NATIONAL TREASURY
PPP MANUAL

MODULE 6: MANAGING THE PPP AGREEMENT

NATIONAL TREASURY PPP PRACTICE NOTE NUMBER 07 OF 2004

In accordance with section 76(4)(g) of the Public Finance Management Act, 1999 (PFMA), National Treasury may issue instructions to institutions to which the PFMA applies in order to facilitate the application of the PFMA and the regulations promulgated under the PFMA.

This National Treasury PPP Practice Note 07 of 2004 'Managing the PPP Agreement' applies to departments, constitutional institutions, public entities listed or required to be listed in schedules 3A, 3B, 3C and 3D to the PFMA, and subsidiaries of such public entities.

Extract from Treasury Regulation 16 to the PFMA

There are numerous sections of Treasury Regulation 16 to the PFMA dealing with the management of PPP agreements.

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; and

The definition of a project officer in Treasury Regulation 16 is:
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;

16.6 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.*

NATIONAL TREASURY

PPP unit

PPP PROJECT CYCLE

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

			PPP Manual reference
PROJECT PREPARATION PERIOD	Phase I	**INCEPTION** • Register project with the relevant treasury • Appoint project officer • Appoint transaction advisor	Module 1 Module 2 MODULE 3 Module 6
	Phase II	**FEASIBILITY STUDY** Prepare a feasibility study comprising: • Needs analysis • Options analysis • Project due diligence • Value assessment • Economic valuation • Procurement plan Treasury Approval: I	Module 1 Module 2 MODULE 4 Module 6 Module 7 Module 8 Module 9
	Phase III	**PROCUREMENT** • Design a fair, equitable, transparent, competitive, cost-effective procurement process • Prepare bid documents, including draft PPP agreement Treasury Approval: IIA • Pre-qualify parties • Issue request for proposals with draft PPP agreement • Receive bids • Compare bids with feasibility study and each other • Select preferred bidder • Prepare value-for-money report Treasury Approval: IIB • Negotiate with preferred bidder • Finalise PPP agreement management plan Treasury Approval: III	Module 1 Module 2 Module 4 MODULE 5 Module 6 Module 7 Module 8 Module 9
PROJECT TERM		**PPP agreement signed**	
	Phase IV	**DEVELOPMENT**	Module 1 Module 2 Module 5 MODULE 6 Module 7 Module 8 Module 9
	Phase V	**DELIVERY**	
	Phase VI	**EXIT**	

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

ABOUT THIS MODULE[1]

Module 6: Managing the PPP Agreement is intended to help the institution put effective mechanisms in place to manage the implementation of the PPP agreement.

The module is designed to help the institution meet its responsibilities in a number of phases of the PPP project cycle:

- in terms of Treasury Regulation 16.3.1(c), which requires the accounting officer/authority to appoint a project officer to manage the PPP agreement
- in terms of Treasury Regulation 16.6.1(b) to obtain Treasury Approval: III (TA:III) for a PPP agreement management plan
- in terms of Treasury Regulation 16.7, which makes the accounting officer/ authority responsible for the proper management of the PPP agreement
- in terms of Treasury Regulation 16.8 which allows for material amendments to a PPP agreement with treasury approval.

Take note

Managing the PPP agreement:

- starts in the inception phase 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.

The module is primarily aimed at the project officer, who will be responsible for preparing and implementing the PPP agreement management plan.

Most of the advice in the module is generic. While different types of PPP projects in different sectors have unique features that need specific forms of treatment with regard to managing the PPP agreement, the underlying principles in this module should apply to all PPP agreements.

1. This module has been compiled with reference to the UK Office of Government Commerce and the UK Treasury Task Force.

CONTENTS

SECTION 1: WHAT IS PPP AGREEMENT MANAGEMENT?

PPP agreement management is the process that enables both parties to a contract to meet their respective obligations in order to deliver the objectives required from the PPP agreement. It involves building a good working relationship between the two parties, and continues throughout the project term. Another dimension of PPP agreement management is managing proactively to anticipate future needs as well as reacting appropriately to unforeseen situations that arise.

The central aim of PPP agreement management is to obtain the services specified in the output specifications and ensure ongoing affordability, value for money and appropriate risk transfer.

This means optimising the efficiency, effectiveness and economy of the service described in the PPP agreement, balancing costs against risks, and actively managing the partnership between the institution and the private party. PPP agreement management should also involve aiming for continuous improvement in performance over the life of the PPP agreement.

