism SMMEs are not easily co-ordinated at the project level to achieve optimal results.

## Policy focus for BEE in tourism PPPs

The tourism PPP environment is full of opportunities and challenges. In this context, the Toolkit has the following policy focus for guiding institutions and private parties to achieve optimal BEE in tourism PPPs:

- Institutions procuring tourism PPPs must make a concerted effort to galvanise the support resources of relevant state institutions, donors and NGOs. This is to ensure co-ordinated delivery of their various services in financing, training, legal and business advice to black enterprises (and, where applicable, community trusts) participating as private party owners, employees and providers of goods and services. Memoranda of understanding (MoU) with these organisations are key to motivating that a value-for-money outcome can be achieved. That is why these MoUs are required components of the institution's feasibility study and, without them, regulatory approval for the feasibility study should not be granted.

- Poor communities within the vicinity of the PPP site (local areas) must receive tangible short- and long-term benefits. This will be primarily through project-specific combinations of: ownership, employment, preferential procurement, and corporate social investments.
- This local community focus must be appropriately balanced for each project. Targeted ownership, strategic representation, employment equity, skills development, preferential procurement, and enterprise development must benefit black people and black women, even those who do not necessarily reside in the local area.

The following are the indicators for BEE in tourism PPPs:

- **Ownership.** Dividends are the long-term rewards of an equity investment (ownership) in the private party, but expectations should not be created that these will be quick or necessarily rich pickings. Volatility in the tourism market and the typical return on equity profiles of tourism businesses can yield good results for shareholders, but seldom consistently, and never early in the project term. Nevertheless, ownership is an important element of BEE, bringing upside benefits to black people, black participation in business risk management, and building local commitment to private party success. Two sub-elements of ownership are targeted for tourism PPPs: ownership by black people and, where appropriate, by local community trusts. In keeping with the *Tourism BEE Charter and Scorecard*, 2005 private parties to PPP agreements with a turnover of less than R5 million per annum are exempt from the ownership requirement.
- **Strategic representation** by black people, black women and local people in the private party can be proactively built over time. Community trusts are not well placed to play day-to-day executive management roles. This means that the focus should rather be on increasing the number and skills of black managers (preferably including those with ownership stakes), whether they are local or not.
- **Employment** yields the greatest flow of funds to poor households in the most immediate way; more than dividend flows and more than local trade in goods and services. The number of jobs for local people is therefore an important indicator in tourism PPPs. Indicators of measurement for local employment impact have accordingly been included in the scorecard.

- **Skills development** is a high priority in tourism PPPs, focused at all levels – shareholders, management, employees, and suppliers of goods and services. While this is an obligation of the private party, the institution must ensure during the feasibility study phase that suitable programmes are made directly available to the private party to support its efforts, and that specialist NGO and state SMME support programmes are accessible.
- **Procurement.** A single project's ability to stimulate the local supply of goods and services is limited. Procurement of goods (such as food and materials) from local SMMEs to tourism PPPs has generally been low. Procurement of services (such as laundry or field guides) is usually easier. Targets for these elements (both to BEE compliant companies not necessarily from the local area, and to local BEE compliant companies) must be tailored accordingly. They must be based on the institution's feasibility study phase assessment of local entrepreneurial activity and the quality of available skills development programmes to support its growth.
- **Enterprise development** will be most viable for large cap projects and targets for small cap projects in this indicator should be tailored appropriately.
- **Corporate social investment** by the private party should be committed to local community benefit (for example, in clinics, schools, roads, HIV-Aids work and the like) and must dovetail with municipal integrated development plans. Bidders will be requested to propose corporate social investment projects and the private party will be contractually committed to deliver. Realistic expectations must be tailored to business turnover.

## BEE scorecards for tourism PPPs

**Take note**

The scorecards are as presented in the *Tourism BEE Charter and Scorecard*, 2005 with the addition of local indicators. They also show the option of a local community trust taking an additional percentage of ownership in the private party to the PPP agreement as may be specified by the institution in the bid documentation, but this may not always be the case.

## BEE scorecard for tourism PPPs (2009)

| | 2009 Weightings | | 2009 Milestones | 2009 Target |
|---|---|---|---|---|
| Indicator | Weighting | Sub-weighting | Indicator to measure BEE achievement | Target |
| | A | B | | C |
| Ownership | 15.00% | 15.00% | Percentage share of economic benefits as reflected by direct shareholding by black people *Note: Direct shareholding includes employee stock ownership plans and other employee share schemes* | *21.00% |
| | | *Specified by the institution* | Community trust ownership *(optional)* | Additional 10% |
| Strategic representation | 14.00% | 3.00% | Black people as a percentage of board of directors | 30.00% |
| | | 3.00% | Black women as a percentage of board of directors | 15.00% |
| | | 2.00% | Local people as a percentage of board of directors | 15.00% |
| | | 3.00% | Black people as a percentage of executive management | 30.00% |
| | | 3.00% | Black women as a percentage of executive management | 15.00% |
| Employment equity | 14.00% | 1.50% | Black people as a percentage of management | 35.00% |
| | | 1.50% | Black women as a percentage of management | 18.00% |
| | | 1.50% | Local people as a percentage of management | 15.00% |
| | | 1.50% | Black people as a percentage of supervisors, junior and skilled employees | 45.00% |
| | | 1.50% | Black women as a percentage of supervisors, junior and skilled employees | 23.00% |
| | | 1.50% | Local people as a percentage of supervisors, junior and skilled employees | 35.00% |
| | | 1.50% | Black people as a percentage of total staff | 53.00% |
| | | 1.50% | Black women as a percentage of total staff | 28.00% |
| | | 2.00% | Local people as a percentage of total staff | 50.00% |

* *Proviso: private parties to tourism PPP agreements with an expected turnover of less than R5 million per annum are exempt from the ownership indicator, as provided in the* Tourism BEE Charter and Scorecard, 2005.

| BEE scorecard for tourism PPPs (2009) (cont.) | | | | |
|---|---|---|---|---|
| | 2009 Weightings | | 2009 Milestones | 2009 Target |
| Indicator | Weighting | Sub-weighting | Indicator to measure BEE achievement | Target |
| | A | B | | C |
| Skills development | 20.00% | 5.00% | Percentage of payroll spend on skills development (including skills development levy) on all accredited training | 3.00% |
| | | 5.00% | Percentage of skills development spend on all black employees | 75.00% |
| | | 5.00% | Number of learnerships as a percentage of total employees | 2.00% |
| | | 5.00% | Number of black learners as a percentage of total learners | 80.00% |
| Preferential procurement | 15.00% | 10.00% | Spend on BEE-compliant companies as a percentage of total procurement spend | 40.00% |
| | | 5.00% | Spend on local BEE-compliant companies as a percentage of total procurement spend | 20.00% |
| Enterprise development | 14.00% | 14.00% | The sum of percentage spend of post-tax profits on enterprise development and percentage employee time contributed to enterprise development over total management time | 1.00% |
| | | | Enhanced revenue and/or cost savings and/or twinning initiatives facilitated for black-owned SMMEs, as a percentage of revenue of the company measured | 1.00% |
| Social development and industry specific | 8.00% | 3.00% | Percentage of corporate social investment spend of post-tax profits on education, community programmes, job creation, training, health, conservation, community tourism and marketing activities to develop local black tourists market (or percentage management time over total employee time) | 1.00% |
| | | 2.00% | Percentage of new recruits with no prior work experience | 10.00% |
| | | 3.00% | Status of TOMSA levy collector | Yes |
| Total | 100.00% | 100.00% | | |

## BEE scorecard for tourism PPPs (2014)

| | 2014 Weightings | | 2014 Milestones | 2014 Target |
|---|---|---|---|---|
| Indicator | Weighting | Sub-weighting | Indicator to measure BEE achievement | Target |
| | A | B | | C |
| Ownership | 20.00% | 20.00% | Percentage share of economic benefits as reflected by direct shareholding by black people *Note: Direct shareholding includes employee stock ownership plans and other employee share schemes* | *30.00% |
| | | *Specified by the institution* | Community trust ownership *(optional)* | Additional 10% |
| Strategic representation | 12.00% | 2.00% | Black people as a percentage of board of directors | 50.00% |
| | | 2.00% | Black women as a percentage of board of directors | 25.00% |
| | | 3.00% | Local people as a percentage of board of directors | 25.00% |
| | | 2.50% | Black people as a percentage of executive management | 50.00% |
| | | 2.50% | Black women as a percentage of executive management | 25.00% |
| Employment equity | 12.00% | 1.00% | Black people as a percentage of management | 50.00% |
| | | 1.00% | Black women as a percentage of management | 25.00% |
| | | 2.00% | Local people as a percentage of management | 25.00% |
| | | 1.00% | Black people as a percentage of supervisors, junior and skilled employees | 65.00% |
| | | 1.00% | Black women as a percentage of supervisors, junior and skilled employees | 35.00% |
| | | 2.00% | Local people as a percentage of supervisors, junior and skilled employees | 50.00% |
| | | 1.00% | Black people as a percentage of total staff | 75.00% |
| | | 1.00% | Black women as a percentage of total staff | 40.00% |
| | | 2.00% | Local people as a percentage of total staff | 60.00% |

* *Proviso: private parties to tourism PPP agreements with an expected turnover of less than R5 million per annum are exempt from the ownership indicator, as provided in the* Tourism BEE Charter and Scorecard, 2005.

| BEE scorecard for tourism PPPs (2014) (cont.) | | | | |
|---|---|---|---|---|
| | 2014 Weightings | | 2014 Milestones | 2014 Target |
| Indicator | Weighting | Sub-weighting | Indicator to measure BEE achievement | Target |
| | A | B | | C |
| Skills development | 18.00% | 4.50% | Percentage of payroll spend on skills development (including skills development levy) on all accredited training | 3.00% |
| | | 4.50% | Percentage of skills development spend on all black employees | 75.00% |
| | | 4.50% | Number of learnerships as a percentage of total employees | 2.00% |
| | | 4.50% | Number of black learners as a percentage of total learners | 80.00% |
| Preferential procurement | 18.00% | 10.00% | Spend on BEE-compliant companies as a percentage of total procurement spend | 50.00% |
| | | 8.00% | Spend on local BEE-compliant companies as a percentage of total procurement spend | 20.00% |
| Enterprise development | 10.00% | 10.00% | The sum of percentage spend of post-tax profits on enterprise development and percentage employee time contributed to enterprise development over total management time | 1.00% |
| | | | Enhanced revenue and/or cost savings and/or twinning initiatives facilitated for black-owned SMMEs, as a percentage of revenue of the company measured. | 1.00% |
| Social development and industry specific | 10.00% | 6.00% | Percentage of corporate social investment spend of post-tax profits on education, community programmes, job creation, training, health, conservation, community tourism and marketing activities to develop local black tourist market (or percentage management time over total employee time) | 1.00% |
| | | 1.00% | Percentage of new recruits with no prior work experience | 10.00% |
| | | 3.00% | Status of TOMSA levy collector | Yes |
| Total | 100.00% | 100.00% | | |

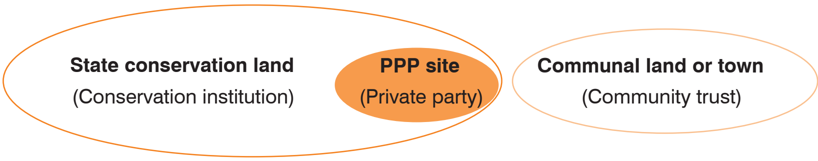
## Three key BEE policy concepts relevant to tourism PPPs

Three key policy concepts relevant to tourism PPPs need to be clarified to properly effect BEE as envisaged in the Toolkit:

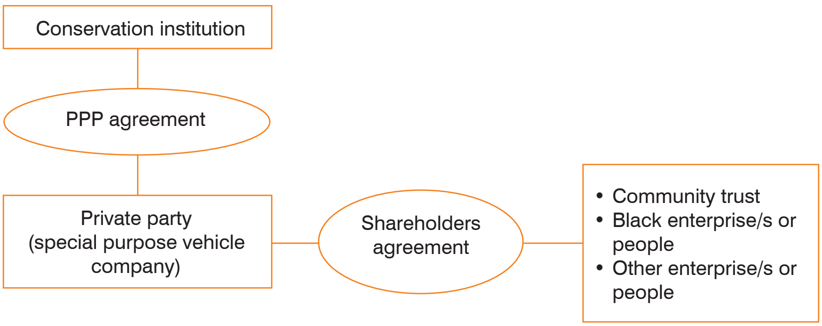
- The option of community trust ownership in private parties to tourism PPP agreements.
- Black people, black ownership and community trusts.
- Unsolicited proposals from community structures.

### 1. The option of community trust ownership in private parties to tourism PPP agreements

Community trust ownership referred to in the Toolkit is equity in the private party which has been set aside by the institution to be acquired by a named, organised and registered non-profit community trust which has been formed to benefit communities ordinarily resident in villages, towns or settlements **adjacent to or within a certain radius of** the state property identified for the PPP project. Where this is appropriate, the private party to the PPP agreement may be obliged (in a manner specified in the request for proposals) to accept the designated community trust as an equity partner.




The contractual relationships can be depicted as follows:



This arrangement will not be viable or desirable in every tourism PPP. It must be assessed by the institution during the pre-feasibility study and feasibility study phases of the PPP project cycle on a project-by-project basis. However, where it is desirable, the community trusts will be identified and consulted by the institutions during these phases. Specifications for their beneficial involvement in the PPP will then be reflected in the BEE scorecard for the project, and included in the PPP procurement documentation.

A number of key considerations drawn from experience need to be taken into account when structuring such arrangements.

- Community ownership is not easy to achieve. A basic starting point is that community interests must be constituted in a suitable legal entity, with suitable governance structures. Unstructured mechanisms and structures that confuse profit-making purposes with non-profit purposes have proven to be unmanageable when forming contractual relationships aimed at achieving communal benefits, and they are also prone to disputes and corruption. Community trusts are suitable vehicles and communal property associations[9] which have been established for the purposes of communal land ownership may also be appropriate.
- The search for finance for the purchase of community ownership in the private party must begin before the procurement phase starts. It must be clearly addressed in the institution's memoranda of understanding (MoUs) with the development finance institutions (DFIs), other financing institutions and support organisations, and possibly other donors. This kind of financing will often comprise a mix of soft loans, grants and own contributions, sometimes combined with shareholding donated by the other equity holders in the private party. The agreed sources and terms of the community trust's financing must be conveyed clearly to bidders in the request for proposals (RFP).
- Community trusts require independent technical, financial and legal advice for any PPP involvement. To date PPPs that have successfully involved community partners have mostly resulted from proactive facilitation from a donor or NGO. Institutions initiating this kind of PPP must therefore take deliberate steps to ensure that independent advice is secured from appropriate support organisations at the feasibility study phase. They also need to ensure that this advice is maintained appropriately throughout the procurement phase and into the early years of implementing the PPP agreement.
- Institutions must guard against conflict of interest in their facilitation of community involvement in the private party to a PPP agreement.

9. Established in terms of the Communal Property Association Act, 1996.

- Government institutions (public entities, municipalities, departments) may not become shareholders in the private party to a PPP agreement.
- Local black enterprises or black entrepreneurs wanting to participate in the PPP must do so through normal business mechanisms: either as black equity partners in bidding consortia or in black management roles in the private party or as subcontractors to the private party or as suppliers of goods and services or as private party employees. They may also need specific support from DFIs and/or other SMME or BEE support institutions.
- The institution must specify in the RFP the rules of engagement between the named community trust and bidder. Approaches to the community trust by different bidders during the procurement phase can lead to complications. At the same time, bidders do need to know something about the community trust, its strengths, organisational capacity and priorities. It is thus recommended that the community trust make a presentation to a bidders' forum soon after the RFP has been issued.

**2. Black people, black ownership and community trusts**

Black people and black ownership are not interchangeable with communities and community ownership. They are different and distinct indicators in the BEE scorecard. Community trust ownership, if applied, will be an additional requirement and will not dilute the scorecard's targets for ownership by black people. Black people also do not have to be local people.

**3. Unsolicited proposals from community structures**

From time to time, institutions are approached by community organisations wanting to gain access to state land to develop a community tourism facility of one kind or another. These approaches, in essence, are unsolicited proposals and should be treated by the institution as such. Proponents should therefore be requested to complete the 'Unsolicited PPP proposal form' as provided in Template 2.

If the proposal has merit, the institution will follow the PPP project cycle as regulated. There is no basis in law to not follow the PPP project cycle or to ignore the legal requirement for an open and competitive procurement process. Indeed, it is in the best interests of both the institution and the community making the proposal for the necessary feasibility study to be done properly by the institution. There is, however, no restriction on setting high targets for community trust ownership in the private party (if the level of local interest and/or capacity is strong), or on setting high targets for local beneficial impact on various elements of the BEE scorecard.

## COMMUNAL AND PRIVATE LAND

The definition of a PPP in Treasury Regulation 16 specifies, inter alia, that a PPP involves the commercial use of **state** property. Land which is registered in ownership to a private individual, a private company, a private or community trust, as being communal land, or which is held in trust for a community by the state, or which is owned by a community entity, or land which is transferred to a community entity in the settlement of a land claim, is **not** state property.

The Toolkit is designed for institutions seeking to offer private parties rights to operate tourism businesses on state-owned land.

**The properties on which tourism PPPs take place in terms of the PFMA and which are the focus of the Toolkit do <u>not</u> include:**

- communal land administered in terms of the Communal Land Rights Act, 2004, including all land held in trust by the state on behalf of tribes or communities, and Ingonyama Trust land [10].
- land registered in the Deeds Office as owned by communal property associations (created in terms of the Communal Property Association Act, 1996) or community trusts
- land transferred in ownership through government's land redistribution programme
- private or communal land declared to be a special nature reserve, nature reserve or protected area in terms of the National Environmental Management: Protected Areas Act, 2003 and which may or may not be incorporated into a protected area owned by the state
- land transferred in ownership in terms of the Restitution of Land Rights Act, 1994, including such land protected in terms of the land claims settlement agreements in perpetuity for conservation, and managed by agreement with state conservation institutions.

### Land transferred through restitution

Where land under a restitution claim has particular biodiversity value, the outcome of the land claims negotiations with stakeholders has often been agreement that the land will be transferred in ownership to the legitimate claimants (along with monetary compensation), it will not be settled upon by the claimants, but it will continue to be held in perpetuity for conservation purposes, managed by the relevant state conservation institution. The state conservation institutions in these arrangements are sometimes also granted commercial rights on this land, to be implemented under their relevant statutory powers. These conditions are typically attached to the title deeds. The state conservation institution, in turn, seeks to supplement its costs of conserving the land by seeking private investors who will pay a concession fee to the conservation institution

10. Some of this land has been proclaimed for conservation and is managed by conservation institutions. In such cases, the guidance in this section applies.

for the rights to invest in and operate tourism facilities on the land. This land does not belong to the state. It is privately owned by the communities and is registered in the Deeds Office, usually in the name of a community trust or a communal property association which seeks to reap the benefits of land ownership.

**The application of Treasury Regulation 16 in respect of communal and other private land**

Where an institution, having the statutory function to operate commercial activities in protected areas, has acquired rights and obligations to develop and manage commercial activities on private or communal land by virtue of a land claim settlement agreement or by virtue of the incorporation or proclamation of private or communal land into a protected area, the granting of such rights to a third party private investor/operator constitutes a PPP by virtue of commercial activities being 'an institutional function', even though the land is not state property.

However, this application of the PPP definition must be interpreted in the context of land rights enshrined in the Constitution of the Republic of South Africa, 1996, and in the context of specific land rights legislation. South African law seeks to restore land rights where these were taken away under apartheid, to protect land ownership, and to empower people to receive the economic benefits of land rights and land ownership.

Furthermore, National Treasury recognises that any private investment in communal or private land does not constitute the enhancement of a state asset but the enhancement of a private asset, even if that asset is managed for conservation purposes by a state institution. In so far as the state institution is granted the authority to facilitate the enhancement of that asset under its custodianship it should do so, therefore, in a manner consistent with land rights legislation and in a manner that also meets the conservation objectives to which both the landowner and the conservation institution subscribe.

In keeping with the good governance principles of the PFMA, National Treasury does not support the formation of joint venture companies between state institutions and communal/private landowners for purposes of procuring private investors/operators or for purposes of operating commercial enterprises. Public entities should also not be created if the institution's roles, resources and relationships can be managed within existing institutional structures and in terms of regular arm's-length contractual relations. Risk must not become blurred between parties, and remedies for an aggrieved party upon non-delivery by another party must be clear.

National Treasury, therefore, will exempt an institution from the application of Treasury Regulation 16 in circumstances involving third party private tourism investment on private or communal land over which the institution has been granted conservation obligations and commercial rights in terms of a co-management agreement (CMA), if the institution can show that it has put one of the following two contractual mechanisms in place:

- a co-management agreement back-to-back with a community-private party agreement; or
- a co-management agreement back-to-back with a community-public private partnership agreement.

## Co-management agreement back-to-back with a community-private party agreement

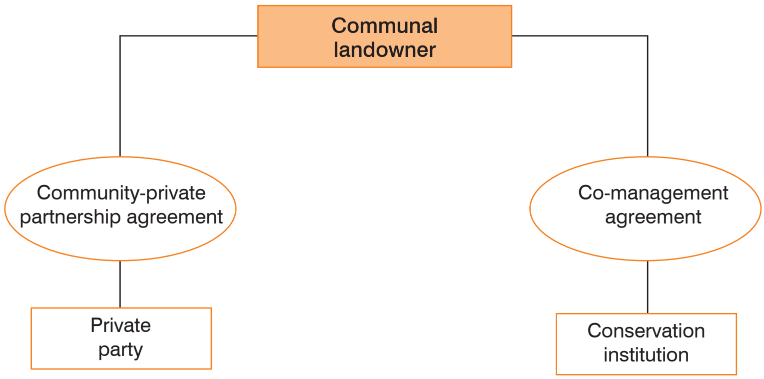
In this mechanism, the landowner (community trust or communal property association) enters into a CMA with the relevant conservation institution (the conservation manager) and enters into a separate community-private party agreement (CPP) with a private investor/operator. The CMA must, in these circumstances, be secured before a landowner seeks a private investor. The CMA between the landowner and the conservation manager becomes a back-to-back agreement with the subsequent CPP. This enables risks to be managed by the appropriate parties, and remedies for non-delivery to be effected accordingly.

The CMA should be concluded on four principal points:

1. **The quality and quantum of conservation management to be provided** by the conservation manager, the costs involved, and the consequences of failure to perform to the agreed standards.
2. **The risks that the landowner will assume and manage**, the costs involved, and the consequences of failure to perform to the agreed standards.
3. **How the revenues from tourism or other uses of the land are to be shared** between the landowner and the conservation manager.
4. **How the necessary feasibility studies for, procurement and management of contractual relationships with third party private sector investors and operators** will be collaboratively handled in support of both parties' rights and obligations.

The CPP must clearly assign risk and reward, and the landowner would be advised to use PPP best practice as a benchmark. In many cases, however, the landowner may also take an equity stake in the private party, thus taking on some commercial risk.

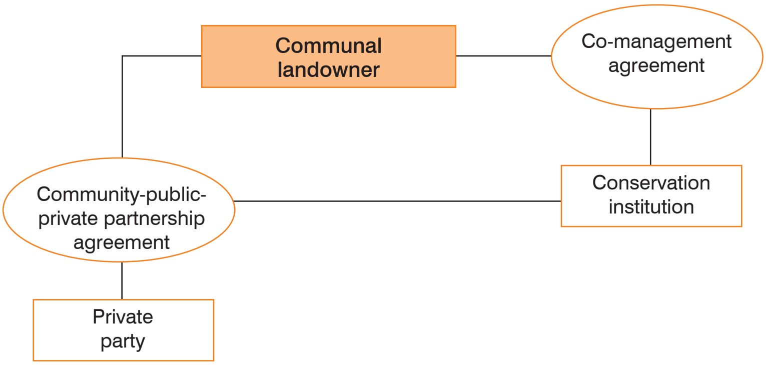
The contractual relationships in this mechanism may be depicted as follows:



### Co-management agreement back-to-back with a community-public-private partnership agreement

This mechanism will achieve the same effect as in the mechanism above. However, it is contractually more complex, and should be pursued only if the contractual arrangement outlined above cannot achieve what the landowner and the institution require. The CMA must be concluded first, on the same principal points outlined above. Signatories to the community-public-private partnership agreement (CPPP) would be the landowner, the institution, and the private party. *Inter alia*, the CPPP must clearly set out each party's rights and obligations, events that constitute defaults by each party, and the explicit consequences of such defaults. Risks and rewards must be clearly and appropriately assigned, using PPP best practice as a benchmark.

The contractual relationships in this mechanism may be depicted as follows:




Such CMAs, CPPs and CPPPs obviously require detailed and consistent approaches, preferably with standardised forms of contractual relationships. These should reflect both the land claims settlement agreements (where applicable) and the relevant conservation legislation.

The relevant government institutions should find appropriate ways to give transaction and management support to communal landowners when they engage with private investors and conservation institutions. Communal landowners also need support in managing their responsibilities in these agreements.

**Similar principles and mechanisms should be applied to private land (other than communal land) that has been incorporated into a protected area and over which a conservation institution has acquired conservation obligations and commercial rights.**

**Take note**

### A PPP on private/communal land within a protected area?

Three crucial questions need to be asked to determine whether an institution granting commercial rights to a private party on land not owned by the state is, by legal definition, a PPP:

- Does the private/communal land form part of a protected area managed by the institution?
- Does the institution have statutory rights or obligations to provide tourism amenties and/or to commercially develop the protected area?
- Does the institution have a contractual right from the landowner to commercially develop the land?

If the answer is 'yes' to all three questions, it is possible that the commercial development of the land would constitute a PPP by virtue of a private party 'performing an institutional function' (that is, commercial activities that would otherwise be performed by the institution) 'on behalf of the institution'. In this scenario, it is recommended that an institution apply to the relevant treasury for an exemption from Treasury Regulation 16, and allow the terms of a CMA to take precedence. The CMA should, nevertheless, attempt to follow best practice set by the Toolkit, as applicable.

## UNSOLICITED PROPOSALS

Institutions receive unsolicited proposals from private parties looking to make use of state property for commercial purposes, where the institution has not issued a request for proposals.

However, unsolicited proposals are usually incomplete, fraught with governance complications, and their value for money cannot be tested without competition. To accept such proposals without the proper feasibility study and procurement processes being followed would not only be in breach of Treasury Regulation 16, but would be in breach of Constitutional provisions for fair, transparent and competitive procurement. But ideas and feedback from the private sector that help institutions identify potential commercial opportunities should not be discouraged.

When an institution receives an unsolicited proposal it should take the following steps:

- The official responsible for developing commercial opportunities must acknowledge that he or she has received the proposal. A template letter for this is provided in 'Template 1: Acknowledgement letter: Unsolicited tourism PPP proposal'.
- As part of the letter, the institution should request that the unsolicited proposer complete a standard business proposal form so that the institution can assess the merits of the case. A template form is provided in 'Template 2: Outline business case: Unsolicited tourism PPP proposal'.

By corresponding in this way over an unsolicited proposal the institution is not accepting any obligations. The unsolicited proposer must be informed that, if the institution decides that the proposal has merit, it will follow the provisions of the Toolkit in preparing for and procuring a partner for the PPP. If the proposal, in the institution's opinion, has no merit, the proposer will be informed that the institution will not take up the proposed project.

If the proposal contains intellectual property rights the institution will not acquire these rights. Although the possibility of such rights being part of an unsolicited proposal is slight, the institution should seek legal advice where necessary.

If the institution's advertising of PPP opportunities is regular and standardised it is likely that unsolicited proposals can be quickly and appropriately channelled into the institution's normal PPP feasibility and procurement processes. Regular annual or biannual advertising of tourism PPP opportunities – especially those targeted at SMMEs – should be standard practice once institutions have established the necessary capacity and systems.

# ENVIRONMENT AND HERITAGE

## Environmental issues

The Environment Conservation Act, 1989 (ECA) identifies activities that may have a substantial detrimental effect on the environment. No-one may undertake an 'identified activity' or cause such an activity to be undertaken except by written authorisation – a record of decision (RoD) – issued by the Minister of Environmental Affairs and Tourism or by a competent or local authority. The competent authority is the relevant provincial authority except in specified circumstances, in which case it is the minister. The competent authority will only issue authorisation to an applicant after it has considered an environmental impact report following an environmental impact assessment (EIA). Regulations to the ECA cite the 'applicant' as any person who applies for an authorisation to undertake an activity or to cause such activity to be undertaken. Depending on the project circumstances, the applicant may therefore either be the institution initiating the PPP or the private party to a PPP agreement. The applicant must appoint an independent consultant, which must comply with the regulations on behalf of the applicant.

Poor environmental planning by institutions causes delays in obtaining RoDs and adds to project costs for all parties. It is common cause that uncertainty adds risk, that risk is managed by mitigation measures that cost, and that cost impacts not only on private party cash flow, but, ultimately, on the PPP fee that the institution can obtain from the private party when operations begin. That is why it is important for the institution to be aware, very early in the PPP cycle, of the environmental impact that a PPP may have. It also needs to do as much preparation as possible to make sure that required RoDs are obtained or refused timeously.

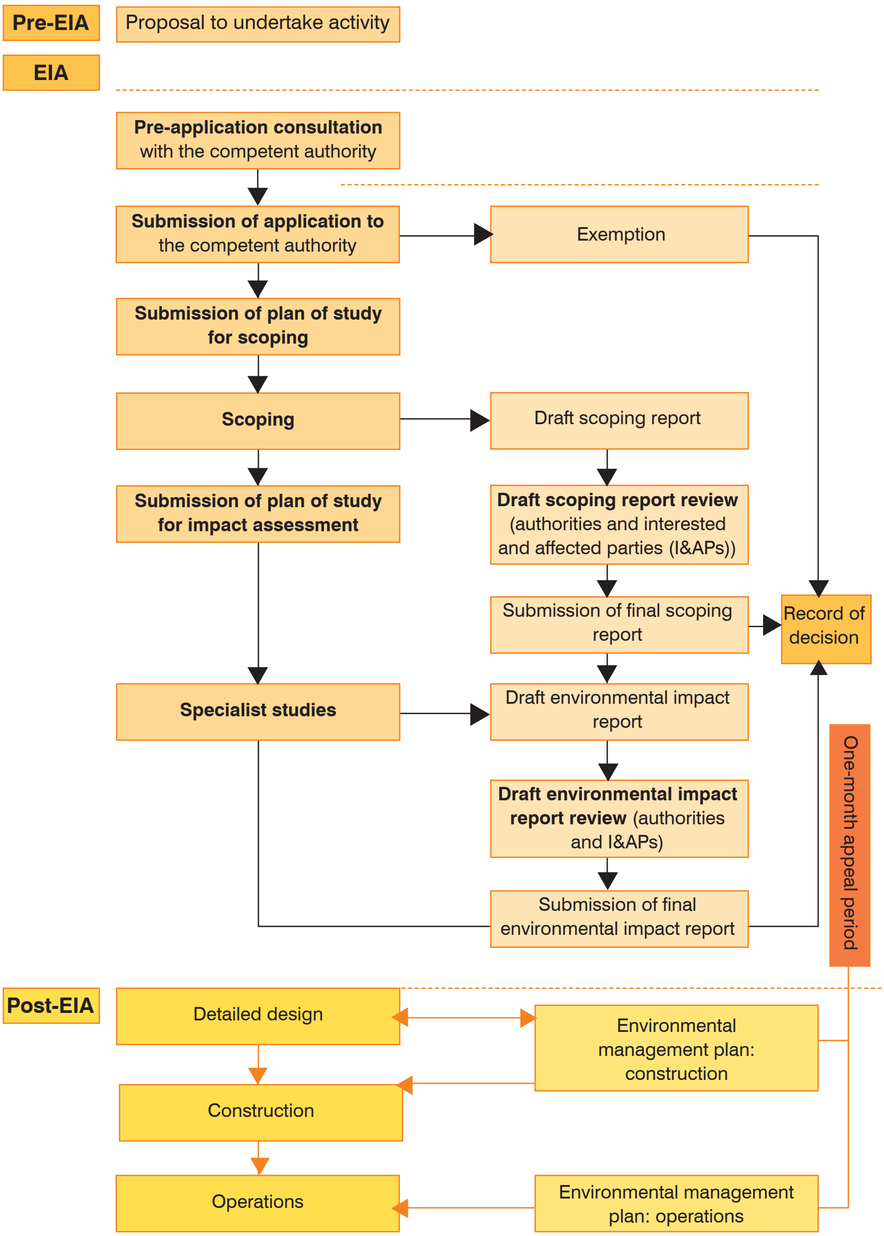
While typically, environmental risks, including the regulatory EIA risks, rest with the private party when the PPP agreement is signed, the institution must try to limit these in the project preparation phases. This begins with the institution consulting early – in the inception and pre-feasibility phases of the PPP project cycle – with the competent authority, and agreeing on what EIA steps are appropriate for which party to take, and at what stage, in order to expedite the project. If the project is a 'no go' for environmental reasons, this must be established by the institution early on – before it proceeds further in the feasibility study.

Each PPP project will be unique, and some will be far more environmentally sensitive than others. For some (particularly SMME projects where a development footprint already exists), it may be possible for the institution (as the applicant) to obtain an exemption from an EIA as early as the PPP feasibility study phase. For others, an RoD may be obtained by the institution (as the applicant) on the basis of a scoping report conducted by the institution's independent consultant during the PPP feasibility study phase. The RoD would set out the environmental parameters and conditions for the project and can be included in the RFP. This would give bidders an equal opportunity to bid within the environmental constraints of the project. Other projects may be so sensitive and the development designs so unique to the private parties that win the bids that plans of study for scoping and subsequent EIAs can only be undertaken by the private parties as the applicant once the PPP agreements have been signed.

Assessing what is possible for each project early in the PPP project cycle is key to expediting the process.

A diagrammatic summary of the EIA process is given on the next page. Guidance is given in the remainder of the Toolkit on the environmental steps that the institution should be considering at each PPP phase. However, institutions are advised to hire experienced environmental consultants when required to ensure that environmental regulations are properly, appropriately, and thoroughly followed for each PPP.

## The regulated environmental impact assessment process



### Heritage issues

If the proposed project falls within the categories of 'development' specified in the National Heritage Resources Act, 1999, the institution must, at the PPP inception phase, notify the responsible heritage resources authority. It also needs to provide details about the location, nature and extent of the proposed development.

If there is reason to believe that heritage resources will be affected by the proposed development, the responsible heritage resources authority may require the institution to submit an impact assessment report. This must be done during the PPP feasibility study phase.

If the proposed project will impact on a heritage resource, in particular if the project requires a heritage resource to be altered or demolished, a permit must be obtained from the relevant heritage resource authority. The permit should be obtained during the PPP feasibility study phase so that bidders know the heritage parameters for making their proposals, and to avoid costly delays later.

## TEMPLATES

### TEMPLATE 1

Acknowledgement letter: Unsolicited tourism PPP proposal

This is a template letter for institutions to acknowledge that they have received an unsolicited proposal by a private party for a PPP project. The letter requests the private party to develop the proposal further by completing 'Template 2: Outline business case: Unsolicited tourism PPP proposal'.

### TEMPLATE 2

Outline business case: Unsolicited tourism PPP proposal

This template requests the private party proponent to give details of its tourism PPP proposal in relation to: the concept of the project; commercial rationale; environmental matters; BEE; operations and management; and financial viability.

**Templates**

Each template for this module, can be downloaded, in Microsoft Word, from the CD accompanying the Toolkit and from the PPP Unit's website, www.ppp.gov.za.

# INDEX

*The prefix GS refers to the 'Getting Started' section of the PPP Toolkit for Tourism. Numerical references are to module number followed by page number.*

## A

# B

# C

# D

# E

# F

## G

# H



# I

# L



# M

# N

# O



# P

# R

# S

# T

## U



## V



## W

# NATIONAL TREASURY
# PPP TOOLKIT FOR TOURISM

## MODULE 1:
## PPP INCEPTION AND PRE-FEASIBILITY PHASE FOR TOURISM PPPs

NATIONAL TREASURY

PPP unit

# PPP PROJECT CYCLE FOR TOURISM PPPs

**Reflecting Treasury Regulation 16 to the Public Finance Management Act, 1999**

PROJECT PREPARATION PERIOD

Phase I

## INCEPTION

- Prepare strategic plan for commercialisation
- Apply for project registration

## PRE-FEASIBILITY

- Pre-feasibility study
- Motivation for small cap route or large cap route
- Possible application for exemption from treasury approvals

Phase II

| SMALL CAP ROUTE | LARGE CAP ROUTE |
|---|---|
| **FEASIBILITY** | **FEASIBILITY** |
| **Institution Approval: I*** | **Treasury Approval: I**** |
| • Issue-based feasibility | • Comprehensive feasibility |

Phase III

| SMALL CAP ROUTE | LARGE CAP ROUTE |
|---|---|
| **PROCUREMENT** | **PROCUREMENT** |
| • Prepare bid documents | • Prepare bid documents |
| **Institution Approval: IIA*** | **Treasury Approval: IIA**** |
| • Issue bid documents<br>• Evaluate bids<br>• Select preferred bidder | • Issue bid documents<br>• Evaluate bids<br>• Select preferred bidder |
| **Institution Approval: IIB*** | **Treasury Approval: IIB**** |
| • Negotiation<br>• Management plan | • Negotiation<br>• Management plan |
| **Institution Approval: III*** | **Treasury Approval: III**** |
| • Sign PPP agreement | • Sign PPP agreement |

PROJECT TERM

Phase IV

## DEVELOPMENT

Phase V

## OPERATIONS

Phase VI

## EXIT

- Measure outputs, monitor and regulate performance, liaise effectively, settle disputes
- Report progress in the Annual Report
- Scrutiny by the Auditor-General

*** If exemption from treasury approvals is granted.**

**** Unless exemption from treasury approvals is granted.**

# ABOUT THIS MODULE

Module 1 sets out the steps to be followed in the PPP inception and pre-feasibility phase of tourism PPPs.

Key milestones for the institution during this phase are the strategic plan for commercialisation, applying to the relevant treasury to register the project and doing the pre-feasibility study.

Based on the outcome of the pre-feasibility study, the institution decides whether to pursue the small cap or large cap route. The institution also decides whether to apply for exemption from treasury approvals.

**Templates**

Each template for this module, listed on the contents page, can be downloaded, in Microsoft Word, from the CD accompanying the Toolkit and from the PPP Unit's website, www.ppp.gov.za. A summary of what is contained in each template and annexure is provided at the end of the module, or the relevant section within the module.

# CONTENTS

PPP TOOLKIT FOR TOURISM

# PPP INCEPTION

# INTRODUCTION

**Extract from Treasury Regulation 16 to the Public Finance Management Act**

***16.3 Project inception***

*16.3.1 As soon as the institution identifies a project that may be concluded as a PPP, the accounting officer or accounting authority must in writing –*

*(a) register the PPP with the relevant treasury;*

*(b) inform the relevant treasury of the expertise within that institution to proceed with a PPP;*

*(c) appoint a project officer from within or outside the institution; and*

*(d) appoint a transaction advisor if the relevant treasury so requests.*

**There are six stages to PPP inception for tourism PPPs**

Stage 1: The accounting officer/authority decides to consider PPPs
Stage 2: Appoint the project officer
Stage 3: Set up the project team
Stage 4: Complete the strategic plan for commercialisation
Stage 5: Register the project with the relevant treasury
Stage 6: Appoint consultants or a transaction advisor

# STAGE 1: THE ACCOUNTING OFFICER/ AUTHORITY DECIDES TO CONSIDER PPPs

The Public Finance Management Act, 1999 (PFMA) assigns significant responsibilities and accountability to accounting officers/authorities to manage the resources of institutions in the public interest and as mandated. The tests and processes which he/she must follow for a public private partnership[1] (PPP) are set out in Treasury Regulation 16 to the PFMA.

In the inception phase of the PPP project cycle the accounting officer/ authority is responsible for:

- deciding to review the potential for PPPs in the institution[2]
- preparing the strategic plan for commercialisation
- informing the relevant treasury of the institution's capacity to proceed with PPPs
- registering the PPP project(s) with the relevant treasury
- appointing a project officer
- appointing consultants or a transaction advisor.

**The duties of the accounting officer/authority**

Throughout the PPP project cycle, the accounting officer/authority will:

- provide strategic direction and vision, ensuring that the PPP outcomes are consistent with the institution's mandate and strategy for the use of state property
- build and secure political support for the commercialisation strategy and the project(s)
- ensure senior management support
- build other stakeholder support
- provide the project officer with suitable delegations and responsibility for project management and include him or her in the senior management team of the institution
- allocate suitable project resources, including budgets and personnel, to the project officer
- receive regular, direct reports from the project officer and provide strategic direction
- where possible resolve disputes that cannot be resolved within the project team
- ensure smooth transitions between changing institutional personnel who may be responsible for the project at different times in the PPP project cycle
- represent the project publicly on behalf of the institution.

The accounting officer/authority's specific regulatory responsibilities in PPPs include:

- getting treasury approvals
- representing the institution on behalf of government as signatory to the PPP agreement
- making sure that the PPP agreement is properly enforced
- making sure that state property is appropriately protected.

1. See *Getting started: 1. Understanding the Toolkit:* 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.
2. See *Getting started: 1. Understanding the Toolkit:* 'Annexure 1: Treasury Regulation 16': 16.1 Definitions.

# STAGE 2: APPOINT THE PROJECT OFFICER

**Extract from Treasury Regulation 16 to the Public Finance Management Act**

*16.1* ***Definitions***

***"project officer"*** *means a person identified by the accounting officer or accounting authority of an institution, who is capable of managing and appropriately qualified to manage a PPP to which that institution is party from its inception to its expiration or termination.*

**Take note**

Appointing the project officer is a critical stage. It should happen as early as possible after the accounting officer/authority has decided to consider PPPs. Only in exceptional cases should the project officer be appointed after the project has been registered with the relevant treasury.

The project officer is responsible for making the project(s) work for the institution, on time, on budget and to the standards set by National Treasury. The project officer is the institution's anchor and champion for a PPP project and should be a full-time appointment.

## What does the project officer do?

All the institutional tasks and obligations detailed in Treasury Regulation 16 and the Toolkit land on the desk of the project officer.

The project officer's is a full-time project management job, requiring a suitable term contract. The project officer should be hired to manage the project from inception, through the feasibility study phase, the procurement phase, and into at least the development phase and the first years of the delivery phase, when he or she will be primarily concerned with PPP agreement management functions.

Broadly, the project officer will:

- manage the planning, procurement and implementation of the PPP project on behalf of the institution, exercising delegated authority
- carry out all stages of the inception phase, including the appointment of the consultants and/or transaction advisor
- direct and manage the work of the consultants or transaction advisor and approve payments in terms of the contract at every phase of project preparation

- report to the accounting officer/authority on the progress of the PPP
- manage the PPP agreement for the project term[3], representing the institution.

## Required qualities and competencies of the project officer

If the project officer is incompetent, lazy or unreliable the project is bound to fail. He or she must be unquestionably honest and committed to achieving best value in the public interest. The job needs the kind of person who is prepared to live the project. It requires a passionate driver who is committed to achieving an optimal project outcome and who has the skills to match. The project officer will be required to act and make decisions with the utmost integrity at all times and to protect the institution's interests and those of the public.

The project officer should be given suitable, legally sound delegations by the accounting officer/authority for the central, driving role he or she has to play on behalf of the institution. The project officer should therefore be or become a member of the institution's senior management team in order to ensure thorough institutional buy-in that the institution's management participates in key project decisions. He or she should have the full trust of the accounting officer/authority, who will depend on the project officer to deliver the best possible project for the institution.

The project officer should therefore have the necessary authority to undertake the feasibility study and to obtain all relevant information from the staff.

Figure 1.1 is a competency model for a PPP project officer. While the model presents a somewhat idealised 'Renaissance human' its aim is to illustrate the wide range of attributes required of a project officer.

Institutions can use the model as:

- a recruitment and selection tool
- an assessment tool for performance appraisals
- a development tool when the project officer is looking to keep his or her expertise aligned with the evolving requirements of the job.

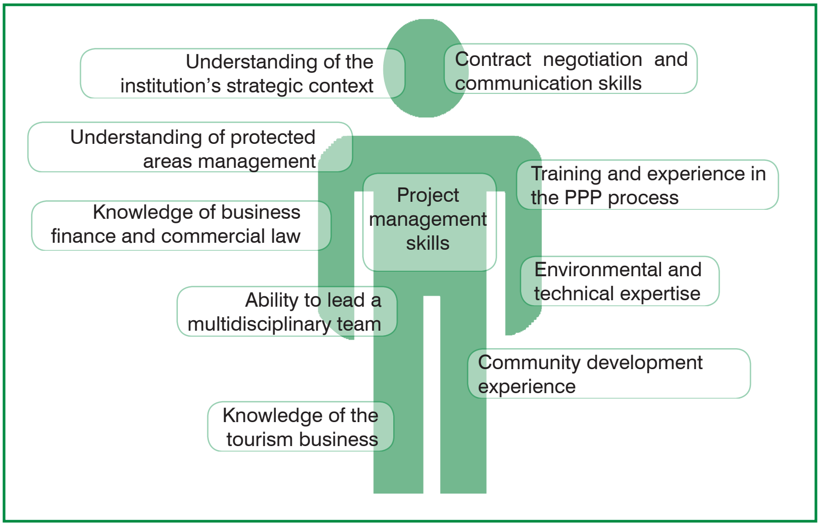
3. See *Module 4: Managing the PPP agreement* for a detailed description of the project officer's PPP agreement management functions throughout the PPP project cycle.

Figure 1.1: Competency model for a PPP project officer

| Competency cluster | Competencies | Indicators |
|---|---|---|
| Self | Applies professional expertise and experience | PPP knowledge and experience, from the public or the private sector |
| | | Comparable project experience |
| | | Relevant knowledge and skill in tourism business, law, finance, public administration and document management |
| | Develops self and others | PPP knowledge |
| | | Personal development |
| | | Team development |
| | | Career development of self and others |
| | Is resilient and motivates | Determination |
| | | Self-motivation |
| | | Motivation of others |
| Task | Implements strategy | Strategy development |
| | | Strategy implementation |
| | | Strategy communication |
| | Solves problems | Problem solving |
| | | Creative thinking |
| | | Decision-making |
| | Achieves results | Project management |
| | | Resource management |
| | | Quality management |
| | | Risk management |
| | | Managing ongoing change |
| | | Variation management |
| | | Knowledge management |
| | | Monitoring |
| People | Builds relationships, communicates and negotiates | Partnership and relationship management |
| | | Communication |
| | | PPP negotiation |
| | Leads and manages team | Leadership and management |
| | | Delegation |

**Source:** *UK Office of Government Commerce*

Figure 1.2: Specific skills and experience required of a tourism PPP project officer




## Formally appointing the project officer

The project officer may be appointed from within or outside the institution, depending on the institution's own capacity and resources. In either case, the institution is advised to enter into a contract with the project officer using 'Template 1: Duties and responsibilities of the project officer'. The contract should clearly identify the measurable outputs of the job and enable the institution to terminate the project officer's services if he or she fails to deliver as agreed, or is found to be corrupt.

If an internal staff member is appointed as the project officer, ideally he or she should hand over his or her current duties in order to focus on the project officer duties full time.

## The project officer's first steps

When first appointed, the project officer must:

- **Review and understand the institution's statutory mandate and all the strategic plans and commercial ventures it has initiated to date.** Institutions are governed by legislation, most institutions have strategic plans, many will have identified commercial opportunities, and many have existing commercial ventures of various kinds. These need to be carefully reviewed by the project officer.

- **Study the Toolkit.** This should include attending a National Treasury PPP Unit training course on the Toolkit
- **Gather and review information on similar previous PPP projects.** The lessons learnt and approaches adopted by other institutions should inform the project officer of key issues to be managed and appropriate methodologies to be used. Case studies are available from National Treasury's PPP Unit[4].
- **Identify the required technical and management expertise.** For each phase of the PPP process the skills needed should be identified, quantified and allocated. The available skills in the institution should be critically reviewed and then assessed against the requirements. Skills which are not available for each phase will need to be sourced from other government institutions or from consultants or a transaction advisor at the appropriate time.
- **Define the scope of work and available budget for the project team, each member in the project team, and for consultants or the transaction advisor** (if consultants or a transaction advisor are going to be used).
- **Set up the project team.** The project officer is required to set up a strong team to lead and monitor the project from the start.

4. Go to www.ppp.gov.za.

# STAGE 3: SET UP THE PROJECT TEAM

**The project team**

- provides strategic direction and facilitates management and political buy-in
- oversees project development budgets and expenditure
- makes sure that the project's progress is effectively communicated within the institution and to the public when required
- approves the deliverables of consultants or the transaction advisor (where used)
- reviews and endorses documentation to be submitted to the accounting officer/ authority for the applications for the treasury approvals
- attends and proactively contributes to all relevant meetings.

## The main functions and responsibilities of the project team

The project team will be led by the project officer and should be kept as small as possible without losing critical representation.

The project team members are responsible for collecting the necessary data within the institution and making sure that all key internal and external stakeholders buy into the project throughout the project cycle.

The project team members should have a clear mandate and the necessary authority to participate in the project team. Each team member's scope of work and responsibilities should be clearly communicated according to best practice in project management. Continuity is very important, so the team members need to stay on the team until the PPP agreement is signed. Members will be expected to attend all meetings and to contribute actively to the PPP process.

The project officer should actively manage the project team members' inputs to make sure that the outputs are co-ordinated and integrated. The project officer should create a culture of preparation for meetings by thinking through the issues, generating focused agendas, providing information timeously before meetings, and insisting on disciplined and rigorous input from the project team members.

**The project team's core skill set**

The members of the project team and the supporting staff necessary to complete the PPP process will vary from project to project. Typically, the project team for a conservation institution will require the following skill set:

- human resources
- reserve management planning and zoning
- ecological services
- finance and budgeting
- community participation and BEE.

## The composition of the project team

The PPP project team should comprise the officials who can provide both strategic and technical support to the project officer. Managers who understand the relationships between the institution's different components are particularly valuable. Technical experts and experienced and perceptive staff who have a clear grasp of market demand and conservation management are needed to establish the project specifications and to evaluate the feasibility study and subsequent bids. If development financing is likely to be necessary for private investors, staff from development finance institutions (DFIs) can be included in the project team during the pre-feasibility and feasibility study phases to give strategic advice on commercial viability. Staff from other institutions or entities can be included if there is no conflict of interest and they can add value.

The transaction advisor or consultants (if appointed) and the relevant treasury PPP unit's project advisor should participate actively in the regular meetings of the project team. For day-to-day project management the project officer will need to set up structured working arrangements with the transaction advisor and the project advisor.

## Different skills required at different times

The different phases, stages and steps in the PPP process require different skills and inputs and the project officer should be aware of this. For example, the transaction advisor will be part of the project team for a limited period, ending his or her contract when the PPP agreement is signed – at the end of the procurement phase. For the purposes of continuity, the core project team should take the project from inception to the signing of the PPP agreement. After that, some of the project team members should be involved in managing the PPP agreement. This is important to ensure that the knowledge gained in the preparation period is not lost.

At least two or three people in the institution, including the chief financial officer, project officer and senior operational managers, should complete a National Treasury's PPP Unit training course on the Toolkit during the inception phase.

## Supporting personnel

If it is clear that the proposed PPP, or bundle of proposed PPPs, is sizeable, the project officer should get dedicated administrative assistance. A secretariat should be appointed and a suitable operating budget should be made available

The secretariat's primary role will be to ensure scrupulous document management and meetings administration throughout the PPP project cycle.

Well-kept project records are vital, enabling an institution to:

- compile its annual reports as required by the PFMA
- supply the Auditor-General with the legally required documentation at any time
- produce, at any time, accurate project information in terms of the Promotion of Access to Information Act, 2000
- make decisions quickly and compile PPP procurement documentation accurately and efficiently, based on preceding project decisions
- give quick and accurate briefings to the institution's accounting officer/ authority and senior management
- devise and implement an effective project communication strategy for engaging with key stakeholders throughout the project cycle.

**Take note**

The project officer and the project secretariat are strongly advised to set up the PPP project management systems in consultation with the institution's internal audit unit to ensure appropriate compliance with the institution's risk management, internal controls, and governance standards.

## STAGE 4: COMPLETE THE STRATEGIC PLAN FOR COMMERCIALISATION

The strategic plan for commercialisation should be adopted by the relevant accounting authority/officer and endorsed by the relevant executive authority. It should show clearly that the institution has the fundamentals in place for a successful PPP process. If this is not the case, the institution will waste its own and the private sector's time, money and effort. If the institution does not have the capacity or skills to complete the plan it may need to appoint relevant consultants to help. The process to be followed for the appointment of consultants or transaction advisors is set out in Stage 6.

The strategic plan is intended to be a living document and should be viewed and treated by the institution as a long-term investment. While the first round of an institution's process for PPPs for tourism involves a considerable amount of work, it will not be necessary to start from scratch and produce a new plan for each subsequent round of PPPs. Many of the institution's objectives and its strategic planning work will apply to later PPPs. It will therefore only be necessary to refine the plan over time and to develop further inputs specific to particular sites.

**Steps**

| | |
|---|---|
| Step 1: | Articulate the institution's mandate, vision, mission, objectives and activities |
| Step 2: | Identify possible sites and opportunities for PPPs |
| Step 3: | Assess the institution's legal capacity to carry out a PPP |
| Step 4: | Articulate the institution's commercialisation policy, objectives and strategy |
| Step 5: | Assess the institution's personnel and systems capacity for PPPs |
| Step 6: | Establish budgetary parameters |
| Step 7: | Identify internal and external stakeholders |
| Step 8: | Identify what additional support the institution needs |
| Step 9: | Compile an initial checklist for each of the commercial opportunities identified |

**The strategic plan for commercialisation must be aligned with existing plans**

It may not be necessary for an institution to compile documentation from scratch for its strategic plan for commercialisation if much of this work has been done or is part of other planning processes. It is necessary, however, to make sure that all the information needed is in one document, and that the existing planning is checked against the Toolkit's guidance for commercialisation planning. It needs to be compiled as a strategic plan for commercialisation and be aligned within the institution's broader planning framework and for each reserve that is targeted for PPP(s).

### Reserve management plan

Crucial for the strategic plan for commercialisation is the institution's reserve management plan (RMP). In terms of legislation for protected areas, an RMP must be done for every protected area in South Africa. Much of the necessary information for the strategic plan for commercialisation (and the pre-feasibility and feasibility phases of the PPP) will be contained in the RMP, and the two should be closely aligned. If an RMP has not yet been done for the protected area identified for PPPs, the strategic plan for commercialisation and the RMP should be done simultaneously to make sure that they are aligned.

**Take note**

A PPP cannot be pursued if the RMP for the identified protected area has not been completed.

### What a reserve management plan needs to cover

Conservation institutions' RMPs typically incorporate:

- the vision for the protected area
- policy and management guidelines describing how the various assets of a reserve will be managed, specifically in relation to:
    - natural resources
    - cultural, historical and archaeological resources
    - zoning
    - tourism
    - marketing
    - partners
    - social/community development
    - infrastructure
    - administration and management
    - land management and use.

## Step 1: Articulate the institution's mandate, vision, mission, objectives and activities

The strategic plan for commercialisation must be grounded in the institution's statutory mandate and complement the institution's overall vision, mission and objectives, which must be clearly defined at the outset.

## Step 2: Identify possible sites and opportunities for PPPs

While this step is an initial identification at a high level, the institution must be wary of including too many sites as possibilities. This could incur unnecessary additional costs if pre-feasibility studies are done on sites which are clearly unsuitable for PPPs. Furthermore, an institution must take into account the relevant RMP that may set limits on any potential development.

Reasons for identifying possible sites and opportunities would include:

- unsolicited proposals received
- no existing development or an identified gap in the market
- known market interest or demand
- successful commercial development in a similar area or market.

**Take note**

It is not always necessary to identify a precise site for a tourism PPP. Very often private parties wish to have some input in what specific site will be used. It is sufficient at this stage just to identify the reserve, dam or area in which a PPP may be proposed.

It is also possible that a range of commercial activities or uses for assets may be identified. An institution does not have to identify the specific commercial activity at this stage. The pre-feasibility and feasibility studies will refine these site and opportunity options and provide specific information upon which final decisions can be made.

## Step 3: Assess the institution's legal capacity to carry out a PPP

This section focuses on both the institution's rights and powers to contract with private parties for the commercial use of state property and on the institution's authority to retain revenues. The policy and regulatory framework applicable to the institution is to be carefully evaluated to determine the institutional mandate.

The following preliminary questions must be answered:

- Does the institution have the right to enter into a PPP?
- Does the institution have the right to retain revenues derived from the PPP?
- Does the institution have the mandate over the state property it proposes for the PPP?
- Are there any other institutions which may have similar rights or interests in the state property and therefore have to be involved in the PPP process? Do they have the mandate to enter into PPPs?

If, in the preliminary legal assessment, the answer to any of these questions is no, these issues should be properly addressed before going further, taking account of the guidance given in the introductory section to the Toolkit: *Getting started: Clarifying some key policy issues*. If the regulatory framework of the institution dictates that these issues cannot be addressed, the institution will not be able to proceed with a PPP.

## Step 4: Articulate the institution's commercialisation policy, objectives and strategy

The institution needs to be very clear about why it is pursuing PPPs, for what outcomes, and how it will go about the process. The commercialisation policy will be the guiding document for the commercialisation process, the objectives will become value-for-money targets, and the strategy will indicate how the PPP process will unfold.

This step should clearly articulate the following:

- **The motivation for commercialisation.** The background to the move to commercialisation and a summary of the institution's strategic policy on commercialisation.
- **High-level commercialisation objectives for the institution.** Revenue generation for the institution, loss minimisation or savings on existing operations, optimal use of under-performing assets, job creation, BEE, infrastructure upgrades, tourism promotion, and further biodiversity protection and conservation. The objectives should be prioritised, and will be used to set specific value-for-money targets for each PPP later in the PPP project cycle.
- **The overall commercialisation strategy and planned approach for developing the sites and opportunities identified in Step 2.** Strategies may vary from bringing all potential opportunities to market at once, or in bundles, or to introduce them to market one at a time. The institution must be mindful that demand is generally not high for tourism PPPs and that transaction costs can be reduced by bundling. The strategy must be consistent with the processes set out in the Toolkit.

**Commercialisation objectives become value-for-money benchmarks for PPPs**

Once clearly refined for a particular project or set of projects, the targets set for each of these become the institution's value-for-money indicators throughout the PPP cycle.

The objectives set by the institution at the inception phase are vital as they provide the benchmarks for the feasibility and procurement phases. During the management of the PPP agreement they are used to measure the success of commercialisation.

Typical objectives that guide the institution's commercialisation strategy may include:

- revenue generation for the institution
- loss minimisation or savings on existing operations
- optimal utilisation of under-performing assets
- job creation
- BEE
- infrastructure upgrades
- tourism promotion
- further biodiversity protection and conservation.

The indicators are used in the institution's assessment of whether a bid does indeed yield value for money. A PPP cannot proceed if an institution cannot demonstrate that the project will meet its value-for-money criteria.

### Step 5: Assess the institution's personnel and systems capacity for PPPs

Before an institution considers contracting with private parties it must ensure that its own management and administrative structures are in place and functioning. When the private sector is engaged, the institution must have the capacity to interact as an equal partner. This step needs to address the following:

- **The proposed organisational structure.** Treasury Regulation 16 gives full authority to the accounting officer/authority to enter into a PPP agreement. He or she must establish an appropriately located and authorised division within the institution for PPPs to be managed effectively and efficiently on his or her behalf, by suitable delegation. The organisational structure must align with the decision-making policy and procedures of the institution, indicate what staff have been assigned at what levels, and show who can make what kind of decisions.
- **The project officer.** Job description, skills and experience must be specified, the expertise of the person appointed must be demonstrated, and the allocation of support personnel must be confirmed.
- **Planning, procurement and management systems.** These must instil confidence that the institution's governance is sound and that checks and balances are in place to ensure integrity of decision-making and to protect the interests of the public.
- **The institution's approval processes for each phase of the PPP project cycle.** These must be aligned with Treasury Regulation 16 and reflect the phases and steps outlined in the Toolkit, whether or not an exemption from treasury approvals is to be sought.

### Step 6: Establish budgetary parameters

This step involves identifying and analysing the institution's medium-term expenditure framework budget with a view to the PPP initiatives, and identifying costs to be incurred for PPPs.

The additional costs that the institution will have to carry to prepare for PPPs and manage PPP agreements must be acknowledged. How these will impact on funding other institutional priorities needs to be identified.

The following list is an indication of likely costs to the institution during the PPP project cycle.

| Figure 1.3 Typical institutional costs of tourism PPPs | |
|---|---|
| **PPP phase** | **Costs to institution** |
| Inception and pre-feasibility | • project officer and staff<br>• consultants or transaction advisor |
| Feasibility | • project officer and staff<br>• consultants or transaction advisor<br>• expression of interest[5]<br>• stakeholder engagement<br>• supporting infrastructure upgrades |
| Procurement | • project officer and staff<br>• consultants or transaction advisor<br>• advertising |
| Managing the PPP agreement | • project officer and staff (long term)<br>• supporting infrastructure maintenance<br>• conservation management obligations |

**National Treasury's Project Development Facility**

If the envisaged PPP is of a scale that it is able to repay transaction costs in the early years of the PPP agreement, bridging funding can be sourced by the institution for a significant portion of the transaction advisor costs from National Treasury's Project Development Facility (PDF). These costs are recovered from the successful private party bidder after signature of the PPP agreement. They must be specified in the procurement documentation so that the private party incorporates them into its business plan. The PDF application procedure is described in Module 3 of National Treasury's *PPP Manual,* available on www.ppp.gov.za.

## Step 7: Identify internal and external stakeholders

All internal and external stakeholders need to be identified. Internal stakeholders include all affected reserve managers, specialist technical staff, and political principals. External stakeholders include neighbouring communities and other neighbouring private landowners, other government institutions, local authorities, utilities, NGOs, and any stakeholders that may be deemed interested and affected parties in terms of environmental legislation. Government institutions that need to be consulted or identified for later involvement typically include the Department of Water Affairs and Forestry (DWAF), the Department of Environmental Affairs and Tourism (DEAT), the Department of Land Affairs (DLA), and the Department of Public Works (DPW). Other institutions include the Tourism, Hospitality and Sport Education and Training Authority (THETA), and the DFIs, particularly the Development Bank of Southern Africa (DBSA), the Industrial Development Corporation (IDC), and relevant financing entities within the Department of Trade and Industry (DTI).

5. See *Module 3: Feasibility study and procurement phases for large cap tourism PPPs.*

### Step 8: Identify what additional support the institution needs

This includes the need for consulting and transaction advisory services at each stage of the PPP project cycle. The extent of this support will depend largely on the internal capacity and skills in the institution as well as the scale of the PPP or bundle of PPPs. Small projects will seldom justify the expense of hiring a transaction advisor. The guidance provided in the Toolkit for most small cap[6] tourism PPPs should be sufficient, possibly with only some specific, short-term consultant input if necessary. Using consultants and transaction advisors is discussed in Stage 6 and in Modules 2 and 3 of the Toolkit. The strategic plan for commercialisation must specify the extent to which such support will be needed and whether the necessary funds for such support are available to the institution.

### Step 9: Compile an initial checklist for each of the commercial opportunities identified

This checklist will help the institution complete a preliminary assessment of whether the PPP opportunities identified can achieve their objectives for commercialisation and whether they will be attractive to the private sector. More detailed due diligence will be done in the pre-feasibility and feasibility phases.

The following initial questions must be addressed for each opportunity:

- Is it a PPP by definition?
- Is the legal mandate in place for the institution to conclude a PPP agreement on the site?
- Is there any known private sector interest?
- Is there a budget to implement?
- Does the project have the support of reserve management?
- Does an RMP need to be done or updated?
- Are there any human resource issues at stake?
- Are there any major environmental issues at stake?
- Are there any special considerations? (For example, if it is a World Heritage Site, what conditions apply?)
- What specific project objectives are to be value-for-money benchmarks for this opportunity?

---

6. Used throughout the Toolkit for easy reference, the colloquial term ‘small cap’ stands for ‘small capital expenditure’ and, ‘large cap’ stands for ‘large capital expenditure’.

## STAGE 5: REGISTER THE PROJECT WITH THE RELEVANT TREASURY

The submission to the relevant treasury must contain the following:

- an application letter from the accounting officer/authority[7]
- the strategic plan for commercialisation.

Before the relevant treasury will register an institution's PPP it must be satisfied that the submitted strategic plan for commercialisation adequately addresses the steps outlined above. The submission should demonstrate that the institution has applied its mind to the scope of the initiative. After the relevant treasury has reviewed the strategic plan for commercialisation it may request further input before formally registering the PPP.

When a project has been registered the relevant treasury will, in writing:

- confirm registration of the project, assign a project number, and enter the project on the official database of PPP projects[8], which will track the progress of the project and update it throughout the PPP project cycle
- if necessary, request that the institution appoint a transaction advisor or consultant (When the relevant treasury registers a project, in terms of Treasury Regulation 16, it has the right to request that transaction advisors be appointed to assist in the PPP process.)
- assign a project advisor to the project.

### When a project is deregistered

If after registration the relevant treasury finds that the institution has not made any progress on the project within six months the project will be deregistered. A project officer should already have been appointed, but if not, the appointment should be made as soon as possible after registration. If a project officer has not been appointed within three months of registration the relevant treasury may deregister the project.

7. A letter is set out in 'Template 2: Application letter: Registering a tourism PPP project'.
8. This database is maintained by National Treasury's PPP Unit. It can be viewed on www.treasury.gov.za or www.ppp.gov.za.

### National Treasury PPP Unit's project advisor

National Treasury's PPP Unit will assign a project advisor to every PPP project registered in terms of Treasury Regulation 16.

**The project advisor provides hands-on technical assistance from the date of registration to the signing of the PPP agreement and in the development and delivery phases of the project term.**

The PPP Unit's project advisor:

- supports the institution through every step of the PPP project cycle, drawing on best practice from other projects and advising on how the institution can best meet the requirements of Treasury Regulation 16
- recommends an institution's application to the PDF if applicable (See Stage 4: Step 6 for a description of the PDF.)
- makes sure that treasury approval applications are processed efficiently within National Treasury
- recommends to the relevant senior official of National Treasury whether the institution's applications for treasury approvals should be approved or declined
- makes sure that communication between National Treasury and the institution is managed professionally at all times.

The project advisor's first tasks will be to help the project officer:

- establish a project team
- draft the terms of reference for consultants or a transaction advisor
- calculate a suitable budget for the costs of the consultants or transaction advisor
- make an application to the PDF, if applicable
- procure the services of the consultants or transaction advisor.

# STAGE 6: APPOINT CONSULTANTS OR A TRANSACTION ADVISOR

An institution may decide that it does not have the necessary personnel, internal capacity or skills to draft successfully an appropriate strategic plan for commercialisation (see Stage 4) or an appropriate pre-feasibility study (see PPP Pre-feasibility: Stage 1.)

In this case, and if the scale of the anticipated PPP initiative justifies it, an institution should appoint consultants to provide specifically defined inputs into these phases, or a transaction advisor to provide the full set of required skills from the inception phase to the end of the procurement phase. If the institution and the relevant treasury are satisfied that the institution has the capacity, skills and experience it will not be necessary to appoint further advisors.

| **The difference between consultants and a transaction advisor in the PPP process** |
|---|
| A transaction advisor is typically a consortium of consultants from different disciplines, hired as a team under a single lead company and appointed to assist an institution from the feasibility phase to the end of the procurement phase of the PPP project cycle. A number of individual consultants may be hired by the institution to assist in particular aspects of preparatory work before the feasibility study phase, or for specific elements of the feasibility and procurement phases if a transaction advisor is not required. While it is possible that the skills of consultants and the transaction advisor may overlap, it is important to note that they are likely to be hired at different phases of the PPP project cycle, or for different purposes, depending on the capacity within the institution, and on its budgetary constraints. |

When the required registration documentation has been submitted, the relevant treasury may direct an institution to procure specific consultant or transaction advisor skills if it believes that the strategic plan for commercialisation is not adequate or appropriate.

An institution must use its own established procurement systems in accordance with the Regulations in terms of the Public Finance Management Act, 1999: Framework for Supply Chain Management in appointing consultants[9].

9. More information on the use of a transaction advisor and consultants is contained in *Module 2: Feasibility and procurement phases for small cap tourism PPPs*, and *Module 3: Feasibility and procurement phases for large cap tourism PPPs*.

**When PPP inception is complete**

- the institution will have appointed the personnel needed for PPPs
- the institution will have completed its strategic plan for commercialisation
- the project(s) will be registered with the relevant treasury
- the relevant treasury will have given direction and advice
- the institution will be ready to move to the pre-feasibility phase.

# TEMPLATES

## TEMPLATE 1

### Duties and responsibilities of the project officer

This template provides the standard PPP project officer's duties and responsibilities during the phases of the PPP project cycle. It should be used by the institution in the project officer's contract of employment.

## TEMPLATE 2

### Application letter: Registering a tourism PPP project

This is a template letter which the institution should use to apply to the relevant treasury to register a PPP project or projects in terms of Treasury Regulation 16 to the PFMA. The institution attaches its strategic plan for commercialisation.

PPP TOOLKIT FOR TOURISM

# PPP PRE-FEASIBILITY

# INTRODUCTION

The phases of the generic PPP project cycle are inception, feasibility, procurement and PPP agreement management. It does not provide for a pre-feasibility phase. However, experience in tourism PPPs has clearly shown that it is necessary for the institution to conduct a proper planning exercise before the feasibility phase. This is to determine specifically what level of feasibility study and what form of procurement will be appropriate.

**Importantly for tourism PPPs, the pre-feasibility phase enables the institution to determine whether a PPP is to follow the small cap or the large cap route.**

The outcome of the pre-feasibility study will also enable the institution to consider whether it is appropriate to apply to the relevant treasury for exemption from the treasury approvals in Treasury Regulation 16. Exemption is most likely to be granted for the small cap route if the institution can demonstrate its capacity to manage the process as set out in the Toolkit. For a project following the large cap route an exemption from treasury approvals would be granted only if the institution can demonstrate a track record of successfully completing similar projects and that it has the necessary internal capacity to do so.

**There are two or three stages to PPP pre-feasibility for tourism PPPs**

Stage 1: The pre-feasibility study
Stage 2: Choose the small cap or large cap route
Possible Stage 3: Apply to the relevant treasury for exemption from treasury approvals

# STAGE 1: THE PRE-FEASIBILITY STUDY

**The main output of the pre-feasibility study is to establish the indicative viability of the project(s) proposed by the institution, and to identify specific issues that require detailed feasibility analysis.**

The pre-feasibility study stage allows the institution to motivate to the relevant treasury whether to direct the project to the small cap or large cap route, and to motivate for exemption from treasury approvals if appropriate.

**Take note**

The inception phase refers to the possibility of numerous PPP projects being planned together. From this pre-feasibility phase onwards the Toolkit refers to a single project because the same level of attention must be given to each. The institution may, however, in many instances, be pursuing more than one PPP at a time. The project officer will need to plan for each identified project specifically, and adapt the Toolkit's template documentation where necessary to accommodate a bundle of PPPs.

**Take note**

The institution may need assistance from consultants for certain technical aspects of the pre-feasibility study, such as the legal review, indicative market review and environmental pre-scoping.

**Remember that much of this information may already be available in institutional documents such as reserve management plans (RMPs). All relevant information should be checked and collated for the pre-feasibilty study, for the purposes of PPP planning.**

## The contents of the pre-feasibility study

The pre-feasibility study should contain the following:

- **A strategic planning context**. This requires a description of how the project supports the current local, provincial and national development priorities and the institution's strategic priorities. The project must be contextualised within the relevant district integrated development plans and other applicable planning frameworks, where they exist. The strategic plan for commercialisation which was completed in the inception phase must be referenced and attached.

- **Value-for-money targets**. The institution's value-for-money targets for the project must be set out clearly. These should be particular targets, based on the objectives set in the strategic plan for commercialisation. The value-for-money targets established for each tourism PPP project are key to its success. They enable the institution to focus the forthcoming feasibility study appropriately, set bid evaluation criteria in the bid documents, evaluate bids, and monitor outcomes during the management of the PPP agreements. In the following procurement phase they enable the institution to draft the RFP documents with bid evaluation criteria clearly specified, to evaluate bids precisely, and to negotiate the terms of the PPP agreement appropriately. Once the PPP agreement is signed, the institution can monitor the PPP's achievements over time and benchmark them against the project's original value-for-money targets.

  Value-for-money targets are likely to be set for any combination of the following objectives:
  - revenue generation for the institution
  - loss minimisation or savings on existing operations
  - optimal use of under-performing assets
  - job creation
  - BEE
  - infrastructure upgrades
  - tourism promotion
  - further biodiversity protection and conservation.

  Value for money, therefore, does not only depend on the actual monetary receipts from a PPP. It includes numerous other factors which an institution may regard as very important.
- **A legal and site review**. This must confirm the institution's rights to tenure and rights to enter into PPP agreements for the identified state property. It must confirm that these rights are, for the purpose of the PPP agreement, vested in a single institution. Site-specific issues such as servitudes or any existing contractual arrangements that may affect development and require a detailed feasibility study must be identified.
- **A budget review**. This serves to confirm that the institution has sufficient budget to fulfil its obligations both in preparing for and managing a PPP agreement.

- **An indicative or preliminary market review**. A rapid demand-and-supply analysis must be done. Key indicators for a market review would include:
  - current occupancy rates and related trends. For example, are occupancies and rates increasing or decreasing?
  - trends in terms of tourism product types and utilisation. For example, are there many upmarket lodges in the area? Would building another create an over-supply, or are there any gaps in the market which could be exploited?
  - investment patterns as per the existing and proposed tourism products. For example, are private parties investing money in a similar product or area?
  - existing secondary research and analysis. For example, existing sub-regional, regional and national supply and demand analysis, including data routinely collected and analysed by South African Tourism, can be used.
  - an informal 'test-the-water exercise' with the private sector. The institution should, at an early stage, engage in this process by conducting interviews with prospective investors and existing operators in the area to gauge investor interest and to get private sector advice. Acquiring this intelligence early on should help to avoid costly wrong decisions. It should also help to dampen the over-expectations that often exist within many institutions about the investment potential of the state property they manage.
- Environmental pre-scoping to screen for fatal flaws. An environmental pre-scoping exercise designed to screen for fatal flaws that would result from the likely impacts of the project (and would thus either prevent the PPP or require major mitigating interventions) must be conducted. This exercise will need to identify any specific environmental issues requiring further assessment in the detailed feasibility study and will enable a record of decision[10] (RoD) to be made as quickly as possible[11]. The pre-feasibility study must document the outcome of the institution's engagement with the competent authority.

10. See *Getting started: 2. Clarifying some key policy issues*.
11. This is a high-level exercise designed to identify fatal flaws of the following kinds of impacts (this is not an exhaustive list but is indicative of the kind of fatal-flaw impacts that scoping is designed to screen for): impacts on endemic species; impacts on red-data or endangered species; geological and hydrological features that will not tolerate human impacts, such as waste, sewage, noise, required by the project; and specific and valuable features of the landscape that could be adversely affected by the type of construction proposed.

It must specifically reflect the agreements reached on the environmental impact assessment[12] (EIA) processes to be followed for the project and any other recommendations or directions given by the competent authority. Other relevant issues such as possible water use applications or zoning issues should also be considered.

- **Stakeholder analysis.** The main internal and external stakeholders, including adjacent communities and landowners, reserve management staff, and interested and affected parties, must be identified. It must be determined whether or not they support the proposed project and whether any of these stakeholders are likely to oppose the PPP initiatives. If the answer is 'yes', the options for resolving the disputes must be identified along with any specific issues requiring a detailed feasibility study.
- **Personnel and human resources issues.** It must be determined where the implementation of the PPP could require staff skills upgrading, retraining or transfers. To properly manage the PPP, additional staff or shifts may be required to allow the PPP agreement to achieve its goals (such as additional reserve staff). These must be listed and quantified and the costs and funding must be specified. Staff who are busy with other activities and who may need to spend more time on PPP-related issues must be identified and their input must be quantified. These changes can impact on existing goals and objectives and the cost must be quantified and explained. Staff operating tourism facilities which have been identified for PPPs may need to be re-deployed or transferred to the private party's employment in terms of labour legislation. Issues requiring a detailed feasibility study must be identified .
- **An infrastructure assessment**. Strategic infrastructure, such as access roads, bulk electricity, bulk sanitation, bulk water supply and communications must be checked for weaknesses. If there is no strategic infrastructure or if it is in a sub-optimal state, it must be determined whether it is likely to diminish the chances of securing quality investors. In particular there needs to be a focus on elements of infrastructure that the institution or the state will probably have to provide, rather than on what the private party could provide. Identify any specific issues requiring a detailed feasibility study. These must all be listed in the assessment and quantified. They must include not only the infrastructure on the site but the necessary support infrastructure, such as access roads and gates, game drive roads, beach access, and boardwalks. The existing use and costs of maintaining these assets must be quantified and any improvements or upgrading that may be required must be clearly accounted for. The likely costs, if any, to further develop

12. See *Getting started: 2. Clarifying some key policy issues*.

the infrastructure must be quantified and funding responsibly specified. A maintenance budget for all these assets must then be drafted and it must be clearly stated who will be responsible for the maintenance and to what standard. Particular attention must be paid to incremental costs where assets may be used for conservation, but may need to be upgraded for tourism use. The additional costs must be allocated to the project so its viability can be properly assessed.

- **An equipment assessment.** Additional equipment that may be required must be listed and quantified. If existing equipment is to be used an estimate of the quantity required and the cost must be calculated. These must be added to the overall costs of implementing the PPP when it is checked for feasibility and value for money.
- **BEE and social development issues**. Based on its strategic plan for commercialisation, the institution's BEE work in the pre-feasibility study entails:
  - reviewing the preliminary market analysis from a BEE perspective
  - identifying any community trusts in the vicinity of the proposed PPP which could be specified as partners in the private party to the PPP and beneficiaries of the project through its corporate social investment
  - contacting the municipality to determine how the proposed PPP could best complement local economic development plans
  - preparing the preliminary BEE scorecard for the project
  - identifying all development finance institutions (DFIs), other financing institutions and support organisations that may support private party bidders and possible community trust partners in their financing packages, business and operational plans, development and environmental plans, and generally, in achieving the project's desired BEE outcomes
  - contacting these DFIs, other financing institutions and support organisations, informing them of the institution's PPP initiatives, and preparing to formulate memoranda of understanding (MoUs) with them. These relationships will be formalised during the feasibility study phase.
- **Performance standards**. It must be determined what is expected from the private party and the institution during the development and operational phases of the PPP agreement. This would include a detailed description of what may be carried out on the site and the reserve in general, covering any issues dealt with in an RMP, or equivalent. The development parameters, which set out the restrictions or requirements of any construction, form part of the performance standards and should address a wide range of issues.

These issues would typically include:

- visual aspects
- design and building style
- supply of services, including type, how they are provided and any limitations on consumption
- communication services
- roads, tracks, trails and paths
- visitor services
- aircraft
- fencing
- landscaping
- use of local materials
- cultural and heritage issues
- waste management
- any limitations during construction
- limits on the number of users at the site, including staff
- access control
- conservation management arrangements.

For conservation institutions their RMP is a key document for determining performance standards in a potential PPP agreement.

**Take note**

The performance standards set in the pre-feasibility study will regulate the behaviour of both parties over the period of a PPP agreement.

These must be established at this early stage so that cost implications can be assessed during the feasibility study and so that they are reflected in the procurement documentation. Some may be changed later, but the broad parameters should remain intact. They must be given very careful thought as they will impact not only on conservation but on future use and development of the reserve, its ecological importance, 'sense of place' and public access. Performance standards will also form an integral component of an EIA, to be considered by the competent authority and, if required, also by interested and affected parties.

- **Risk allocation**. The risk matrix that follows, which can be elaborated if necessary, can be used to describe the project-specific risks, how they can be mitigated, and who will bear them. Remember, risks can only be allocated between the parties to the PPP agreement. If a risk-taker is outside the principal parties to the PPP agreement, there must be a back-to-back agreement with the third party that deals with these risks.

Figure 1.4: PPP Risk Matrix

| Risk | General description | Project-specific description | Probability of the risk arising (high/medium/low) | Mitigation measures | Allocation (institution/private party/shared) |
|---|---|---|---|---|---|
| Financing | The raising of capital for capital expenditure and operating expenditure, tax, inflation, interest rate, and currency risks | | | | |
| Supporting infrastructure | The risk that supporting infrastructure may be inadequate to sustain the enterprise | | | | |
| Planning, design and construction | The possibility that planning consents are not obtained; that the design is not fit for the purpose; and that construction is not completed on time and on budget | | | | |
| Utilities | The risk that utilities may not be fully available or may cause delays | | | | |
| Environment and heritage | The possibility of liability for losses caused by environmental or heritage damage or delays | | | | |
| Maintenance | The possibility that the costs of maintenance to required standards may vary from projections or that maintenance is not carried out | | | | |
| Operations | The possibility of any factors (other than force majeure) impacting on operations | | | | |
| Market, demand, volume | The possibility that demand for the product is less than projected | | | | |
| Political | The possibility of unforeseeable conduct by any government institution adversely affecting the project or expropriation of private party assets | | | | |
| Force majeure | The possibility of the occurrence of unexpected events beyond either party's control adversely affecting the project | | | | |

- **Conclusion.** With all these factors taken into consideration the pre-feasibility study should conclude by making a firm recommendation on the site and the commercial opportunity that the institution has identified for the project.

**Take note**

The pre-feasibility study will either:

- recommend that the PPP option, identified site and commercial opportunity **initially appears to be feasible** as envisaged by the institution, and that the institution should proceed to the detailed feasibility study, **or**
- recommend that the PPP option, identified site and commercial opportunity **initially appear to be unfeasible** and that the option should no longer be considered, or that it should be refined.

The pre-feasibility study therefore:

- narrows down the specific project options originally considered by the institution in its strategic plan for commercialisation
- provides a firm and comprehensive checklist to be used throughout the PPP process.

## STAGE 2: CHOOSE THE SMALL CAP OR LARGE CAP ROUTE

The choice is based on an assessment of both quantitative and qualitative factors.

**Questions that need to be asked for the quantitative assessment** based on the findings of the pre-feasibility study are:

- What is the likely 'ball park' **capital investment** required from a private party (and/or the institution)?
- What is the likely 'ball park' **turnover** of the anticipated business?
- What is the likely number of **employees**?
- Is this an **SMME opportunity** or not?

If the capital investment projected is **R10 million or less**, the institution should motivate for the small cap route. If the anticipated capital sum is marginally greater than R10 million, the institution should motivate whether it is still justified to pursue the small cap route, or whether the project clearly requires the rigorous feasibility and procurement processes and more comprehensive PPP agreement terms of the large cap route. If the anticipated capital sum is significantly greater than R10 million, the large cap route PPP process should be pursued.

**Questions that need to be asked for the qualitative assessment** – with reference to the **risk matrix** developed in the pre-feasibility study – are:

- What are the key project risks that may indicate the need, in the interests of the project and the institution, for a more rigorous feasibility study than the low cap route provides?
- Are there any risks that the institution would have to bear in relation to the financing of the project, investment in supporting infrastructure, design and construction, operation and maintenance of facilities, marketing and reservations, or the environmental sensitivity of the site?

In many cases the findings of the quantitative assessment will be clear or will be resolved by discussion between the institution and the relevant treasury, based on the work done in the pre-feasibility study. But the quantitative assessment may result in a marginal conclusion, or be open to contention. In this case, the qualitative risk assessment becomes very important in determining the PPP process to be followed. Whether the qualitative risk assessment becomes the deciding factor or not, it remains an important early warning system for the institution to establish at the pre-feasibility phase. It enables the institution to set the project on a path that has a reasonable chance of success.

The institution is expected to apply its mind to these important quantitative and qualitative project assessments and to motivate properly whether the small cap or large cap route should be followed.

If the institution does not wish to apply for an exemption from treasury approvals it must submit to the relevant treasury:

- the pre-feasibility study
- the comprehensive motivation for the small cap or large cap choice.

The relevant treasury may recommend that the institution needs to do further preparatory work on the pre-feasibility study.

The relevant treasury may or may not agree with the conclusion the institution has reached on which route it wants to follow.

As treasury approvals are required later in the feasibility study and procurement phases, it will be necessary for the institution and the relevant treasury to reach agreement on these matters in the pre-feasibility phase.

# STAGE 3: APPLY TO THE RELEVANT TREASURY FOR EXEMPTION FROM TREASURY APPROVALS

**Extract from Treasury Regulation 16 to the Public Finance Management Act:**

*16.10.1 The relevant treasury may, subject to any terms and conditions that it considers appropriate and upon written application from an institution, exempt that institution whether in relation to a specific PPP or in general, from complying with any or all of the provisions of this Regulation 16.*

## Exemption from treasury approvals

An institution may be exempt from obtaining the prescribed treasury approvals. This means that the feasibility and procurement phases of a PPP may go ahead without the oversight and statutory approvals of the relevant treasury.

For institutions undertaking PPPs involving the use of state property by a private party for commercial purposes, the relevant treasury will consider an application for exemption if:

- the pre-feasibility report demonstrates that the project is suited to the small cap PPP project cycle as set out in the Toolkit, and that the institution has the capacity to manage the feasibility and procurement phases according to the guidance given in the Toolkit
- the pre-feasibility report demonstrates that the project is suited to the large cap PPP project cycle as set out in the Toolkit, that the institution has successfully concluded similar PPP agreements, and that the institution has the internal capacity to manage the feasibility and procurement phases according to the guidance given in the Toolkit.

The pre-feasibility report submitted to the relevant treasury forms the basis of the application for exemption.

**An exemption is not an exemption from Treasury Regulation 16. The institution will still have to follow the regulated PPP project cycle and follow the guidelines set out in the Toolkit.**

To do so, it will have to establish appropriate 'arm's-length' internal approval systems consistent with those that would have been applied by the relevant treasury. This is why, for the small cap route, reference is made to institutional approvals (IAs).

Once an exemption from treasury approvals has been granted for a particular project or number of projects, the relevant treasury will no longer be involved in the PPP. But it will continue to be involved if the institution wishes to deviate materially from the Toolkit, or if reasons for withdrawing the exemption become apparent (as discussed under 'Withdrawal of exemption'), or if the institution wishes to have certain specific input from the relevant treasury at a later stage.

### The contents of an application for exemption

An exemption application should contain:

- the pre-feasibility study
- a comprehensive motivation for whether the small cap or large cap route should be followed
- a comprehensive motivation demonstrating the institution's capacity to manage the PPP through the phases and to the standards set by Treasury Regulation 16 and according to the guidance given in the Toolkit.

  Specifically, this must include:
  - an outline of the institution's management capacity for the project, attaching relevant résumés of key personnel, the curriculum vitae and job description of the appointed project officer and his or her support staff, and the terms of reference of any appointed consultant(s) or transaction advisors
  - a write-up of the institution's track record in successfully concluding similar PPP agreements
  - an outline of the institution's internal management and accounting authority/officer approval systems established for the project, reflecting the approvals of Treasury Regulation 16.

### Withdrawal of exemption

The relevant treasury retains the full discretion to withdraw or vary the conditions of an exemption at any time before the PPP agreement is signed. This may occur in a number of situations. For example, if the risk allocation changes because the institution is exposed to additional risks owing to information discovered after the exemption was granted, or if the bids received differ dramatically from what was initially expected. Furthermore, any evidence of mismanagement or lack of capacity within the institution will also prompt the relevant treasury to withdraw an exemption.