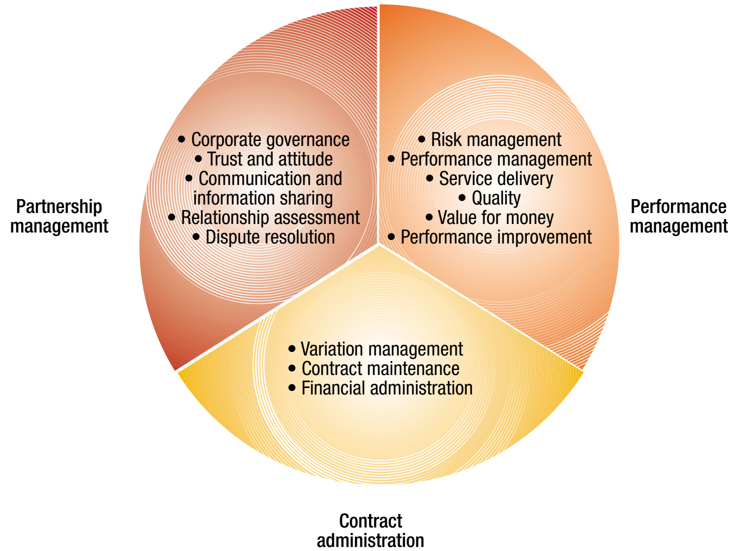
Functions of PPP agreement management

The various responsibilities and tasks that need to be undertaken during PPP agreement management can broadly be divided into three main functions:

- **Partnership management** is concerned with structures of accountability and how the institution and the private party relate to each other.
- **Service delivery management** can be described as the systems and procedures designed to manage risk and performance.
- **PPP agreement administration** relates to the administrative processes required to ensure that all the procedures contained in the PPP agreement and all the documentation relating to the PPP agreement are effectively managed.

In practice there will be a considerable degree of overlap between these functions, and they will often need to be undertaken simultaneously at any particular phase of the project. Nevertheless, an understanding of the purpose of each function and the required competencies will clarify further the responsibilities of the project officer and enable him or her to assemble a PPP agreement management team with the necessary attributes.

Figure 6.1: Key PPP agreement management functions



The three functions are each discussed in detail in sections 4, 5 and 6.

Phases of PPP agreement management

Take note

PPP agreement management starts with the appointment of the project officer in the inception phase of the PPP project cycle and continues throughout the PPP project cycle. It is a set of functions, with related responsibilities and tasks, which apply at different phases of the PPP project cycle.

- **The inception phase and feasibility study phase** cover the periods from the inception of the project by the institution until it has obtained TA:I for the feasibility study.[2]
- **The procurement phase** covers the period from when the institution has obtained TA:I until the signing of the PPP agreement, including all the TA:II and TA:III activities carried out before the signing of the PPP agreement.[3]

2. See modules 1 to 4.
3. See *Module 5: PPP Procurement.*

- **The development phase** begins from the signing of the PPP agreement and lasts until service delivery begins. It includes the transition to the new service delivery arrangements, and, depending on the nature of the project, may involve the design of facilities, the commissioning of goods and equipment, or the construction of buildings.
- **The delivery phase** refers to the period when services are delivered and used according to the PPP agreement's specified outputs throughout the remaining life of the project.
- **The exit phase** is towards the end of the life of the project – whether the project is ending through expiry or termination. Activities are wound up and the institution makes new financial and contractual arrangements for continued service delivery.

In practice, there will usually be some degree of overlap, particularly between the development and delivery phases and the delivery and exit phases. Furthermore, in different types of projects the relative importance of each phase may differ. Nevertheless, dividing PPP agreement management into these phases provides a framework for considering the key challenges and tasks of PPP agreement management throughout the project term.

During each phase, different aspects of the three PPP agreement management functions – partnership management, service delivery management and PPP agreement management – will need to be undertaken.

The PPP agreement management framework

Figure 6.2 below illustrates a PPP agreement management framework comprised of the three key functions and the critical phases. It summarises some of the most important tasks to be carried out during each phase. A more detailed breakdown of tasks is contained in figures 6.8-6.11. The reader who wants a quick overview of what is required for PPP agreement management at each phase of the PPP project cycle may want to read these pages before reading the rest of the module

Figure 6.2: The PPP agreement management framework

Critical phases and illustrative timeframe		Key functions		
		Partnership management	Service delivery management	PPP agreement administration
Years 1 to 2	Inception and feasibility	Appointment of project officer Establishment of project team Deciding on project type and procurement method	Establish the project's output specifications, affordability limits, value-for-money benchmarks, and risk allocation	Establish tracking and document management systems Identify budgets Establish financial management systems
Years 2 to 3	Procurement	Develop the partnership management plan Establish the PPP agreement management team Prepare the PPP agreement management plan	Develop the payment mechanism and performance management plan Develop the risk management plan	Develop the PPP agreement administration plan
Years 3 to 5	Development	Ensure a seamless transition to the new arrangements Establish sound partnership management systems Manage change	Establish risk control procedures Establish performance management systems Monitor the development of the service towards the commencement date Manage variations	Develop financial administration, PPP agreement maintenance and variation management procedures Calculate, record, deduct penalties Develop the PPP agreement management manual
Years 5 to 20	Delivery	Review and revise the partnership as necessary Manage change Review and revise the PPP agreement management Commission independent reviews	Ensure contracted services are provided in accordance with the output specifications Manage risks Manage performance Manage variations	Review and revise financial administration, PPP agreement maintenance and variation management procedures Calculate, record and deduct penalties Update the PPP agreement management manual
Years 18 to 20	Exit	Manage change Organise closure Integrate lessons of the partnership into the work of the institution	Assess deliverables, value for money, quality and innovation achieved by the project Make arrangements for the delivery of the service by the institution or inception of a new PPP project Organise post-implementation review	Implement hand-back procedures Implement transition, which may involve inception of a new PPP project