### Material deviation from the Toolkit

The Toolkit has been drafted as a standard guide to be used in entering into and managing tourism PPPs. However, it is clear that it is not always possible to apply a standard guide to every PPP that may arise. If the relevant treasury has granted an exemption and allowed an institution to grant internal approvals, any proposed material deviation from the guidance of the Toolkit must be approved by the relevant treasury before this material deviation begins. Deviations which are not material do not have to be approved. An institution should be wary of deviating from the Toolkit unnecessarily.

**When pre-feasibility is completed**

- the institution will have a list of possible PPP projects that have a reasonable prospect of being viable
- the institution will have identified specific issues for each project requiring detailed feasibility study work
- there will be agreement between the institution and the relevant treasury on the small cap and the large cap route for each project
- an exemption from treasury approvals may have been granted to the institution
- the institution will be ready to move to the feasibility study phase.

# NATIONAL TREASURY
# PPP TOOLKIT FOR TOURISM

## MODULE 2:
## FEASIBILITY STUDY AND PROCUREMENT PHASES FOR SMALL CAP TOURISM PPPs

NATIONAL TREASURY

PPP unit

# PPP PROJECT CYCLE FOR TOURISM PPPs

**Reflecting Treasury Regulation 16 to the Public Finance Management Act, 1999**

PROJECT PREPARATION PERIOD

Phase I

## INCEPTION

- Prepare strategic plan for commercialisation
- Apply for project registration

## PRE-FEASIBILITY

- Pre-feasibility study
- Motivation for small cap route or large cap route
- Possible application for exemption from treasury approvals

Phase II

| SMALL CAP ROUTE | LARGE CAP ROUTE |
|---|---|
| **FEASIBILITY** | **FEASIBILITY** |
| **Institution Approval: I*** | **Treasury Approval: I**** |
| • Issue-based feasibility | • Comprehensive feasibility |

Phase III

| SMALL CAP ROUTE | LARGE CAP ROUTE |
|---|---|
| **PROCUREMENT** | **PROCUREMENT** |
| • Prepare bid documents | • Prepare bid documents |
| **Institution Approval: IIA*** | **Treasury Approval: IIA**** |
| • Issue bid documents<br>• Evaluate bids<br>• Select preferred bidder | • Issue bid documents<br>• Evaluate bids<br>• Select preferred bidder |
| **Institution Approval: IIB*** | **Treasury Approval: IIB**** |
| • Negotiation<br>• Management plan | • Negotiation<br>• Management plan |
| **Institution Approval: III*** | **Treasury Approval: III**** |
| • Sign PPP agreement | • Sign PPP agreement |

PROJECT TERM

Phase IV

## DEVELOPMENT

Phase V

## OPERATIONS

Phase VI

## EXIT

- Measure outputs, monitor and regulate performance, liaise effectively, settle disputes
- Report progress in the Annual Report
- Scrutiny by the Auditor-General

* **If exemption from treasury approvals is granted.**

** **Unless exemption from treasury approvals is granted.**

# ABOUT THIS MODULE

**Module 2 sets out the steps to be followed in the small cap[1] feasibility study phase and procurement phase.**

By now, the institution's public private partnership (PPP) has been registered with the relevant treasury. The institution has completed the pre-feasibility phase and has received direction from the relevant treasury confirming that the procedure for small cap PPPs will be followed. If an exemption application was made and was successful at the end of the pre-feasibility phase, the institution will be continuing on the small cap PPP route. This means it will not seek treasury approvals, and instead will apply its own internal approvals, following the guidance of this *PPP Toolkit for Tourism* (the Toolkit).

Module 2 is written on the assumption that the institution has obtained exemption from treasury approvals and has been authorised to run an in-house process. It therefore refers to institution approvals II:A, II:B and III where applicable.

**In keeping with the provisions of the Public Finance Management Act, 1999 (PFMA) the institution's accounting officer/authority shall bear the responsibility for granting the institution approvals referred to in this module.**

**Take note**

The relevant treasury could require that treasury approvals are necessary for the small cap feasibility and procurement phases if it finds that the institution does not have the capacity or experience to manage these approvals itself.

**Annexures and templates**

Each annexure and template for this module, listed on the contents page, can be downloaded, in Microsoft Word or Excel, from the CD accompanying the Toolkit and from the PPP Unit's website, www.ppp.gov.za. A summary of what is contained in each template and annexure is provided at the end of the module, or the relevant section within the module.

1. Used throughout the Toolkit for easy reference, the colloquial term 'small cap' stands for 'small capital expenditure' and 'large cap' stands for 'large capital expenditure'.

# CONTENTS

# APPOINTING A TRANSACTION ADVISOR OR CONSULTANTS

**Extract from Treasury Regulation 16 to the PFMA**

***16.1 Definitions***

***"transaction advisor"*** *means a person or persons appointed in writing by an accounting officer or accounting authority of an institution, who has or have appropriate skills and experience to assist and advise the institution in connection with a PPP, including the preparation and conclusion of a PPP agreement.*

## What is a transaction advisor?

At project inception, Treasury Regulation 16.3.1(d) requires that the accounting officer/authority must appoint a transaction advisor if the relevant treasury so requests.

The transaction advisor is typically a consortium of professional consultants, from one or more firms, who work as a team. The transaction advisor contracts with the institution through the lead firm. All other members of the consortium participate either through subcontracts with the lead firm or via a joint venture arrangement.

The transaction advisor does all the detailed financial, technical, black economic empowerment (BEE) and legal work required to prepare the institution for a PPP agreement. The transaction advisor may also be required to provide support to the institution after the PPP agreement has been signed, particularly in the development phase and the early years of the operations phase.

## When is a transaction advisor necessary?

National Treasury does not require as a matter of course that a transaction advisor be appointed for small cap PPPs since the costs involved for a small cap PPP are likely to be disproportionate to the project.

**The institution's project officer should be able to manage the feasibility and procurement phases of most small cap projects following the guidance of the Toolkit or with the support of specific consultants where required.**

However, a good transaction advisor brings advantages to the institution, such as:

- experience in similar transactions
- protection against very costly, avoidable mistakes
- access to national and international best practice
- technical strength to the institution's team

- greater investor confidence
- an opportunity for skills development among government officials
- a single point of accountability for getting the job done well and on time
- an opportunity to grow the number of black consultants in the South African PPP market.

The following factors should be considered when deciding whether a transaction advisor is necessary:

- the capacity of the institution to manage the PPP process itself, following the guidance given in the Toolkit
- the institution's experience in managing similar PPP projects
- the number and scale of the PPP projects to be offered to the market. (A large bundle of small cap projects or a mix of small and large cap projects may warrant a transaction advisor.)
- the results of the pre-feasibility study in relation to further technical feasibility study needs and identified project risks
- the available budget for paying professional advisory fees, relative to the estimated revenue to be earned by the institution through PPP fees.

During the inception and pre-feasibility phases the institution will have demonstrated its capacity to manage the feasibility and procurement phases of the small cap route on its own, and its understanding of the PPP project cycle. It will also have identified the support it needs.

**Take note**

The relevant treasury can still insist that a transaction advisor be appointed. Treasury Regulation 16.3.1 requires that the accounting officer/authority must appoint a transaction advisor if the relevant treasury so requests.

**If the institution decides it needs a transaction advisor, specific guidance on how to procure one is given in *Module 3: Feasibility study and procurement phases for large cap tourism PPPs*.**

## Hiring consultants

**The difference between a transaction advisor and consultants**

Consultants are appointed with a much narrower brief than transaction advisors. A consultant is not typically retained for the whole PPP project cycle but provides specific input as requested by the project officer. This places less stress on an institution's budget, but places a heavy responsibility on the project officer.

Despite the fact that the institution has the capacity to manage the small cap PPP project internally, it may need to hire certain specialised skills at certain times.

**A consultant is a skilled private individual or firm hired to assist the institution to complete a specific task in the PPP project cycle.**

At the start of the feasibility phase the institution should list what specific skills will be needed in the phases that lie ahead. To do this, the institution must be guided by the work done in the inception and pre-feasibility phases, by a careful review of the stages and steps outlined in the Toolkit, and by an honest assessment of its own internal capacity.

## What consultant skills and experience may be required?

Typically for tourism PPP projects, professional skills and experience may, for example, be needed in:

- the financing, marketing and management of tourism businesses (and specialists in sub-sectors of the tourism sector)
- contract and administrative law
- environmental impact assessments (EIAs) (and specialists in components of these)
- PPP procurement management
- project management
- BEE rating agencies accredited by the Department of Trade and Industry (DTI)
- specialists in the structuring of local community participation in PPPs.

## Procuring a consultant

The institution should follow its own internal procurement rules and procedures for hiring professional consultant services, based on regulations issued in terms of the PFMA for supply chain management. At all times, consultants hired for PPP work should be contracted only with well-drafted terms of reference, in which they are paid for specific products delivered (outputs) to the level of quality specified by the institution, not simply by the hour or by the day.

**Take note**

Template consultant advertisements, terms of reference and contracts are not provided in the Toolkit for two reasons:

- Institutions have their own internal procurement rules and procedures for contracting once-off professional services.
- The use of consultants must be oriented to the specific requirements of each PPP as identified during the pre-feasibility study phase.

PPP TOOLKIT FOR TOURISM

# FEASIBILITY STUDY PHASE FOR SMALL CAP TOURISM PPPs

## Extract from Treasury Regulation 16 to the PFMA

***16.4 Feasibility study – Treasury Approval: I***

*16.4.1 To determine whether the proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority of that institution must undertake a feasibility study that –*

*(a) explains the strategic and operational benefits of the proposed PPP for the institution in terms of its strategic objectives and government policy;*

*(b) describes in specific terms –*

*(i) in the case of a PPP involving the performance of an institutional function, the nature of the institutional function concerned and the extent to which this institutional function, both legally and by nature, may be performed by a private party; and*

*(ii) in the case of a PPP involving the use of state property, a description of the state property concerned, the uses, if any, to which such state property has been subject prior to the registration of the proposed PPP and a description of the types of use that a private party may legally subject such state property to;*

*(c) in relation to a PPP pursuant to which an institution will incur any financial commitments, demonstrates the affordability of the PPP for the institution;*

*(d) sets out the proposed allocation of financial, technical and operational risks between the institution and the private party;*

*(e) demonstrates the anticipated value for money to be achieved by the PPP; and*

*(f) explains the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP;*

*16.4.2 An institution may not proceed with the procurement phase of a PPP without prior written approval of the relevant treasury for the feasibility study.*

*16.4.3 The treasury approval referred to in regulation 16.4.2 shall be regarded as Treasury Approval: I.*

*16.4.4 If at any time after Treasury Approval: I has been granted in respect of the feasibility study of a PPP, but before the grant of Treasury Approval: III in respect of the PPP agreement recording that PPP, any assumptions in such feasibility study are materially revised, including any assumptions concerning affordability, value for money and substantial technical, operational and financial risk transfer, then the accounting officer or accounting authority of the institution must immediately –*

*(a) provide the relevant treasury with details of the intended revision, including a statement regarding the purpose and impact of the intended revision on the affordability, value for money and risk transfer evaluation contained in the feasibility study; and*

*(b) Ensure that the relevant treasury is provided with a revised feasibility study after which the relevant treasury may grant a revised Treasury Approval: I.*

# INTRODUCTION

The object of providing for a small cap route is to allow institutions to follow a simpler form of the PPP project cycle, which has been appropriately modified to attract small medium and micro enterprises (SMMEs) to smaller tourism PPP opportunities. It is expected that the institution is able to manage this process itself, following the detailed guidance given in the Toolkit.

The PPP feasibility and procurement phases must be followed by the institution, with their regulated approval points in the PPP project cycle. Furthermore, the PPP regulatory tests of affordability, value for money and risk transfer must be rigorously applied.

Module 2 refers throughout to 'the project', 'the PPP opportunity', and 'the site'. But in many cases, the institution will be dealing with a bundle of such projects, opportunities and sites in the feasibility and procurement phases. It is nevertheless very important that each project, opportunity or site within a bundle is treated with the degree of attention to detail that the Toolkit prescribes.

The Toolkit has been drafted to apply to as wide a range of tourism PPPs as possible. However, there may be occasions when it is necessary to deviate materially from its provisions because of the specific nature of the project, PPP opportunity or site.

If the institution believes that deviation is necessary, before proceeding further it must provide the relevant treasury with:

- its proposals for deviation from the Toolkit
- the reasons for the proposed deviation
- the implications of the deviation for project affordability, value for money and risk transfer.

# KEY TESTS FOR THE SMALL CAP FEASIBILITY PHASE

**Crucial questions a feasibility study must answer**

- Is the necessary **due diligence fully complete**?
- Is the envisaged project likely to be **viable for a private party**?
- Is it **affordable to the institution**?
- What **risks** are involved and who carries them?
- Will it be a **value-for-money** project for the institution?

## The purpose of the feasibility study

Treasury Regulation 16.4 sets out clear requirements for the feasibility study. The basic objective of the feasibility study is 'to determine whether the proposed PPP is in the best interests of an institution'.

In the case of a PPP involving the commercial use of state property the feasibility study is specifically required to:

- explain the strategic and operational benefits of the proposed PPP for the institution in terms of its strategic objectives and government policy
- describe in specific terms the state property concerned, and how this property has been used, if at all, before the registration of the proposed PPP, and the types of use that a private party may legally apply to the state property
- demonstrate the affordability of the PPP for the institution
- set out the proposed allocation of financial, technical and operational risks between the institution and the private party
- demonstrate the anticipated value for money to be achieved by the institution through the PPP
- explain the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP.

**The institution may not proceed with the PPP procurement phase without the feasibility study being formally approved.**

The Toolkit gives specific guidance on how to fulfil these regulatory requirements for the feasibility study phase in a way that is suitable for small cap tourism PPPs. This will enable the institution to make a clear decision about whether the project is in the institution's best interests.

Much of the work for the feasibility phase has already been done in the pre-feasibility phase and the institution will already have a good understanding of these requirements.

**Feasibility studies for small cap projects are less complex**

Feasibility studies conducted for large cap projects are more complex than those required for small cap projects, although the same regulatory tests apply.

The small cap feasibility study simply ensures that, before the procurement phase begins (which, no matter how small the project, incurs costs for both the institution and bidders):

- the institution is able to satisfy itself that all due diligence has been taken care of
- the project is likely to be viable for private parties
- the project will be affordable to the institution
- project risks will be substantively carried by the private party
- the project will result in value-for-money outcomes that meet the institution's strategic objectives.

## The due diligence checklist for a small cap project

The due diligence checklist is based on the pre-feasibility report[2].

The pre-feasibility study would have focused on the following areas:

- the project in the context of the institution's strategic planning
- site and opportunity options
- value-for-money indicators
- a legal and site review
- a budget review
- a preliminary market review
- environmental pre-scoping
- a stakeholder analysis
- personnel and human resource issues
- an infrastructure assessment
- an equipment assessment
- BEE
- performance standards
- risk assessment.

The pre-feasibility study would have provided important information on these issues, identified aspects of concern and set out steps to mitigate or remove these concerns, and reached some initial conclusions. The feasibility study must review and update each of these items on the checklist, as well as those that may not have been considered but are relevant.

The feasibility study must:

- confirm the initial findings, or set out the changes made to the pre-feasibility study on the basis of further due diligence or information
- illustrate how any concerns raised in the pre-feasibility study have been resolved, or give reasons why they cannot be resolved.

2. See *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*.

**Take note**

The checklist is not a closed list – each PPP will have its own issues that must be dealt with.

## What constitutes a viable project for a private party?

It is pointless for the institution to run a procurement process for a business that is patently not viable. But it is also not cost-effective to try to second-guess the market through costly investigations of very small business opportunities. It is only when bids are received that the institution will know how the market actually values the opportunity and whether it is considered to be viable. However, the institution must be able to show in the feasibility study that a small cap PPP has a reasonable prospect of attracting private party interest.

A crucial step in the pre-feasibility study is the preliminary market review in which informal interaction with various private parties would have enabled the institution to identify potentially viable business opportunities. Unsolicited proposals received for similar opportunities are also a good indication of potential viability. This information is crucial for the institution to judge whether there would be market interest in a small cap PPP opportunity, if it is put out to market.

Guidance is given in Stage 2 of this phase on doing a simple projection of cash flows, based on the market information available to the institution, to get an indication of project viability for a private party.

## What is risk transfer?

Risk transfer refers to which party carries the main risks in a project. A PPP is premised on the private party assuming substantial project risks. In small cap tourism PPPs, just as in any other, the private party must be able to carry substantial financial, technical and operational risks involved in the commercial use of the state property.

**The institution has already done a preliminary risk assessment in the pre-feasibility study. This should be carefully revisited in the feasibility study and be completed or expanded as necessary, taking account of further information and analysis.**

## What is value for money?

### Extract from Treasury Regulation 16 to the PFMA

*"**value for money**" means that the … use of state property by a private party in terms of the PPP agreement results in a net benefit to the institution defined in terms of cost, price, quality, quantity, risk transfer or a combination thereof.*

Value for money in tourism PPPs may involve any combination of:

- revenue generation for the institution
- loss minimisation or savings on existing operations
- optimal utilisation of under-performing assets
- job creation
- BEE
- infrastructure upgrades
- tourism promotion
- further biodiversity protection and conservation.

Value for money therefore does not only lie in actual monetary return. But there must be a clear net benefit to the institution to justify the project. The institution has already identified its key value-for-money indicators in both the inception and pre-feasibility phases.

## What is affordability?

### Extract from Treasury Regulation 16 to the PFMA

*"**affordability**" means that the financial commitments to be incurred by an institution in terms of the PPP agreement can be met by funds (a) designated within the institution's existing budget for the institutional function to which the agreement relates; and/or (b) destined for the institution in accordance with the relevant treasury's future budgetary projections for the institution.*

For tourism PPPs this means that the institution must show that it has the budget to meet its obligations in the PPP agreement.

These obligations may include:

- management of the PPP agreement (costs of the project officer and staff)
- conservation maintenance to the standards to be specified in the PPP agreement
- infrastructure upgrades/maintenance to be specified in the PPP agreement.

The institution will have to consider its expenses, and offset these against possible income from the PPP fee that would be payable by a private party.

A careful assessment of these costs will enable the institution to determine the minimum PPP fee needed to cover the additional costs of managing the PPP. It is not realistic to expect that PPP fees will cover all the institution's costs of conservation within a specified area. However, at least those costs incurred in managing the PPP must be recoverable. If that cannot be achieved the project is unaffordable, and will not pass the Treasury Approval: I (TA:I) (or Institution Approval: I) (IA:I) test.

**Take note**

The institution will probably be managing a bundle of PPPs so its cost of direct PPP management should be spread proportionately across a number of projects and should be compared with the estimated PPP fees. Undertaking only a few small cap PPPs is unlikely to be affordable.

The minimum PPP fee is therefore an important calculation. It must be well justified in the PPP feasibility study and will, in most cases, be set by the institution in its request for proposals (RFP) as a condition bidders must agree to in their bids.

**There are eight stages to the feasibility study phase for small cap tourism PPPs**

Stage 1: Review and update the pre-feasibility study
Stage 2: Test the viability of the small cap business and set the minimum PPP fee
Stage 3: Finalise the BEE scorecard
Stage 4: Follow up on the environmental impact assessment
Stage 5: Enter into memoranda of understanding with development finance institutions, other financing institutions and support organisations
Stage 6: Develop a marketing plan
Stage 7: Develop the procurement plan
Stage 8: Draft and submit feasibility study report for Institution Approval: I

## STAGE 1: REVIEW AND UPDATE THE PRE-FEASIBILITY STUDY

**This involves reviewing, amending or confirming the findings of the pre-feasibility study and providing information about how concerns raised in the pre-feasibility study have been addressed.**

This stage involves working through the important due diligence checklist. This will form part of the feasibility study report submitted for IA:I. Three categories in particular need to be updated: the value-for-money objectives, the budget review and the risk allocation. This stage should follow the same headings as the pre-feasibility study.

The headings are:

- **strategic planning context**
- **value-for-money objectives**: these must be updated to set specific value-for-money targets for each of the identified value-for-money objectives
- **legal review**
- **budget review:** this must be updated to confirm affordability
- **indicative or preliminary market review**
- **environmental pre-scoping to screen for fatal flaws**
- **stakeholder analysis**
- **personnel and human resources**
- **infrastructure assessment**
- **equipment assessment**
- **BEE and social development issues**
- **performance standards**
- **risk allocation**: this must be updated to confirm the allocation of risk
- **conclusions**.

## STAGE 2: TEST THE VIABILITY OF THE SMALL CAP BUSINESS AND SET THE MINIMUM PPP FEE

**This involves a combined analysis of business viability, the institution's affordability limits, its value-for-money objectives, and the risk transfer that has been targeted for the project.**

**Take note**

The concepts of viability, affordability, value for money and risk transfer are closely interrelated. Assessed together they make or break the case for a PPP. This is a key concluding section of the feasibility study.

### Doing a simple cash flow projection to test viability

Use Figure 2.1 to get a sense of the viability of the business for the private party. The estimates can only be based on the market information available to the institution. When the bids come in the institution will be able to compare them to these feasibility study estimates. While the projections will probably not be accurate, they will enable the institution to consider the real cash flow constraints that the private party is likely to face. This will help the institution to avoid unrealistic expectations, to understand the business, and to set a realistic minimum PPP fee.

### Setting the minimum PPP fee

The institution needs to make a clear decision now about what it is willing to accept as a minimum PPP fee. This is the minimum amount that will make it worth the institution's while to conduct the PPP.

The minimum PPP fee must be determined taking account of:

- the results of the preliminary market review (Is it an asset which has attracted considerable market interest?)
- the results of the simplified cash flow projection of the business
- the value-for-money targets set for the project (balancing these appropriately for the project)
- an opportunity analysis (What else would happen if the asset were not offered for a PPP? For example, are there recurring costs that the institution would still have to carry, or are there any other likely uses for the asset?)
- the projected costs to the institution of monitoring and managing the PPP.

**Take note**

For very small PPPs, the variable PPP fee may not be appropriate. In such a case, the institution will request bidders to compete on a minimum PPP fee only.

Figure 2.1: Example of a simplified cash flow forecast (net of VAT) for the project's first five years

| | Start-up R'000 | Year 1 R'000 | Year 2 R'000 | Year 3 R'000 | Year 4 R'000 | Year 5 R'000 |
|---|---|---|---|---|---|---|
| **Cash inflows** | | | | | | |
| Owners' capital | | | | | | |
| Loans received | | | | | | |
| Grants received | | | | | | |
| Cash from sales and other operating revenue | | | | | | |
| Cash from other sources | | | | | | |
| Total cash inflow *A* | | | | | | |
| **Cash outflows** | | | | | | |
| Project costs and start-up expenses | | | | | | |
| Salaries, wages and staff costs | | | | | | |
| All other operating costs and expenses | | | | | | |
| Loan repayments | | | | | | |
| Replacement of equipment and vehicles | | | | | | |
| Total cash outflow *B* | | | | | | |
| **Net cashflow** [*A* – *B*] before PPP fees and tax | | | | | | |

The minimum PPP fee for small cap tourism PPPs should not be set high. Management costs spread over a number of small cap PPP projects will be low per project. Furthermore, obtaining a nominal 'floor' income but passing maintenance risk on to the private party for an asset that is actually costing the institution money may be a good deal.

**The decision about the minimum PPP fee is closely linked to the value-for-money targets that have been identified.**

If revenue generation is the key value-for-money objective, the institution will seek to maximise the minimum PPP fee it can set within what may be viable for the private party. If savings, job creation or SMME creation are more vital objectives and it can afford to manage the PPPs, the institution may be justified in setting a minimum PPP fee that simply covers its direct costs of management.

**Take note**

The minimum PPP fee will be set in the RFP and used as a key decision-making tool to evaluate bids when they come in. Bidders will be asked to bid the variable PPP fee – which is a percentage of their gross revenue per annum. In any one year, whichever of these fees is the greater is the sum payable by the private party to the institution as the PPP fee.

## STAGE 3: FINALISE THE BEE SCORECARD

The *Tourism BEE Charter and Scorecard*, 2005 applies generically across the tourism industry, setting targets that industry participants need to meet. National Treasury has adapted the charter's scorecard for use as an evaluation framework for tourism PPPs[3]. It enables institutions to set consistent BEE requirements and bidders' BEE bids to be properly evaluated.

The BEE indicators in the scorecard[4] should be reflected in all PPP agreements involving the use of state property for commercial tourism purposes, with an additional focus on local impacts.

The indicators are:

- ownership
- strategic representation
- employment equity
- skills development
- preferential procurement
- enterprise development
- social development and industry-specific indicators.

If appropriate, specific provision may be made by the institution for additional ownership by an established local community trust.

### The details of the BEE scorecard

The BEE scorecard for the project must be finalised during the feasibility study phase, taking account of the following factors:

- the prevalence and strength of black enterprise within the sector and locally (this includes tourism investors, operators and suppliers of relevant goods and services)
- whether any communities within the vicinity of the proposed PPP have organised channels for achieving communal benefits, such as community trusts, and how strong they are. If such organised channels are not established or are in the process of being established, it will not be practical to insist on a community trust shareholder in the private party to the PPP agreement
- financing, skills development, technical, legal and organisational support facilities available to black enterprises in the sector and to community trusts
- municipal government's local economic development plans
- whether certain BEE targets need to be phased in over the project term.

---

3. This is explained in *Getting started: 2. Clarifying some key policy issues.*
4. These indicators are in the first column of the Tourism BEE Scorecards. See *Getting started: 2. Clarifying some key policy issues.*

The Toolkit is based on the assertion that the indicative targets set in the charter's scorecard are minimum targets for BEE in tourism PPPs. This is because PPPs require the formation of a new company to enter into a PPP agreement, giving greater scope for achieving strong BEE than may be the case in existing companies.

**Take note**

Two BEE scorecards are given in the *Tourism BEE Charter and Scorecard*, 2005: one for 2009, the other for 2014[5]. PPPs that go out to procurement from the date of publication of the Toolkit until the end of 2008 will be expected, at least, to meet the targets set out in the Tourism BEE Scorecard 2009[6]. They will then have to improve these to meet or better the 2014 targets by that date in the PPP agreement. PPPs that go out to procurement from the start of 2009 will be expected, at least, to meet the targets set out in the Tourism BEE Scorecard 2014. Further discussion on BEE in the Toolkit will use the Tourism BEE Scorecard 2009, but the institution must update this to the Tourism BEE Scorecard 2014 from the start of 2009.

**The *Tourism BEE Charter and Scorecard,* 2005 states that the category of ownership (accorded 15 points) is not applicable to businesses with a turnover of less than R5 million.**

This means that the defined categories and point weightings only equal 85 points. The institution has two choices here. It can choose either to simply score BEE out of 85 in accordance with the scorecard and convert the score to a percentage thereafter. Or it can allocate the remaining 15 per cent to other indicators in the scorecard it deems particularly relevant to the project.

5. See *Getting started: 2. Clarifying some key policy issues*.
6. See *Getting started: 2. Clarifying some key policy issues*.

## STAGE 4: FOLLOW UP ON THE ENVIRONMENTAL IMPACT ASSESSMENT

It may be both necessary and possible to complete further steps in the environmental impact assessment (EIA) process during the feasibility study phase. The pre-feasibility report will have identified the EIA path necessary for the project[7].

---

7. See *Getting started: 2. Clarifying some key policy issues*.

# STAGE 5: ENTER INTO MEMORANDA OF UNDERSTANDING WITH DEVELOPMENT FINANCE INSTITUTIONS, OTHER FINANCING INSTITUTIONS AND SUPPORT ORGANISATIONS

## Background

A number of development finance institutions (DFIs) other financing institutions and support organisations can help private parties with financing tourism PPPs[8]. Experience has shown that the institution needs to consult with these organisations and reach agreement on the terms of their involvement in the project as early as possible in the PPP feasibility study phase. Small cap projects will probably not require the same level of this kind of financing as large cap projects, but institutions should nevertheless consult these organisations on their possible involvement.

A number of SMME support organisations provide support to bidders during the PPP process in the form of training, technical assistance, grants and so on[9]. The institution should have consulted them during the pre-feasibility study phase. During the feasibility study phase agreements need to be reached on their actual commitment to assisting the SMMEs. The list of support organisations in 'Annexure 2: Non-government support organisations' is not complete and does not apply in all circumstances. Institutions should proactively research other kinds of support in their area and sector.

## Steps the institution needs to take

- **Step 1:** Follow up the preliminary contacts made in the pre-feasibility study phase and confirm that the identified organisations are able to provide SMME support in the PPP.
- **Step 2:** Hold meetings with these organisations to inform them further of the proposed PPP. The institution needs to establish what practical support they can commit to the project, the criteria and processes for accessing such support, and during which phases of the PPP project cycle the support can be provided (procurement, development and delivery).
- **Step 3:** Prepare an assistance to bidders pack of all the SMME and funding support products available to bidders. The pack must include:
  - the criteria for SMMEs to access these funding support products
  - information about at which phase of the PPP process they can be accessed

8. See 'Annexure 1: Financing packages through state institutions'.
9. See 'Annexure 2: Non-government support organisations'.

    - the individuals from the organisations that the private party bidders can contact while they are preparing their bids
    - any pro forma application forms that are available from the support organisations.
- **Step 4:** Sign a memorandum of understanding (MoU) with each of these support organisations. This must verify and confirm the information and commitments in the assistance to bidders packs and commit the institution and the relevant support organisation to collaborate in the interests of the project. Two template MoUs have been provided to help with this. 'Template 1: Memorandum of understanding between the institution and financing institutions' is to be used when committing DFIs and other financing institutions to the PPP process. 'Template 2: Memorandum of understanding between the institution and support organisations' is to be used for other support organisations that are providing other SMME support.
- **Step 5:** The assistance to bidders pack and the MoUs must be included as annexures to the feasibility study report. The pack must be prepared to be included in the RFP documentation during the procurement phase.

## STAGE 6: DEVELOP A MARKETING PLAN

The institution needs to have a clearly developed marketing plan to reach those who might be interested in the PPP opportunity that is being offered.

**The institution should develop its PPP marketing strategy in line with its commercialisation strategy, in keeping with the scale of each project.**

For example, if local economic development is a key objective and the PPP opportunity relatively small, advertisements in relevant local newspapers and dissemination of information through provincial business association networks will be more appropriate than buying costly national advertising. Radio and internet marketing can complement print advertisements.

However, at the very least, the institution must ensure that:

- advertisements are placed in one provincial newspaper and community newspapers
- the RFP is available on the institution's website and on National Treasury's PPP website (www.ppp.gov.za).

It is vital that the institution discuss the PPP opportunities with relevant chambers of commerce, tourism and investment agencies, tourism business councils and any other relevant industry or marketing body. These bodies often prove to be excellent marketing channels, advertising the opportunities among their members.

It is recommended that small cap tourism PPP opportunities be made available on a routine annual or bi-annual basis once an institution's PPP systems are in place. This will enable private parties to have early prior knowledge of PPP opportunities and anticipated timing. It will also promote a known and transparent process for gaining access to PPP opportunities on a regular, ordered and cost-efficient basis.

**Take note**

Direct approaches to the private sector through tourism business associations, informing them of the PPP opportunity, are a good way to encourage bids. The project officer should take proactive steps to do this in a way that cannot be deemed prejudicial to others. Doing radio interviews, speaking at conferences, and writing feature articles for the press are all important ways of building awareness of the PPP opportunities that are being offered. It is also a good idea to keep in touch with the private parties that were canvassed or interviewed in the pre-feasibility preliminary market review, as well as with any parties that may have submitted relevant unsolicited proposals, and refer them to the RFP.

## STAGE 7: DEVELOP THE PROCUREMENT PLAN

The procurement plan must contain:

- a project timetable for the key milestones and all approvals that will be required to take the project from Institution Approval I (IA:I) to Institution Approval: III (IA:III)
- confirmation that sufficient funds in the institution's budget are available to take the project to IA:III and into PPP agreement management
- a list of any potential challenges to the project and a discussion of how these will be addressed by the project team
- the governance processes to be used by the institution in its management of the procurement, especially regarding decision-making and required approvals from within and outside the institution
- list of the project stakeholders and the extent of their involvement in the PPP
- list of the project team with assigned functions
- list of any consultants or transaction advisors retained and their deliverables
- information to be made available to bidders and how such information will be developed
- details of the bid evaluation process and teams
- the means of establishing and maintaining an appropriate audit trail for the procurement
- appropriate security and confidentiality systems, including confidentiality agreements, anti-corruption mechanisms, and declaration of interest formsto be signed by all project team members[10] .

**Take note**

The procurement plan is intended to be a living document and must be updated from time to time as the PPP progresses, milestones are reached, or extra information is obtained.

10. See 'Template 8: Declaration of Interest form' and 'Template 7: Code of conduct'.

## STAGE 8: DRAFT AND SUBMIT FEASIBILITY STUDY REPORT FOR INSTITUTION APPROVAL: I

The feasibility study report must be submitted to the accounting officer/authority. The report must show that all the prescribed steps for tourism PPPs have been complied with through the inception and pre-feasibility study phases, and that PPP feasibility can be demonstrated. The institution will therefore collate its PPP preparation work to date in a report that satisfies the provisions of Treasury Regulation 16.

The recommended contents of the feasibility study report are set out in the box below. Guidance is given on how to compile the feasibility study findings. The project preparation material comprises the results of the work done in the seven stages of the feasibility study set out above. It constitutes the essential back-up material for the conclusions reached in the feasibilty study finding.

**Contents of the small cap tourism PPP feasibility study report**

**Submission requirements**

Covering memo from project officer to accounting officer/authority requesting IA:I

**Part 1: Introduction**

- executive summary
- project background

**Part 2: Feasibility study findings**

- explain the strategic and operational benefits of the PPP for the institution in terms of its strategic objectives and government policy
- describe the state property concerned, the uses of the property prior to the PPP and a description of the types of uses to which a private party may subject the state property
- demonstrate the affordability of the PPP for the institution
- set out the proposed allocation of financial, technical and operational risks between the institution and the private party
- demonstrate the anticipated value for money to be achieved by the PPP
- explain the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP

**Part 3: Project preparation material**

- due diligence confirming and updating the findings of the pre-feasibility study
- viability of the small cap tourism PPP and determination of the minimum PPP fee
- BEE scorecard for the PPP
- progress on the EIA
- support to be provided by DFIs, other funding institutions and support organisations
- marketing plan
- procurement plan

## Guidelines for writing Part 2 of the feasibility study report: feasibility study findings

1. **Explain the strategic and operational benefits of the PPP for the institution in terms of its strategic objectives, reserve management plans (or equivalent), and government policy.**
   This information is contained in the institution's strategic plan for commercialisation[11] which must be carried across into the feasibility study report.
2. **Describe the state property concerned, the uses of the property prior to the PPP and a description of the types of uses to which a private party may subject the state property.**
   This information is contained in the institution's strategic plan for commercialisation[12]. During the inception phase, the institution identified the sites and activities that are being considered for a PPP[13].
3. **Demonstrate the affordability of the PPP for the institution.**
   The concept of affordability is discussed earlier in this module under *Key tests for the small cap feasibility phase*[14]. The institution must now update its budgetary planning and confirm that it has the funds available to fulfil its expected obligations in relation to the PPP. Short- and long-term affordability must be considered. The feasibility study's projected minimum PPP fee must be factored in together with the available budgets to reach conclusions about affordability.
4. **Set out the proposed financial, technical and operational risks between the institution and the private party.**
   The institution has done considerable work in identifying and allocating the project risks. Being a small cap PPP project, the risks to the institution should have been determined as low[15]. The feasibility study report should present and analyse the proposed risk matrix for the project.
5. **Demonstrate the anticipated value for money to be achieved by the PPP.**
   The concept of value for money is discussed earlier in this module under *Key tests for the small cap feasibility phase*. Achieving value for money is the essential motivation for entering into a PPP. The institution would have identified and confirmed its value-for-money objectives at various stages[16]. The feasibility study report must confirm the targets set for each value-for-money objective for the project and demonstrate that these are achievable.

---

11. This was prepared in *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*: PPP Inception: Stage 4: steps 1 and 4. Step 1 requires the institution to set out how the PPP is grounded in its vision, mission and objectives. Step 4 provides an initial indication of the motivation for commercialisation and the objectives that the PPP seeks to achieve.
12. This was prepared in *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*: PPP Inception: Stage 4: Step 2, and in PPP Pre-feasibility: Stage 1.
13. These choices were confirmed, refined or adapted in *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*: Pre-feasibility: Stage 1, during which the actual sites and activities are subjected to a due diligence on a number of key factors.
14. Furthermore, *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*: PPP Inception: Stage 4: Step 6 requires the institution to identify and budget for the costs associated with running a PPP process from start to finish.
15. *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*: PPP-pre-feasibility: Stage 1 identifies the risks and Stage 2 presents them.
16. Initially, it would have identified its commercialisation objectives in *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*: PPP Inception: Stage 4: Step 4. These objectives are investigated further in Pre-feasibility: Stage 1 of the same module and form the core benchmarks for value for money.

6. **Explain the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP.**
   This section must describe the precise capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP. It must include résumés of key personnel, including the project officer and his or her support staff in the institution, and describe the internal reporting and approval systems, and how the project will be managed in its forthcoming phases. The capacity of the institution has already been investigated and documented during the inception and pre-feasibility phases[17]. Furthermore, in applying for an exemption from treasury approvals, the institution would have submitted a comprehensive motivation demonstrating its capacity to manage the PPP according to the standards of Treasury Regulation 16. The information contained in these documents should be collated (and updated where applicable).

**Take note**

The affordability and value-for-money conclusions must indicate that the costs of the PPP to the institution are affordable and whether such costs are justified relative to the value-for-money outcomes that the project is expected to achieve. Remember, while value for money is not only about the revenue that the institution can receive, there must be a net benefit to the institution, and the project must be affordable.

## Institution Approval: I

If the institution's accounting officer/authority is satisfied that the feasibility study meets the requirements of Treasury Regulation 16.4, as guided by the Toolkit, it will be able to grant IA:I, enabling the project to proceed to the procurement phase.

### Revision of the feasibility study

Treasury Regulation 16.4.4 provides that if any material assumptions upon which the feasibility study was based materially change at any time after IA:I has been granted, but before the PPP agreement has been signed, a revised approval is required. In such an event, the project officer must immediately provide the relevant approval authority with information about the material changes and an updated feasibility study reflecting the changes and the impact they may have on affordability, value for money and risk transfer.

17. *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*: Stage 4: Step 5 requires the institution to set out its organisational structure, project officer competencies, planning, procurement and management systems and the institution's approval process that will be followed. Step 7 requires the institution to identify any external support necessary to implement this commercial strategy.

# ANNEXURES AND TEMPLATES

## ANNEXURE 1

### Financing packages through state institutions

A number of financing packages are available through state institutions to support tourism development. This annexure provides details of some of the packages available. These include: investment grants; concessionary loan finance; empowerment funds; training grants and incentives; marketing support; and poverty relief funds.

## ANNEXURE 2

### Non-government support organisations

There are a number of skilled and experienced non-government organisations (NGOs) that support local economic development, poverty alleviation and the empowerment of the poor through tourism. Funded by aid agencies, they are able to provide support at low cost. This annexure lists some of these organisations.

## TEMPLATE 1

### Memorandum of understanding between the institution and financing institutions

This is a template agreement to be used by the institution to secure the collaboration of financing institutions for a tourism PPP. While this MoU is between the institution and the financing institution, the beneficiaries of any financing package are the investors in the PPP.

## TEMPLATE 2

### Memorandum of understanding between the institution and support organisations

This is a template agreement to be used by the institution to secure the collaboration of support organisations for a tourism PPP. While this MoU is between the institution and the support organisation, the beneficiaries of any support package are potential bidders and the investors in the PPP.

PPP TOOLKIT FOR TOURISM

# PROCUREMENT PHASE FOR SMALL CAP TOURISM PPPs

# INTRODUCTION

The feasibility phase is now complete. The institution now proceeds with the procurement phase in compliance with Treasury Regulation 16.

### Extract from Treasury Regulation 16 to the PFMA

***16.5 Procurement – Treasury approvals IIA and IIB***

*16.5.1 Prior to the issuing of any procurement documentation for a PPP to any prospective bidders, the institution must obtain approval from the relevant treasury for the procurement documentation, including the draft PPP agreement.*

*16.5.2 The treasury approval referred to in regulation 16.5.1 shall be regarded as Treasury Approval: IIA.*

*16.5.3 The procurement procedure –*

*(a) must be in accordance with a system that is fair, equitable, transparent, competitive and cost-effective; and*

*(b) must include a preference for the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination in compliance with relevant legislation.*

*16.5.4 After the evaluation of the bids, but prior to appointing the preferred bidder, the institution must submit a report for approval by the relevant treasury, demonstrating how the criteria of affordability, value for money and substantial technical, operational and financial risk transfer were applied in the evaluation of the bids, demonstrating how these criteria were satisfied in the preferred bid and including any other information as required by the relevant treasury.*

*16.5.5 The treasury approval referred to in regulation 16.5.4 shall be regarded as Treasury Approval: IIB*

**Take note**

It is the institution's responsibility to design and manage the procurement process in a way that meets Treasury Regulation 16's requirements. The small cap procurement process described in the Toolkit is compliant with Treasury Regulation 16 and is tailored to suit the limited scale of the projects and the limited resources of the parties involved.

A small cap PPP procurement typically involves the following stages:

- request for proposals (RFP)
- choosing the preferred bidder
- negotiations
- signing the PPP agreement.

A large cap PPP procurement typically involves the following stages:

- pre-qualification: request for qualification (RFQ)
- RFP
- possible best and final offer (BAFO)
- choosing the preferred bidder
- negotiations
- signing the PPP agreement.

For a small cap tourism PPP it is not necessary to pre-qualify bidders because it would generally be disproportionately time-consuming and costly for both the institution and the private party.

**An RFQ should be considered only if the preliminary market analysis in the pre-feasibility phase or the analysis of unsolicited proposals indicates large numbers of serious bidders for a project[18].**

It is also not envisaged that a BAFO stage will be necessary in small cap projects. If a bid evaluation indicates the need for a BAFO, the institution should seek advice from the relevant treasury.

**The are four stages to the procurement phase for small cap tourism PPPs**

Stage 1: Request for proposals and Institution Approval: IIA
Stage 2: Evaluate bids, choose the preferred bidder and get Institution Approval: IIB
Stage 3: Negotiations
Stage 4: Get Institution Approval: III and sign the PPP agreement

18. In such cases, the institution should follow the RFQ process set out in *Module 3: Feasibility study and procurement phases for large cap tourism PPPs*.

# STAGE 1: REQUEST FOR PROPOSALS AND INSTITUTION APPROVAL: IIA

The RFP stage has two parts:

- Part 1: prepare the RFP documents, PPP agreement and RFP advertisement (with the purpose of getting IA: IIA)
- Part 2: publish the RFP advertisement and engage with bidders.

## Part 1: Prepare the RFP document, PPP agreement and RFP advertisement

| Part 1: Steps |
|---|
| Step 1: Prepare the RFP document |
| Step 2: Prepare the draft PPP agreement |
| Step 3: Prepare the RFP advertisement |
| Step 4: Get Institution Approval: IIA |

**Take note**

These instructions are based on 'Template 3: Request for proposals: Tourism PPP opportunity for an SMME'. The structure mirrors the template, which should be read in conjunction with these preparation guidelines.

The RFP is a formal document that the institution distributes to interested bidders. The institution must draft the RFP based on its feasibility study report. The RFP must have as an attachment the draft PPP agreement. IA:IIA for the draft RFP and the draft PPP agreement must be granted before the RFP is issued.

## Step 1: Prepare the RFP document

### Contents



### 1. Important general notes

This gives the basic information about the RFP, specifically stating which institution is issuing the tender, under what authority, and the tender number.

### 2. The PPP opportunity

This is a crucial section as it contains the project-specific details that a bidder will use in deciding whether to bid or not.

The institution should distil appropriate information from its feasibility study, focusing on the following key aspects:

- **Explanation of the project**. Explain the background to the project, the institution's envisaged and desired outcomes, what the bidder is expected to do (for example, upgrade and operate an accommodation facility) and the required performance standards.
- **Strategic planning context**. Provide an explanation of the institutional environment in which the project is to take place. This includes the regulatory, physical, political and social environment, consistent with applicable reserve management plan(s).
- **Value for money**. Specify the key objectives (and, where appropriate, the actual targets of each objective) of the PPP.
- **Site review.** Provide as much detail as possible about the site and about issues that were identified during the pre-feasibility and feasibility phases.

  These issues may cover:
  - legislation
  - environment
  - stakeholders
  - personnel and human resources
  - infrastructure

- equipment
- performance standards
- transfer of risk
- other information (identified as being relevant during the inception and feasibility phases).

### 3. Assistance to bidders pack

The RFP must contain the assistance to bidders pack on the support organisations (state, non-governmental organisations (NGOs) and donors), DFIs and other financing institutions that have committed themselves to helping private parties in the project. The pack must include brief summaries of the products on offer, the criteria for applying, during what phase of the PPP these products will be made available, and relevant names and contact details for each product. Bidders should be encouraged to approach these organisations when compiling their bids.

### 4 and 5. Site and other due diligence

Small cap PPPs will not necessarily need an exhaustive bidder due diligence. As much information as possible should be provided to bidders so that they can submit good-quality bids. Since very little, if any, information given in the RFP is warranted by the institution, the procurement phase must enable bidders to go on site visits to conduct their own due diligence. If a community trust is to be involved as a community partner, the site visit must include the leaders of the trust briefing bidders.

Depending on whether or not the institution will incur significant costs in managing a site visit, the institution should specify what portion of this cost the bidder will have to bear. It should explain how bidders should pay and give other relevant logistical details. Normally bidders pay their own travel and accommodation expenses for site visits and added costs should be avoided, especially for SMME opportunities.

### 6. What must be included in the bid and how to submit it

It is recommended that bids be required to be submitted in two envelopes, in the format prescribed.

### Why a two-envelope system?

The price component of a bid (the PPP fee payable to the institution) can influence the evaluation of the functional components of bids. A bid evaluation committee can sometimes overlook functional weaknesses when it is aware that the PPP fee offered is considerable. This can result in technically weak bids with inflated PPP fee offers being chosen as preferred bidders.

**The two-envelope system enables the functional, BEE and price components of a bid to be evaluated separately, objectively, and in accordance with the committed weightings.**

If the institution chooses for good reason to procure through a single envelope system it should document its reasons for this. It needs to specify the mitigation measures it has taken to guard against bias in bid evaluation and ensure that the accounting officer/authority has specifically approved this choice.

## Envelope 1

Envelope 1 must contain three copies of the following documents:

- information relating to the intended constitution of the private party special purpose vehicle (SPV) in the prescribed format

**Take note**

A private party does not have to form an SPV for the purpose of bidding. But the preferred bidder will have to do this to enter into the PPP agreement. Bidders must therefore show how their SPV would be constituted if their bid were successful.

- the financing plans for the SPV in the prescribed format
- a BEE plan in the prescribed format (BEE is discussed later in this section)
- a business and operational plan in the prescribed format
- a development and environmental plan in the prescribed format
- tax clearance certificates, dated within six months of the bid submission date, for each shareholder in the SPV.

## Envelope 2

Envelope 2 must contain three copies of the following documents:

- the PPP fee offer in the prescribed format
- a marked-up copy of the PPP agreement, with explanations of the proposed amendments and all schedules completed.

**Take note**

1. 'Template 3: Requests for proposals: Tourism PPP opportunity for an SMME' contains annexures which set out the exact information required from bidders for the above categories. The institution must adapt these for each PPP according to the objectives set in the feasibility study. The specifications are used for bid evaluation. They should focus on project outcomes. They should not be prescriptive, stifle innovation or be so onerous that otherwise solid bids are knocked out unnecessarily.
2. The submission of these items is a minimum requirement for a bid to be compliant. Bidders which do not submit all these items (after requests for clarification or completion if necessary) should be rejected.
3. Pre-qualification is not typically necessary for small cap PPPs. However, the institution may wish to prescribe minimum thresholds in the RFP that a bidder must meet. For example, it could set minimum requirements for the financial strength of the parties making up the bidder, or for their experience in tourism. However, these limits should not be set too high, especially for marginal opportunities[19].

### 7. The date and place for submitting bids

This section sets out when and where the bids must be submitted.

### 8. How the bids will be opened

This section gives details about when, where and by whom the bids will be opened. It sets out the steps that the evaluators will take to clarify certain issues and check that bids are compliant.

### 9. Incomplete bids

This section informs bidders about what action is taken if bids are incomplete or require clarification.

### 10. How the bid will be evaluated and the preferred bidder chosen

This section deals with how the institution will go about evaluating the bids. It sets out the evaluation criteria for choosing a preferred bidder. The criteria mirror the categories of information requested from the bidder. The institution cannot evaluate bids on the basis of information it did not request.

Each bid must be evaluated strictly in accordance with the bid evaluation criteria given to bidders in the RFP. While institutions will have varied these criteria to suit the value-for-money targets in each particular project, the approach outlined here is offered as best practice. This is to instil consistency and predictability in the small cap tourism PPP market. Institutions are advised to use this approach as the basis for devising the bid evaluation criteria in their RFP documents.

19. Guidance on pre-qualification is given in *Module 3: Feasibility study and procurement phases for large cap tourism PPPs.*

In the case of tourism PPPs:

- the functionality element constitutes the bidder's response to the prescribed requirements for financing plans, business and operational plans, development and environmental plans, and the risk matrix
- the BEE element constitutes the bidder's response to the RFP BEE scorecard
- the price element constitutes the PPP fee offered by the bidder.

In compliance with the Preferential Procurement Policy Framework Act, 2000 (PPPFA) the BEE component of the bid will constitute 10 per cent of the bid evaluation weighting, with the price and functionality elements constituting the remaining 90 per cent.

The institution must decide, based on its value-for-money targets, how best to split the weighting between functionality and price. If competition for the PPP fee offered is deemed to be a strong driver of value for money to the institution the price element should be weighted accordingly. However, if this element is weighted more heavily than the key functionality element bidders tend to overestimate their projected turnover so that they can win the bid. This can result in the more realistic bids, often from more experienced tourism business operators, losing. This is not necessarily in the long-term best interests of the institution.

The formula by which the bids are evaluated is as follows. An example of its application is given in figure 2.4.

**a***(functionality score/100) + **b***(BEE score/100) + **c***(price score/100) = **d**

where

**a** is the weighting for functionality (as chosen by the institution)

**b** is the weighting for BEE (10 per cent)

**c** is the weighting for price (as chosen by the institution)

**d** is the total score achieved by the bidder

The functionality and BEE elements of the bid are submitted by the bidder in Envelope 1. The price element is submitted in Envelope 2.

In the evaluation of Envelope 1 a minimum threshold of 65 per cent of the total functionality scorecard points and a minimum threshold of 65 per cent of the total BEE scorecard points must be achieved before Envelope 2 is opened and evaluated.

## Functionality

The functionality bid of each bidder will be evaluated according to the criteria and thresholds set out in the functionality scorecard. The institution will have to adapt this scorecard in accordance with the particular PPP.

These evaluation criteria mirror the information requested in the template RFP. The institution must ensure that its evaluation criteria correspond exactly to what is requested in the RFP.

Figure 2.2: Example of functionality scorecard

| | Evaluation criteria | Scoring | Maximum sub-total | Maximum total |
|---|---|---|---|---|
| **1** | **Financing plan** | | | |
| 1.1 | Has the bidder secured adequate finance to implement the project? | Fully = 5<br>Partially = 3<br>Not at all = 0 | 5 | |
| 1.2 | Are the shareholders/participants solvent and liquid? | Fully = 5<br>Partially = 3<br>Not at all = 0 | 5 | |
| 1.3 | Is the basic cash flow model viable? | Fully = 5<br>Partially = 3<br>Not at all = 0 | 5 | |
| | | | | **15** |
| **2** | **Business and operational plan** | | | |
| 2.1 | Is or will the bidding company be constituted as required in the RFP? | Fully = 3<br>Partially = 2<br>Not at all = 0 | 3 | |
| 2.2 | Does the proposed tourism product fall in the range of product types specified in the RFP? | Fully = 5<br>Partially = 3<br>Not at all = 0 | 5 | |
| 2.3 | Bidder's experience and track record in similar enterprises, in similar target markets | Excellent = 10<br>Acceptable = 5<br>Poor = 0 | 10 | |
| 2.4 | Bidder's commercial knowledge of the target market for this product, demonstrated in the rationale of the business plan | Excellent = 10<br>Acceptable = 5<br>Poor = 0 | 10 | |
| 2.5 | Do the bidder's planned operating standards and staffing qualifications meet those specified in the RFP? | Fully = 5<br>Partially = 3<br>Not at all = 0 | 5 | |
| 2.6 | Do the bidder's product branding plans comply with the institution's specifications in the RFP? | Fully = 2<br>Partially = 1<br>Not at all = 0 | 2 | |
| | | | | **35** |

Figure 2.2: Example of functionality scorecard (cont.)

| | Evaluation criteria | Scoring | Maximum sub-total | Maximum total |
|---|---|---|---|---|
| **3** | **Development and environment plan** | | | |
| 3.1 | Are all EIA requirements understood and planned for? | Fully = 4<br>Partially = 2<br>Not at all = 0 | 4 | |
| 3.2 | Is adequate provision made for recognising and reporting on cultural, archaeological and highly sensitive natural resource finds? | Yes = 4<br>Partially = 2<br>No = 0 | 4 | |
| 3.3 | Is the planned number of guest and staff beds, and operator vehicles within the limits given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | 4 | |
| 3.4 | Are there adequate plans for staff accommodation, health, safety and medical/emergency evacuation? | Yes = 4<br>Partially = 2<br>No = 0 | 4 | |
| 3.5 | Are the visual impacts of the planned facility within the specifications given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | 4 | |
| 3.6 | Are the bulk infrastructure use plans (water, electricity, fuel supply, telecoms, roads, airstrips) within the specifications given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | 4 | |
| 3.7 | Are waste management plans within the specifications given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | 4 | |
| 3.8 | Are fire management plans within the specifications given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | 4 | |
| 3.9 | Is there a commitment to abide by the park/institution rules/ regulations/ environmental guidelines/codes of conduct? | Yes = 4<br>Partially = 2<br>No = 0 | 4 | |
| 3.10 | Other project-specific criteria, if needed; if not, allocate allotted points elsewhere | [Score consistently] | 4 | |
| | | | | **40** |
| **4** | **Risk matrix** | | | |
| | Does the bid commit to the RFP's required risk allocation for the project? | Fully = 10<br>Adequately = 5<br>Unacceptably = 0 | | **10** |
| | **Total functionality points** | | | **100** |
| | **Minimum threshold** | | | **65** |

## BEE

The BEE scorecard finalised for the project during the feasibility study phase needs to be developed further in the preparation of the RFP. In the feasibility study phase the institution confirmed the project's BEE indicators, weightings, and targets.

In the preparation of the RFP and draft PPP agreement the institution must:

- establish a suitable scoring system for each indicator to ensure clarity both for bidders and for the project evaluation committee (PEC) on how the BEE components of the bids will be evaluated
- consider hiring a BEE ratings agent which is accredited by the Department of Trade and Industry (DTI) and who is familiar with the *Tourism BEE Charter and Scorecard,* 2005 and with PPPs. This person could help the project officer specify what information bidders must supply for the BEE aspects of their bids and help the PEC to score the BEE elements of each bid
- prepare the prescribed format in which bidders must submit their BEE plans.

The BEE bids should be scored using the scoring system given in the *Tourism BEE Charter and Scorecard,* 2005. The institution will have decided its scoring system during Stage 3 of the feasibility phase detailed earlier in this module. A bidder's proposed SPV must score a minimum of 65 per cent of the available points in order to pass (being a Good BEE Contributor as defined by the *Tourism BEE Charter and Scorecard,* 2005). If a bid does not meet this minimum threshold, the bid should not be considered further.

An example of how the scoring system could be established is shown in Figure 2.3.

Bidders should be required to score themselves in their bid submissions and provide appropriate substantiation of, or commitment to meeting, their proposed scores. With the help of its appointed BEE ratings agency (if required) the institution will doublecheck the bidders' scoring during the bid evaluation.

**Take note**

Bidders must form new SPVs if they are selected for the PPP. The BEE components of their bids will therefore be commitments, not their current status. These BEE commitments must be evaluated according to how realistic and substantiated they are, because they will become binding in the PPP agreement.

## Figure 2.3: Example of BEE scorecard

| Indicator | Weighting | Sub-weighting | Indicators to measure BEE achievement | Target | Bid offered | Evaluation | Score |
|---|---|---|---|---|---|---|---|
| | A | B | | C | | | |
| Ownership | 15.00% | 15.00% | Percentage share of economic benefit as reflected by direct shareholding by black people | *21.00% | | Meets target – 15<br>Less than target – 0 | |
| | | *Required by the institution* | Community trust ownership | Additional 10% | | May be mandatory | |
| | | | | | | **Score out of 15** | |
| Strategic representation | 14.00% | 3.00% | Black people as a percentage of the board of directors | 30.00% | | Meets target – 3<br>Less than target – 0 | |
| | | 3.00% | Black women as a percentage of the board of directors | 15.00% | | Meets target – 3<br>Less than target – 0 | |
| | | 2.00% | Local people as a percentage of board of directors | 15.00% | | Meets target – 2<br>Less than target – 0 | |
| | | 3.00% | Black people as a percentage of executive management | 30.00% | | Meets target – 3<br>Less than target – 0 | |
| | | 3.00% | Black women as a percentage of executive management | 15.00% | | Meets target – 3<br>Less than target – 0 | |
| | | | | | | **Score out of 14** | |
| Employment equity | 14.00% | 1.50% | Black people as a percentage of management | 35.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Black women as a percentage of management | 18.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Local people as a percentage of management | 15.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Black people as a percentage of supervisors, junior and skilled employees | 45.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Black women as a percentage of supervisors, junior and skilled employees | 23.00% | | Meets target – 1.5<br>Less than target – 0 | |

* *Proviso: private parties to tourism PPP agreements with an expected turnover of less than R5 million per annum are exempt from the ownership indicator, as provided in the* Tourism BEE Charter and Scorecard, 2005.

Figure 2.3: Example of BEE scorecard (cont.)

| Indicator | Weighting | Sub-weighting | Indicators to measure BEE achievement | Target | Bid offered | Evaluation | Score |
|---|---|---|---|---|---|---|---|
| | A | B | | C | | | |
| Employment equity | | 1.50% | Local people as a percentage of supervisors, junior and skilled employees | 35.00% | | Meets target – 1.5 Less than target – 0 | |
| | | 1.50% | Black people as a percentage of total staff | 53.00% | | Meets target – 1.5 Less than target – 0 | |
| | | 1.50% | Black women as a percentage of total staff | 28.00% | | Meets target – 1.5 Less than target – 0 | |
| | | 2.00% | Local people as a percentage of total staff | 50.00% | | Meets target – 2 Less than target – 0 | |
| | | | | | | **Score out of 14** | |
| Skills development | 20.00% | 5.00% | Percentage of payroll spend on skills development (including skills development levy) on all accredited training | 3.00% | | Meets target – 5 Less than target – 0 | |
| | | 5.00% | Percentage of skills development spend on all black employees | 75.00% | | Meets target – 5 Less than target – 0 | |
| | | 5.00% | Number of learnerships as a percentage of total employees | 2.00% | | Meets target – 5 Less than target – 0 | |
| | | 5.00% | Number of black learners as a percentage of total learners | 80.00% | | Meets target – 5 Less than target – 0 | |
| | | | | | | **Score out of 20** | |
| Preferential procurement | 15.00% | 10.00% | Spend on BEE - compliant companies as a percentage of total procurement spend | 40.00% | | Meets target – 10 Less than target – 0 | |
| | | 5.00% | Spend on local BEE - compliant companies as a percentage of total procurement spend | 20.00% | | Meets target – 5 Less than target – 0 | |
| | | | | | | **Score out of 15** | |

Figure 2.3: Example of BEE scorecard (cont.)

| Indicator | Weighting | Sub-weighting | Indicators to measure BEE achievement | Target | Bid offered | Evaluation | Score |
|---|---|---|---|---|---|---|---|
| | A | B | | C | | | |
| Enterprise development | 14.00% | 7.00% | The sum of percentage spend of post-tax profits on enterprise development and percentage employee time contributed to enterprise development over total management time | 1.00% | | Meets target – 7<br>Less than target – 0 | |
| | | 7.00% | Enhanced revenue and/ or cost savings and/or twinning initiatives facilitated for black-owned SMMEs, as a percentage of revenue of the company measured | 1.00% | | Meets target – 7<br>Less than target – 0 | |
| | | | | | | **Score out of 14** | |
| Social development and industry-specific | 8.00% | 3.00% | Percentage CSI spend of post-tax profits on education, community programmes, job creation, training, health, conservation, community tourism and marketing activities to develop local black tourist market (or percentage management time over total employee time) | 1.00% | | Meets target – 3<br>Less than target – 0 | |
| | | 2.00% | Percentage of new recruits with no prior work experience | 10.00% | | Meets target – 2<br>Less than target – 0 | |
| | | 3.00% | Status of TOMSA levy collector | Yes | | Meets target – 3<br>Less than target – 0 | |
| | | | | | | **Score out of 8** | |
| **Total BEE points** | **100** | **100** | | | | **Score out of 100** | |
| **Minimum threshold** | | | | | | **65** | |

## Price

Price points are calculated using the prescribed price formula set in the regulations to the PPPFA. The maximum points are awarded to the bidder which (having passed the functionality and BEE thresholds) makes the highest PPP fee offer. The remaining points are allocated pro rata to the remaining bidders which have passed the functionality and BEE thresholds.

### Setting the PPP fee

The PPP fee payable by the private party is the greater of:

i) the minimum PPP fee (fixed and declared by the institution in the RFP); and
ii) the variable PPP fee, being a percentage of gross revenue (a sum bid by the private party).

**National Treasury recommends that the institution sets the minimum PPP fee that would meet its affordability and value-for-money criteria (as established during the feasibility study phase), and asks bidders to compete on the variable PPP fee.**

For very small PPPs, the variable PPP fee may not be appropriate. In such a case, the institution will request bidders to compete on a minimum PPP fee only and not to apply a variable PPP fee to the PPP agreement.

The institution must make sure that the decision on the structure of the price portion of the bid is correctly reflected in the RFP and PPP agreements and carried through to the evaluation of price bids.

## Overall evaluation

Each of the three elements (functionality, BEE and price) is scored out of 100 points. If the minimum thresholds are achieved for functionality and BEE, the scores achieved are calculated into a bidder's overall score using the formula set out above, according to the weightings chosen by the institution for functionality and price. While the BEE weighting is fixed by legislation at 10 per cent, institutions are free to decide what weighting to give price and functionality.

### Figure 2.4: Example of how to calculate a bidder's overall score

An institution may have decided that the functionality of a bid is crucial to the success of the PPP and allocated a weighting of 70% to functionality, 10% to BEE, and 20% to price. The weightings would therefore have been allocated according to the following formula:

**a***(functionality score/100) + **b***(BEE score/100) + **c***(price score/100) = **d**

where:

**a** is 70

**b** is 10

**c** is 20

**d** is the total score achieved by the bidder

So, if a bidder scores 80, 70 and 70 points for each of the categories respectively out of 100 points each, the calculation of the final score will be 70*(80/100) + 10*(70/100) + 20*(70/100) = 56+7+14=77

### 11. Finalising the PPP agreement

This section gives bidders information about when the institution will negotiate and sign the PPP agreement and the consequences of failing to do so within the stipulated time period.

### 12. Bid timetable

This section contains the timetable summary of the crucial steps in the RFP process.

## Step 2: Prepare the draft PPP agreement

'Template 4: Drafting notes to the small cap tourism PPP agreement'[20] gives direction on clauses which may or may not be appropriate, depending on the project. The institution must work through this carefully to prepare the PPP agreement properly, based on 'Template 5: Draft small cap tourism PPP agreement'[21]. These are National Treasury's standardised provisions for small cap tourism PPP agreements.

The institution may need to hire a lawyer to assist in finalising the draft PPP agreement.

**Any material deviation from the template provided in the Toolkit should be agreed with the relevant treasury prior to the application for IA:IIA.**

**Take note**

The institution must remember to finalise the BEE terms of the draft PPP agreement in accordance with the BEE scorecard. This must be done in the BEE schedule, and if appropriate, in a penalty regime that creates appropriate sanctions in the event that the private party fails to meet its BEE commitments.

## Step 3: Prepare the RFP advertisement

The advertisement placed by the institution must inform all interested bidders of the PPP opportunity and make it easy for them to obtain detailed information about the project and the bid submission requirements.

The institution may decide to charge a nominal fee for the collection of the bid documents in order to ensure that only genuinely interested parties apply. However, this fee must not be prohibitive.

20. 'Template 5: Draft small cap tourism PPP agreement' should always be read together with the drafting notes.
21. See 'Template 6: Small cap tourism PPP advertisement'.

### Step 4: Get Institution Approval: IIA

The complete set of RFP, draft PPP agreement and RFP advertisement must be considered by the institution for purposes of granting IA:IIA. None of these documents may be publicised until this approval has been obtained.

## Part 2: Publish the RFP advertisement and engage with bidders

| Part 2: Steps |
| --- |
| Step 1: Publish the RFP advertisement<br>Step 2: Facilitate site visit and answer bidder's questions |

### Step 1: Publish the RFP advertisement

The advertisement must be published in line with the marketing plan and the institution's budgetary constraints.

### Step 2: Facilitate site visits and answer bidders' questions

The institution (specifically the project officer) must conduct a site visit with interested bidders on the day and at the time set out in the RFP. The institution must make sure that all relevant information is made available to bidders so that they can prepare accurate bids in accordance with the institution's objectives. A register of participants should be kept.

If a community trust has been named by the institution as a community equity partner for the project, the site visit must include a briefing to bidders by the leaders of the community trust. The institution may decide that bidders should not meet individually with the community trust while they are preparing their bids, and that only the preferred bidder will be able to go into discussions with the community trust at that stage. This briefing is therefore important as it gives bidders a sense of the community's perspective on the project. It also means that the institution and other support organisations must have done sound preparatory work with the community trust beforehand.

Any questions from bidders must be submitted in writing to the project officer. The questions should be replied to in writing within 24 hours of their being received. The questions and replies should be put onto the institution's website and sent to bidders which attended the site visit, without revealing which bidder asked the question.

# STAGE 2: EVALUATE BIDS, CHOOSE THE PREFERRED BIDDER AND GET INSTITUTION APPROVAL: IIB

The institution has obtained IA:IIA and is now able to manage the procurement process, evaluate bids and choose the preferred bidder.

| Steps |
|---|
| Step 1: Receive bids<br>Step 2: Evaluate bids<br>Step 3: Choose the preferred bidder and a reserve bidder<br>Step 4: Write the value-for-money report<br>Step 5: Get Institution Approval: IIB |

## Step 1: Receive bids

The institution must appoint an official to be directly responsible for receiving bids in accordance with the directions set out in the RFP (see Sub-step 4.1 below). This official must make sure that he or she is on hand to receive bids and to acknowledge receipt in a formal bid register that the institution will keep. The bid register should record the time the bid was submitted, by whom and for what tender, and be signed by the bidder and the official. A receipt reflecting this information should be given to the bidder.

## Step 2: Evaluate bids

The evaluation of bids is a crucial part of the project preparation period of the whole PPP project cycle. The  choice of the right bidder is vital in ensuring that the institution achieves its value-for-money objectives.

| Sub-steps |
|---|
| 2.1. Prepare for bid evaluation<br>2.2. Open bids and check for compliance<br>2.3. Functionality and BEE evaluation<br>2.4. Price evaluation |

### 2.1. Prepare for bid evaluation

**Take note**

In the event that the relevant treasury is granting treasury approvals, the accounting officer/authority may head up the PEC. But if the institution has exemption from treasury approvals, the accounting officer/authority is the person or entity that grants the regulatory approvals. He or she therefore cannot be both the referee and a player in the evaluation of bids.

**The project evaluation committee (PEC) and bid secretariat**

**The PEC should be appointed well before the bid submission date.**

The PEC is headed by the project officer and supported by committee members appointed by the accounting officer/authority. Members may be sourced from within the institution and from other institutions. It may be of value to source members from institutions that have done PPP bid evaluations before. Any consultants or transaction advisors retained by the institution in this phase may participate in bid evaluation as advisors to the PEC, but they are not voting members.

The role of the PEC is to:

- accept bids as complete and compliant
- evaluate and score the bids
- select a preferred and a reserve bidder
- submit a value-for-money report for IA:IIB.

All PEC members must:

- be briefed on the project and the bid evaluation system
- confirm their understanding of their role
- receive an evaluation scoresheet for each bid[22]
- sign the code of conduct
- confirm that they will abide by their responsibilities
- diarise the relevant dates for evaluation meetings.

The responsibilities of a PEC member include:

- to read each bid thoroughly
- to evaluate it strictly according to RFP criteria
- to participate fully in meetings of the panel.

A member should be removed from the panel if he or she fails to comply with these responsibilities. The accounting officer/authority of the institution should take proactive steps to ensure that the PEC members comply with their obligations.

22. 'Template 9: Bid evaluation scoresheet'.

**It may be worthwhile for the institution to establish a standing PEC if it is engaged in a number of PPPs.**

**Bid secretariat.** A bid secretariat should be appointed to assist the project officer and PEC in the evaluation of bids.

The bid secretariat's key roles (as guided by the project officer) are:

- to prepare the required documentation for the PEC
- to administer and record the receiving of bids
- to prepare evaluation scoresheets for each bid and an electronic spreadsheet for calculating scores, in accordance with the RFP.
- to organise all logistical matters related to bid evaluation
- to ensure all bids are safely stored and transported
- to collate scores.

**Take note**

Template 9 is an evaluation scoresheet, and Template 10 is an evaluation spreadsheet. These are based on the sample evaluation scoring methods provided in this module. Any changes to this scoring that the institution makes during the preparation of the RFP must be carried through into these evaluation tools.

**Take note**

The PEC is responsible for evaluating bids. However, the PEC can request appropriate assistance from transaction advisors/consultants/BEE ratings agencies. This could be for preparing the bid documents, summarising bids, analysing bids, calculating scores, and providing advice to the PEC. But the PEC is the entity which actually scores each bid and takes responsibility for each decision made. Consultants/advisors and agencies are not members of the PEC. They must, however, also sign the code of conduct and declaration of interest forms.

## Anti-corruption, disclosure and code of conduct

The institution must sign off on an anti-corruption policy for the project. This must include clear requirements and processes for dealing with corrupt activities of project team members or bidders. The procurement plan and the bid processes must have the built-in safeguards of disclosure, a code of conduct[23], a declaration of interest[24], structured oversight and internal and external audit. All members of the project team and bid evaluation panel, including the transaction advisor, where one is appointed, must disclose any

23. See 'Template 7: Code of conduct'.
24. See 'Template 8: Declaration of interest form'.

potential conflict between their personal and family interests and those of the project. This disclosure must be evaluated by the accounting officer/authority or delegated representatives. An appropriate response must be formulated and implemented, such as recusal of the official from any position where the conflict of interest could affect a decision. All the institution's project team members, including the institution's advisors, and all members of the institution's bid evaluation committee must sign the code of conduct. The institution must remember that administrative justice legislation allows losing bidders to request access to all documents used and compiled in bid evaluations. The institution must therefore ensure meticulous document management and a transparent and competitive process.

**Take note**

The decisions and actions of officials representing the state must be able to withstand subsequent scrutiny. The bid evaluation process must be sound and fair and the behaviour of officials must be ethical.

The following principles must apply:

- the PEC should meet on an uninterrupted basis in a designated venue for the time necessary to conduct the bid evaluation
- the project officer is the chairperson of the PEC
- the bid secretariat records all proceedings and files all scoresheets
- the relevant codes of conduct and declaration of interest forms must be signed before evaluation starts.

In the event of a conflict of interest the chairperson will recuse the relevant member from participating further on the PEC.

### 2.2. Open bids and check for compliance

In the presence of the PEC, the bid secretariat should:

- specifically separate the price envelope from the functionality and BEE envelope of each bid and ensure that all the price envelopes are sealed and secure until they are needed
- make a list of all bids opened by the PEC and check that it accords with the list of bids received
- officially open the functionality and BEE envelope for each bid and check each for completeness and compliance with the bid submission requirements (set out in Stage 1: Step 1: Section 6 above).

**Clarification for completeness and compliance**

Sometimes bids do not comply with the stated requirements of the bid. This means that one or more of the items are missing or incomplete, or that there is contradictory or ambiguous information. In these cases the institution may ask bidders for clarification and to supply the missing information so that the bid can be evaluated properly. Any request for clarification or missing information must be in writing. The questions must refer to a specific element of the bid that requires completion or compliance and must not solicit any change to the bid. No amendment to the PPP fee or substance of the bid should be sought, offered or permitted, except where there is clearly a mistake. An institution cannot attempt to rewrite a bid under the guise of seeking clarification.

The constitutional requirement of fairness and transparency prohibits any type of change to a bid or negotiation with individual bidders during bid evaluation. If the response sets out a change to the bid, it must be set aside and its contents ignored. In such a case, or if the response does not resolve the matter on which clarity was sought, the subsequent evaluation of that element of the bid should note this.

### 2.3. Functionality and BEE evaluation

Each bid must be evaluated strictly in accordance with the bid evaluation criteria given to bidders in the RFP. Figures 2.2 and 2.3 are suggested templates for evaluation criteria, but the institution is expected to tailor them according to its own needs and the particular PPP it is working with.

**Take note**

In the case of tourism PPPs:

- the functionality element constitutes the bidder's response to the prescribed requirements for: financing plans, business and operational plans, development and environmental plans, and the risk matrix
- the BEE element constitutes the bidder's response to the RFP BEE scorecard
- the price element constitutes the PPP fee offered by the bidder in the prescribed format.

In accordance with the prescribed two-envelope system the functionality and BEE elements of the bid are submitted by the bidder in Envelope 1, while the price element is submitted in Envelope 2.

### Action 1: Score the bids' functionality

The RFP would have specified that, in the evaluation of Envelope 1, a minimum threshold of 65 per cent of the total functionality scorecard points and a minimum threshold of 65 per cent of the total BEE scorecard points must be achieved before Envelope 2 is opened and evaluated. If a bidder does not achieve these scores Envelope 2 will not be opened. The PEC will therefore initially calculate whether the bidders have reached the minimum functionality thresholds before proceeding. Template 9 is an evaluation scoresheet.

Without discussing it with another member, each member:

- reads and evaluates each functionality proposal
- gives preliminary scores to each element on the evaluation scoresheet
- writes explanatory notes (with reference to bid page numbers where relevant) to substantiate each score.

### Action 2: Plenary discussion

The chairperson holds a plenary discussion with the PEC on each functionality element of each bid. Agreement should be reached on any bid which should be disqualified at this stage for non-compliance. Members are required to state their evaluations and listen to other members' evaluations. They can adjust their scores, if necessary, if other members draw attention to aspects of the bids that they had not previously considered. Any adjustments should be initialled on the PEC members' evaluation scoresheets.

### Action 3: Enter the scores

Once the bids have been discussed the chairperson calls on the bid secretariat to display the bid evaluation spreadsheet for the functionality component so that the PEC can witness each score being entered. Template 10 is an electronic spreadsheet that can be used for this purpose[25]. The chairperson systematically allows each member to call out his or her scores for each element of each bid. If at any time any member believes that, based on the plenary discussions, another member's scoring is unreasonable, he or she may ask for an explanation. The chairperson's decision on disputes between members shall be binding on the members and the PEC.

### Action 4: Confirm the bids that have passed the functionality threshold

The bid secretariat totals the aggregate scores for each functionality element of each bid and announces which bids have passed and which have failed.

### Actions 5, 6, 7 and 8: Score the BEE bids

In accordance with the directions set out above for scoring the functionality of bids the PEC must:

- Action 5: Score the BEE bids on the evaluation scoresheets in accordance with the BEE scorecard (with the assistance of an accredited BEE ratings agency if necessary)
- Action 6: Hold a plenary discussion
- Action 7: Enter the scores on the spreadsheet
- Action 8: Confirm which bids have passed.

25. See 'Template 10: Bid evaluation spreadsheet'.

### Action 9: Discuss and record reservations

All reservations that PEC members have about any element of the functionality and BEE elements of the bid should be discussed, listed and accurately recorded by the bid secretariat for referral after the scoring of the price components.

### Action 10: Confirm which bids may go forward

The chairperson will confirm which bids may proceed to price scoring, and will instruct the bid secretariat to open only those envelopes.

### Action 11: Sign and hand in the evaluation scoresheets

Each PEC member signs his or her functionality and BEE evaluation scoresheets and hands them in to the bid secretariat.

## 2.4. Price evaluation

### Action 1: Score the PPP fee offered

The PEC then proceeds to open bids from bidders which have achieved the minimum thresholds for functionality and BEE. Price points will be calculated using the prescribed price formula set in the regulations to the PPPFA. The maximum points are awarded to the bidder which, having passed the functionality and BEE thresholds, makes the highest PPP fee offer. The remaining points are allocated pro rata to the other bidders which have passed the functionality and BEE thresholds. Scoring the price bids will depend on the format of the PPP fee that has been set by the institution in the RFP. Most bids will be evaluated on the variable PPP fee offered by each bidder. If the PPP fee was only required to be bid on a minimum PPP fee these are the offers that must be evaluated. In both instances, the PPP fee that the bidders offer must be checked for viability against the cash flow projections presented in 'Template 3: Request for proposals: Tourism PPP opportunity for an SMME: Annexure 1: The finance plan' to the functionality proposals presented in Envelope 1.

### Action 2: Add up functionality, BEE and price scores

Each of the three elements is scored out of 100 points and the scores achieved (if the minimum thresholds are achieved for functionality and BEE) are calculated into the bidder's overall score using the following formula:

**a***(functionality score/100) + **b***(BEE score/100) + **c***(price score/100) = **d**

where

**a** is the weighting for functionality (as chosen by the institution)

**b** is the weighting for BEE (10 per cent)

**c** is the weighting for price (as chosen by the institution)

**d** is the total score achieved by the bidder

### Action 3: Assess mark-up of the PPP agreement

The marked up PPP agreements submitted by the bidders must be assessed. The mark-ups are evaluated with two key factors in mind.

- If the proposed mark-ups change or contradict the bidder's proposed functionality, BEE or price proposals, the scores for these elements should be re-evaluated in the light of the mark-ups.
- Any changes to the PPP agreement that will need to be negotiated with the preferred and reserve bidders need to be noted for the negotiations stage.

### Possible Action 4: Identify and interview the top bidders

The institution has some discretion in this action, and it is not compulsory. It may be that the scoring process has identified two or three bidders whose scores are very close. The institution may wish to hold interviews with these bidders to clarify any outstanding issues. The institution must have a very clear idea about what it wants to discuss with them. Based on these interviews, PEC members may need to adjust their scores. The bid secretariat should make sure that all members have their original evaluation scoresheets on which to record these changes. All changes should be clearly motivated.

However, it may not be necessary to hold interviews if a bidder is clearly the top bidder and there is no need to clarify any issues at this stage. Remember, the institution will clarify certain aspects of the bid during the negotiation of the PPP agreement.

### Best and final offer

If the PEC cannot make a decision between bidders because of serious deficiencies in bids the institution may choose to approach bidders with a request for BAFO. This would be an attempt to make sure that there is no bid failure. The institution must liaise with National Treasury's PPP Unit for direction if it wants to follow this process.

## Step 3: Choose the preferred bidder and a reserve bidder

The evaluation should result in the selection of one preferred bidder and one or more reserve bidder, based on the final scores. The preferred and reserve bidders may not be announced until IA:IIB has been obtained for the value-for-money report.

## Step 4: Write the value-for-money report

### Extract from Treasury Regulation 16 to the PFMA

*16.5.4 After the evaluation of the bids, but prior to appointing the preferred bidder, the institution must submit a report for approval by the relevant treasury, demonstrating how the criteria of affordability, value for money and substantial technical, operational and financial risk transfer were applied in the evaluation of the bids, demonstrating how these criteria were satisfied in the preferred bid and including any other information as required by the relevant treasury.*

Before the preferred bidder is announced, the project officer must complete the value-for-money report and submit it to the accounting officer/authority for IA:IIB. There can be no negotiation with the preferred bidder before this approval has been granted.

The value-for-money report enables the institution's accounting officer/authority to assess the findings and recommendations of the PEC. The value-for-money targets established in the feasibility study are very important for enabling the institution to confirm that the proposed preferred bidder is likely to give the institution a value-for-money outcome. The institution's value-for-money targets will have been clearly conveyed to bidders in the RFP, the bids will have been evaluated against these specific criteria, and the preferred bidder will have achieved the highest scores when the PEC evaluated the bids against the criteria given in the RFP.

**A summary of these factors and the PEC's conclusions and recommendations constitutes the value-for-money report.**

**Take note**

The approval for the value-for-money report is not an approval of the procurement process or its outcome, but rather an indication that the preferred bidder provides the best value for money for the project, and that the bid is affordable by the institution.

### Contents of the value-for-money report

Covering memo from the project officer to the accounting officer/authority, applying for IA:IIB

**Section 1: Introduction**
- the project's background
- the bid process to date
- the evaluation criteria
- the evaluation approach
- the PEC.

**Section 2: Evaluations**
- compliance and completeness
- a brief summary analysis of each bid according to the criteria set in the RFP:
  - functionality
  - BEE
  - PPP fee
- a marked up PPP agreement
- consolidation of the analyses
- choice of preferred and reserve bidder.

**Section 3: Affordability assessment**
- Set out the cost of preferred and reserve bids to the institution, for example, if further budgetary commitments are required.

**Section 4: Value-for-money assessment**
- This section must link directly to the value-for-money targets set in the feasibility study. The institution must show how the preferred and reserve bids meet these targets.

**Section 5: Risk transfer assessment**
- Set out the risk matrix of the preferred and reserve bidders, linked to the PEC's analysis of the mark-up of the PPP agreement, highlighting any matters of concern.

**Section 6: Bid deficiencies**
- Set out and assess any bid deficiencies in the preferred bid and anticipated difficulties in resolving them during the negotiations stage.

**Section 7: Negotiation plan**
- The negotiation plan must set out the negotiation strategy, listing the issues to be resolved.

## Step 5: Get Institution Approval: IIB

Only when IA:IIB has been given, may the preferred and reserve bidders be announced and negotiations with the preferred bidder begin.

The reserve bidder is crucial. The institution may require the preferred bidder to be replaced if the bidder withdraws or if negotiations compromise value for money as approved in IA:IIB.

## STAGE 3: NEGOTIATIONS

| Steps |
|---|
| Step 1: Preparatory work<br>Step 2: Initial contact<br>Step 3: Engagement<br>Step 4: Ongoing management<br>Step 5: Achieve resolution<br>Step 6: Final bargaining<br>Step 7: Formal settlement |

The institution has now been granted IA:IIB, enabling it to proceed to the negotiation of the PPP agreement with the preferred bidder.

It may be necessary to negotiate certain aspects of a preferred bidder's proposal. Negotiations are an integral part of the procurement phase. They are a process, not an event. Successful negotiations culminate in awarding the contract, concluding the procurement phase, and starting implementation.

The output of the negotiations must be a PPP agreement with all ancillary agreements complete.

The basic principles of successful negotiations are:

- focus on interests, not positions
- separate the people from the problem
- do your homework – know what you want
- be fair – build trust
- be prepared to commit
- be an active listener
- respect the other side's priorities
- be prepared to compromise
- leave it aside – resolve immaterial sticking points later
- never feel that the preferred bidder has a monopoly position
- don't feel pressured to take a decision at any given time
- never be emotional and reactive.

### Step 1: Preparatory work

- Outline the objectives of the negotiations to bridge gaps, eliminate confusion, and formally clarify terms and conditions to structure a durable agreement that protects the interests of both parties.
- Prepare a schedule for starting and concluding the negotiations within the bid validity period.
- Establish a negotiation team. It should be made up of members of the PEC to ensure continuity.

- Define skill mix requirements.
- Assign a lead negotiator. This person does not have to be the project officer, but must take guidance from the project officer and must have direct access to the accounting officer/authority via the project officer. The lead negotiator should be empowered to make most decisions, but should report to the accounting officer/authority for approval on crucial decisions which involve risk transfer, value-for-money and affordability implications different from those envisaged in the feasibility study.
- Strategise.
- Anticipate the private party's positions and interests.
- Carefully review bid evaluation reports, proposal implementation plans and performance schedules, and financial analyses and projections.

### Step 2: Initial contact

- Invite the bidder, in writing, to a meeting.
- Specify the issues to be discussed, the institution's suggested approach to resolution, and any additional information required for the meeting.
- Provide the date, time, location, and expected duration.
- Request the names and positions of each person on the bidder negotiation team.

### Step 3: Engagement

- Begin the first negotiation meeting by making opening statements and introductions and by clarifying roles and responsibilities.
- Create a climate of trust and co-operation.

### Step 4: Ongoing management

- Continually define issues and set an agenda for each meeting.
- Identify shared, compatible, and conflicting interests.
- Jointly refine agendas to include action items and keep the meetings on track.
- Carefully manage the tracking of evolving documentation by:
  - appointing an assigned drafter
  - tracking, numbering and dating changes on every document being negotiated
  - keeping the main draft in read-only format and creating password access to documents.

## Step 5: Achieve resolution

- Generate options for settlement.
- Concentrate first on common and easily resolved issues to establish a collaborative process.
- Assess the options.
- Choose an option by using objective criteria based on concepts, standards or principles that the parties believe in and which will not be under the control of either party alone.

## Step 6: Final bargaining

Final bargaining requires compromises so that both parties see the settlement as the best possible one under the circumstances. Be prepared to trade between value-for-money target items as the commercial details of the project become clearer. This can be done as long as the overall value-for-money outcome for the institution is still being achieved.

The institution must strive to make the funding agreements (if any) unconditional. Conditions precedent (sometimes termed suspensive conditions) in the PPP agreement should be limited as far as possible. They refer to matters that need to be resolved, failing which the agreement, if signed, is not enforceable. There may be some conditions that cannot be met before signing the PPP agreement, but these must be minimised.

## Step 7: Formal settlement

- Record details of negotiated points and resolutions.
- Agree on how any potential conditions precedent can be minimised.
- Agree to the required follow-up in management of the PPP agreement (of outstanding issues that do not impact on negotiated settlement) and the timeframe.
- Establish a preliminary schedule for signing the PPP agreement.

# STAGE 4: GET INSTITUTION APPROVAL: III AND SIGN THE PPP AGREEMENT

**Treasury Regulation 16 to the PFMA**

***16.6 Contracting PPP agreements – Treasury Approval: III***

*16.6.1 After the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution concludes a PPP agreement, that accounting officer or accounting authority must obtain approval from the relevant treasury –*

*(a) that the PPP agreement meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer as approved in terms of regulation 16.4.2 or as revised in terms of regulation 16.4.4;*

*(b) for a management plan that explains the capacity of the institution, and its proposed mechanisms and procedures, to effectively implement, manage, enforce, monitor and report on the PPP; and*

*(c) that a satisfactory due diligence including a legal due diligence has been completed in respect of the accounting officer or accounting authority and the proposed private party in relation to matters of their respective competence and capacity to enter into the PPP agreement.*

*16.6.2 The treasury approval referred to in regulation 16.6.1 shall be referred to as Treasury Approval: III.*

The institution's assessment of whether to grant IA:III should be a continuation of the value-for-money report. The project officer must provide the accounting officer/authority with the final terms of the PPP agreement, and contingent liabilities that the institution carries in terms of the agreement, and the plan for managing the PPP agreement. IA:III will be awarded if it can be shown that the PPP agreement achieves the objectives of the institution in the PPP and that the project officer has set up the systems necessary for its management.

A PPP agreement management plan[26] is required in the IA:III submission. The plan is one of the pillars of effective PPP agreement management and the project officer will need to ensure that adequate time and resources are devoted to its preparation long before this stage.

26. *Module 4: Managing the PPP agreement* gives guidance on preparing the PPP agreement management plan.