Take note

The foundations for PPP agreement management are laid in the phases of the PPP project cycle before the signing of the PPP agreement, including the inception, feasibility and procurement phases. This is why the appointment of a good project officer at the outset is so vital to PPP success. The terms of the signed PPP agreement will guide its management and form the core around which the contracted services can be developed and delivered, value for money can be achieved, and a productive relationship can grow. If the PPP agreement was poorly constructed, it will be much more difficult to make PPP agreement management a success.

Exit strategy

The project officer should prepare an exit strategy as part of the process of developing the PPP agreement management plan.[4] This strategy should be based on the provisions contained in the PPP agreement in relation to termination and expiry, and should demonstrate the institution's capacity to bring the project to an end efficiently and ensure ongoing service delivery. This may be achieved either by continuing the functions in-house or by setting up the inception phase of a new PPP project.

The exit strategy should include:

- an analysis of options, within the parameters of the PPP agreement, for continuing the service after termination or expiry, and an initial recommendation on the preferred option
- plans for organising a post-implementation review of the project, which should: (i) assess key deliverables, value for money, quality and project innovation; and (ii) be carried out within six months of the expiry or termination date
- the steps that will be taken to integrate the lessons of the project into the day-to-day work of the institution
- an implementation plan based on the hand-back procedures set out in the PPP agreement
- plans to deal with the implications of any employee transfers from the private party to either the institution or a successor body
- an estimate of the resources and personnel that the institution will allocate to managing the exit strategy
- plans for a closure event to celebrate the achievements of the project and prepare PPP agreement management staff and end users for their new role.

The exit strategy should be reviewed at appropriate points during the delivery phase, and revised as necessary to ensure that robust plans are in place three years in advance of the expiry of the project term.

4. See *Module 5: PPP Procurement*.

SECTION 2: THE INSTITUTION'S ROLES AND RESPONSIBILITIES

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 the PPP agreement management process could lead to unnecessary delays and disputes. The primary figures involved in PPP agreement management on the institution side are the accounting officer/authority and the project officer.

The accounting officer/authority[5]

In relation to PPP agreement management, the main responsibilities of the accounting officer/authority are to:

- mobilise support for the PPP project amongst politicians and other key stakeholders
- appoint a project officer as soon as the institution identifies a possible PPP,[6] as required by Treasury Regulation 16.3.4, to enable the project officer to make inputs into the output specifications and the PPP agreement, and ensure management continuity through each stage of the project
- obtain TA:III from the relevant treasury for the PPP agreement management plan[7]
- sign the PPP agreement
- delegate the necessary powers to the project officer after the PPP agreement has been signed to enable him or her to ensure the implementation of the PPP agreement
- resolve any disputes which the project officer is unable to settle
- provide executive commitment to sound partnership management
- provide financial oversight and ensure that the PPP project continues to operate in the public interest after the PPP agreement has been signed
- ensure that the PPP agreement is properly enforced
- report on the management of the PPP agreement in the institution's annual report.

5. See *Module 3: PPP Inception*, for an explanation of the overall role of the accounting officer/ authority in PPP projects.
6. See *Module 3: PPP Inception*.
7. See *Module 5: PPP Procurement*.

The project officer[8]

Required competencies

The project officer is appointed in the earliest stage of PPP inception, in the knowledge that he or she will be required to play a central role in managing the PPP agreement. As noted in *Module 3: PPP Inception*, the appointment of a project officer needs to be carefully considered, as the responsibility of undertaking the contract management functions of a major project requires a broad range of personal and technical competencies. In addition, Treasury Regulation 16.3.1(c) requires that the project officer be capable and appropriately qualified. While the PPP agreement will determine the legal and contractual obligations of both parties, the project officer will be required to exercise skill and judgement in order to effectively protect the institution's interests. In addition, he or she will be responsible for hiring a team with the range of technical know-how to properly manage the interests of the institution as set out in the PPP agreement.