The plan should have been devised during the RFP stage and finalised during the negotiation stage. The preferred bidder should be closely involved in the development of the PPP agreement management plan during the negotiation stage and this involvement should be used to develop good working relations between the two parties. The plan must be based on the PPP agreement. Should there be any dispute, the PPP agreement will be the definitive document.

### The PPP agreement management plan

The main functions of the PPP agreement management plan are:

- to demonstrate to the relevant treasury the institution's capacity to enforce the PPP agreement effectively
- to provide a strategic management tool to guide the contract
- to manage activities that the institution and the private party will undertake during each stage of the project
- to clarify the key roles and responsibilities of the institution during each stage of the project and identify the resources that the institution will require to undertake these responsibilities
- to provide information on the contract management approach and contract management arrangements which can be pursued to assess the performance of the institution in discharging its obligations and responsibilities as set out in the agreement and government legislation, such as the PFMA
- provide a vehicle for addressing issues that cannot be dealt with adequately in the PPP agreement (such as attitudes and behaviour).

The PPP management plan should also deal with the following:

- a statement of the principles that will govern the partnership
- the aims, objectives and long-term goals of the partnership
- the benefits to both the institution and the private party of a successful partnership
- details of private party corporate governance arrangements
- the partnership management structure
- knowledge management systems
- succession plans for key members of the PPP agreement
- the management team
- a communication framework
- mechanisms that will enable the partnership to be assessed

After the initial PPP agreement management plan has been prepared for IA:III, the approach should be updated regularly in consultation with the private party, to respond to changing policies, tourism sector requirements, environmental standards, technology and user expectations.

## Signing the PPP agreement

The accounting officer/authority of the institution can sign the PPP agreement with the private party once IA:III has been granted.

# TEMPLATES

## TEMPLATE 3

### Request for proposals: Tourism PPP opportunity for an SMME

This template RFP is the standardised format that the institution should use to invite bidders to submit proposals for a small cap tourism PPP. Refined appropriately by the institution for each PPP opportunity, it will provide bidders with information about the project, the institution's requirements, how bids must be completed and submitted, and how bids will be evaluated.

## TEMPLATE 4

### Drafting notes to the small cap tourism PPP agreement

These are the notes that help the institution draft the tourism PPP agreement appropriately for each PPP opportunity.

## TEMPLATE 5

### Draft small cap tourism PPP agreement

This template tourism PPP agreement for small cap tourism PPPs constitutes National Treasury's standardised provisions for the contractual relationship to be established between the institution and the private party in a small cap tourism PPP. It must be adapted by the institution for each specific PPP, using the guidance given in Template 4.

## TEMPLATE 6

### Small cap tourism PPP advertisement

This template advertisement should be used by the institution to invite bidders to submit proposals for a particular PPP.

## TEMPLATE 7

### Code of conduct

This template code of conduct is signed by all members of bid evaluation panels appointed by the institution to evaluate tourism PPP bids. The aim of the code is to ensure that members exercise sound judgement, act with exceptional standards of moral integrity and abide by all applicable laws.

## TEMPLATE 8

### Declaration of interest form

This template declaration of interest form is filled out by the institution and signed by all members of bid evaluation panels appointed by the institution to evaluate tourism PPP bids. Its aim is to make sure that there are no conflicts of interest and that the integrity of the bid evaluation is protected.

## TEMPLATE 9

### Bid evaluation scoresheet

Bid evaluation panel members each fill out the scoresheet provided in the template, which must be adapted by the institution to reflect the precise bid evaluation criteria specified in the RFP.

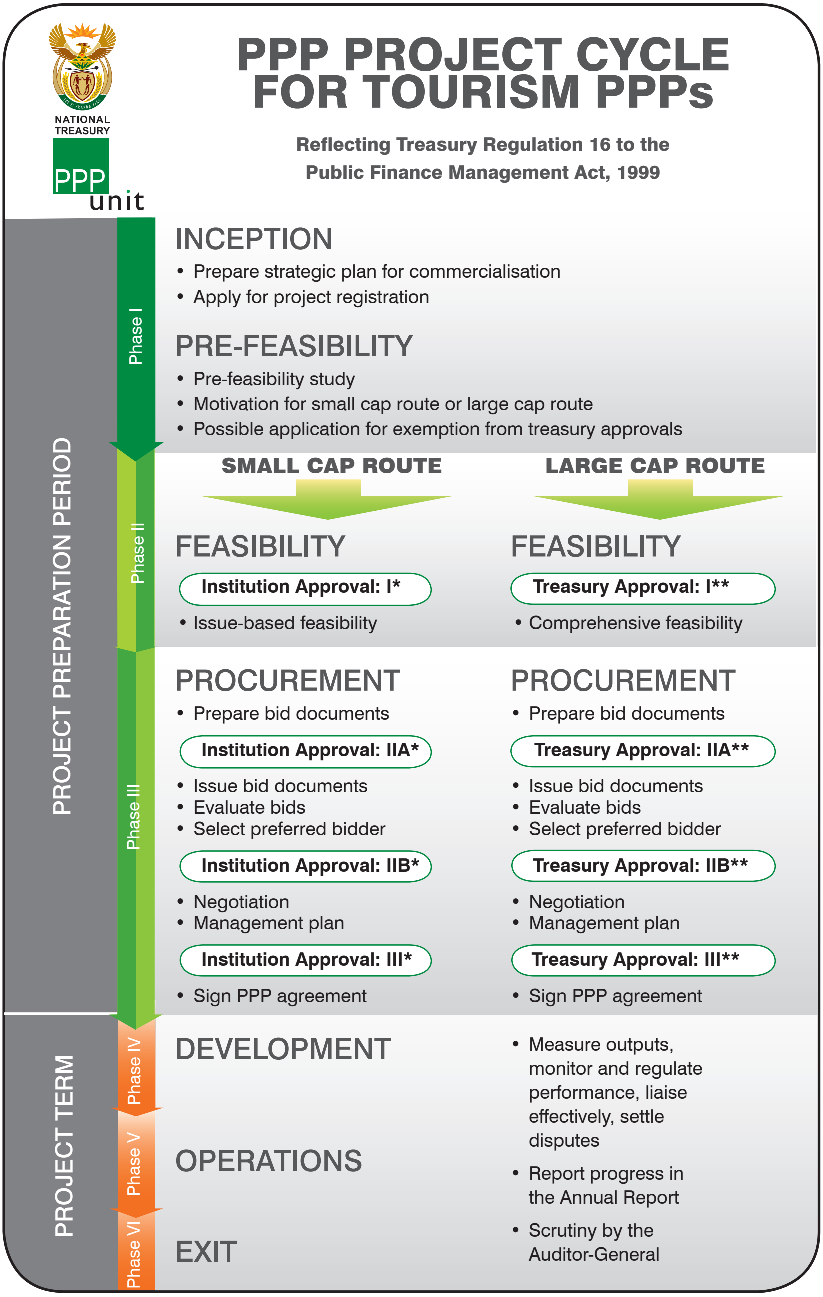
## TEMPLATE 10

### Bid evaluation spreadsheet

This is an Excel document, which enables the institution to total all the individual scores of the bid evaluation panel members.

# NATIONAL TREASURY
# PPP TOOLKIT FOR TOURISM

## MODULE 3:
## FEASIBILITY STUDY AND PROCUREMENT PHASES FOR LARGE CAP TOURISM PPPs




*** If exemption from treasury approvals is granted.**
**** Unless exemption from treasury approvals is granted.**

# ABOUT THIS MODULE

**Module 3 guides institutions in the feasibility study and procurement phases of large cap[1] tourism PPPs, which are generally more risky and complex and which require significantly more capital investment than small cap tourism PPPs.**

The approach is largely consistent with the stages and steps set out in *Module 2: Feasibility study and procurement phases for small cap PPPs*. However, there are areas in which more detailed feasibility work needs to be done and greater safeguards need to be built in to both the procurement process and the terms of the PPP agreement for both the private party and the institution.

**Take note**

This module is written on the assumption that exemption from obtaining the relevant treasury approvals has not been granted and that the institution will need to get the various approvals from the relevant treasury. But an institution could run an in-house approval process for a large cap project if it has shown that it has the capacity and experience to do so during its exemption application in the pre-feasibility phase in *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*.

**Annexures and templates**

Each annexure and template for this module, listed on the contents page, can be downloaded, in Microsoft Word or Excel, from the CD accompanying the Toolkit and from the PPP Unit's website, www.ppp.gov.za. A summary of what is contained in each annexure and template is provided at the end of the module, or the relevant section within the module.

1. Used throughout the Toolkit for easy reference, the colloquial term 'small cap' stands for 'small capital expenditure' and 'large cap' stands for 'large capital expenditure'.

# CONTENTS

# APPOINTING A TRANSACTION ADVISOR

**Extract from Treasury Regulation 16 to the PFMA**

***16.1 Definitions***

***"transaction advisor"*** *means a person or persons appointed in writing by an accounting officer or accounting authority of an institution, who has or have appropriate skills and experience to assist and advise the institution in connection with a PPP, including the preparation and conclusion of a PPP agreement.*

## What is a transaction advisor?

At project inception, Treasury Regulation 16.3.1(d) requires that the accounting officer/authority must appoint a transaction advisor, if the relevant treasury so requests.

The transaction advisor is typically a consortium of professional consultants, from one or more firms, who work as a team. The transaction advisor contracts with the institution through the lead firm. All other members of the consortium participate either through subcontracts with the lead firm or via a joint venture arrangement.

The transaction advisor does all the detailed financial, technical, black economic empowerment (BEE) and legal work required to prepare the institution for a PPP agreement. In the feasibility study phase covered later in this module, the transaction advisor will complete a feasibility study to a standard that will enable the institution to obtain Treasury Approval: I (TA:I) if required. In the procurement phase covered later in this module, the transaction advisor will assist the institution to prepare for and implement the PPP procurement process, including preparing all necessary documentation to enable the institution to obtain treasury approvals IIA (TA:IIA), IIB (TA:IIB) and III (TA:III), and complete a close-out report and case study.

The transaction advisor may also be required to provide PPP agreement management support to the institution after the PPP agreement has been signed, particularly in the development phase and the early years of the operations phase.

## When is a transaction advisor necessary?

If an institution has the necessary capacity, skills and experience in running tourism PPPs it may not be necessary to appoint a large, multi-skilled transaction advisor. Some institutions may only need to supplement their capacity with consultants who will advise on specific aspects. This will reduce the load on the institution's budget, but requires good internal management. The institution and the relevant treasury will have discussed the capacity requirements during the PPP inception phase[2], and the relevant treasury will have given direction on what advisors are appropriate[3].

However, a good transaction advisor brings advantages to the institution, such as:

- experience in similar transactions
- protection against very costly, avoidable mistakes
- access to national and international best practice
- technical strength to the institution's team
- greater investor confidence
- an opportunity for skills development among government officials
- a single point of accountability for getting the job done well and on time
- an opportunity to grow the number of black consultants in the South African PPP market.

The professional skills and experience of the transaction advisor to a tourism PPP are typically in: tourism, contract and administrative law, PPP procurement management, project management, BEE, and in all other disciplines relevant to the tourism sector within protected areas.

The transaction advisor has to be sufficiently competent to cost-effectively complete the work necessary for the institution to meet the stringent requirements of each treasury approval, up to and including financial closure at the end of the procurement phase.

Getting maximum benefit from a transaction advisor requires good management and effective leadership and oversight by the institution, from defining the transaction advisor's tasks to choosing the transaction advisor, and throughout its engagement with the institution. Without this, the transaction advisor's work can be misdirected, misunderstood and may even amount to fruitless and wasteful expenditure by the institution. The project officer and the project team play a pivotal role in managing the transaction advisor on a day-to-day basis.

The PPP transaction advisor should be viewed as an investment and not simply as an expense, and as key to assisting the institution to secure the best PPP deal possible.

2. See *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*.
3. For more detail see *Module 1: PPP inception and pre-feasibility phase for tourism PPPs:* PPP Inception and *Module 2: Feasibility study and procurement phases for small cap tourism PPPs*: Hiring consultants.

The institution should therefore balance its need to obtain top quality assistance with its need to keep the overhead costs of preparing the PPP in check. The aim is to get optimal value for money from the transaction advisor[4].

This involves some important prerequisites:

- The accounting officer/authority should mandate the project officer to manage the work of the transaction advisor directly, make certain binding project decisions, and drive the project on a day-to-day basis on behalf of the institution.
- The terms of reference for the transaction advisor should be precise and focused on clear deliverables.
- In line with government's constitutional mandate for the hiring of services, the procurement of the transaction advisor must be fair, equitable, transparent, competitive and cost-effective, and must apply preferential procurement for BEE.
- There should be one lead advisor in the transaction advisor who is responsible for managing the deliverables of each member of the consortium and who reports daily to the project officer.
- Avoid separately retaining or subsequently hiring additional consultants for the project apart from the transaction advisor. This can create conflicting work streams and accountability, and may be detrimental to both the quality and the timing of the project.
- If there are already consultants working for the institution on the project before its registration with the relevant treasury as a potential PPP, consider either bringing their contracts to closure before advertising for the transaction advisor or transferring their services to the management of the transaction advisor in a manner clearly articulated during the procurement of the transaction advisor.
- The terms of the contract between the institution and the transaction advisor should incentivise quality completion of milestones according to the PPP project cycle, on time and within the budget.
- The project team should meet regularly with the transaction advisor to receive progress updates, provide project direction, resolve impasses, and ensure ongoing institutional input and support.

---

4. For guidance on securing the services of a transaction advisor, the institution is advised to consult National Treasury's *PPP Manual*, *Module 3: PPP Inception*. The template terms of reference for transaction advisors provided there should, however, be adapted specifically to the scope of work set out in the Toolkit. The *PPP Manual* also explains how institutions can apply to National Treasury's Project Development Facility to get bridging finance for PPP transaction advisory services.

**Take note**

Template consultant advertisements, terms of reference and contracts are not provided in the Toolkit for two reasons:

- Institutions have their own internal procurement rules and procedures for contracting once-off professional services.
- The use of consultants must be oriented to the specific requirements of each PPP as identified during the pre-feasibility study phase.

PPP TOOLKIT FOR TOURISM

# FEASIBILITY STUDY PHASE
# FOR LARGE CAP TOURISM PPPs

**Extract from Treasury Regulation 16 to the PFMA**

### *16.4 Feasibility study – Treasury Approval: I*

*16.4.1 To determine whether the proposed PPP is in the best interests of an institution, the accounting officer or the accounting authority of that institution must undertake a feasibility study that –*

*(a) explains the strategic and operational benefits of the proposed PPP for the institution in terms of its strategic objectives and government policy;*

*(b) describes in specific terms –*

*(ii) in the case of a PPP involving the use of state property, a description of the state property concerned, the uses, if any, to which such state property has been subject prior to the registration of the proposed PPP and a description of the types of use that a private party may legally subject such state property to;*

*(c) in relation to a PPP pursuant to which an institution will incur any financial commitments, demonstrates the affordability of the PPP for the institution;*

*(d) sets out the proposed allocation of financial, technical and operational risks between the institution and the private party;*

*(e) demonstrates the anticipated value for money to be achieved by the PPP; and*

*(f) explains the capacity of the institution to procure, implement, manage, enforce, monitor and report on the PPP;*

*16.4.2 An institution may not proceed with the procurement phase of a PPP without prior written approval of the relevant treasury for the feasibility study.*

*16.4.3 The treasury approval referred to in regulation 16.4.2 shall be regarded as Treasury Approval: I.*

*16.4.4 If at any time after Treasury Approval: I has been granted in respect of the feasibility study of a PPP, but before the grant of Treasury Approval: III in respect of the PPP agreement recording that PPP, any assumptions in such feasibility study are materially revised, including any assumptions concerning affordability, value for money and substantial technical, operational and financial risk transfer, then the accounting officer or accounting authority of the institution must immediately –*

*(a) provide the relevant treasury with details of the intended revision, including a statement regarding the purpose and impact of the intended revision on the affordability, value for money and risk transfer evaluation contained in the feasibility study; and*

*(b) ensure that the relevant treasury is provided with a revised feasibility study after which the relevant treasury may grant a revised Treasury Approval: I.*

# INTRODUCTION

A feasibility study needs to be authentic and thorough. It is the basis on which government makes an important investment decision, not just a bureaucratic requirement. Regardless of the term and scale of a project, there are long-term implications and a great deal at stake.

Institutions need approval from the relevant treasury at various points in all four phases of the PPP project cycle. TA:I is for the feasibility study, Phase II of the PPP project cycle.

The feasibility study must demonstrate whether the PPP:

- is affordable
- transfers appropriate technical, operational and financial risk to the private party
- gives value for money.

TA:I allows the institution to enter the procurement phase of the PPP project cycle.

The feasibility study is a critical part of the project preparation period of the PPP project cycle for the following reasons:

- It provides information about costs (explicit and hidden) and gives an indication about whether costs can be met from within institutional budgets without other activities being disrupted.
- It allows for the identification, quantification, mitigation, and allocation of risks.
- It prompts institutions to consider how the project will be structured.
- It identifies constraints which may cause the project to be halted.
- It ensures that the project is developed around a suitable business plan.

**Take note**

A feasibility study is an evolving, dynamic exercise. While it is done primarily to decide whether or not to proceed with a PPP, it is also used throughout the procurement phase for continuous risk tracking, to determine value for money at TA:IIB and TA:III, and to check affordability at TA: III.

Figure 3.1 shows the stages of the large cap tourism PPP feasibility study. The text that follows explains in detail the steps and deliverables for each stage. Working through the nine stages – following the steps closely and providing the deliverables – will ensure that the institution provides the relevant treasury with all the information it requires to assess the proposed project for TA:I. It will also prevent project delays caused by incorrect or missing information.

**The feasibility study is required for all tourism products to be pursued as PPPs and builds on the work undertaken by the institution in the strategic plan for commercialisation[5] and the pre-feasibility study[6].**

### The PPP feasibility study in relation to broader planning

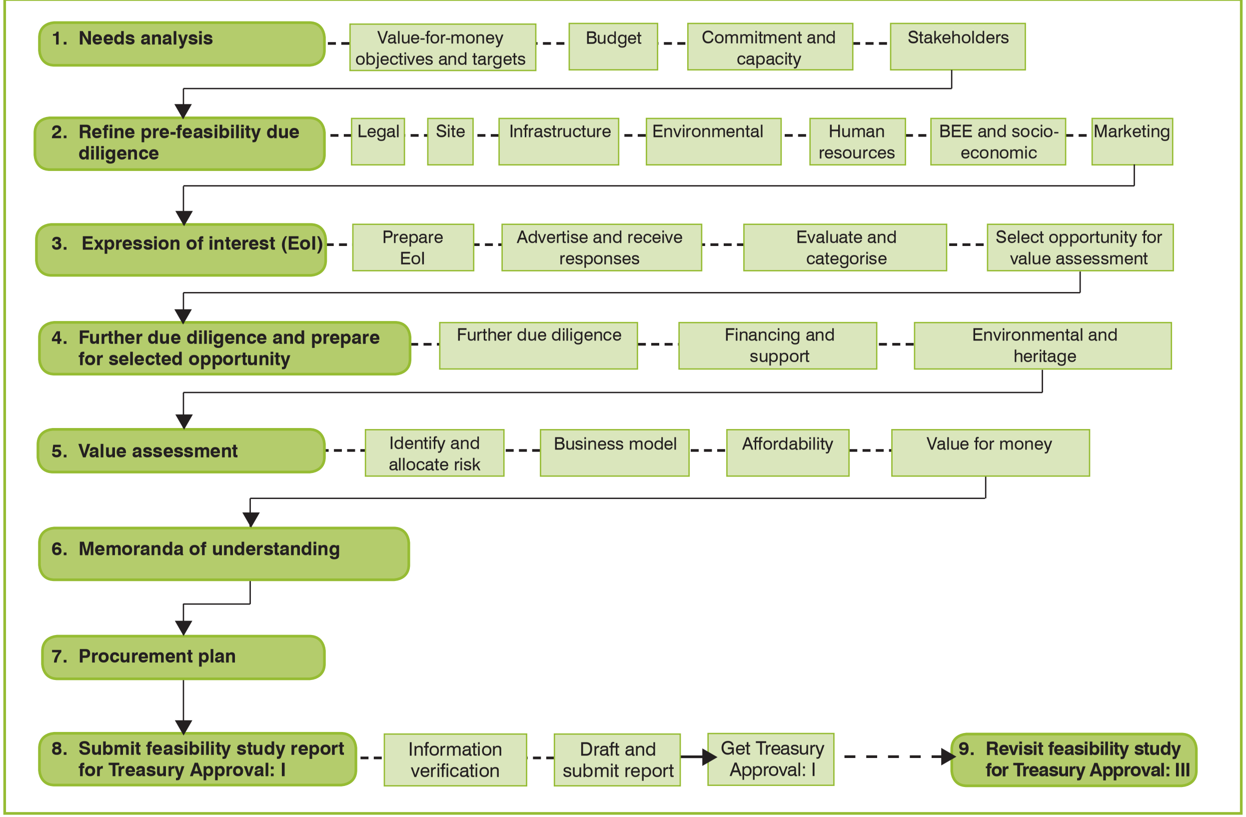
The Toolkit outlines the planning work that the institution typically needs to do for each PPP project. But it is possible that much of the information would have been gathered and the consultation done or already under way for the institution's broader reserve management and resource utilisation planning. There must be consistency in all the institution's planning initiatives and a lot of work can be done simultaneously for a wide range of planning purposes. For example, data can be collected and stakeholders consulted on a range of issues at one time. It may therefore only be necessary to collate, update, double-check and interpret existing information for the preparation of a PPP. However, it is important to avoid cutting and pasting outdated, irrelevant data and to make sure that all data is current, accurate and used appropriately. For PPP feasibility study purposes, the information and analyses must be presented in the format outlined in the Toolkit to ensure comprehensive preparation of the PPP project.

### There are nine stages to the feasibility study phase for large cap tourism PPPs

Stage 1: Needs analysis
Stage 2: Refine pre-feasibility due diligence
Stage 3: Expression of interest
Stage 4: Further due diligence and prepare for selected opportunity
Stage 5: Value assessment
Stage 6: Enter into memoranda of understanding with development finance institutions, other financing institutions and support organisations
Stage 7: Develop the procurement plan
Stage 8: Draft and submit feasibility study for Treasury Approval: I
Stage 9: Revisit feasibility study for Treasury Approval: III

5. See *Module 1: PPP inception and pre-feasibility phase for tourism PPPs:* PPP Inception: Stage 4.
6. See *Module 1: PPP inception and pre-feasibility phase for tourism PPPs:* PPP Pre-feasibility.

Figure 3.1: Stages of the large cap feasibility study



# STAGE 1: NEEDS ANALYSIS

The needs analysis reviews and refines the work done to date on the value-for-money objectives, budget, capacity and stakeholders. The aim is to clarify these key issues.

The institution's needs will have been considered and written up in the strategic plan for commercialisation during the inception phase[7] and further refined in the pre-feasibility phase. During this stage of the feasibility study, these needs are to be thoroughly interrogated and refined.

**Needs analysis**

Part 1: Review and refine the value-for-money objectives and targets
Part 2: Identify and analyse the available budget(s)
Part 3: Demonstrate the institution's commitment and capacity
Part 4: Key stakeholder analysis

## Part 1: Review and refine the value-for-money objectives and targets

The value-for-money objectives are a key driver of the PPP. The strategic plan for commercialisation and the pre-feasibility report should be critically reviewed to confirm that the value-for-money objectives and targets identified in the pre-feasibility study correctly reflect the project's needs and the institution's strategic objectives.

The value-for-money objectives should:

- be written to reflect clearly the institution's strategic objectives as provided in the strategic plan for commercialisation
- be prioritised
- be written as outputs (the outputs will be high-level outputs at this stage. After the expression of interest (EoI) stage the value-for-money outputs will be further refined to suit the identified opportunities)
- have measurable targets
- have achievable targets.

The performance standards identified in the pre-feasibility study should also be reviewed and modified to make sure that they support the value-for-money targets.

7. See *Module 1: PPP inception and pre-feasibility phase for tourism PPPs:* PPP Inception: Stage 4.

**Input versus output**

**In conventional procurement, the institution takes on design, construction and operational risk by specifying the detailed inputs.**

**In PPP procurement, the institution specifies its overall output requirements, but detailed design, construction and operational risks are for the private party to manage.**

For example, in the conventional procurement of a building, the institution prepares detailed design specifications (inputs) and issues these in a tender. Once the contract is awarded, the institution supervises the contractor's construction closely to ensure compliance with the tender specifications. The institution is responsible for the design and planning of the project, all statutory requirements (such as environmental and heritage approvals and town planning regulations), and any costs that may arise through unforeseen circumstances or elements that were omitted from the tender. The contractor is only responsible for what is covered by the tender specifications, or anything that could reasonably have been foreseen. Specifying inputs typically gives rise to cost overruns and delays, excludes the possibility of alternative innovative solutions, and runs the risk that the building's design may not match the requirements of the operator.

**Defining outputs requires the institution to apply its mind to *what* needs to be achieved, as opposed to *how* it will be achieved.**

PPP projects are driven substantially by output specifications providing for optimal financial, technical and operational innovation and risk assumption by the private party.

For example, PPP specifications for the private use of state property for commercial purposes would not give bidders the institution's design for a lodge. Rather, the institution would specify the development parameters at the site (environmental limits, location, access arrangements, utilities provision), the performance standards (service quality, the condition of infrastructure at the end of the contract) and the socio-economic outcomes required (local impact, BEE).

## Part 2: Identify and analyse the available budget(s)

The project-specific budget needs must be refined from the work undertaken in the strategic plan for commercialisation and the pre-feasibility study.

This analysis should:

- confirm the available budgets for the project, ensuring that staff, infrastructure, equipment and professional services costs have been calculated and provided for in the medium-term expenditure framework
- discuss any consolidation of budgets, namely drawing funds from various budgets into a consolidated budget which will be ring-fenced for the project. These budgets may be internal to the institution but may also involve identifying budgets in other institutions, for example, the Department of Public Works (DPW)

- list the line items currently in the institution's budget for costs which may no longer be incurred as a result of the proposed project. For example: security and fence maintenance may become the private party's responsibility in a PPP in a protected area. The institution would no longer incur these costs, which then represent potential savings.

**As affordability is a cornerstone of the feasibility study phase, the budget for the project will be revisited at various stages in the feasibility study.**

## Part 3: Demonstrate the institution's commitment and capacity

The institution's ability to manage, process, evaluate, negotiate and implement the project must be clearly demonstrated. The capacity needs of the project should be assessed based on the strategic plan for commercialisation and the pre-feasibility study.

Information must be provided about the project officer and project team and the transaction advisor. With regard to the project officer and project team, the names of the institution's project team members must be provided, as well as their roles in the project, their relevant skills, brief CVs, and the budget available for project management. With regard to the transaction advisor, the members' names must be provided, along with their roles in the project, their relevant skills, brief CVs, and the budget available for transaction advice.

In the capacity assessment the following should be addressed:

- the lines of decision-making within the institution, particularly between project officer, senior management and the accounting officer/authority
- any areas where a lack of capacity exists, in the project team or in the transaction advisor
- a plan for how the lack of capacity will be addressed throughout the project process
- the plans for skills transfer from the transaction advisor to the project team at various stages of the project
- how staff turnover will be managed.

## Part 4: Key stakeholder analysis

The list of project stakeholders identified in the strategic plan for commercialisation must be reviewed and a consultation plan developed.

The following detail is required for this part of the needs analysis:

- **Identify all the key stakeholders, which may include:**
  - those within the institution
  - other government departments
  - other spheres of government
  - organised labour
  - third parties
  - the public, particularly local communities and land owners.

- **Describe the nature of each relationship and the project's impact on each stakeholder**

  In particular, identify impacts on the funding, resources or processes of the key stakeholders. This is important for establishing where the service will begin and end.

- **Include a consultation plan**

  The plan should detail how and when consultation will take place during the project preparation period and how the views and contributions of the key stakeholders will be incorporated into the project. Also include the results of any consultation the institution has already undertaken, and any required concurrence obtained from government stakeholders (such as permission from the South African Heritage Resources Agency (SAHRA) to demolish a building).

# STAGE 2: REFINE PRE-FEASIBILITY DUE DILIGENCE

**The due diligence in the pre-feasibility and feasibility phases of a tourism PPP is undertaken to identify all the key issues that may influence the viability of the project.**

Issues affecting both the institution and private parties wishing to enter into a PPP agreement should be identified. This information is required so that when the institution presents the potential opportunities to the market in the EoI the private sector knows the facts. In addition, the due diligence information will inform the value assessment (Stage 5 of the feasibility study phase) and if TA:I is awarded, the information will be used to write up the procurement documentation.

### Overview of due diligence work undertaken in the pre-feasibility phase

The pre-feasibility due diligence focused on the following[8]:

- **strategic planning context:** this assessed the project against the institution's strategic priorities and the prevailing national, provincial and local development priorities (for example, district integrated development plans)
- **value-for-money targets:** the institution's value-for-money targets were clearly set out
- **legal and site review:** this confirmed tenure and rights to enter into PPP agreements and identified any specific issues requiring a detailed feasibility study
- **budget review:** this confirmed that the institution has sufficient budget to prepare and manage the PPP agreement
- **indicative or preliminary market review:** this entailed a desk-top study and an informal 'test the water' exercise to get private sector input
- **environmental pre-scoping to screen for fatal flaws:** this identified fatal flaws that could prevent the PPP or that would require major mitigating interventions. It also identified any specific environmental issues needing further assessment in the detailed feasibility study
- **stakeholder analysis:** this identified the main stakeholders and confirmed their support for the proposed project. It also identified any specific issues requiring a detailed feasibility study
- **personnel and human resources:** the human resource implications of the project were assessed and any specific issues requiring a detailed feasibility study were identified
- **infrastructure assessment:** this identified any strategic and support infrastructure required for the project to succeed and quantified the development and maintenance costs of this infrastructure and responsibly specified the funding
- **equipment assessment:** this listed and priced all existing and additional equipment which might be required
- **BEE and social development issues:** a package of support measures was identified to ensure that the BEE objectives could be met

8. See *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*: PPP Pre-feasibility: Stage 1.

- **performance standards:** the performance standards expected from the private party and the institution were identified
- **risk allocation:** the inherent risks were identified and allocated. These could include risks in financing, facility development, the development of strategic bulk infrastructure, the operation and maintenance of facilities, marketing and reservations, the environmental regulatory framework, and compliance.

The refined due diligence stage entails the following:

- The pre-feasibility due diligence is reviewed and issues for further assessment are identified. (In the pre-feasibility phase most of the areas requiring additional due diligence work should have been identified.)
- Further due diligence work is done on identified issues. (The extent of the due diligence is guided by risks to be assumed by the institution and the private party. The risks need to be suitably addressed to provide certainty for the institution and confidence for bidders that the institution is a capable partner. The primary results of the due diligence will be given to interested parties in Stage 3.)

**Refined project due diligence**

Part 1: Legal issues
Part 2: Site enablement issues
Part 3: Infrastructure issues
Part 4: Environmental and heritage issues
Part 5: Human resources issues
Part 6: BEE and socio-economic issues
Part 7: Marketing issues

## Part 1: Legal issues

Legal issues not resolved during the feasibility study phase of the PPP project cycle create significant delays at the negotiations stage of the procurement phase. In some cases they have led to significant obstacles to concluding PPP agreements.

Although a preliminary legal analysis was done during the pre-feasibility phase, a comprehensive legal due diligence of the range of preferred opportunities must now be done to make sure that all foreseeable legal requirements are met for the development of the project. Although it may be costly to undertake a comprehensive legal due diligence of all aspects of the project, it is ultimately worthwhile. Early legal certainty directly affects project costing in the value assessment, reduces PPP bidding costs for all parties, and avoids using costly time on these issues in the negotiations phase.

Common legal issues that arise concern use rights and regulatory matters. However, the institution's legal advisors should conduct a thorough due diligence on all the legal issues that have a bearing on the project.

### Use rights of the institution

Get legal opinion about whether the institution has the authority to enter into a PPP agreement in respect of the specific site.

**Take note**

PPPs may not be used to limit an institution's responsibility to perform its functions. Even though a tourism PPP gives the private party the commercial use of the state property, the institution remains accountable for ensuring that such state property is appropriately protected against forfeiture, theft, loss, wastage and misuse.

### Regulatory matters

It can generally be assumed that the institution performs its mandated functions within the regulations. However, if the project being considered is a greenfields project and the institution has never done this kind of project before, a regulatory due diligence will be necessary.

Investigate any regulatory matters that may impact on the private party's ability to deliver as expected.

These may include:

- tax legislation
- labour legislation
- environmental and heritage legislation
- foreign exchange legislation
- legislation governing the use of certain financial instruments
- competition legislation
- sector regulations, such as airport licensing, health standards and building codes.

## Part 2: Site enablement issues

Where a physical site is involved, indicate whether the institution intends to specify a preferred site, nominate a definite site, or leave the question of location open to bidders. The 'test-the-waters' exercise conducted in the preliminary market review of the pre-feasibility study should provide the institution with the information to make this decision.

If the institution nominates a particular site it will need to identify, compile and verify all related approvals. The purpose is to uncover any problems that may impact on the project's affordability and value for money, or cause regulatory delays at implementation.

Establish the following:

- land ownership
- land availability and any title deed endorsements
- whether there are any land claims
- whether there are any lease interests in the land.

Appoint experts to do surveys of:

- zoning rights and town planning requirements
- municipal integrated development plans (IDPs)
- geo-technical matters.

## Part 3: Infrastructure issues

It is necessary to do a due diligence assessment of the infrastructure currently available on the site. This may include access roads; fences; services, such as water, electricity and sewage; buildings; equipment; vehicles; and general facilities. In addition, the cost of upgrading and building new infrastructure for the range of PPP opportunities should be estimated. This is a very preliminary estimate and after selecting the opportunity for value assessment – at the end of the EoI stage – a more detailed estimate will be developed for that opportunity.

## Part 4: Environmental and heritage issues

Experts should be appointed to further assess the environmental and heritage issues identified in the pre-feasibility phase. The implications for the opportunity identified should be fully assessed and further consultation with the competent authority may be necessary. After this, the institution should decide on the extent and timing of the environmental impact assessment (EIA), heritage impact assessment (HIA) and public participation processes. Follow the guidelines set out in the introductory section of the Toolkit[9].

## Part 5: Human resources issues

The work undertaken to date must be refined for the selected PPP opportunity. If necessary, labour relations experts should be appointed to develop the potential human resources solutions in compliance with labour legislation and with the necessary employee consultation.

---

9. See *Getting started : 2. Clarifying some key policy issues:* Environment and heritage.

## Part 6: BEE and socio-economic issues

The institution needs to reconcile its BEE objectives with the *Tourism BEE Charter and Scorecard*, 2005, adapted as recommended in the Toolkit[10]. The feasibility phase allows the institution to mould certain indicators – specifically those concerning local community impact – according to its strategic objectives for the project.

The BEE scorecard for the project must be finalised during the feasibility study phase, taking account of the following factors:

- the prevalence and strength of black enterprise within the sector and locally (this includes tourism investors, tourism operators and suppliers of relevant goods and services)
- whether any communities within the vicinity of the proposed PPP have organised channels for achieving communal benefits, such as community trusts, and their strength. If such organised channels are not yet set up or are in the process of being set up, it will be difficult, if not impossible, to require a mandatory community trust equity partner in the private party to the PPP agreement.
- financing, skills development, legal and organisational support facilities available to black enterprises in the sector and to community trusts
- municipal government's local economic development plans
- the best- and worst-case scenarios in the proposed business model for the project (see Stage 5: Part 2), testing the impact of the various BEE targets on the model
- whether certain BEE targets need to be phased in over the project term.

**Take note**

Two BEE scorecards are given in the *Tourism BEE Charter and Scorecard*, 2005[11]. Large cap tourism PPPs that go out to procurement from the date of publication of the Toolkit until the end of 2008 will be expected, at least, to meet the targets set out in the Tourism BEE Scorecard, 2009. Large cap tourism PPPs that go out to procurement from the start of 2009 will be expected, at least, to meet the targets set out in the Tourism BEE Scorecard, 2014. Further discussion on BEE in this Toolkit will use the Tourism BEE Scorecard 2009, but the institution must update this to the Tourism BEE scorecard 2014 from the start of 2009.

---

10. See *Getting started: 2. Clarifying some key policy issues*: Black economic empowerment in tourism PPPs: BEE scorecards for tourism PPPs.
11. See *Getting started: Clarifying some key policy issues*: BEE Scorecards for tourism PPPs.

The feasibility study phase must also finalise memoranda of understanding (MoUs) with development finance institutions (DFIs), other financing institutions and support organisations which were identified and contacted during the pre-feasibility study phase. The MoUs will confirm the nature and extent of their involvement, which is vital to successful BEE outcomes. (Guidance on concluding these MoUs is given in Stage 6[12].)

## Part 7: Marketing issues

It is at this early stage that the institution needs to have a clearly developed marketing plan that will ensure that the opportunities being offered through the proposed PPP process are known and understood by those who might be interested.

The institution should develop its marketing strategy in line with its commercialisation strategy. For example, if it is seeking to maximise financial returns it should advertise nationally in the hope of attracting national bidders. Radio and internet marketing can complement print advertisements.

At the very least, the institution should ensure that:

- advertisements are placed in one national newspaper
- the EoI, request for qualifications (RFQ) and request for proposals (RFP) are available on the institution's website and on National Treasury's PPP website (www.ppp.gov.za)
- advertisements are circulated through relevant provincial and national tourism business associations and tourism investment promotion agencies.

Marketing the PPP project should not be limited to placing advertisements in newspapers and on websites, other avenues should be explored too. Opportunities to network with chambers of commerce, tourism investment agencies, and tourism business associations should be seized whenever they arise.

**Take note**

Direct approaches to the private sector through tourism business associations, informing them of the PPP opportunity, are a good way to encourage bids. The project officer should take proactive steps to do this in a way that cannot be deemed prejudicial to others. Doing radio interviews, speaking at conferences, and writing feature articles for the press are all important ways of building awareness about the PPP opportunities that are being offered. It is also a good idea to keep in touch with the private parties canvassed or interviewed in the pre-feasibility preliminary market review, as well as any parties that may have submitted relevant unsolicited proposals, and refer them to the RFP.

12. See 'Template 1: Memorandum of understanding between the institution and financing institutions' and 'Template 2: Memorandum of understanding between the institutions and support organisarions'.

## STAGE 3: EXPRESSION OF INTEREST

An EoI is an effective tool for assessing the level and type of market interest in revenue-generating projects where the broad parameters of the potential PPP are known. In this case, an EoI helps to determine investor interest in tourism developments in a conservation area.

The rationale for an EoI at this early stage is to enable the institution to make an informed decision, based on likely market interest, about whether to proceed with the project. It would not make sense for the institution to spend time and resources on detailed project preparation only to discover that no bidders were interested in the project.

The EoI must be more than a public advertisement calling for responses. It should consist of an advertisement and an EoI document. It is, however, not a procurement document like an RFQ, which is used to limit the number of final bidders. If a bidder does not participate in the EoI stage, it can still – and is encouraged to – bid in the procurement phase.

**Steps**

Step 1: Prepare the expression of interest
Step 2: Advertise and distribute the expression of interest and receive responses
Step 3: Evaluate the submissions and categorise the suggested business opportunities
Step 4: Select the optimal business opportunity for the value assessment

### Step 1: Prepare the expression of interest[13]

The document must include:

- the background and purpose of the EoI, including the aims of the institution and a brief description of the project site and possible PPP opportunities, as well as a clear indication of the project as a potential PPP to be procured in accordance with Treasury Regulation 16 to the PFMA
- a full description of the site, confirmation of the institution's legal rights to enter into a PPP there, as well as a description of any commercial uses to which the site is being or has been put, the infrastructure, supporting infrastructure, any environmental constraints, any human resources issues, any local/neighbouring community concerns, and any other relevant information

13. See 'Template 3: Request for expression of interest: Tourism PPP opportunity'.

- information on current tourism trends
- the possible commercial opportunity(ies) that could be developed at the site
- the institution's initial value-for-money targets for a PPP at the site
- information on the briefing session and site visit
- information that the respondents must supply in a standard format, including contact information, company profile and experience in the tourism industry, and information describing their interest in a PPP opportunity at the site
- the process to be followed in the EoI and subsequent communication with respondents (with timelines)
- an appropriate disclaimer of institution liability and reservation of rights.

### Step 2: Advertise and distribute the expression of interest and receive responses[14]

- Identify and invite potential investors to participate in the EoI (investors could include local businesses and entrepreneurs, established players in the market, local communities, and any parties that submitted unsolicited proposals).
- Advertise as widely as possible.
- Hold briefing sessions where the opportunities are presented and the EoI and procurement processes are explained.
- Distribute the EoI at the briefing sessions, via the institution's and National Treasury's websites and via e-mail.

### Step 3: Evaluate the submissions and categorise the suggested business opportunities

The suitability of the suggested business opportunities submitted in the EoIs should be evaluated and categorised by the project team and the transaction advisor. Where possible, the DFIs, other financing institutions and support organisations consulted by the institution in the pre-feasibility study phase should be involved in this evaluation to consider the development funding needs of the various suggested business opportunities.

---

14. See 'Template 4: Advertisement for expression of interest: Tourism PPP opportunity'.

### Step 4: Select the optimal business opportunity for the value assessment

The institution should select the business opportunity for the project site which best meets the value-for-money objectives that it developed in its commercialisation strategy. For example, one interested party may propose a five-star, exclusive, luxury lodge, while another may propose a wilderness safari camp for school children. Consider the implications of these different business opportunities for meeting the institution's value-for-money objectives.

The optimal business opportunity will be considered further in the value assessment stage (Stage 5). The institution could select more than one potential business opportunity and, where appropriate, it may be preferable to do so. But it is important to note that doing value assessments on numerous business opportunities will affect the cost of the transaction advisory services in Stage 5.

## STAGE 4: FURTHER DUE DILIGENCE AND PREPARE FOR SELECTED OPPORTUNITY

### Further due diligence

Further due diligence work is only required if the selected business opportunity has specific aspects that were not fully addressed in the due diligence. These issues are only expected to be minor points of clarification and confirmation.

### Financing and support arrangements

Negotiations between the institution and the DFIs, other financing institutions and support organisations should be able to advance so that there is greater clarity about the bankability of the project and what its additional support requirements and options may be. MoUs for the different financing packages and support facilities must be signed by the end of the feasibility study phase (see Stage 6) and assistance to bidders packs included in the procurement documentation for use by bidders.

### The environmental and heritage process

In the refined due diligence the institution decided on the extent and timing of the EIA, HIA and public participation processes to be undertaken in terms of the applicable laws. The next steps can now be taken if appropriate, based on the optimal business opportunity for the PPP.

# STAGE 5: VALUE ASSESSMENT

This is the pivotal stage of the feasibility study. It enables the institution to determine whether entering into a PPP agreement is beneficial to the institution.

The three tests prescribed by Treasury Regulation 16 to the PFMA are:

- Is it affordable?
- Does it appropriately transfer risk from the institution to the private party?
- Does it provide value for money?

### The three main criteria for value assessment

**Affordability.** This is whether the cost of the project to the institution over the whole project term can be accommodated in the institution's budget, given its existing commitments and the anticipated income from PPP fees.

**Risk.** This is inherent in every project. In a tourism PPP the financing, design, construction and operational risks inherent in the tourism business are typically managed by the private party. There will be a number of risks, however, that the institution may be best placed to manage, for example, the management of game. The treatment of risk is a key aspect of the value assessment.

**Value for money.** This means that the PPP agreement results in a net benefit to the institution, defined in terms of cost, price, quality, quantity, or risk transfer, or a combination of these.

**Take note**

A proposed PPP project is **unaffordable** if the institution cannot cover its costs incurred in the maintenance of the assets and management of the PPP agreement from the PPP fee received. If a project is unaffordable it undermines the institution's ability to deliver other services and it should not be pursued. Affordability is a driving constraint in all PPP projects. In tourism PPPs, market demand is thus critical to being able to secure the PPP fee necessary to make the project affordable. While economies of scale may be achievable with a number of PPP projects managed by one project officer, the affordability test must be satisfied to achieve TA:I.

## Demonstrating affordability

A business model is developed and the project's viability is assessed against the institution's available budget and expected revenue, namely, the PPP fee. This assessment must focus on the expected costs and revenue that the institution will incur if the PPP is successful. The institutional component of the business model must cater for the costs to the institution. These include meeting its obligations in the PPP, managing the PPP agreement, and managing those risks retained by the institution.

**If the project is not affordable, the institution may modify its obligations and risk assumptions, or it may have to abandon the project.**

The expected PPP fee paid by the private party is determined by modelling the costs and revenue for the private party. The market review conducted in the pre-feasibility study and the submission received from the EoI stage will be the primary information sources indicating the revenue potential for the private party. The viability of the PPP is dependent on the private party making sufficient return on its investment.

### The value-for-money test

The value-for-money test is conducted when bids are evaluated. But an initial indication of whether the PPP will provide value for money is a requirement for TA:I.

In revenue-generating PPPs where state land is to be made available for commercial purposes a good measure of value for money is to compare the current use of the property with the expected revenue and the strategic benefits that can be obtained from the proposed PPP.

| Value assessment |
| --- |
| Part 1: Identify and allocate risks<br>Part 2: Develop the business model<br>Part 3: Assess affordability<br>Part 4: Assess value for money |

## Part 1: Identify and allocate risks

A risk matrix was developed in the pre-feasibility phase[15]. This matrix must be refined for the specific opportunity identified in the EoI process. The same risk categories can be used as those in the pre-feasibility phase. However, attention should be focused on the operational risks, which could include human resources and public liability aspects. The categories in the standardised risk matrix in National Treasury's *PPP Manual*[16] can also be used as a checklist to ensure that all the major risks have been identified and assessed. The standardised risk matrix has been written for a service delivery type PPP, but the principles and categories can readily be adapted to tourism PPPs.

15. See *Module 1: PPP inception and pre-feasibility phase for tourism PPPs:* PPP Pre-Feasibility: Stage 1: Figure 1.3.
16. See National Treasury's *PPP Manual: Module 4: PPP Feasibility Study*: 'Annexure 4: Standardised PPP risk matrix'.

The risk matrix should summarise the various risks predicted for the identified opportunity and indicate to which party the risk is allocated. The associated cost of each risk is not required, but the level of risk should be assessed. The matrix should also give an indication of the proposed risk mitigation strategy for dealing with each particular risk.

The risk identification and allocation is best done in a workshop setting with the institution's project team, transaction advisor, the relevant treasury's PPP unit's project advisor, advisors from the DFIs, other financing institutions and support organisations, and project officers from other institutions with tourism PPP experience.

**Steps**

Step 1: Review the risks identified in the pre-feasibility phase
Step 2: Assess the impact of the identified risks
Step 3: Identify strategies for mitigating the risks
Step 4: Allocate risk
Step 5: Construct the risk matrix

## Step 1: Review the risks identified in the pre-feasibility phase

In the pre-feasibility phase, the primary risks were identified and allocated. The risks should now be reviewed in light of the selected business opportunity and the refined due diligence. Explore each risk category in detail and produce a list of risks that is specific to the project. Identify, allocate and show the mitigation measures for all material risks. Even if a risk is unquantifiable, it should be included in the list.

**Take note**

When identifying risks by referring to an established list it is possible that a key risk for the specific project may be left out by mistake (as opposed to simply not being a risk for the specific project). At the end of the risk identification workshop, go through the stages of the project from the signing of the PPP agreement to its expiry date, and consider various possible scenarios. Also watch out for duplicated risks.

## Step 2: Assess the impact of the identified risks

The impacts of a risk may be influenced by the following:

- **Effect.** If a risk situation occurs, its effect on the project may result, for example, in an increase in costs, a reduction in revenues, or in a delay, which, in turn, may also have cost implications. The severity of the effect of the risk also plays a role in the financial impact.

- **Timing.** Different risks may have different effects at different times in the life of the project. For example, construction risk will generally affect the project in the early stages. The effect of inflation must also be borne in mind.
- **Type.** Some risks are difficult to quantify accurately, for example, the impact of a flood or the impact of changing market demand for a tourism product could vary greatly in different circumstances.
- **Severity of the consequence.** It is essential to specify all the direct impacts for each category of risk. Each impact is thus a sub-risk, with its own cost and timing implications.

### Step 3: Identify strategies for mitigating the risks

A risk can be mitigated either by changing the circumstance under which the risk may occur or by providing insurance for it. Indicate what the risk mitigation strategy will be for dealing with each particular risk, and the associated cost of mitigation.

### Step 4: Allocate risk

Once risks have been identified and assessed, analyse which risks should be carried by the private party, which the institution should retain, and which will be shared. This will be reflected in the business model.

A risk should be carried by the party best able to manage it. The principle for allocating risk should be value for money. Where retaining a risk presents value for money for the institution, it should be retained.

### Step 5: Construct the risk matrix

The risk matrix consolidates all identified project risks and their impacts, and assigns them to a responsible party. They will need to be reflected in the business model. They will also be used and elaborated on during the procurement phase.

**A clear risk matrix is a fundamental component of PPP procurement. It is used to identify and track risk allocation throughout the drafting of the PPP agreement, the bidding process, PPP agreement negotiation, and financial closure.**

## Part 2: Develop the business model

Although the business activities are known and operated best by the private party, it is critical that the institution's project officer has a good, comprehensive understanding of the business opportunity being made available through the PPP. This is a vitally important element of ensuring that the project is viable and that it will be affordable and provide value for money to the institution.

## The business model

'Template 5: Business model', is a high-level assessment tool to be used by the institution to test the viability of the proposed large cap tourism PPP project. The model is designed so that the project officer is required only to input key assumptions, variables and base costs. The private party and institution's financial forecasts are then automatically populated, and a value-for-money output generated.

The template business model has been prepared using Microsoft's Excel spreadsheet. It provides elements of simplicity and protection from formula errors by locking selected cells and only allowing information to be captured in cells marked in yellow. The model also provides for a dual analysis of both a best- and worst-case scenario, to test the sensitivities of the key drivers.

The model does not address detailed financing structures, but provides for basic and traditional funding and recording the costs. The model requires a number of key cost and income drivers to be populated for both the private party and the institution.

**Take note**

Please note that, unfortunately, Excel does not allow for an easy adaptation of the project term. The model provided in the Toolkit is based on a 20-year term. If the institution wants to consider a different term, the transaction advisor must build a replica model using the required term.

Figure 3.2: The main components of the template business model

| Worksheet name | Purpose and principal features |
|---|---|
| Welcome | Provides links to the respective sections of the model. Sets out the key principles and the basis on which the model is designed. |
| Value-for-money report | A one-page printed report clearly shows the value-for-money outputs in spreadsheet style and a graph format, reflecting both best- and worst-case scenarios. |
| Value-for-money summary sheet | This sheet extracts a selection of financial results, key ratios, and other important decision-supporting criteria and presents them in a one-page summary. |
| Assumptions and key drivers | This is the core input page. The project officer will be able to populate only the yellow cells. |
| Private party models (best- and worst-case) | This sheet generates the private party cash flow statements, income statements and balance sheets, including the calculation of the net present values and internal rates of return for the forecast financial results, based on the criteria entered by the project officer on the assumptions and key drivers sheet. |
| Institution models (best- and worst-case) | This sheet generates the institution's cash flow statements, including the calculation of the net present values of return for the forecast financial results, based on the criteria entered by the project officer on the assumptions and key drivers sheet. |
| BEE procurement analysis (best- and worst-case) | This sheet enables the project officer to analyse the proportion of those cost components within the model that will be procured from BEE providers. |

## Figure 3.3: Steps the project officer follows to complete the template business model

**The 7Ps**

**Prepare**

- Establish a good understanding of the tourism industry and especially the market niche in which the anticipated PPP opportunity and product will be positioned.
- Get the results of the risk matrix (see Part 1).
- Get the EoI responses.
- Become familiar with the business model template format and basic requirements.

**Presumptions**

- Several significant assumptions will have to be made and, where applicable, these must be noted in the comments or other spaces provided.
- Don't assume anything. If you are unclear or have a different opinion about the treatment of selected matters, note your comments so that they can be considered.
- Consider the proposed project structure and the impact it will have on debt, equity gearing, and the starting date of the activities.
- Focus on the following key drivers, where subjectivity is a factor:
  - Rack rates and occupancy: be guided by:
    - the transaction advisor's tourism experience
    - the market review conducted in the pre-feasibility study
    - the EoIs received
  - Level of capital expenditure required to achieve rack rates.
  - Rates of inflation and interest rates.
  - Extent of operational costs – number of staff, operating overheads, marketing spend.

**Populate**

- Populate the yellow fields with the best estimate of the most likely assumptions and key drivers.
- Populate both the best- and worst-case scenarios.

**Proportion of BEE**

- Capture the proportion of BEE procurement, based on the Tourism BEE Scorecard.

**Preview of possible permutations**

- View how the model is taking shape.
- Begin the sensitivity analysis. Test all the possible permutations on the value-for-money outcome based on the assessment of how severe the impacts of the identified risks would be.
- Use the best- and worst-case scenario tool to model the impact of different levels of PPP fees charged to the private party on the overall value-for-money outcomes.
- Consider whether the key drivers on which the model is based would be acceptable to the private party. The primary factor is whether the minimum PPP fee required from the private party benefits both the institution and the private party over the term of the PPP agreement.
- Consider the affordability criteria. Within the current medium-term budget allocations, can the institution actually afford to manage the PPP until the PPP fee meets its costs of management? Often the institution's start-up costs are significant, and the higher (variable) PPP fees are only achievable after a few years of the private party's operations. Recovery of the institution's costs may therefore be spread over the medium to long term, so the break-even point needs to be determined. Although the net present value (NPV) may be positive over the full period, significant institutional shortfall may be present for the early years.

**Pin down and print**

- When the sensitivity analysis and the final population of the model with the most suitable criteria are finished, save and lock the report. It can be used as the feasibility study's base case.
- Print the reports and assessment for inclusion in the feasibility study report, for submission for TA:I.

**PPP promotion**

- If the business model clearly indicates a net benefit to the institution, the feasibility study can be concluded with a recommendation to proceed with the PPP.

## Useful considerations for developing the business model

### Variable and fixed costs, capital expenditure and income

The business model sets out the relationship between variable and fixed costs, capital expenditure and income. These relationships vary among tourism businesses positioned in different niches of the market, especially the capital cost to accommodation rate per night ratio. As the rate per night increases so the capital expenditure per bed increases. But as the rate declines, generally a larger number of beds are required to cover the fixed costs of running the operation. Obviously, the variable costs for cheaper accommodation will also decline as the level of service falls with cheaper accommodation. The variable costs per guest decline and the staff-to-guest ratio also declines.

The capital cost per bed can vary considerably. A number of factors can increase capital and/or operational costs.

One factor is the attributes of the site and the surrounding area. Sites in inaccessible areas will often require expensive access roads. Also, the provision of water and electricity and the disposal of waste may be difficult. Staff may need to be accommodated on site or bussed in daily.

The overall feasibility of the business model is checked in the internal rate of return (IRR) and shown as the net present value (NPV), providing an indication of the viability of the enterprise. These measures of viability take into account the cash flow of a project and deal with the time value of money. If the variables such as the occupancy, number of beds, rate charged and costs are changed, the IRR and NPV should change accordingly. This provides a good test of the sensitivity of the business to variations in input. For example, if the cost of labour increases by 10 per cent and the IRR declines by more than 10 per cent it would suggest that the business is sensitive to changes in the cost of labour and the private party and the institution may need to be aware of this and assess the risks it may pose to the project. Changing the percentage of gross revenue payable as the variable PPP fee will also have an effect on IRR, giving the institution insight into how the private party may bid for the project.

The occupancy and achieved rate per night at which the business model becomes profitable (break-even point) is important. If this only occurs at high rates and occupancies, the project may not be viable and should be pursued with caution, if at all.

**Take note**

It must be stressed that the business model must be used with extreme caution: numbers cannot simply be doubled or halved; relationships between elements are not always linear, and expert advice from a financial advisor with good tourism business experience must be sought when developing the input variables to these models.

**The institutional component**

The typical costs for the institution must be shown. These would include salaries and wages for the project office, administrative and office costs, and professional fees. These are offset from the income derived from the PPP fee. The institution must carefully identify and quantify all costs and assumptions.

Institution costs also include the incremental costs of maintaining the fixed assets necessary to support the project. This is potentially the most difficult component to assess properly. Almost all protected areas have basic infrastructure, such as roads, tracks, entrance gates, staff facilities, jetties, and sewerage systems. Many of these will be required for the general conservation activities of the park and some will be used by general day visitors who may not be part of the anticipated PPP agreement. An attempt must be made to allocate properly the costs to the different functions. It is at this point that a critical assessment must be made of the need for additional infrastructure and the standards to which it must be developed and maintained to fulfil the institution's obligations in the PPP agreement.

For many PPPs, this support infrastructure must be maintained to an adequate standard for the use of the private party. This can be expensive, but simply passing the cost on to the private party may make the project unviable. This will have been assessed when developing the risk matrix, and any risks retained by the institution must be costed in this institution model. In some institutions these assets are maintained by the institutions themselves and are often built into the annual budgets and the medium-term expenditure frameworks. However, for many institutions, this function is often the responsibility of other government departments. It is particularly in these instances that the costs of maintaining the infrastructure are often overlooked and/or undervalued. Such assets require maintenance schedules in order to meet institutional obligations in the PPP agreement. It is here that PPPs can fail the 'affordability test'. But the risk of entering into a PPP agreement without defining or setting these standards and budgeting for their costs is likely to result in significant disputes later when assets deteriorate, impacting on the private party's use and rights over the area.

**The sensitivity analysis**

If, for example, the costs of roads and tracks and the maintenance of entrance gates (beyond the extent to which they are provided without a PPP) exceeds the projected PPP fee, the project may be unaffordable. The sensitivity analysis must help identify the ranges within which the PPP is affordable and provides value for money to the institution.

The sensitivity analysis is undertaken in this business model by changing key drivers and monitoring the resulting change in results.

Each model will have unique cost structures and revenue drivers, but the basic structure will be similar to the example given in the Toolkit. The model must have a number of different input and output variables. The output variables must be developed so that they provide an indication of what the institution's commercialisation objectives are. If these are to optimise revenue, at least one of the output variables must be net income to the institution.

Typically, income will change over time as private party revenue increases. Cash flows over time are a good measure of performance and can be shown either as an NPV or an IRR. Once these have been set up, the input variables can be altered to show what effect they have on the cash flow and the NPV and/or IRR.

Sensitivity analyses are, however, only as good as the model on which they are based: the more the model reflects reality, the better the output it will provide and the more valuable its use in testing the feasibility of the project, from a private party, an institutional, and a BEE point of view.

## Part 3: Assess affordability

| Steps |
|---|
| Step 1: Determine whether the private party model is viable<br>Step 2: Confirm that the institution can afford the PPP project<br>Step 3: Determine the affordability break-even point<br>Step 4: Set the minimum PPP fee |

### Step 1: Determine whether the private party model is viable

From the business model, determine whether the private party business is viable. If the business is not viable there will be no PPP.

Critical elements to assess are:

- the capital required to undertake the project
- operating expenses (including fixed and variable costs)
- break-even income for the private party
- whether the project is geared with debt finance – if so, interest rates need to be included
- the minimum PPP fee that makes the PPP affordable to the institution.

For break-even income it is necessary to assess the quantity of sales (such as bed nights or units) and the rate per unit to determine if they are feasible, given the existing products and asset base. The business must also be sufficiently large to be viable.

When assessing the viability for the private party it must be remembered that the private party expects a good return on its investment as generally there is no compensation paid for fixed improvements once the PPP agreement has expired. So the project will have to cover all costs and still provide the investor with a return. The higher the risk of the project, the higher this return must be; and it must be comparatively more attractive than it would be if the same project were developed on private land next door. Tourism projects, especially when a new product or brand is being developed, are considered high risk and the additional obligations imposed through the PPP process (many of which may not prevail on private land) add to this risk, so returns need to be favourable.

### Step 2: Confirm that the institution can afford the PPP project

From the institutional aspect of the business model, confirm whether the institution can afford the PPP project. Will the PPP fee meet or exceed the costs of managing the institution's obligations in the PPP agreement? The available budgets and PPP fee included in the model will help to determine this. If it is not affordable, refine the outputs, reduce costs, or revisit the allocation and cost of the risks in the business model.

Remember that it is not realistic to expect PPPs to cover all the costs of conservation within a protected area, especially from the start. Such an expectation will either result in no or limited market interest, or in over-priced bids that will have to be terminated or renegotiated a few years into operations when PPP fees cannot be met. Cost those expenses that will be incurred specifically for the purpose of managing the PPP (or bundle of PPPs) and the institution's obligations in relation to the PPP. Some of these may be partially met through current expenditure commitments that would be incurred by the institution with or without a PPP.

### Step 3: Determine the affordability break-even point

Businesses such as these often take several years to reach maturity and desired occupancy levels. As a result, the PPP fee payable may not reach its peak until this time. It must be considered that even if the value-for-money report shows a positive NPV decision, the institution must consider whether it can afford to bridge the shortfall for the period until it breaks even.

### Step 4: Set the minimum PPP fee

The minimum PPP fee must be set taking account of, and balancing, the viability and risk in the private party business model, and affordability from the institution's perspective. The minimum PPP fee will be declared to bidders in the RFP as the minimum fixed fee that the institution is able to accept for granting the private party the rights to the commercial use of the state property. Bidders will be asked to commit to this minimum PPP fee and to bid a variable PPP fee in addition. It is therefore critical that the minimum PPP fee is appropriately set in the feasibility study.

## Part 4: Assess value for money

The value-for-money test is an evaluation of whether the PPP agreement will result in a net benefit to the institution, defined in terms of cost, price, quality, quantity, risk transfer or a combination of these.

The value-for-money objectives are used to assess value for money. An appropriate target for each output specification must be identified and a minimum benchmark determined for each. The expected result for each output specification should then be compared to the benchmark. In revenue-generating PPPs that use state property, the benchmark may often be the current situation or a no-intervention option, where existing operations are shut down.

Figure 3.4: Example of a partial value-for-money assessment

| Priority | Value-for-money objective | Appropriate measure for value-for-money objective | Scoring | | | Achieved value for money (if B>A then yes) |
|---|---|---|---|---|---|---|
| | | | Current situation | Benchmark (minimum PPP fee required) (A) | Feasibility study shows (B) | |
| 1 | Generate additional income | PPP fee minus costs of managing the PPP | Nil | PPP fee needed to cover costs of managing the PPP: R250 000 per annum | Minimum PPP fee achievable: R400 000 per annum | Yes |
| 2 | Reduce poaching | Increase in yearly count of specific animal | 50 animals | 50 plus a 5% natural growth per year | 8% growth per year | Yes |

If some value-for-money objectives are not expected to be achieved while others are achievable, the institution must make a judgment call on the overall value for money it is likely to achieve. As a bottom line, the project must be affordable.

**Take note**

The concepts of viability, affordability, value for money and risk transfer are closely interrelated. Assessed together they make or break the case for a PPP. This is a key concluding section of the feasibility study.

# STAGE 6: ENTER INTO MEMORANDA OF UNDERSTANDING WITH DEVELOPMENT FINANCE INSTITUTIONS, OTHER FINANCING INSTITUTIONS AND SUPPORT ORGANISATIONS

A number of DFIs and other financing institutions can help private parties in financing tourism PPPs. It is necessary for the institution to consult with these DFIs and reach agreement on the terms of their involvement in the project as early as possible in the PPP feasibility study phase[17].

A number of support organisations can provide support to bidders during the PPP process. In addition, other support organisations can support the institution in the PPP[18]. These should have been consulted by the institution during the pre-feasibility study phase. Agreements must now be reached with them during the feasibility study phase on their actual commitment to assisting the private party and the institution with training, loan facilities, grants and so on[19].

In concluding MoUs with the DFIs, other financing institutions and support organisations it is important for the institution to get clarity and binding commitments on the financial incentives and packages that will be offered to the bidders. In addition, it would greatly increase the speed with which the organisations could process applications from bidders if they agreed to pre-qualify particular projects.

By bringing them in at an early stage:

- they are able to assess the quality of the project, which enables them to assess returns
- they are able to assess stakeholder involvement
- they can determine for themselves whether EIAs and other legal requirements have been conducted and complied with.

Where possible, the organisations should be persuaded to:

- participate in the pre-qualification of private parties for the PPP opportunity on offer, giving the institution comfort that when it later appoints a preferred bidder that bidder has a reasonable prospect of being able to secure the necessary finance
- commit an experienced project advisor to act as lead arranger for the preferred bidder, if required by the bidder, to make sure that the various sources of financing (from DFIs and others) can be packaged optimally for the project
- ensure the quick and efficient processing of bidders' applications for finance.

17. See 'Annexure 1: Financing packages through state institutions'.
18. See 'Annexure 2: Non-government support organisations'.
19. See 'Template 1: Memorandum of understanding between the institution and financing institutuons' and 'Template 2: Memorandum of understanding between the institution and support organisations'.

## STAGE 7: DEVELOP THE PROCUREMENT PLAN

The institution must be able to demonstrate that it is able, and has the necessary budget and capacity, to undertake a particular project.

In order to demonstrate this, the institution should implement a procurement plan, setting out:

- a project timetable for the key milestones and all approvals which will be required to take the project from TA:I to TA:III. Broadly, such milestones would include:
  - pre-qualification of bidders
  - choosing the preferred bidder
  - negotiations with the preferred bidder
  - signing the PPP agreement
- confirmation that sufficient funds in the institution's budget are available to take the project to TA:III and into implementation
- a list of any potential challenges to the project and a discussion of how these will be addressed by the project officer
- the best procurement practice and procedures for the project type and structure, taking into account process issues such as:
  - transparency: without transparency, political and legal challenges could sidetrack or kill the project
  - pre-qualification: in order to ensure that all bidders have the functionality, the financial strengths, and the BEE profile required to implement the project to the prescribed standards
  - due diligence: in order to ensure that all bidders receive the same access to information
  - the bidding system and evaluation criteria: in order to establish an unambiguous, competitive and fair procedure that builds confidence among bidders and prevents arbitrary decision-making by officials
- the governance processes to be used by the institution in its management of the procurement, especially for decision-making
- the project stakeholders and the extent of their involvement in the PPP, with particular emphasis on economically empowering local communities
- the project team, with the members' assigned functions, to assist in persuading the relevant treasury that the institution has the requisite skills and capacity
- categories of information to be made available to bidders and how such information will be developed, particularly information which should be disclosed to the bidders during the due diligence process
- a list of required approvals from within and outside the institution

- a graphic illustration of the procurement process that helps to plan, co-ordinate and track specific tasks in the project (a GANTT chart), including all approvals and work items necessary for getting these approvals (for procurement documentation as well as, for example, the land acquisitions and environmental studies to be procured by the institution)
- contingency plans for dealing with deviations from the timetable and budgets
- the bid evaluation process and teams, ensuring that, for purposes of transparency, all bidders are provided with the same information before the bid
- an appropriate quality assurance process for procurement documentation
- the means of establishing and maintaining an appropriate audit trail for the procurement
- appropriate security and confidentiality systems, including confidentiality agreements, anti-corruption mechanisms, and conflict of interest forms to be signed by all project team members[20].

**Take note**

The procurement plan is intended to be a living document and must be updated from time to time as the PPP progresses, milestones are reached, or extra information is obtained.

20. See 'Template 12: Declaration of interest form' and 'Template 11: Code of conduct'.

## STAGE 8: DRAFT AND SUBMIT FEASIBILITY STUDY REPORT FOR TREASURY APPROVAL: I

The feasibility study report must provide comprehensive information and a clear analysis of the feasibility study findings to enable the relevant treasury to assess the merits and viability of the project. All information in the report must be verified and compiled coherently into a single document. All documents that have informed the feasibility study, or which are referenced in the main text, and which are of decision-making relevance, must be included as annexures. To enable quick reference to the information contained in annexures to the report, a summary of the documents making up the annexures should be provided.

### Information verification

Where a transaction advisor is used, each member must sign off on its section of the feasibility study report. Where the institution has not appointed a transaction advisor, the institution's project team must do so. The project officer is responsible for signing off the completed document before submitting the feasibility study to the accounting officer/authority for submission to the relevant treasury.

### Draft and submit the feasibility study report

The report must be compiled as specified in the submission requirements listed in the box below. When complete and endorsed by the institution, the accounting officer/authority submits the feasibility study report to the head of the relevant treasury with an application for TA:I.

**Contents of the large cap tourism PPP feasibility study report**

**Submission requirements**

Covering letter from accounting officer/authority requesting TA:I in terms of Treasury Regulation 16.4

**Part 1: Introduction**

- executive summary
- project background
- approach to and methodology of feasibility study
- summary of annexures

**Part 2: Needs analysis**

- value-for-money objectives and targets
- available budgets
- institution's commitment and capacity
- key stakeholder analysis

**Part 3: Due diligence**
- legal issues
- site enablement issues
- infrastructure issues
- environmental and heritage issues
- human resources issues
- BEE and socio-economic issues
- marketing issues

**Part 4: Value assessment**
- risk transfer
- affordability
- value for money

**Part 5: General**
- MoUs
- procurement plan

**Part 6: Annexures**
- ensure that all documents referred to in the text are annexed, including the business model.

## Get Treasury Approval: I

If the relevant treasury is satisfied that the feasibility study meets the requirements of Treasury Regulation 16.4, it will grant TA:I, permitting the institution to proceed to the procurement phase.

# STAGE 9: REVISIT FEASIBILITY STUDY FOR TREASURY APPROVAL: III

Much can change between the time that the institution obtains TA:I and the time that TA:III is awarded. Treasury Regulation 16 to the PFMA provides for circumstances where information which was important to the feasibility study and which played a role in the awarding of TA:I changes.

#### Extract from Treasury Regulation 16 to the PFMA

***16.4 Feasibility study – Treasury Approval: I***

*16.4.4 If at any time after Treasury Approval: I has been granted in respect of the feasibility study of a PPP, but before the grant of Treasury Approval: III in respect of the PPP agreement recording that PPP, any assumptions in such feasibility study are materially revised, including any assumptions concerning affordability, value for money and substantial technical, operational and financial risk transfer, then the accounting officer or accounting authority of the institution must immediately –*

- *(a) provide the relevant treasury with details of the intended revision, including a statement regarding the purpose and impact of the intended revision on the affordability, value for money and risk transfer evaluation contained in the feasibility study; and*
- *(b) ensure that the relevant treasury is provided with a revised feasibility study after which the relevant treasury may grant a revised Treasury Approval: I.*

The requirement is thus not to revisit the feasibility study only before financial closure, but at any time that any assumptions may differ materially from the original assumptions.

The reason for this requirement is that if any of the information changes or is materially revised, this may have an adverse effect on the feasibility of the project, and may oblige the relevant treasury to re-evaluate whether the project still qualifies for TA:I.

# ANNEXURES AND TEMPLATES

## ANNEXURE 1

### Financing packages through state institutions

A number of financing packages are available through state institutions to support tourism development. This annexure provides details of some of the packages available. These include: investment grants; concessionary loan finance; empowerment funds; training grants and incentives; marketing support; and poverty relief funds.

## ANNEXURE 2

### Non-government support organisations

There are a number of skilled and experienced non-government organisations (NGOs) that support local economic development, poverty alleviation and the empowerment of the poor through tourism. Funded by aid agencies, they are able to provide support at low cost. This annexure lists some of these organisations.

## TEMPLATE 1

### Memorandum of understanding between the institution and financing institutions

This is a template agreement to be used by the institution to secure the collaboration of financing institutions for a tourism PPP. While this MoU is between the institution and the financing institution, the beneficiaries of any financing package are the investors in the PPP.

## TEMPLATE 2

### Memorandum of understanding between the institution and support organisations

This is a template agreement to be used by the institution to secure the collaboration of financing institutions for a tourism PPP. While this MoU is between the institution and the support organisation, the beneficiaries of any support package are potential bidders and the investors in the PPP.

## TEMPLATE 3

### Request for expression of interest: Tourism PPP opportunity

This template is the standardised format that the institution should use to ask interested parties to submit information about a possible PPP, which they might be interested in pursuing. The institution will use this information to assess the feasibility of the possible PPP.

## TEMPLATE 4

### Advertisement for expression of interest: Tourism PPP opportunity

This template advertisement should be used by the institution to invite bidders to submit an expression of interest in relation to a possible PPP.

## TEMPLATE 5

### Business model

This template Excel spreadsheet should be used for all the financial projections of a proposed PPP.

PPP TOOLKIT FOR TOURISM

# PROCUREMENT PHASE FOR LARGE CAP TOURISM PPPs

# INTRODUCTION

The feasibility phase is now complete. The relevant treasury must approve the institution's procurement documents before they are released. Treasury Regulation 16 to the PFMA states that it is the responsibility of the accounting officer/authority to design and manage the procurement process in a way that meets Treasury Regulation 16's requirements. The procurement process set out below complies with Treasury Regulation 16.

**Extract from Treasury Regulation 16 to the PFMA**

***16.5 Procurement – Treasury approvals IIA and IIB***

*16.5.1 Prior to the issuing of any procurement documentation for a PPP to any prospective bidders, the institution must obtain approval from the relevant treasury for the procurement documentation, including the draft PPP agreement.*

*16.5.2 The treasury approval referred to in regulation 16.5.1 shall be regarded as Treasury Approval: IIA.*

*16.5.3 The procurement procedure –*

- *(a) must be in accordance with a system that is fair, equitable, transparent, competitive and cost-effective; and*
- *(b) must include a preference for the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination in compliance with relevant legislation.*

*16.5.4 After the evaluation of the bids, but prior to appointing the preferred bidder, the institution must submit a report for approval by the relevant treasury, demonstrating how the criteria of affordability, value for money and substantial technical, operational and financial risk transfer were applied in the evaluation of the bids, demonstrating how these criteria were satisfied in the preferred bid and including any other information as required by the relevant treasury.*

*16.5.5 The treasury approval referred to in regulation 16.5.4 shall be regarded as Treasury Approval: IIB.*

**The are five stages to the procurement phase for large cap tourism PPPs**

Stage 1: Request for qualifications and Treasury Approval: IIA
Stage 2: Request for proposals and Treasury Approval: IIA
Stage 3: Evaluate bids, choose the preferred bidder and get Treasury Approval: IIB
Stage 4: Negotiations
Stage 5: Get Treasury Approval: III and sign the PPP agreement

# STAGE 1: REQUEST FOR QUALIFICATIONS AND TREASURY APPROVAL: IIA

| Steps |
| --- |
| Step 1: Prepare the RFQ |
| Step 2: Prepare the RFQ advertisement |
| Step 3: Submit the RFQ and advertisement to the relevant treasury for Treasury Approval: IIA |
| Step 4: Advertise and distribute the RFQ |
| Step 5: Evaluate the responses from interested parties |
| Step 6: Communicate with pre-qualified bidders |

## Step 1: Prepare the RFQ

**Take note**

These instructions are based on 'Template 6: Request for qualifications: Tourism PPP opportunity'. The structure set out below mirrors the template RFQ and provides further information on drafting an RFQ. The template RFQ should therefore be read with these preparation instructions.

### Introduction

**National Treasury considers it to be best practice for the institution to limit the number of private parties eligible to participate in large cap tourism PPP procurement by carrying out a pre-qualification exercise.**

This is the RFQ stage. It is a very important part of the PPP procurement process and must meet all the requirements of procurement legislation, regulations and best practice.

**Take note**

It may not be necessary to carry out an RFQ if the institution gets very few serious responses to an EoI. The institution could then proceed directly to the RFP. But there are disadvantages to excluding an RFQ stage: it means that bidders are not pre-screened for qualifying criteria; it can reduce the quality of bids and competition between best bidders because each bidder's chances of winning are diluted and they may be reluctant to incur high bid costs; and it can limit the interaction and opportunities for structured engagement between the institution and short-listed bidders to optimise the probability of achieving a 'fit' between bidders' preferences and the institution's needs and constraints.

The RFQ's objectives are to:

- select a limited number of bidders that are qualified – in terms of functionality, finance, and BEE – and have sufficient experience and commitment to prepare proposals and execute the project
- set out the rules of participation in the procurement process clearly and unequivocally
- disseminate information on the project.

This ensures that the successful bidder will not only have the qualifications to undertake the project, but the capacity to execute it effectively and timeously. Only pre-qualified bidders will be allowed to enter the RFP stage.

### Important considerations in the request for qualifications stage

- Pre-qualified bidders should be kept to a minimum of three and a maximum of five. Given the high cost to the private sector of submitting proposals, this will give pre-qualified bidders a reasonable chance of success while maintaining competition.
- Where only two or even one bidder pre-qualifies, the project is placed at a disadvantage because competitive bidding is essential for getting value for money. In principle, under South African procurement law – and subject to the institution's procurement policy – it is not necessary to cancel a bidding process if only one bid is made. However, this may be an indication that the project has not been well structured or conceived and the institution should observe the next point.
- Ascertain the likely reasons for the limited interest and revisit the RFQ documentation and the feasibility study to see what assumptions could be revised to increase market interest. Any changes in the feasibility study must be evaluated for changes in affordability, value for money and risk transfer.
- Secure a revised TA:I if any changes are made to assumptions in the feasibility study.
- Carry out a second pre-qualification exercise if the project assumptions have been changed materially and if a revised TA:I has been secured.
- If the feasibility study is not revised:
  - carry out the pre-qualification exercise again, with a wider circulation to attract a suitable number of bidders, or
  - continue with the limited number of pre-qualified bidders, but with a revised procurement plan.

## Contents of the request for qualifications

The RFQ document must enable bidders (referred to in 'Template 6: Request for qualifications: Tourism PPP opportunity' as 'interested bidders') to present the appropriate information about themselves. It must also clearly set out the RFQ evaluation criteria and processes. Any special requirements of the institution must be clearly stated, and particular RFQ provisions must be developed for each PPP.

Institutions are advised to consider which RFQ requirements are important value-for-money considerations for the project. Important requirements can be added to those given in the template RFQ.

The essential qualifying requirements must always be:

- financial capacity
- track record in tourism
- BEE.

**Section 1: Important general notes**
This section sets out the rules of the RFQ and gives the institution's contact details.

**Section 2: Purpose of the RFQ**
This section explains why the RFQ process is being undertaken.

**Section 3: The PPP opportunity**
This section explains what the project entails and why the institution believes a need exists for such a project. It provides details about the project site and the PPP opportunity, gives information about the feasibility study outcomes, and should give some information about the feasibility study it conducted.

It is important that the institution state what its value-for-money objectives are for the project.

**Section 4: Pre-qualification requirements**
The institution should list the types of information it requires about interested parties in order to assess their ability to undertake the project.

Each bidder should be requested to provide at least the following information:

- a detailed description of the structure of the special purpose vehicle (SPV) to be created to undertake the PPP project, including a list of the shareholders and their roles and responsibilities, the equity, ownership and directorships held by shareholders and/or other relevant parties
- evidence of its financial strength. Each shareholder must provide evidence of its solvency and confirmation must be given that the bidder's asset value exceeds an amount stipulated by the institution
- its track record in the tourism business. The institution must require the consortium members to provide proof of their experience in businesses similar to the tourism PPP project in question.
- its commitment to BEE. Each shareholder in the proposed SPV must be evaluated according to the *Tourism BEE Charter and Scorecard*, 2005. At least half the companies making up the SPV should, as a qualifying criterion for the bid, demonstrate that they are 'Good BEE Contributors' as defined by the *Tourism BEE Charter and Scorecard*, 2005. A certificate from an accredited BEE ratings agency should accompany each bidder's statement in this regard.

**Section 5: What must be included in the submission**
This section clarifies what the interested bidder must submit.

**Section 6: The date and place for delivering submissions**
This section gives bid delivery details.

**Section 7: How submissions will be evaluated**
This section outlines the bid evaluation process.

**Section 8: Bid timetable**
This section commits the institution to a time frame.

(See 'Template 6: Request for qualifications: Tourism PPP opportunity'.)

## Step 2: Prepare the RFQ advertisement

There are two components to preparing the RFQ advertisement:

- a marketing plan
- preparing the actual advertisement.

### The marketing plan

The initial marketing plan developed in the feasibility study phase should now be updated and finalised for the procurement phase (see Stage 2: Part 7 of the feasibility study phase). This is a crucial step, and the marketing plan must be actively implemented by the project officer in order to attract bidders to what are characteristically risky business ventures.

### The advertisement

The advertisement must inform interested bidders of the PPP opportunity and enable them to get detailed information easily about the project and the bid submission requirements[21].

## Step 3: Submit the RFQ and advertisement to the relevant treasury for Treasury Approval: IIA

Before issuing the RFQ, the project officer must have received the following approvals:

- the approval of the accounting officer/authority, who is responsible for implementing the institution's procurement policy under the PFMA
- any other approvals that may apply to the particular institution
- TA:IIA from the relevant treasury for the RFQ.

21. See 'Template 7: Advertisement for request for pre-qualification: Tourism PPP opportunity'.

**Take note**

Approaching the private sector directly to inform them of the PPP opportunity is a good way to encourage bids. The project officer should be proactive about this, while making sure that his or her actions are not seen to be in any way prejudicial.

The project officer should contact the private parties canvassed or interviewed in the pre-feasibility preliminary market review, as well as any parties that may have submitted relevant unsolicited proposals, and refer them to the RFQ.

Experience has shown that most market interest is generated through placing advertisements in national newspapers.

## Step 4: Advertise and distribute the RFQ

The method of RFQ distribution must follow the institution's marketing plan. This typically involves advertising the project in relevant publications, in the *Government Gazette*, on the institution's website and by making press statements about the project, and calling on interested parties to collect copies of the RFQ from the institution and/or download them from its website. It may include an open briefing session for potential bidders to introduce the project and to stimulate private sector interest.

## Step 5: Evaluate the responses from interested parties

Evaluation criteria must be based on the information requested from the interested parties. The criteria will vary from project to project. The process of evaluation should be conducted by the project team, supported by the transaction advisor, using a transparent pre-qualification procedure which entails:

- receiving and opening pre-qualification submissions
- checking and ensuring compliance with the institution's pre-qualification requirements
- selecting pre-qualified bidders based on compliance with the institution's pre-qualification requirements.

## Step 6: Communicate with pre-qualified bidders

When the pre-qualified bidders have been chosen, the accounting officer/ authority should communicate with both pre-qualified and unsuccessful bidders as soon as possible and publicly announce the pre-qualified bidders. The pre-qualified bidders should be called to a bidders' conference to inform them of the RFP processes and timelines that will follow.

## STAGE 2: REQUEST FOR PROPOSALS AND TREASURY APPROVAL: IIA

The RFP stage has two parts:

- Part 1: prepare the RFP document, PPP agreement and invitation letter (with the purpose of getting TA:IIA)
- Part 2: deliver the RFP invitation letter and engage with bidders.

### Part 1: Prepare the RFP document, PPP agreement and invitation letter

| Part 1: Steps |
|---|
| Step 1: Prepare the RFP document<br>Step 2: Prepare the draft PPP agreement<br>Step 3: Prepare the RFP invitation letter<br>Step 4: Get Treasury Approval: IIA |

#### Step 1: Prepare the RFP document

**Take note**

These instructions are based on 'Template 8: Request for proposals: Tourism PPP opportunity'. The structure mirrors the template RFP. The template RFP should therefore be read with these preparation instructions.

The RFP is a formal document which the institution distributes to pre-qualified bidders. The institution must draft the RFP based on its feasibility study report. The RFP must include the draft PPP agreement as an attachment. The institution must get TA:IIA (for the draft RFP, including the draft PPP agreement) before the RFP is issued.

## Contents of the RFP

1. Important general notes
2. The PPP opportunity
3. Assistance to bidders pack

4 & 5. Site and other due diligence

6. What must be included in the bid and how to submit it
7. The date and place for submitting bids
8. How the bids will be opened
9. Incomplete bids
10. How the bids will be evaluated and the preferred bidder chosen
11. Finalising the PPP agreement
12. Bid timetable

### 1. Important general notes

This gives basic information about the RFP, specifically stating which institution is issuing the tender, under what authority, and the tender number.

### 2. The PPP opportunity

This is a crucial section as it is this information that a bidder will use to decide whether to bid or not.

The institution should distil appropriate information from its feasibility study, focusing on the following key aspects:

- **an explanation of the project:** the project will have been defined during the feasibility study. Explain the background to the project, the institution's envisaged and desired outcomes, and what the bidder is expected to do (for example, upgrade and operate an accommodation facility)
- **a strategic planning context:** provide an explanation of the institutional environment in which the project is to take place. This includes the regulatory, physical, political and social environment, consistent with the applicable reserve management plan(s)
- **value for money:** specify the key objectives (and, where appropriate, the actual targets of each objective) of the PPP. The institution must specifically set its minimum PPP fee, based on how this was determined in the feasibility study business model (see Stage 5: Part 2 of the feasibility study phase). It must be emphasised that this fee is a key criterion for affordability and value for money.
- **a site review:** Provide as much detail as possible about the site and about issues that were identified during the pre-feasibility and feasibility phases.

These issues may cover:

- legislation
- environment
- stakeholders
- personnel and human resources
- infrastructure
- equipment
- performance standards
- transfer of risk
- other information (identified as being relevant during the inception and feasibility study phases).

### 3. Assistance to bidders pack

The RFP must contain the assistance for bidders pack on the DFIs, other financing institutions and support organisations that have committed themselves to assisting private parties in the project. The pack must contain brief summaries of the products on offer, the criteria for applying, during which phase of the PPP project cycle these products will be made available, and the names and contact details of individuals to contact for each product. Bidders should be encouraged to approach these organisations when compiling their bids.

**Take note**

Bidders must be advised that none of these state, NGO and donor support organisations or DFIs will participate in the institution's evaluation of bids, so there will be no conflict of interest.

### 4 and 5. Site and other due diligence

Before bids are submitted, bidder due diligence on large cap projects is of particular importance. Any unverified assumptions by a bidder at the submission stage may well jeopardise the whole procurement process. (These assumptions may then become negotiating tools, or levers for decreasing service levels.) Since very little, if any, institutional information is warranted by the institution, the bidders' due diligence must be thorough, and the RFP process must therefore enable bidders to go on site visits.

Depending on whether or not the institution will incur significant costs in managing a site visit (such as providing for helicopter flight inspections), the institution should specify what portion of this cost the bidder will have to bear. It should explain how bidders should pay and give other relevant logistical details. The RFP should include information about whether a data room will be provided and, if so, the time and place.

### 6. What must be included in the bid and how to submit it

Bids should be required to be submitted in two envelopes, in the format prescribed.

> **Why a two-envelope system?**
>
> The price component of a bid (the PPP fee payable to the institution) can influence the evaluation of the functional components of bids. A bid evaluation committee can sometimes overlook functional weaknesses when it is aware that the PPP fee offered is considerable. This can result in technically weak bids, with inflated PPP fee offers, being chosen as preferred bidders.
>
> **The two-envelope system enables the functional, BEE and price components of a bid to be evaluated separately, objectively and in accordance with the committed weightings. The Toolkit assumes the use of a two-envelope system and gives guidance accordingly.**
>
> If the institution chooses for good reason to procure through a single-envelope system, it should document its reasons for this. It must specify the mitigation measures it has taken to guard against bias in bid evaluation and ensure that the accounting officer/ authority has specifically approved this choice.
>
> **Sometimes the one-envelope system is appropriate**
> Although the two-envelope system is recommended, institutions are not prohibited from using a one-envelope system. The one-envelope system allows the PPP fee offer and the bidder's business model to be examined simultaneously. This is useful if there are sufficient checks and balances to protect against bias.

### Envelope 1

Envelope 1 must contain three copies of the following documents:

- information on the constitution of the private party SPV in the prescribed format
- the financing plans for the SPV in the prescribed format
- a BEE plan in the prescribed format
- a business and operational plan in the prescribed format
- a development and environmental plan in the prescribed format
- tax clearance certificates, dated within six months of the bid submission date, for each shareholder in the SPV
- a bid bond.

**Take note**

'Template 8: Request for proposals: Tourism PPP opportunity' includes annexures which set out the exact information on the above categories required from bidders. An institution should carefully consider and amend the annexures to ensure that they meet project requirements.

### Envelope 2

Envelope 2 must contain three copies of the following documents:

- the PPP fee offer in the prescribed format
- a marked-up copy of the PPP agreement, with explanations of the proposed amendments and all schedules completed.

**Take note**

These minimum requirements establish what constitutes a compliant bid. Bids which do not meet them (after requests for clarification or completion) should be rejected. However, the minimum requirements must not stifle innovation or be so onerous that otherwise solid bids are knocked out unnecessarily.

**Variant bids**

Making provision for variant bids can be useful in certain circumstances as it allows for private party innovation and possibly better value for money for the institution. The institution should consider this during its PPP feasibility study. However, variant bids can complicate bid evaluation, so they must be provided for carefully. If variant bids are to be allowed, the RFP must clearly specify that they must:

- be accompanied by a compliant bid
- meet the specified minimum requirements of the RFP
- show how each element differs from the compliant bid, what changes to risk allocation have been proposed, and what value for money it presents to the institution
- be clearly separable from the compliant bid and from other variant bids so that each variant bid can be evaluated in its own right.

Examples of variant bids may include a variant number of years for the PPP agreement, the creation of additional facilities, or alternative uses of existing infrastructure.

Institutions should consult National Treasury's PPP Unit on variant bids during the feasibility study phase and in the preparation of the procurement documents.

### 7. The date and place for submitting bids

This section sets out when and where the bids must be submitted.

### 8. How the bids will be opened

This section details when, where and by whom the bids will be opened. It sets out the steps that the evaluators will take in clarifying certain issues and checking that bids are compliant.

### 9. Incomplete bids

This section informs bidders about what action is taken if bids are incomplete or require clarification.

### 10. How the bids will be evaluated and the preferred bidder chosen

This section sets out how the institution intends to evaluate bids. It sets out the key evaluation criteria that the institution will apply in choosing a preferred bidder. The criteria mirror the contents of the bid and the information requested from the bidder. The institution cannot evaluate bids on the basis of information it did not request.

Each bid must be evaluated strictly in accordance with the bid evaluation criteria given to bidders in the RFP. While institutions will have varied these criteria to suit the different value-for-money targets in each particular project, the approach outlined here is provided as best practice to establish consistency and predictability for the large cap tourism PPP market. Institutions are advised to use this approach as the basis for devising the bid evaluation criteria in their RFP documents.

In the case of tourism PPPs:

- the **functionality** element constitutes the bidder's response to the prescribed requirements for financing plans, business and operational plans, development and environmental plans, and the risk matrix
- the **BEE** element constitutes the bidder's response to the RFP Tourism BEE scorecard
- the **price** element constitutes the PPP fee offered by the bidder in the prescribed format.

In compliance with the Preferential Procurement Policy Framework Act, 2000 (PPPFA) the BEE component of the bid will constitute 10 per cent of the bid evaluation weighting, with the price and functionality elements constituting the remaining 90 per cent.

The institution must decide, based on its value-for-money targets, how best to split the weighting between functionality and price. If competition for the PPP fee offered is deemed to be a strong driver of value for money for the institution, the price element should be weighted accordingly. However, experience has shown that if this element is weighted more heavily than the key functionality element, bidders tend to overestimate their projected turnover so that they can win the bid. This can result in the more realistic bids, often from more experienced tourism business operators, losing. This is not necessarily in the long-term best interests of the institution.

The formula by which the bids are evaluated is as follows:

Each of the three elements is scored out of 100 points, and the scores (if the minimum thresholds are achieved for functionality and BEE) are calculated into the bidder's overall score using the following formula:

**a***(functionality score/100) + **b***(BEE score/100) + **c***(price score/100) = **d**

where

**a** is the weighting for functionality (as chosen by the institution)

**b** is the weighting for BEE (10 per cent)

**c** is the weighting for price (as chosen by the institution)

**d** is the total score achieved by the bidder[20]

The functionality and BEE elements of the bid are submitted by the bidder in Envelope 1. The price element is submitted in Envelope 2.

**In the evaluation of Envelope 1, a minimum threshold of 65 per cent of the total functionality scorecard points must be achieved and a minimum threshold of 65 per cent of the total BEE scorecard points must be achieved before Envelope 2 is opened and evaluated.**

## Functionality

The functionality of each bidder will be evaluated according to the criteria and thresholds set in the functionality scorecard. The evaluation criteria of the functionality scorecard mirror the information requested in 'Template 8: Request for proposals: Tourism PPP opportunity'. The institution must ensure that its evaluation criteria correspond exactly to what is requested in the RFP.

## Figure 3.5: Example of functionality scorecard

| | Evaluation criteria | Scoring | Maximum sub-total | Maximum total |
|---|---|---|---|---|
| **1** | **Financing plan** | | | |
| 1.1 | Has adequate finance been secured by the bidder to implement the project? | Fully = 5<br>Partially = 3<br>Not at all = 0 | 5 | |
| 1.2 | Are the shareholders/participants in the bidder solvent and liquid? | Fully = 5<br>Partially = 3<br>Not at all = 0 | *5* | |
| 1.3 | Is the basic cash flow model submitted by the bidder viable? | Fully = 5<br>Partially = 3<br>Not at all = 0 | *5* | |
| | | | | ***15*** |
| **2** | **Business and operational plan** | | | |
| 2.1 | Is or will the bidding company be constituted as required in the RFP? | Fully = 3<br>Partially = 2<br>Not at all = 0 | *3* | |
| 2.2 | Is the proposed tourism product within the range of product types specified in the RFP? | Fully = 5<br>Partially = 3<br>Not at all = 0 | *5* | |
| 2.3 | Bidder's experience and track record in similar enterprises, in similar target markets | Excellent = 10<br>Acceptable = 5<br>Poor = 0 | *10* | |
| 2.4 | Bidder's commercial knowledge of the target market for this product, demonstrated in the rationale of the business plan | Excellent = 10<br>Acceptable = 5<br>Poor = 0 | *10* | |
| 2.5 | Do the bidder's planned operating standards and staffing qualifications meet those specified in the RFP? | Fully = 5<br>Partially = 3<br>Not at all = 0 | *5* | |
| 2.6 | Do the bidder's product branding plans comply with the institution's specifications in the RFP? | Fully = 2<br>Partially = 1<br>Not at all = 0 | *2* | |
| | | | | ***35*** |
| **3** | **Development and environment plan** | | | |
| 3.1 | Are all EIA requirements understood and planned for? | Fully = 4<br>Partially = 2<br>Not at all = 0 | *4* | |
| 3.2 | Is adequate provision made to recognise and report on cultural, archaeological and highly sensitive natural resource finds? | Yes = 4<br>Partially = 2<br>No = 0 | *4* | |
| 3.3 | Is the planned number of guest and staff beds/visitors and staff and operator vehicles within the limits given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | *4* | |
| 3.4 | Are there adequate plans for staff accommodation, health, safety and medical/ emergency evacuation? | Yes = 4<br>Partially = 2<br>No = 0 | *4* | |
| 3.5 | Are the visual impacts of the planned facility within the specifications given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | *4* | |

| Figure 3.5: Example of functionality scorecard (cont.) | | | | |
|---|---|---|---|---|
| | **Evaluation criteria** | **Scoring** | **Maximum sub-total** | **Maximum total** |
| 3.6 | Are the bulk infrastructure use plans (water, electricity, fuel supply, telecoms, roads, airstrips) within the specifications given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | 4 | |
| 3.7 | Are waste management plans within the specifications given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | *4* | |
| 3.8 | Are fire management plans within the specifications given in the RFP? | Yes = 4<br>Partially = 2<br>No = 0 | *4* | |
| 3.9 | Is there commitment to abide by the park/ institution rules/regulations/ environmental guidelines/codes of conduct? | Yes = 4<br>Partially = 2<br>No = 0 | *4* | |
| 3.10 | Other project-specific criteria if needed; if not, allocate allotted points elsewhere | Score consistently | *4* | |
| | | | | ***40*** |
| **4** | **Risk matrix** | | | |
| | Does the bid commit to the RFP's required risk allocation for the project? | Fully = 10<br>Adequately = 5<br>Unacceptably = 0 | | ***10*** |
| | **Total functionality points** | | | **100** |
| | **Minimum threshold** | | | **65** |

## BEE

**The BEE scorecard:** The BEE scorecard finalised for the project during the feasibility study phase needs to be further developed in the preparation of the RFP. In the feasibility study phase the institution confirmed the project's BEE indicators, weightings and targets.

In the preparation of the RFP and draft PPP agreement the institution must:

- establish a suitable scoring system for each indicator to ensure clarity for both bidders and the project evaluation committee (PEC) on how the BEE components of the bids will be evaluated
- consider hiring a BEE ratings agent accredited by the Department of Trade and Industry (DTI) and familiar with the *Tourism BEE Charter and Scorecard*, 2005 and PPPs. This agent could help the project officer specify what information bidders must supply for the BEE aspects of their bids and help the PEC to score the BEE elements of each bid
- prepare the prescribed format in which bidders must submit their BEE plans (see 'Template 8: Request for proposals: Tourism PPP opportunity').

**Establishing the RFP scoring system for the BEE scorecard:** The BEE bids should be scored using the scoring system given in the *Tourism BEE Charter and Scorecard*, 2005. The institution will have decided its scoring system during Stage 2: Part 6 of the feasibility phase. A bidder's SPV must score a minimum of 65 per cent of the available points in order to pass (being a good BEE contributor , as defined by the *Tourism BEE Charter and Scorecard*, 2005). If the bid does not meet this minimum threshold, the bid will not be considered further.

**Take note**

Bidders must form new SPVs if they are selected for the PPP. The BEE components of their bids will therefore be commitments, not their current status. These BEE commitments must be evaluated on how realistic and substantiated they are, because they will become binding in the PPP agreement.

An example of how the scoring system could be established is shown in Figure 3.6.

Bidders should be required to score themselves in their bid submissions and provide appropriate substantiation of, or commitment to, meeting their proposed scores. With the help of its appointed BEE ratings agency, the institution will double check the bidders' scoring during the bid evaluation.

## Price

Price points are calculated using the prescribed price formula set in the regulations to the PPPFA. The maximum points are awarded to the bidder which (having passed the functionality and BEE thresholds) makes the highest PPP fee offer. The remaining points are allocated pro rata to the remaining bidders that have passed the functionality and BEE thresholds.

## Figure 3.6: Example of BEE scorecard

| Indicator | Weighting | Sub-weighting | Indicators to measure BEE achievement | Target | Bid offered | Evaluation | Score |
|---|---|---|---|---|---|---|---|
| | A | B | | C | | | |
| Ownership | 15.00% | 15.00% | Percentage share of economic benefits as reflected by direct shareholding by black people | *21.00% | | Meets target – 15<br>Less than target – 0 | |
| | | *Required by the institution* | Community trust ownership | Additional 10% | | May be mandatory | |
| | | | | | | **Score out of 15** | |
| Strategic rep-resentation | 14.00% | 3.00% | Black people as a percentage of the board of directors | 30.00% | | Meets target – 3<br>Less than target – 0 | |
| | | 3.00% | Black women as a percentage of the board of directors | 15.00% | | Meets target – 3<br>Less than target – 0 | |
| | | 2.00% | Local people as a percentage of board of directors | 15.00% | | Meets target – 2<br>Less than target – 0 | |
| | | 3.00% | Black people as a percentage of executive management | 30.00% | | Meets target – 3<br>Less than target – 0 | |
| | | 3.00% | Black women as a percentage of executive management | 15.00% | | Meets target – 3<br>Less than target – 0 | |
| | | | | | | **Score out of 14** | |
| Employment equity | 14.00% | 1.50% | Black people as a percentage of management | 35.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Black women as a percentage of management | 18.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Local people as a percentage of management | 15.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Black people as a percentage of supervisors, junior and skilled employees | 45.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Black women as a percentage of supervisors, junior and skilled employees | 23.00% | | Meets target – 1.5<br>Less than target – 0 | |

* *Proviso: private parties to tourism PPP agreements with an expected turnover of less than R5 million per annum are exempt from the ownership indicator, as provided in the* Tourism BEE Charter and Scorecard, 2005.

Figure 3.6: Example of BEE scorecard (cont.)

| Indicator | Weighting | Sub-weighting | Indicators to measure BEE achievement | Target | Bid offered | Evaluation | Score |
|---|---|---|---|---|---|---|---|
| | A | B | | C | | | |
| Employment equity | | 1.50% | Local people as a percentage of supervisors, junior and skilled employees | 35.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Black people as a percentage of total staff | 53.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 1.50% | Black women as a percentage of total staff | 28.00% | | Meets target – 1.5<br>Less than target – 0 | |
| | | 2.00% | Local people as a percentage of total staff | 50.00% | | Meets target – 2<br>Less than target – 0 | |
| | | | | | | **Score out of 14** | |
| Skills development | 20.00% | 5.00% | Percentage of payroll spent on skills development (including skills development levy) on all accredited training | 3.00% | | Meets target – 5<br>Less than target – 0 | |
| | | 5.00% | Percentage of skills development spend on all black employees | 75.00% | | Meets target – 5<br>Less than target – 0 | |
| | | 5.00% | Number of learnerships as a percentage of total employees | 2.00% | | Meets target – 5<br>Less than target – 0 | |
| | | 5.00% | Number of black learners as a percentage of total learners | 80.00% | | Meets target – 5<br>Less than target – 0 | |
| | | | | | | **Score out of 20** | |
| Preferential procurement | 15.00% | 10.00% | Spend on BEE - compliant companies as a percentage of total procurement spend | 40.00% | | Meets target – 10<br>Less than target – 0 | |
| | | 5.00% | Spend on local BEE-compliant companies as a percentage of total procurement spend | 20.00% | | Meets target – 5<br>Less than target – 0 | |
| | | | | | | **Score out of 15** | |

**Figure 3.6: Example of BEE scorecard (cont.)**

| Indicator | Weighting | Sub-weighting | Indicators to measure BEE achievement | Target | Bid offered | Evaluation | Score |
|---|---|---|---|---|---|---|---|
| | A | B | | C | | | |
| Enterprise development | 14.00% | 7.00% | The sum of percentage spend of post-tax profits on enterprise development and percentage employee time contributed to enterprise development over total management time | 1.00% | | Meets target – 7<br>Less than target – 0 | |
| | | 7.00% | Enhanced revenue and/ or cost savings and/or twinning initiatives facilitated for black-owned SMMEs as a percentage of revenue of the company measured | 1.00% | | Meets target – 7<br>Less than target – 0 | |
| | | | | | | **Score out of 14** | |
| Social development and industry-specific | 8.00% | 3.00% | Percentage CSI spend of post-tax profits on education, community programmes, job creation, training, health, conservation, community tourism and marketing activities to develop local black tourist market (or percentage management time over total employee time) | 1.00% | | Meets target – 3<br>Less than target – 0 | |
| | | 2.00% | Percentage of new recruits with no prior work experience | 10.00% | | Meets target – 2<br>Less than target – 0 | |
| | | 3.00% | Status of TOMSA levy collector | Yes | | Meets target – 3<br>Less than target – 0 | |
| | | | | | | **Score out of 8** | |
| **Total BEE points** | **100** | **100** | | | | **Score out of 100** | |
| **Minimum threshold** | | | | | | **65** | |

### Setting the PPP fee

The PPP fee payable by the private party is the greater of:

i) the minimum PPP fee (fixed and declared by the institution in the RFP); and
ii) the variable PPP fee, being a percentage of gross revenue (a sum bid by the private party).

**National Treasury recommends that the institution set the minimum PPP fee that would meet its affordability and value-for-money criteria (as established during the feasibility study phase) and ask bidders to compete on the variable PPP fee.**

The institution must make sure that the decision about the structure of the price portion of the bid is correctly reflected in the RFP and PPP agreements and carried through to the evaluation of price bids.

## Overall evaluation

Each of the three elements (functionality, BEE, and price) is scored out of 100 points. If the minimum thresholds are achieved for functionality and BEE, the scores achieved are calculated into a bidder's overall score using the formula set out above, according to the weightings chosen by the institution for functionality and price. While the BEE weighting is fixed by legislation at 10 per cent, institutions are free to decide what weighting to give to price and functionality.

### Figure 3.7: Example of how to calculate a bidder's overall score

An institution may have decided that the functionality of a bid is crucial to the success of the PPP and allocated a weighting of 70 per cent to functionality, 10 per cent to BEE and 20 per cent to price. The weightings would therefore have been allocated in the formula as follows:

**a***(functionality score/100) + **b***(BEE score/100) + **c***(price score/100) = **d**
where:

**a** is 70

**b** is 10

**c** is 20

**d** is the total score achieved by the bidder

So, if a bidder scores 80, 70 and 70 points for each of the categories respectively out of 100 points each, the calculation of the final score will be 70*(80/100) + 10*(70/100) + 20*(70/100) = 56+7+14=77

## 11. Finalising the PPP agreement

This section gives bidders information about when the institution will negotiate and sign the PPP agreement, and what the consequences will be if this does not happen in the proposed period.

**12. Bid timetable**

This section contains the timetable summary of the crucial steps in the RFP process.

### Step 2: Prepare the draft PPP agreement

'Template 9: Drafting notes to the large cap tourism PPP agreement'[22] gives direction on clauses which may or may not be appropriate, depending on the project. The institution must work through this carefully to prepare the PPP agreement properly, based on 'Template 10: Draft large cap tourism PPP agreement'[23]. These are National Treasury's standardised provisions for small cap tourism PPP agreements.

A suitably experienced lawyer should help the institution finalise the draft PPP agreement and its schedules.

**Any material deviation from the template provided in the Toolkit should be agreed with the relevant treasury before the institution applies for TA:IIA.**

### Step 3: Prepare the RFP invitation letter

The RFP is to be delivered to the pre-qualified bidders via an invitation letter.

### Step 4: Get Treasury Approval: IIA

The relevant treasury will assess the RFP and the draft PPP agreement for the purposes of granting TA:IIA. None of these documents may be issued to the pre-qualified bidders until this approval has been granted.

## Part 2: Deliver the RFP invitation letter and engage with bidders

| Part 2: Steps |
| --- |
| Step 1: Deliver the RFP invitation letter<br>Step 2: Facilitate site visits and answer bidders' questions |

### Step 1: Deliver the RFP invitation letter

The RFP is to be delivered to the pre-qualified bidders via an invitation letter signed by the accounting officer/authority.

22. 'Template 9: Draft large cap tourism PPP agreement' should always be read together with the drafting notes.
23. See 'Template 10: Large cap tourism PPP advertisement'.

## Step 2: Facilitate site visits and answer bidders' questions

The project officer must conduct a site visit with the bidders on the day and at the time stipulated in the RFP and ensure that all relevant information is made available to bidders so they can prepare accurate bids in line with the institution's objectives.

Where information over and above that provided in the RFP is being made available the institution should provide bidders with access to a data room with photocopy facilities. Information provided by the institution should not be warranted.

Any questions from bidders must be submitted in writing to the project officer and should be replied to in writing within 24 hours. The questions and replies must be put onto the institution's website and sent to bidders who attended the site visit, without revealing which bidders asked the questions.

# STAGE 3: EVALUATE BIDS, CHOOSE THE PREFERRED BIDDER AND GET TREASURY APPROVAL: IIB

The institution has obtained TA:IIA and is now able to manage the procurement process, evaluate bids and choose the preferred bidder.

| Steps | |
|---|---|
| Step 1: | Receive bids |
| Step 2: | Evaluate bids |
| Step 3: | Choose the preferred bidder and a reserve bidder |
| Step 4: | Write the value-for-money report |
| Step 5: | Get Treasury Approval: IIB |

## Step 1: Receive bids

The institution must appoint an official, preferably a member of the PEC, to be directly responsible for receiving bids in accordance with the directions set out in the RFP. This official must formally receive bids and acknowledge receipt in a formal bid register. The bid register should record the time the bid was submitted, by whom and for what tender, and be signed by the bidder and the official. A receipt reflecting this information should be given to the bidder. The bids should then be stored in a safe place, preferably with the institution's chief financial officer.

## Step 2: Evaluate bids

Bids must be evaluated only in terms of the bid evaluation criteria given to bidders in the RFP. While these criteria may have been varied to suit the different value-for-money targets in each particular project the approach outlined below is provided as best practice to establish consistency and predictability for the large cap tourism PPP market.

| Sub-steps |
|---|
| 2.1. Prepare for bid evaluation |
| 2.2. The project evaluation committee and teams evaluate the bids |

### 2.1. Prepare for bid evaluation

Treasury Regulation 16 of the PFMA requires that the evaluation of pre-qualified bidders and the selection of the preferred bidder take place in accordance with the prescribed procurement procedure.

The project officer must make sure that:

- the evaluation process will ensure compliance with the procedural fairness provisions of the Promotion of Administrative Justice Act, 2000. The PEC must be aware that bidders are allowed to request copies of documents relating to the bid evaluation process and may ask for details about how their bids were evaluated
- the evaluation criteria and processes are established before bidders submit proposals
- the evaluation teams and committee are appointed in writing, and all declarations and codes of conduct are signed (see 'Template 11: Code of conduct' and 'Template 12: Declaration of interest form').

**Take note**

The institution must sign off on an anti-corruption policy for the project. This must include clear requirements and processes for dealing with corrupt activities of project team members or bidders. The procurement plan and the bid processes must have the built-in safeguards of disclosure, a code of conduct, a declaration of interest, structured oversight and internal and external audit. All members of the project team and bid evaluation panel, including the transaction advisor, where one is appointed, must disclose any potential conflict between their personal and family interests and those of the project. This disclosure must be evaluated by the accounting officer/authority or delegated representatives. An appropriate response must be formulated and implemented, such as recusal of the official from any position where the conflict of interest could affect a decision. All the institution's project team members, including the institution's advisors, and all members of the institution's bid evaluation committee must sign the code of conduct. The institution must remember that administrative justice legislation allows losing bidders to request access to all documents used and compiled in bid evaluations. The institution must therefore ensure meticulous document management and a transparent and competitive process.

For purposes of ensuring procedural fairness and efficiency, the project officer should:

- in consultation with the accounting officer/authority, appoint members of the bid evaluation teams and committee who have experience in such bid evaluation. Where necessary, external individuals or consultants with specialist skills may also be appointed to the bid evaluation teams and committee
- brief the bid evaluation teams and committee on the bid evaluation process and the system being used before bids are received
- ensure that all members are aware of their responsibilities

- confirm and diarise the dates on which various stages of the evaluation process will be completed
- diarise the final date upon which the preferred and reserve bidders will be selected.

**Take note**

Template 13 is an evaluation scoresheet, and Template 14 is an evaluation spreadsheet. These are based on the sample evaluation scoring methods provided in this module. Any changes to this scoring that the institution makes during the preparation of the RFP must be carried through into these evaluation tools.

## 2.2 The project evaluation committee and teams evaluate the bids

Evaluation of the pre-qualified bidders and selection of the preferred bidder and reserve bidder will be conducted at two levels. Each evaluation level will be conducted by a separate group, with each level having its own checks and balances.

The levels are:

- Level 1: technical evaluation teams (TETs)
- Level 2: the project evaluation committee (PEC).

**Take note**

It is important that where exemption from treasury approvals has been granted the accounting officer/authority is not included in either the TETs or the PEC. The TETs and PEC are jointly referred to as the bid evaluation committee.

### Level 1: Technical evaluation teams

The TETs analyse only two of the three evaluation categories: functionality and BEE. The overall, integrated proposal (after opening Envelope 2) is evaluated by the PEC. There may be a number of TETs, depending on the complexity of the project. For example, there may be a TET evaluating the BEE plans, another evaluating the financing plans, another evaluating the business and operational plans, and another evaluating the development and environment plans. TETs need to be made up of suitably qualified professionals, at least from within the institution and from the transaction advisor.

**The TETs analyse only the functionality and BEE criteria.** Communication between the different TETs, and between the TETs and the PEC is very important. It is important that the TETs make a formal presentation to the PEC so that the PEC can make an informed decision on which bidder to select.

The project officer will have received the bids and separated Envelope 1 from Envelope 2 for each bid. (Envelope 1 contains the functionality and BEE information and Envelope 2 contains the PPP fee offer. All the Envelopes 2 are locked in a safe until they are needed.)

The first function of the TETs is to do the preliminary work to establish which bids to take forward in the evaluation.

This function entails:

- **Opening:** the project officer should open each bid Envelope 1 in the presence of at least three senior institution officials, including the chief financial officer, if possible. The members of each of the SPVs are recorded, and the declaration of interest forms completed for signature by members of the TETs and PEC. Members of the TETs are then given access to each bidder's Envelope 1, containing each bidder's functionality and BEE proposals.
- **Checking for completeness:** the TETs check each of the functionality and BEE proposals for completeness. This entails confirming whether each bidder has submitted all the required documents (for example, original tax clearance certificates and SPV formation documents). All these formalities must have been set out clearly in the RFP. Each RFP requirement should be listed, with a reference to its place in the RFP and its description. If there are any incomplete bids, the TET will make a note of this.
- **Checking for compliance:** the TETs then check each of the functionality and BEE proposals to ascertain whether each bidder has complied with the minimum requirements set out in the RFP. The TETs should use the same format used for checking bid completeness. Great care must be taken to ensure that the essential minimum requirements are fully met. If there are any noncompliant bids, the TETs will make a note of this.

### Clarification for completeness and compliance

The PPP procurement process allows members of the TETs or PEC to ask clarification questions of bidders after the bids are opened. This is to ensure that the evaluation that follows reflects a full understanding of each proposal. The constitutional requirement of fairness and transparency means that any form of change to a bid or negotiation with individual bidders during the evaluation process is prohibited. The line is easily crossed if the term 'clarification' is not defined and the process for clarification is not clearly set out.

Clarification must involve written questions from the institution and written responses from the bidder. The questions must refer to a specific element of the proposal and must not solicit any change to the proposal. The response must be vetted before being accepted as a clarification. If the response sets out a change to the proposal it must be set aside and its contents ignored. In such a case, or if the response does not resolve the matter on which clarity was sought, the interpretation of the response that results in the lowest score or the production of an evaluation note for that element of the evaluation should be used.

## The scoring process for the technical evaluation teams

### Action 1: Scoring functionality

The RFP would have specified that in the evaluation of Envelope 1 a minimum threshold of 65 per cent of the total functionality scorecard points (and 65 of the BEE scorecard points) must be achieved before Envelope 2 is opened and evaluated. If a bidder does not get these scores, Envelope 2 will not be opened. The TETs will therefore initially calculate whether the bidders have reached the minimum thresholds for functionality before proceeding. (See 'Template 13: Bid evaluation scoresheet'.)

Without discussing it with another member, each TET member:

- reads and evaluates each functionality proposal
- gives preliminary scores to each element in line with the template evaluation sheet
- writes explanatory notes (with reference to bid page numbers where relevant) to substantiate each score.

### Action 2: Plenary discussion

The TET chairperson holds a plenary discussion on each functionality element of each bid. Agreement should be reached on any bid which should at this stage be disqualified for non-compliance. TET members must state their evaluations and listen to other members' evaluations. They may adjust their scores, if necessary, if other members bring attention to aspects of the bids that they had not considered previously. Any adjustments should be initialled on the evaluation sheets.

### Action 3: Enter the scores

Once the bids have been discussed, the TET chairperson displays the bid evaluation spreadsheet (see 'Template 14: Bid evaluation spreadsheets') for the functionality component so that the TET members can witness each score being entered. The TET chair systematically allows each member to call out his or her functionality scores for each element of each bid. If at any time any member believes that, based on the plenary discussions, another member's scoring is unreasonable, he or she may ask for an explanation. The TET chair's decision on any dispute between members shall be binding on the members and the TETs.

### Action 4: Confirm the bids that have passed the functionality threshold

The TET chairperson will total the aggregate scores for each functionality element of each bid, and announce which bids have passed and which have failed.

### Actions 5, 6, 7 and 8: Scoring BEE

In accordance with the directions set out for scoring the functionality of bids, the TET members must:

- **Action 5:** Confirm the scoring of the BEE bids in accordance with the BEE score sheet
- **Action 6:** Hold a plenary discussion
- **Action 7:** Enter the scores in the bid evaluation scoresheet
- **Action 8:** Confirm which bids have passed the BEE evaluation process.
- **Action 9:** Discuss and record reservations

All reservations that TET members have about any part of the functionality and BEE elements of the bids should be discussed, listed and accurately recorded by the TET chairperson for referral after the PPP fee components have been scored.

**Action 10: Confirm which bids may go forward**
The TET chairperson confirms which bids may proceed to PPP fee scoring and records those bids.

**Action 11: Sign and hand in the evaluation sheets**
Each TET member signs his or her functionality and BEE evaluation scoresheets and hands them in to the TET chairperson. Where there is more than one TET each TET produces its own report and scoresheets for functionality and BEE. These scoresheets are then passed on to the PEC.

## Level 2: The project evaluation committee

Where exemption from treasury approvals has not been granted the PEC may be made up of the accounting officer/authority, supported by committee members he or she has appointed. Where exemption from treasury approvals has been granted (where institutional approvals then apply) the accounting officer/authority should not be part of the PEC and the accounting officer/authority must approve or reject the recommendation of the PEC and grant the necessary approvals.

### The scoring process for the project evaluation committee

The role of the PEC is to:
- receive and evaluate the report and recommendations of the TETs
- open and assess the contents of Envelope 2 of the bids that pass the functionality and BEE thresholds
- calculate the final scores on the electronic spreadsheet (see 'Template 14: Bid evaluation scoresheet')
- select a preferred and reserve bidder
- write negotiating notes on the PPP agreement mark-up
- where necessary, decide on a best and final offer (BAFO) process
- compile the value-for-money report for TA:IIB.

The PEC is the overall decision-making committee and conducts the final checks before a preferred bidder is chosen.

**Action 1: Score the PPP fees**
The PEC opens the PPP fee proposals of the bidders which have achieved the minimum thresholds for functionality and BEE. PPP fee points will be calculated using the prescribed price formula set in the regulations to the PPPFA. The maximum points are awarded to the bidder which (having passed the functionality and BEE thresholds) makes the highest PPP fee offer, and the remaining points are allocated pro rata to the remaining bidders which have passed the functionality and BEE thresholds.

**Action 2: Add up functionality, BEE and PPP fee scores**
Each of the three elements is scored out of 100 points, and the scores achieved (if the minimum thresholds are achieved for functionality and BEE) are calculated into the bidder's overall score using the following formula:

**a***(functionality score/100) + **b***(BEE score/100) + **c***(price score/100) = **d**

where

**a** is the weighting for functionality (percentage determined by institution)

**b** is the weighting for BEE (10 per cent)

**c** is the weighting for price (percentage determined by institution)

**d** is the total score achieved by the bidder.

The PEC then compiles project evaluation notes and makes a single recommendation on the preferred and reserve bidders.

### Possible Action 3: Identify and interview the top bidders

The institution has some discretion in this action, it is not compulsory. The scoring process may have identified two or three bidders whose scores are very close and the institution may wish to hold interviews with these bidders to clarify any outstanding issues. The institution must have a very clear idea about what it wants to discuss with them. Based on these interviews, PEC members may need to adjust their scores.

However, it may not be necessary to hold interviews if a bidder is clearly the top bidder and if it is not necessary to clarify any issues at this stage. The institution will clarify certain aspects of the bid during the negotiation of the PPP agreement.

### Best and final offer

If the PEC cannot make a decision between bidders because of serious deficiencies in the bids, the institution may choose to approach bidders with a request for best and final offers. This would be done in an attempt to make sure that there is no bid failure. The institution must liaise with National Treasury's PPP Unit for directions on how to follow this process.

## Step 3: Choose the preferred bidder and a reserve bidder

The evaluation should result in one preferred bidder and one or more reserve bidders being selected, based on the evaluation process and the final totals of each bidder. Regardless of whether the PPP process is being conducted internally by the institution or under the supervision of the relevant treasury, the preferred and reserve bidders may not be announced until Institution Approval: IIB (IA:IIB) or TA:IIB has been obtained for the value-for-money report.

If the PPP process is being conducted internally, the PEC compiles a value-for-money report, and recommends the preferred and reserve bidders to the accounting officer/authority, which then grants IA:IIB.

If the process is being regulated by the relevant treasury, the PEC compiles the value-for-money report and makes recommendations to the accounting officer/authority. The accounting officer/authority then submits the value-for-money report to the relevant treasury for TA:IIB.

## Step 4: Write the value-for-money report

### Extract from Treasury Regulation 16 to the PFMA

16.5.4 *After the evaluation of the bids, but prior to appointing the preferred bidder, the institution must submit a report for approval by the relevant treasury, demonstrating how the criteria of affordability, value for money and substantial technical, operational and financial risk transfer were applied in the evaluation of the bids, demonstrating how these criteria were satisfied in the preferred bid and including any other information as required by the relevant treasury.*

The value-for-money report enables the institution's accounting officer/ authority or the relevant treasury to assess the findings and recommendations of the PEC. The value-for-money targets established in the feasibility study are of paramount importance in enabling the institution to confirm that the proposed preferred bidder is likely to give the institution a value-for-money outcome.

In this regard:

- a well-constructed and managed PPP procurement process will make writing the value-for-money report easy. The institution's value-for-money targets will have been clearly conveyed to bidders in the RFP, the bids will have been evaluated against these specific criteria, and the preferred bidder will have achieved the highest scores when the PEC evaluated the bids against the criteria given in the RFP. A summary of these factors and the PEC's conclusions and recommendations constitute the value-for-money report
- before the preferred bidder is announced, the project officer must complete the value-for-money report, and submit it to the accounting officer/authority or the relevant treasury for IA:IIB or TA:IIB. There can be no negotiation with the preferred bidder before this approval has been granted
- the approval of the value-for-money report is not an approval of the procurement process or its outcome but an approval that the preferred bidder provides the best value for money for the project and that the bid is affordable to the institution.

## Contents of the value-for-money report

The value-for-money report is based on the institution's value-for-money targets for the project, the PPP process conducted to date and the actual bids received. The suggested contents of the value-for-money report are:

Covering letter from the accounting officer/authority to the relevant treasury, applying for TA:IIB

### Section 1: Introduction

- project background
- bid process to date
- evaluation criteria
- evaluation approach
- project evaluation committee
- summary of compliant bids submitted.

### Section 2: Evaluations

- compliance and completeness
- a summary analysis of each bid according to the criteria set in the RFP:
  - Functionality
  - BEE
  - PPP Fee
- a marked up PPP agreement
- consolidated analyses

### Section 3: Affordability assessment

The cost of the preferred and reserve bids to the institution and whether these are affordable.

### Section 4: Value-for-money assessment

This section must link directly to the value-for-money targets set in the feasibility study. The institution must show how the preferred bid meets these targets.

### Section 5: Risk transfer assessment

The risk matrix of the preferred bidder, linked to the PEC's analysis of the mark-up of the PPP agreement, highlighting any matters of concern.

### Section 6: Bid deficiencies

Statement and assessment of any deficiencies in the preferred bid and anticipated difficulties in resolving them during the negotiations stage.

### Section 7: Negotiation plan

The negotiation plan must set out the negotiation strategy listing all issues to be resolved.

### Section 8: Conclusion

Recommendation of the preferred and reserve bidders.

## Step 5: Get Treasury Approval: IIB

Only when TA:IIB has been granted may the preferred and reserve bidders be announced and negotiations with the preferred bidder begin.

Both the preferred and the reserve bidders should be required to formally accept the appointment as a commitment to the process.

The reserve bidder is crucial. The institution may require the preferred bidder to be replaced if the bidder withdraws or if negotiations compromise value for money as approved in TA:IIB.

# STAGE 4: NEGOTIATIONS

| Steps |
|---|
| Step 1: Preparatory work<br>Step 2: Initial contact<br>Step 3: Engagement<br>Step 4: Ongoing management<br>Step 5: Achieve resolution<br>Step 6: Final bargaining<br>Step 7: Formal settlement |

The institution has now been granted IA:IIB, enabling it to proceed to the negotiation of the PPP agreement with the preferred bidder.

It may be necessary to negotiate certain aspects of a preferred bidder's proposal. Negotiations are an integral part of the procurement phase. They are a process, not an event. Successful negotiations culminate in awarding the contract, concluding the procurement phase, and starting implementation.

The output of the negotiations must be a PPP agreement with all ancillary agreements complete.

The basic principles of successful negotiations are:

- focus on interests, not positions
- separate the people from the problem
- do your homework – know what you want
- be fair – build trust
- be prepared to commit
- be an active listener
- respect the other side's priorities
- be prepared to compromise
- leave it aside – resolve immaterial sticking points later
- never feel that the preferred bidder has a monopoly position
- don't feel pressured to take a decision at any given time
- never be emotional and reactive.

## Step 1: Preparatory work

- Outline the objectives of the negotiations to formally clarify terms and conditions, bridge gaps, eliminate confusion and structure a durable agreement that protects the interests of both parties.
- Prepare a schedule for starting and concluding the negotiations within the bid validity period.
- Establish a negotiation team.

- Define skill mix requirements.
- Assign a lead negotiator. This person does not have to be the project officer, but must take guidance from the project officer and must have direct access to the institution via the project officer.
- Strategise.
- Anticipate the private party's positions and interests.
- Carefully review bid evaluation reports, proposal implementation plans and performance schedules, and financial analyses and projections.
- Design a detailed negotiation plan.
- Pre-define certain positions – fall back, alternative or best alternative to a negotiated agreement, and no-go positions.

### Step 2: Initial contact

- Invite the bidder, in writing, to a meeting.
- Specify the issues to be discussed, the institution's suggested approach to resolution, and any additional information required for the meeting.
- Provide the date, time, location, and expected duration.
- Request the names and positions of each person on the bidder negotiation team.

### Step 3: Engagement

- Begin the first negotiation meeting by making opening statements and introductions and by clarifying roles and responsibilities.
- Create a climate of trust and co-operation.

### Step 4: Ongoing management

- Continually define issues and set an agenda for each meeting.
- Identify shared, compatible, and conflicting interests.
- Jointly refine agendas to include action items and keep the meetings on track.
- Each meeting should focus on interests rather than positions or personalities.
- Carefully manage the tracking of evolving documentation by:
  - appointing an assigned drafter
  - tracking, numbering and dating changes on every document being negotiated
  - keeping the main draft in read-only format and creating password access to documents.

## Step 5: Achieve resolution

- Generate options for settlement.
- Concentrate first on common and easily resolved issues to establish a collaborative process.
- Assess the options.
- Choose an option by using objective criteria based on concepts, standards or principles that the parties believe in and which will not be under the control of either party alone.

## Step 6: Final bargaining

Final bargaining requires compromises so that both parties see the settlement as the best possible one under the circumstances. Be prepared to bridge affordability gaps as commercial details become clearer. Some output specifications may need to be reduced to keep the project affordable, provided that quality and value for money are maintained.

The institution must strive to make the funding agreements unconditional. Conditions precedent in the PPP agreement should be limited as far as possible. This refers to matters that need to be resolved, failing which, the agreement, if signed, is not enforceable. There may be some conditions that cannot be met before signing the PPP agreement, but these must be minimised.

## Step 7: Formal settlement

- Record details of negotiated points and resolutions.
- Agree on how any potential conditions precedent can be minimised.
- Agree to the required follow-up in contract management (of outstanding issues that do not impact on negotiated settlement) and the timeframe.
- Establish a preliminary schedule for signing the PPP agreement.

# STAGE 5: GET TREASURY APPROVAL: III AND SIGN THE PPP AGREEMENT

**Treasury Regulation 16 to the PFMA**

***16.6 Contracting PPP agreements – Treasury Approval: III***

*16.6.1 After the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution concludes a PPP agreement, that accounting officer or accounting authority must obtain approval from the relevant treasury –*

*(a) that the PPP agreement meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer as approved in terms of regulation 16.4.2 or as revised in terms of regulation 16.4.4;*

*(b) for a management plan that explains the capacity of the institution, and its proposed mechanisms and procedures, to effectively implement, manage, enforce, monitor and report on the PPP; and*

*(c) that a satisfactory due diligence including a legal due diligence has been completed in respect of the accounting officer or accounting authority and the proposed private party in relation to matters of their respective competence and capacity to enter into the PPP agreement.*

*16.6.2 The treasury approval referred to in regulation 16.6.1 shall be referred to as Treasury Approval: III.*

The institution's application for TA:III should be a continuation of the value-for-money report. It establishes the final negotiated project costs, the value for money, the final terms of the PPP agreement, and the contingent liabilities incurred by the institution. It also provides the institution's plan for managing the PPP agreement and confirms the legal due diligence on the competency of the parties to enter into the PPP agreement.

A PPP agreement management plan[24] must therefore be included in the TA:III submission. The PPP agreement management plan is one of the pillars of effective PPP agreement management, and the project officer will need to ensure that adequate time and resources are devoted to its preparation before this step is reached. The preferred bidder should be closely involved in the development of the PPP agreement management plan during the negotiation stage and this involvement should be used to develop good working relations between the two parties.

24. *Module 4: Managing the PPP agreement* gives guidance on preparing the PPP agreement management plan.

### The PPP agreement management plan

The purpose of the PPP agreement management plan is to:

- demonstrate to the relevant treasury the institution's capacity to enforce the PPP agreement effectively
- provide a strategic management tool to guide the contract
- manage activities that the institution and the private party will undertake during each stage of the project
- clarify the key roles and responsibilities of the institution during each stage of the project and identify the resources that the institution will require to undertake these responsibilities
- provide information on the contract management approach and contract management arrangements which can be pursued to assess the performance of the institution in discharging its obligations and responsibilities as set out in the agreement and government legislation, such as the PFMA
- provide a vehicle for addressing issues that cannot be dealt with adequately in the PPP agreement (such as attitudes and behaviour).

The PPP management plan should cover the following:

- a statement of the principles that will govern the partnership
- the aims, objectives and long-term goals of the partnership
- the benefits to both the institution and the private party of a successful partnership
- details of private party corporate governance arrangements
- the partnership management structure
- knowledge management systems
- succession plans for key members of the PPP agreement
- the management team
- a communication framework
- mechanisms that will enable the partnership to be assessed
- a summary of the dispute resolution procedures
- the roles and responsibilities of institution officials who will be responsible for partnership management
- an estimate of the resources that the institution will allocate to partnership management.

After the initial PPP agreement management plan has been prepared as part of the TA:III process, the approach to contract management should be updated regularly in consultation with the private party, to respond to changing policies, industry requirements, environmental standards, technology and end-user expectations.

## Signing the PPP agreement

Once the institution has been granted TA: III the accounting officer/authority may sign the PPP agreement.

# TEMPLATES

## TEMPLATE 6

### Request for qualifications: Tourism PPP opportunity

This template should be used by the institution to ask potential bidders to submit specific information that will enable the institution to pre-qualify a limited number of bidders.

## TEMPLATE 7

### Advertisement for request for pre-qualification

This template advertisement should be used by the institution to invite bidders to submit bids for pre-qualification for a particular PPP.

## TEMPLATE 8

### Request for proposals: Tourism PPP opportunity

This template RFP is the standardised format that the institution should use to invite bidders to submit proposals for a large cap tourism PPP. Refined appropriately by the institution for each PPP opportunity, it will provide bidders with information about the project, the institution's requirements, how bids must be completed and submitted, and how bids will be evaluated.

## TEMPLATE 9

### Drafting notes to the large cap tourism PPP agreement

These are the notes that help the institution draft the tourism PPP agreement appropriately for each PPP opportunity.

## TEMPLATE 10

### Draft large cap tourism PPP agreement

This template tourism PPP agreement for large cap tourism PPPs constitutes National Treasury's standardised provisions for the contractual relationship to be established between the institution and the private party in a large cap tourism PPP. It must be adapted by the institution for each specific PPP, using the guidance given in Template 9.

## TEMPLATE 11

### Code of conduct

This template code of conduct is signed by all members of bid evaluation panels appointed by the institution to evaluate tourism PPP bids. The aim of the code is to ensure that members exercise sound judgement, act with exceptional standards of moral integrity and abide by all applicable laws.

## TEMPLATE 12

### Declaration of interest form

This template declaration of interest form is filled out by the institution and signed by all members of bid evaluation panels appointed by the institution to evaluate tourism PPP bids. Its aim is to make sure that there are no conflicts of interest and that the integrity of the bid evaluation is protected.

## TEMPLATE 13

### Bid evaluation scoresheet

Bid evaluation panel members each fill out the scoresheet provided in the template, which must be adapted by the institution to reflect the precise bid evaluation criteria specified in the RFP.

## TEMPLATE 14

### Bid evaluation spreadsheet

This is an Excel spreadsheet which enables the institution to total all the individual scores of the bid evaluation panel members.

# NATIONAL TREASURY
# PPP TOOLKIT FOR TOURISM

## MODULE 4:
## MANAGING THE TOURISM PPP AGREEMENT

NATIONAL TREASURY

PPP unit

# PPP PROJECT CYCLE FOR TOURISM PPPs

**Reflecting Treasury Regulation 16 to the Public Finance Management Act, 1999**

PROJECT PREPARATION PERIOD

Phase I

## INCEPTION

- Prepare strategic plan for commercialisation
- Apply for project registration

## PRE-FEASIBILITY

- Pre-feasibility study
- Motivation for small cap route or large cap route
- Possible application for exemption from treasury approvals

Phase II

### SMALL CAP ROUTE

## FEASIBILITY

**Institution Approval: I***

- Issue-based feasibility

Phase III

## PROCUREMENT

- Prepare bid documents

**Institution Approval: IIA***

- Issue bid documents
- Evaluate bids
- Select preferred bidder

**Institution Approval: IIB***

- Negotiation
- Management plan

**Institution Approval: III***

- Sign PPP agreement

### LARGE CAP ROUTE

## FEASIBILITY

**Treasury Approval: I****

- Comprehensive feasibility

## PROCUREMENT

- Prepare bid documents

**Treasury Approval: IIA****

- Issue bid documents
- Evaluate bids
- Select preferred bidder

**Treasury Approval: IIB****

- Negotiation
- Management plan

**Treasury Approval: III****

- Sign PPP agreement

PROJECT TERM

Phase IV

## DEVELOPMENT

Phase V

## OPERATIONS

Phase VI

## EXIT

- Measure outputs, monitor and regulate performance, liaise effectively, settle disputes
- Report progress in the Annual Report
- Scrutiny by the Auditor-General

***  If exemption from treasury approvals is granted.**
**** Unless exemption from treasury approvals is granted.**

# ABOUT THIS MODULE

The PPP agreement has been negotiated and signed. This module sets out key principles and approaches for managing the signed PPP agreement. The principles apply to both small cap and large cap[1] tourism PPP projects, but the extent of the actions to address the principles may vary significantly between the two routes. Project officers must apply the principles in all projects.

PPP agreement management must be on the project officer's agenda throughout the project preparation period (from the inception phase to the signing of the PPP agreement) and be implemented throughout the project term (from the signing of the PPP agreement to its expiry or termination, whichever occurs first). It is a function that features throughout the PPP project cycle.

This module gives guidance on:

- how to develop a PPP agreement management plan
- how to create a comprehensive PPP agreement management manual.

The manual and the plan that guides its use will be the project officer's handbook throughout the project term.

This module has been developed from experience gained in tourism PPPs to date and from applying the generic principles presented in Module 6 of National Treasury's *PPP Manual,* which should be consulted further if necessary.

**Take note**

The management of the PPP agreement:

- starts in the inception and pre-feasibility phases of the PPP project cycle
- is designed in detail towards the end of the procurement phase
- is put into practice after the signing of the PPP agreement, for the development, delivery and exit phases.

1. Used throughout the Toolkit for easy reference, the colloquial term 'small cap' stands for 'small capital expenditure' and 'large cap' stands for 'large capital expenditure'.

# CONTENTS

# THE KEY COMPONENTS OF MANAGING A TOURISM PPP AGREEMENT

**Take note**

When using Module 4, refer to the definitions of terms in the template draft PPP agreements in Module 2 (Template 5) and Module 3 (Template 10). Key terms used in this module are defined in the draft PPP agreements.

Public private partnership (PPP) agreement management enables both parties to the contract (the private party and the institution) to meet their respective obligations.

There are three main functions of PPP agreement management in tourism PPPs:

- **partnership management** is concerned with how the institution and the private party relate to one another
- **performance and risk management** is concerned with how the institution and the private party are performing to the standards set in the PPP agreement
- **PPP agreement administration** is concerned with efficient day-to-day financial and administrative systems to support the partnership, and with performance and risk management.

**The central aim of PPP agreement management is to ensure that the project continues to be affordable and provides value-for-money outcomes for the institution, and that the private party continues to manage project risk.**

**Treasury Regulation 16.7.3 of the Public Finance Management Act, 1999 (PFMA) specifically provides that a PPP agreement involving the use of state property by a private party does not divest the accounting officer/authority of the institution of the responsibility to make sure that the property is appropriately protected against forfeiture, theft, loss, wastage and misuse.**

Managing PPP agreements is therefore critical for the success of the PPP. No matter how well the PPP agreement is crafted, there will always be some ‘grey’ areas arising from unforeseen circumstances. The working relationship of the partnership between the private party and the institution is built and developed during the length of the agreement. A good relationship requires fair judgment and a sound understanding of the other party’s goals and constraints.

The performance that the institution is to manage is determined by the specific rights and obligations set out in the PPP agreement and must be explicitly reflected in the institution’s PPP agreement management plan. For tourism PPPs, the typical performance standards are given in the template PPP agreements provided in the Toolkit[2]. Most of the performance standards, however, will be site-specific and captured in the PPP agreement schedules[3].

This module gives guidance on how to package these for the purposes of devising a PPP agreement management plan as part of a working manual for PPP agreement management.

**Take note**

PPP agreement management starts seriously after the PPP agreement has been signed.

The development phase is the initial period of the agreement, when the private party is constructing and developing the facilities.

The operations phase is the longest portion of the agreement, when the private party is actually operating its business.

The exit phase is the last part of the agreement term, when the private party is getting ready to transfer the site back to the institution.

### Success factors for good tourism PPP agreement management

#### A strong project officer

- **Get the right person for the right phase.** The project officer must understand the project very well and must be competent[4]. The same person who undertook the feasibility and procurement phases should implement the project, at least until the institution and private party have settled into a productive relationship. It may be appropriate to introduce a new project officer during the development phase so he or she can take over when construction is finished. Some personality types would rather work under high pressure and in the uncertain environment of feasibility, procurement and construction than build long-term relationships. The exit phase may require a person with more analytical and negotiation skills.
- **Identify training needs.** The project officer must understand the fundamentals of business drivers such as financing, marketing, operations, the legal context and human resources. Training might be required.
- **Delegate appropriately.** The project officer must be delegated authority to manage the PPP agreement with the private party and to address any problems arising from the institution failing to fulfil its obligations.
- **Dedicate project officer time**. The project officer should be focused primarily on the job of managing the institution's PPPs, not diverted to other functions.

2. See *Module 2: Feasibility study and procurement phases for small cap tourism PPPs*: 'Template 5: Draft small cap tourism PPP agreement' and *Module 3: Feasibility study and procurement phases for large cap tourism PPPs:* 'Template 10: Draft large cap tourism PPP agreement'.
3. For example, site development parameters will be addressed in Schedule 1: Works Specifications and Schedule 6: Project Site. Waste management, ecological management, operational activities, and facilities maintenance should be addressed in Schedule 2: Operation and Maintenance Specifications and Schedule 4: Environmental Specifications. BEE commitments will be specified in Schedule 5: BEE Obligations.
4. *Module 1: PPP inception and pre-feasibility phase for tourism PPPs* provides an overview of the desired skills and experience for project officers.

## The institution must fulfil its contractual obligations

- **The project officer is responsible for making sure that the institution fulfils its obligations as set out in the PPP agreement**. Often other officials will be responsible for the delivery of services or conditions specified in the agreement (such as the maintenance of roads or support infrastructure, or taking care of conservation issues). The project officer must monitor and address any ways in which the institution is not observing the agreement.
- **The project officer must know the PPP agreement thoroughly and apply it continually to make sure that the agreement objectives and details are being implemented.** The PPP agreement defines the rights and obligations of each party. The project officer must implement both the letter and the spirit of the agreement.
- **The project officer must monitor private party performance and apply the contractual measures for underperformance***.* The private party must be held accountable if its obligations are not fulfilled. If the project officer is lax and does not make sure that the private party is called to account, all the effort to negotiate an acceptable PPP agreement for the institution will have been wasted. The agreement is only as good as its implementation.

## The project officer must be proactive

- **The project officer must be proactive in identifying and addressing potential problems without micro-managing aspects that are not within his or her jurisdiction or amount to taking project risk back from the private party.** The project officer must respect that the development and operations specified in the PPP agreement are managed and reported on by the private party, which requires a relatively hands-off, but tentatively watchful approach by the institution.

## The project officer must build relationships

- **The project officer must build a relationship of trust and respect with the private party without compromising the intended objectives of the project.** This can sometimes be very difficult, but can be resolved if the project officer seeks to understand fully the private party's view, is principled without being dogmatic, firm but not inflexible, and is proactive and communicates effectively. The project officer builds trust and credibility with the private party by undertaking his or her duties efficiently and effectively. The project officer needs to demonstrate that the institution applies the same standards to its own performance as it does to that of the private party.
- **The project officer should build relationships with stakeholders, especially local communities**. Third parties and associated parties can significantly affect the private party's performance. The project officer needs to be fully aware of the issues and which stakeholders they affect, setting up good communication channels with the identified players. By being proactively involved, while keeping within the appropriate boundaries, the project officer may be an important agent in conflict resolution.

## Good multi-way communication

- **Clear communication channels must be defined**. At all times, there must be direct communication access between the project officer and private party management.
- **Regular communication forums are required***.* These should be held at least monthly, and decisions and discussions must be minuted. These forums should be used to inform the institution and private party of their respective plans and operational activities. For example, the private party needs to be informed of the institution's ecological plans for the year, as they may directly affect the private party's operations (for example, a planned burning programme in an area where the private party is operating).

## Key procedures

- **Developing appropriate procedures to receive, manage and distribute the PPP fees paid by the private party**. The PPP agreement defines how the PPP fee is calculated and when it is due. The project officer must make sure that the PPP fees are invoiced and paid within the specified time limits. All receipts and payments must be traceable and in line with the PPP agreement.
- **Developing appropriate measurement systems for tracking non-financial aspects such as black economic empowerment (BEE) and environmental impacts.** The PPP agreement may make provision for independent monitors for these aspects. In all cases, the private party has strict reporting obligations, and the institution must study the reports carefully and take corrective action where necessary in terms of the PPP agreement.

## Setting up a PPP division if there are a number of PPPs

- If the institution is involved in a number of PPP projects, it is recommended that a PPP division be set up. Ideally, members will specialise in specific areas of PPP agreement management.

## Using independent experts

- An independent expert can be invaluable to the partnership, offering objectivity and skills. For example, independent environmental officers have been used very successfully on projects that require construction work in ecologically sensitive areas.

## Developing documented guidance for applying the agreement

- The management plan should be updated regularly and is the primary tool for informing the institution's staff of their roles and responsibilities. The plan should clearly set out who is responsible for what. For example, to monitor the water use standards, responsibility may be assigned to a ranger in the reserve to measure a water tank level once a month.

## Managing possible amendments and variations

- The PPP agreement may need to be amended or aspects re-negotiated to cater for any unforeseen circumstances that arise during the project term. This can be problematic as it creates an opportunity for deviating from the performance standards and risk profile specified in the procurement phase. If the proposed changes are material, they are subject to approval in terms of Treasury Regulation 16.8 (unless the institution has obtained exemption from such approval, in which case it requires a formal institutional approval). Any variation of a PPP agreement must continue to meet affordability, value-for-money and risk transfer requirements.

# MANAGING THE TOURISM PPP AGREEMENT THROUGHOUT THE PPP PROJECT CYCLE

**PPP agreement management begins in the inception phase, establishes its building blocks during the pre-feasibility and feasibility phases, is planned in detail during the procurement phase, and is implemented in the development, operations and exit phases.**

The following extracts from Treasury Regulation 16 to the PFMA show the importance of PPP agreement management at each of these phases of the PPP project cycle.

**Take note**

The project officer must develop and compile auditable records that address the phased regulatory requirements for PPP agreement management.

### Extracts from Treasury Regulation 16 to the PFMA

***"Project officer"*** *means … a person identified by the accounting officer or accounting authority of an institution, who is capable of managing and is appropriately qualified to manage a PPP to which that institution is party from its inception to its expiry or termination.*

***16.3 Project inception***

*16.3.1 As soon as the institution identifies a project that may be concluded as a PPP, the accounting officer or accounting authority must in writing …*

*(c) appoint a project officer from within or outside the institution …*

***16.6 Contracting PPP agreements – Treasury Approval: III***

*16.6.1 After the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution concludes a PPP agreement, that accounting officer or accounting authority must obtain approval from the relevant treasury …*

*(b) for a management plan that explains the capacity of the institution, and its proposed mechanisms and procedures, to effectively implement, manage, enforce, monitor and report on the PPP …*

***16.7 Management of PPP agreements***

*16.7.1 The accounting officer or accounting authority of the institution that is party to a PPP agreement is responsible for ensuring that the PPP agreement is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as approved in Treasury Approval: III for –*

*(a) measuring the outputs of the PPP agreement;*

*(b) monitoring the implementation of the PPP agreement and performances under the PPP agreement;*
*(c) liaising with the private party;*
*(d) resolving disputes and differences with the private party;*
*(e) generally overseeing the day-to-day management of the PPP agreement; and*
*(f) reporting on the PPP agreement in the institution's annual report.*

*16.7.2 A PPP agreement involving the performance of an institutional function does not divest the accounting officer or accounting authority of the institution concerned of the responsibility for ensuring that such institutional function is effectively and efficiently performed in the public interest or on behalf of the public service.*

*16.7.3 A PPP agreement involving the use of state property by a private party does not divest the accounting officer or accounting authority of the institution concerned of the responsibility for ensuring that such state property is appropriately protected against forfeiture, theft, loss, wastage and misuse.*

### *16.8 Amendment and variation of PPP agreements*

*16.8.1 The prior written approval of the relevant treasury is required for any material amendments to a PPP agreement including any material variations to the outputs therein, or any waivers contemplated or provided for in the PPP agreement.*

*16.8.2 The relevant treasury will approve a material amendment only if it is satisfied that the PPP agreement, if so amended, will continue to provide –*
*(a) value for money;*
*(b) affordability; and*
*(c) substantial technical, operational and financial risk transfer to the private party.*

*16.8.3 The accounting officer or accounting authority must substantially follow the procedure prescribed by regulations 16.4 and 16.6 for obtaining such treasury approval.*

## Preparing: before the agreement is signed

### The inception, pre-feasibility and feasibility study phases

These span the period from the inception of the project by the institution until it has obtained Treasury Approval: I (TA:I) or Institution Approval: I[5] (IA:I) for the feasibility study.

Effective PPP agreement management can be established by the institution during these phases by:

- appointing a competent project officer
- setting budgets for managing the PPP agreement
- interrogating the institution's management plans and other plans to identify the full implications of the PPP for the institution
- identifying the support infrastructure needed and the resulting maintenance costs
- calculating costs to ensure that the minimum PPP fee covers the institution's costs of managing and fulfilling its obligations
- building support among internal and external stakeholders
- specifying the performance standards clearly
- ensuring very clear statements of value-for-money objectives, affordability limits, and project risks.

### The procurement phase

This covers the period from when the institution has obtained TA:I or IA:I to the signing of the PPP agreement, including all the steps preceding TA:II or IA: II and TA:III or IA:III before the signing of the PPP agreement.

In the procurement phase the project officer prepares for PPP agreement management by:

- ensuring that the bid documents reflect precisely the project's required performance standards, value-for-money objectives and risk allocation expectations
- developing a PPP agreement management plan confirming the institution's capacity to effectively 'implement, manage, enforce, monitor and report on the PPP'[6] for TA:III or IA:III. (The recommended contents of a tourism PPP agreement management plan are set out in Figure 4.1.)

5. Detailed guidance for obtaining TA:I and IA:I is given in Modules 1, 2 and 3.
6. As per Treasury Regulation 16 to the PFMA.

## Managing: once the agreement has been signed

### The development phase

This phase begins once the PPP agreement has been signed and continues until the independent certifier signs the completion certificate (if necessary) and operations start. It includes the private party moving onto the site, and, depending on the nature of the project, typically involves facilities design, construction and the commissioning of goods and equipment.

Critical milestones prescribed in the template tourism PPP agreements for the development phase include: signature date, works, completion certificate, scheduled operations commencement date, and long-stop date.

The project officer's role during this phase includes:

- monitoring the institutional and private party obligations in terms of the PPP agreement, specifically in respect of the commencement and completion of the works
- acting as the day-to-day link between the private party and the institution, and providing the accounting officer/authority with regular reports
- acting as the institution's representative in assessing applications for any relief or compensation events, with delegated authority to agree to changes arising from relief events
- managing the consequences of private party default precisely as specified in the PPP agreement.

### The operations phase

This refers to the period of tourism operations for the project term. The PFMA requires annual reporting on the agreement.

The project officer's duties include:

- monitoring that all the private party's performance standards and obligations set out in the PPP agreement are fully complied with
- making sure that all the institution's obligations set out in the PPP agreement are fully complied with
- building the relationship between the institution and the private party and making sure that there is good, ongoing communication
- granting institutional approval for operations and maintenance to begin
- ensuring that PPP fees are paid correctly and on time
- receiving and evaluating the private party's reports as per reporting obligations in the PPP agreement
- managing relationships with internal and external stakeholders
- managing dispute resolution.

## The exit phase

This phase covers the end of the project term, or when the contract is terminated prior to the expiry date. The private party's operations are wound up and the institution makes new financial and contractual arrangements for the use of the state property. The handover should cause minimal disruption, especially for institutional employees and future clients.

The project officer's duties include:

- undertaking a feasibility study and completing the procurement phase for a new PPP, if appropriate
- checking that the private party has complied with its obligations, specifically, reviewing the quality of facilities maintenance, and drawing on the final bond if necessary to rectify any maintenance defects
- ensuring that there is a firm plan in place for the management of the site from the expiry date, ideally managing the handover of the site to the next private party which has signed a new PPP agreement.

# THE PPP AGREEMENT MANAGEMENT PLAN

**Extract from Treasury Regulation 16 to the PFMA**

***16.6 Contracting PPP agreements – Treasury Approval: III***

*16.6.1 After the procurement procedure has been concluded but before the accounting officer or accounting authority of an institution concludes a PPP agreement, that accounting officer or accounting authority must obtain approval from the relevant treasury …*

*(b) for a management plan that explains the capacity of the institution, and its proposed mechanisms and procedures, to effectively implement, manage, enforce, monitor and report on the PPP …*

The institution must demonstrate in its TA:III or IA:III application that it has the capacity to manage the PPP agreement. This capacity must be detailed in the PPP management plan. The plan will be very similar for both small and large cap tourism PPP projects, although the scope and details will vary.

The tourism PPP agreement management plan should be compiled according to the following structure.

Figure 4.1: Template PPP agreement management plan

| Sections | Summary of contents |
|---|---|
| **1. Purpose and approach** | • Purpose of the PPP agreement management plan<br>• Partnership principles (corporate governance, communication and information, relationship management, trust and attitudes, dispute management)<br>• Benefits of a successful partnership to the institution and the private party<br>• The institution's approach to PPP agreement management |
| **2. Value-for-money objectives** | • Summary of project's value-for-money objectives and how these are expected to be achieved with the private party |
| **3. Partnership management** | • Partnership management plan (to manage the partnership principles identified in section 1) |
| **4. Risk and performance management** | • Risk management plan<br>• Performance management plan |
| **5. PPP agreement administration** | • Plan for variation management, agreement maintenance, and financial administration |
| **6. Exit strategy** | • Options and procedures for continuing operations after termination/expiry based on the provisions of the PPP agreement |
| **7. Implementation plan** | • Table for each phase, identifying key tasks, target dates, responsibilities and the institution's budget |

## Section 1: Purpose and approach

The purpose of the plan, partnership principles, benefits of a successful partnership to both parties, and the institutional approach to PPP agreement management must be addressed in this section.

The five key principles of partnership management are:

- **corporate governance:** this comprises structures, systems, policies and other mechanisms of accountability within the institution
- **trust and attitudes:** while contractual and commercial arrangements may lay the basis for a partnership that is built on common objectives and shared rewards, trust is a key feature of a successful partnership. The behaviour of individuals in a contractual relationship is a reflection of their attitudes, and the right attitudes will lead to the right behaviour
- **communication and information sharing:** good communication and systematic information sharing is fundamental to the partnership
- **relationship assessment:** a way of assessing the non-financial performance aspects of the partnership between the institution and the private party should be put in place. External parties can be contracted to give this assessment
- **dispute resolution**: the PPP agreement sets out the dispute resolution process to be followed. But one of the main goals of the project officer should be to anticipate and prevent disputes from arising.

## Section 2: Value-for-money objectives

The plan must summarise the value-for-money objectives that were established in the feasibility study and specified in the bid documents. It must then indicate how these are likely to be fulfilled by the private party according to the commitments made in the PPP agreement. Figure 4.2 is an example of how this can be done.

Figure 4.2: Example summary of how the private party will fulfil the value-for-money objectives

| **Value-for-money objective** | **Private party commitment** |
|---|---|
| To increase revenue to the institution | Minimum PPP fee: Rx per annum<br>Variable PPP fee: x per cent revenue per annum |
| To create jobs | x number of construction jobs during the development period<br>x number of permanent jobs during the operating period |

## Section 3: Partnership management

The key principles of partnership management have been set out in Section 1. This section must set out the practical steps that will be taken to give effect to these principles, specifically:

- how decisions affecting the PPP will be taken in the corporate governance structures of the institution and how these decisions are communicated to the private party
- whether any particular steps need to be taken to build trust between the institution's staff and the private party and between the private party and other stakeholders
- what formal and informal communication channels will be set up, what meetings are needed between the parties and how often they will be held
- whether a periodic review of the relationship will be conducted by an independent party and on what terms
- the formal mechanisms by which disputes will be managed between the parties.

PPP agreements are managed not only by the agreement but also through a respectful relationship between the parties on a day-to-day basis. Infrequent and informal interaction will not prove successful. Sufficient time and resources must be budgeted for the necessary senior managers to participate when needed. Any potential damage to the relationship, and possible legal consequences, must be considered when relationship management is left to junior officials.

### The parties need to share a common goal, recognise 'own goals'

**For a PPP to function effectively the private party and the institution must both strive towards a common goal of creating a sustainable business.**

To achieve this, both parties may need to build the brand of the nature reserve and to improve the visitor enjoyment of the reserve. But each party will have different 'own goals' within this common goal. For example, the private party needs to service its debt and make a return on equity for its shareholders, while the institution wants to protect biodiversity and effect socio-economic development. The common goal must be kept in sight constantly by both parties in all dealings, with an appreciation of the other party's 'own goals'. This becomes especially important when dealing with variations to the PPP agreement.

## Section 4: Risk and performance management

### Risk management

This involves keeping the exposure of the project to any potential threats at an acceptable level by taking appropriate action.

Risk is the essence of all business relationships. An understanding of the risk each party is taking will help to build a good working relationship. Although one party may be taking the risk, the management of this risk is often contingent on the other party fulfilling its obligations. The private party invests in the reserve, but for the business to be successful, the reserve must be well run and managed.

Reward must be commensurate with the risk the parties are bearing. Typically, private parties that are absorbing high risk will expect higher returns. The management plan must identify these high-risk elements. It must focus on how they will be managed in the relationship.

The project officer must list the potential risk events, drawing on the risk matrix established in the pre-feasibility study[7]. The probability of any of the risk events happening should be stated, as well as the consequences for the institution should a risk event occur. The effects on the institution must be measured against the value-for-money objectives of the PPP. There should be contingency plans for risks with significant consequences.

For example: The risk of the private party not paying the PPP fee. This may have significant consequences for the institution's management of the reserve in which the tourism project is situated. But there may be a low probability that it will occur. Importantly, the institution can mitigate the risk by putting in place measures to predict it. The private party's reporting obligations are the institution's early warning system. If the business shows consistently low occupancies, low revenue and high costs, it is likely to be in trouble. The project officer can discuss this with the private party's management before a default occurs and establish what is being done to turn the business around. If the private party defaults, the institution will not only suffer the loss of PPP fee income it will incur additional costs in the dispute and termination process. It is in the interests of both parties to act early to rectify the problems.

Once a default occurs the steps set out in the PPP agreement must be taken, giving the private party opportunities to rectify the default, and proceeding with termination of the PPP project if it fails to do so.

7. See *Module 1: PPP inception and pre-feasibility phase for tourism PPPs*: PPP Pre-feasibility: Stage 1.

Figure 4.3 is an example of how to tabulate each identified risk in order to anticipate the consequences of a risk arising and put mitigation measures in place.

Figure 4.3: Example of how to tabulate risks, their consequences, and mitigation measures

| Risk event | Probability of occurrence | Consequences of occurrence | Early warning indicators | Private party mitigation | Institutional mitigation | Process to follow if risk event occurs |
|---|---|---|---|---|---|---|
| Non-payment of PPP fees. | Low. | Significant, with increased costs to the institution and the possible termination of the PPP agreement. | Declining profitability of business. Poor occupancies. Poor levels of service. | Management measures. Insurance. | Close monitoring of private party reports. Visitor surveys. Ensure remedy periods are used effectively. | Notice to rectify failure. Fast track dispute. Notice of termination. Remedy period. Termination. |

## Performance management

This involves making sure that the performance standards set out in the PPP agreement are met[8]. Site-and project-specific issues should be added by the project officer.

Monitoring is largely the private party's responsibility, and reports are provided to the institution on a regular basis as specified in the PPP agreement. The project officer will need to set up periodic checks on these reports. To keep track of performance it is essential to list the performance standards of the agreement and identify which will require specific monitoring, and by whom. Performance management checklists will need to be drawn up, reviewed and updated continually as performance levels change over time and a better understanding develops between the parties.

8. These performance standards are specified in the template PPP agreements and their schedules in *Module 2: Feasibility and procurement phases for small cap tourism PPPs*: 'Template 5: Draft small cap tourism PPP agreement' and *Module 3: Feasibility and procurement phases for large cap tourism PPPs*: 'Template 10: Draft large cap tourism PPP agreement'.

## Section 5: PPP agreement administration

PPP agreement administration involves setting up administrative processes to make sure that all the procedures and documentation relating to the PPP agreement are effectively managed on a day-to-day basis.

The three main categories of PPP agreement administration are:

- **financial administration:** establishing systems and procedures to make and receive financial payments and to keep accurate records of financial transactions
- **PPP agreement maintenance:** making sure that all project documentation is consistent, up-to-date and accessible, and that actions are taken timeously to fulfil the administrative requirements of contractual obligations. Constant updating of the PPP agreement management manual is essential
- **variation management:** creating mechanisms to enable changes to the PPP agreement to be made, if necessary. Variations may involve changes to the works or performance standards. The relevant treasury must be notified of all material amendments and variations before they are implemented. Variations that will have an impact on affordability, value for money, or risk transfer will require treasury approvals in terms of Treasury Regulation 16 to the PFMA, or formal institutional approvals if an exemption from treasury approvals has been granted.

Details of staff or experts who have been contracted to undertake the different activities must be provided in this section. This should include CVs that show their relevant experience.

## Section 6: Exit strategy

The exit strategy should include:

- a list of the options for continued operations after the expiry of the PPP agreement term
- measures to monitor facilities and maintenance standards in the final years of the project term
- ensuring that the final bond is instituted by the private party as required in the PPP agreement
- procedures to be adopted for a smooth transition to new operations
- roles and responsibilities in the transition.

## Section 7: Implementation plan

The implementation plan should set out in detail every task that the project officer or other staff in the institution need to carry out in each phase of the project term. It will need to be updated regularly.

Figure 4.4: Template PPP agreement implementation plan

| Key tasks (examples) | Target date | Responsibility | Institution budget |
|---|---|---|---|
| **1. Development phase** | | | |
| Approve appointment of independent certifier | Within one month of signature date | Project officer | Rx' 000 |
| Upgrade access road to agreed standard | (x day x month) | Reserve manager | Rx' 000 |
| Receive completion certificate and snag list | (x day x month) | Project officer | – |
| Hold meetings with private party | Last Friday of each month | Project officer and reserve manager | – |
| **2. Operations phase** | | | |
| Give approval for the private party to begin operations | (Scheduled operation commencement date) | Project officer | |
| Receive and study private party reports | Monthly | Project officer and reserve manager | – |
| Hold meetings with the private party | Last Friday of each month | | |
| Monitor water consumption | | Reserve manager | Rx'000 |
| Arrange game stocking to agreed levels | Monthly<br>(x month) per annum | | |
| **3. Exit phase** | | | |
| Feasibility study for new PPP<br>Procurement for new PPP<br>Facilities maintenance inspection<br>Check final bond | (2 years prior to expiry date) | Project officer | Rx'000 |

The permanent staff involved in these tasks must be identified and their level of input must be specified and reflected in their annual performance agreements. A short CV for each staff member and his or her position within the organisation can be supplied with the management plan. An organogram may help to show how the organisation is structured and how the reporting relationships will function. It is important that the project officer manages the interaction between the staff members for the implementation plan.

Building on the feasibility study's calculation of the institution's cost of PPP management, key staff time and overhead costs to PPP management need to be updated. A medium-term expenditure framework budget for internal management and monitoring purposes is necessary.

## Development phase[9]

It is during this phase that problems can escalate fast and environmental and social impacts can deviate from what was agreed, through deliberate avoidance, neglect, or unforeseen circumstances. Although it is the job of the independent certifier to confirm whether or not the works comply with the specifications agreed between the parties, the institution must keep track of how the works are progressing. A sound communication system must be put in place at the outset, both between the private party management and the project officer, and also within the institution, so that all staff know what is expected of them and how they should deal with problems that arise. Relief events and compensation events in this period need to be very carefully managed by the project officer, as set out in the PPP agreement.

**The time line for tourism PPP agreement management in the development phase**

The time line for this phase is explicitly stated in the PPP agreement. For large cap tourism projects it starts with the signature date and is completed at the scheduled operations commencement date. It may extend, however, to the long-stop date. If the independent certifier has not issued the completion certificate by the long-stop date, the PPP agreement may be terminated by the institution. The independent certifier must be approved by the institution. During the development phase the private party must maintain a performance bond in favour of the institution.

## Operations phase[10]

The start of the operations phase is also demanding of time and resources. For the institution to establish a relationship with the private party and develop optimal processes typically takes from one to three years, depending on the type and nature of the PPP and the development, and the institution's experience in managing PPPs.

**The time line for PPP agreement management in the operations phase**

Operation begins on the operation commencement date when the certificate of completion has been issued and the institution has granted approval for the private party to undertake operation and maintenance.

9. The draft tourism PPP agreements use the term 'development period'.
10. The draft tourism PPP agreements use the term 'operations period'.

The initial stages of the operations phase are important as they set the tone for the rest of the project. If management is lax it is often difficult to tighten it later.

## Exit phase

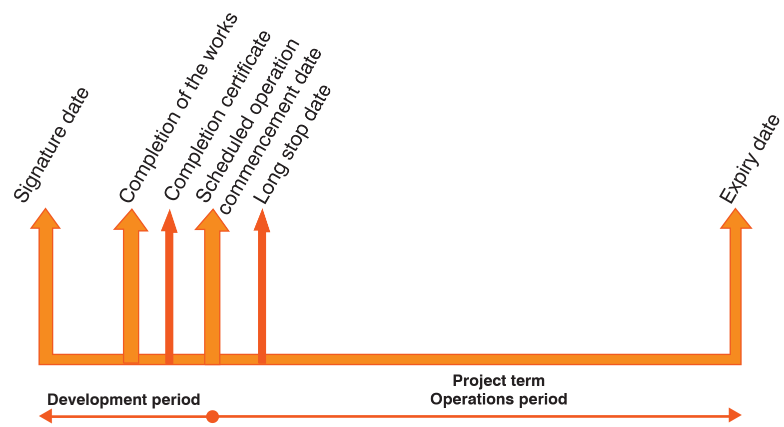
If the private party or institution terminates the PPP early, or if it has run its full project term, this phase will require additional input. The monitoring of the standards of the business and the infrastructure, in particular, needs to be increased to make sure that assets do not deteriorate. A feasibility study for a new PPP may be appropriate and should be done at least two years before the expiry date of the previous agreement, followed by procurement.

### The time line for PPP agreement management in the exit phase

The private party is required to obtain a final bond in a specified amount, at a specified date in the final years of the PPP agreement. This is to incentivise the private party to maintain the facilities in excellent condition until the expiry date. If the private party fails to do so, the institution may call the bond to remedy the maintenance shortfall.

The exit phase will start at a date that allows the institution enough time to prepare to rebid the site or make alternative arrangements. A description of the options that are available to the institution at the expiry date should be listed in the PPP management plan. The impacts on staff, the environment (if any structures are to be removed or decommissioned), and the institution must be considered. It is likely that for most opportunities the site will be rebid and continually upgraded for tourism. PPP fees and other conditions may change in the new procurement.

Fig 4.5 Time line for managing the tourism PPP agreement



# THE PPP AGREEMENT MANAGEMENT MANUAL

The tourism PPP management manual is a physical and electronic compilation of all the documents relating to the PPP agreement. It is a living resource for the institution, and must be updated constantly by the project officer. New PPP management staff or the office of the Auditor-General should be able to familiarise themselves with the full background to the agreement by studying the manual. It should accurately reflect, therefore, the history that has informed the working relationship between the private party and the institution.

**Contents of the PPP agreement management manual**

- the strategic plan for commercialisation
- the pre-feasibility study report
- all Treasury Regulation 16 compliance documentation, such as that for project registration, exemption approvals (if applicable), and all treasury approvals or institutional approvals (as applicable)
- the feasibility study report, including the business model
- the bid documents (the request for qualifications, the request for proposals and the draft PPP agreement) issued by the institution
- the memoranda of understanding with development financing institutions, other financing institutions and support organisations
- the preferred bidder's bid submission and all related correspondence
- the record of the bid evaluation
- the value-for-money report on the preferred bid
- the final, signed PPP agreement and all schedules to the PPP agreement
- all financing agreements
- the PPP agreement management plan
- variations to the PPP agreement, if any
- the names and roles of all contact people in the institution, private party, third parties, and key external stakeholders
- all contractual correspondence
- any other important documentation supporting the PPP agreement.

# SUMMARY OF KEY INSTITUTIONAL ROLES AND RESPONSIBILITIES IN PPP AGREEMENT MANAGEMENT

National Treasury's *PPP Manual* provides a framework and principles for managing PPP agreements[11]. A critical aspect of effective PPP agreement management for the institution is to clarify the roles and responsibilities of key individuals. Ambiguity about the functions of important players in PPP agreement management can lead to unnecessary delays and disputes. The primary figures involved in PPP agreement management in the institution are the accounting officer/authority and the project officer.

## The accounting officer/authority's roles and responsibilities

In relation to PPP agreement management, the main responsibilities of the accounting officer/authority are to:

- mobilise support for the PPP project among politicians and other key stakeholders
- appoint a project officer as soon as the institution identifies a possible PPP, as required by Treasury Regulation 16.3.4 to the PFMA
- get all necessary treasury approvals as per Treasury Regulation 16 to the PFMA, or execute the approvals internally, if exempted from obtaining treasury approvals
- sign the PPP agreement
- provide executive commitment to sound partnership management
- delegate the necessary powers to the project officer for the management of the PPP agreement
- resolve any disputes the project officer is unable to settle
- provide financial oversight and ensure that the PPP project continues to operate in the public interest
- ensure that institutional functions are effectively and efficiently performed in the public interest or on behalf of the public service
- ensure that the state property is protected from forfeiture, theft, loss, wastage and misuse
- ensure that the PPP agreement is properly enforced
- report on the management of the PPP agreement in the institution's annual report.

11. See National Treasury's *PPP Manual: Module 6: Managing the PPP Agreement*.

## The project officer's responsibilities

While the PPP agreement will determine the legal and contractual obligations of the parties, the project officer will be required to exercise skill and judgment to protect the institution's interests effectively. In addition, he or she will be responsible for hiring a team with the technical know-how to manage the interests of the institution properly, as set out in the PPP agreement.

The project officer's main responsibilities in relation to managing the PPP agreement are to:

- manage the project on behalf of the institution, exercising delegated authority
- make sure that the PPP project continues to be affordable, that it provides value for money, and that risk is appropriately allocated
- monitor the fulfilment of all private party obligations
- ensure that the institution fulfils its obligations
- build a strong partnership and good working relations with the private party
- prevent and resolve disputes
- manage the consequences of private party defaults and institution defaults precisely as specified in the PPP agreement
- manage all financial and administrative systems required for the PPP
- manage the implementation of approved variations
- report on the management of the PPP agreement, among others, for the institution's annual report, and for the Accountant-General, the Auditor-General and any other government regulator.

NATIONAL TREASURY

PPP unit

# PPP TOOLKIT FOR TOURISM

NATIONAL TREASURY PPP PRACTICE NOTE NUMBER 01 OF 2005

# PREFACE

South Africa's tourism business opportunities in our world-renowned, nationally-loved protected areas are many and diverse. Opportunities abound to expand tourism, to grow revenues for conservation and heritage, to boost entrepreneurship, to attract international investment, to extend black economic empowerment, and to create jobs in remote and poor communities. These opportunities can become realities through public private partnership agreements.

PPPs are essentially about risk and reward, about how the interests of public and private parties are balanced to achieve good outcomes for the public. National Treasury regulates PPPs and provides proactive, best practice PPP advice to institutions in a range of sectors. Pioneering tourism PPPs, concluded by a number of South Africa's conservation and heritage institutions in recent years, have enabled National Treasury to establish, through wide consultation and keen collaboration, a set of standardised procedures and contract terms that bring certainty and consistency for future projects, based on lessons learned.

The *PPP Toolkit for Tourism* is a very practical, step-by-step guide, with numerous templates to aid its efficient application. Its aim is to empower relevant institutions to get on with the job, and to encourage private tourism investors and operators to do business with them. We trust that it will be put to full use.

Lesetja Kganyago
**Director General: National Treasury**
November 2005

# CONTENTS

## MODULE 2: FEASIBILITY STUDY AND PROCUREMENT PHASES FOR SMALL CAP TOURISM PPPs

## MODULE 4: MANAGING THE TOURISM PPP AGREEMENT

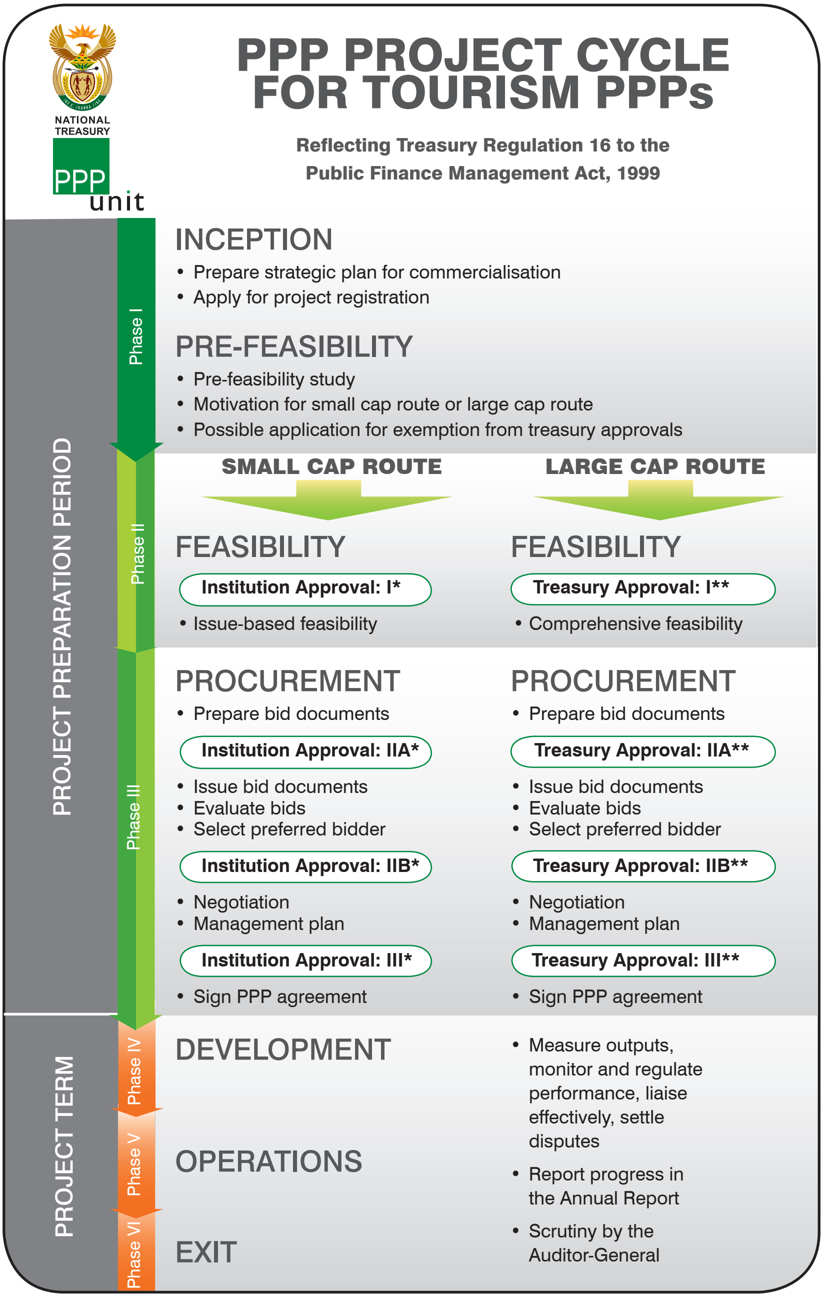


## INDEX

# ACRONYMS

**BAFO** – best and final offer
**BBBEE Act** – Broad-based Black Economic Empowerment Act, 2003
**BEE** – black economic empowerment
**CMA** – co-management agreement
**CPP** – community-private party agreement
**CPPP** – community-public private partnership
**DFI** – development finance institution
**DEAT** – Department of Environmental Affairs and Tourism
**DLA** – Department of Land Affairs
**DPW** – Department of Public Works
**DWAF** – Department of Water Affairs and Forestry
**ECA** – Environment Conservation Act, 1989
**EIA** – environmental impact assessment
**EoI** – expression of interest
**EMP** – environmental management plan
**GDP** – gross domestic product
**HIA** – heritage impact assessment
**IDP** – integrated development plan
**IA:I, IA:IIA, IA:IIB, IA:III** – Institution Approval: I, IIA, IIB, III
**IRR** – internal rate of return
**MFMA** – Municipal Finance Management Act, 2003
**MoU** – memorandum of understanding
**MTEF** – medium-term expenditure framework
**NAV** – net asset value
**NGO** – non-governmental organisation
**NPV** – net present value
**PDF** – Project Development Facility (of National Treasury)
**PEC** – project evaluation committee
**PFMA** – Public Finance Management Act, 1999
**PPP** – public private partnership
**PPPFA** – Preferential Procurement Policy Framework Act, 2000
**RFP** – request for proposals
**RFQ** – request for qualifications
**RMP** – reserve management plan
**RoD** – record of decision

**SAHRA** – South African Heritage Resources Agency
**SMME** – small, medium and micro enterprise
**SPV** – special purpose vehicle
**TA:I, TA:IIA, TA:IIB, TA:III** – Treasury Approval: I, IIA, IIB, III
**TET** – technical evaluation team
**TOMSA** – Tourism Marketing South Africa
**THETA** – Tourism, Hospitality and Sport Education and Training Authority
**VAT** – value-added tax




* If exemption from treasury approvals is granted.

** Unless exemption from treasury approvals is granted.