Module 3: PPP Inception provides a competency model for the project officer. It can be used:

- as a recruitment and selection tool in the inception phase of the PPP project cycle, when the institution is seeking to appoint a project officer
- as an assessment tool throughout the PPP project cycle, when the project officer is undergoing a performance appraisal
- as a development tool when the project officer is looking to keep his or her expertise aligned with the evolving requirements of PPP agreement management.

Main responsibilities

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
- ensure that the PPP project continues to be affordable, and provides quality, value for money and appropriate risk transfer
- ensure both parties meet their contractual obligations
- ensure the requirements of the output specifications are achieved
- appoint a PPP agreement management team with the necessary technical skills to administer institutional obligations and protect institutional rights in the PPP agreement
- build a strong partnership and good working relations with the private party
- prevent and/or resolve disputes
- manage risks
- monitor private party performance and take corrective action where necessary
- develop and implement the PPP agreement management plan[9]

8. See *Module 3: PPP Inception*.
9. See *Module 5: PPP Procurement.*

- develop and maintain the PPP agreement management manual and related PPP agreement administration systems
- report on the management of the PPP agreement, as required, among others, for the institution's annual report, and by the Accountant-General,[10] the Auditor-General[11] and any other government regulator
- ensure that the private party maintains insurance and indemnities in force
- manage approved variations
- develop an effective communication framework
- organise PPP agreement management reviews
- manage consequences of contract breach.

Section 7 sets out the project officer's PPP agreement management tasks and responsibilities for each phase of the PPP project cycle in detail.

A particular responsibility, which is a requirement of *Standardised PPP Provisions* (Standardisation) (Part H: 38), is the appointment of a liaison officer by each of the parties. Standardisation states that the project officer should act as the institution's liaison officer, who is responsible for dispute resolution and meeting with the private party on a regular basis to consider performance reports. However, depending on the size of the project, the project officer may need to delegate some of these responsibilities to another member of the PPP agreement management team, particularly the dispute resolution procedures set out in Part S:86 of Standardisation. (See Section 4 of this module.)

The PPP agreement management team

The resources to be devoted to PPP agreement management will be affected by the overall size and complexity of the project and the particular stage it has reached. In some cases it may be possible for the PPP agreement management function to be carried out by a single individual. This team will have evolved since its role as a project team in the inception, feasibility and procurement phases, taking on different technical skills and experience as needed throughout the PPP project cycle.

It is common for the project officer to be supported by, or to co-ordinate, a PPP agreement management team, consisting of a range of specialists and technical advisors with varying levels of involvement.

Typical expertise

It should be the project officer's responsibility, in consultation with the accounting officer/authority, to decide on the composition of the team, how it should be deployed, and whether and when to call on additional expertise (within the scope of the budget). The range of expertise and skills required will vary over the life of the PPP agreement. Membership of the team will reflect the various competencies

10. See *Module 8: Accounting Treatment for PPPs.*
11. See *Module 7: Auditing PPPs*

required to effectively discharge PPP agreement management responsibilities during each stage of the PPP agreement. Typical expertise that needs to be represented or available is:

- knowledge of the subject matter
- design and construction
- business and product assurance
- facilities and services management
- IT (especially, but not only for IT projects)
- statutory safety and regulatory responsibilities
- law
- finance
- Black Economic Empowerment (BEE) monitoring.

The main focus of the project officer and the PPP agreement management team will be to develop an appropriate arms-length approach and not to interfere with the way the service is delivered by the private party, provided the output specifications are met.

Structure

It will be the responsibility of the project officer to co-ordinate inputs from the various team members in order to ensure effective and consistent PPP agreement management. The project officer should establish a suitable structure for the PPP agreement management team well before the PPP agreement comes into force. While individuals will change, the aim should be for continuity of PPP agreement management expertise from the procurement phase onwards. To this end, knowledge management systems should be developed and succession plans prepared for critical team members. The private party should be made fully aware of the PPP agreement management structures that have been established within the institution. Usually, the private party will appoint its own PPP agreement management team to act as its interface with the institution.

Outside expertise

Where contract management expertise is brought in from outside the institution, either on an ad hoc basis or under a long-term arrangement, it will be important to ensure that commercially confidential information held by the institution is protected. The terms of reference, timeframes and the basis of fees for such advisors must be clearly defined to ensure that management of the PPP agreement rests with the institution. Any contract with independent professional advisors providing contract management services must contain clear arrangements for reporting the results of performance monitoring to the institution and the private party.

Ethics

In all their dealings, the private party, the project officer and the PPP agreement management team should be guided by the provisions of the *Code of Conduct* contained in the public service regulations.[12]

12. Regulations to the Public Services Act, 1994, published as Regulation No 6979, Government Notice R1, *Government Gazette* 21951 of 5 January 2001.

SECTION 3: THE APPROACH TO PPP AGREEMENT MANAGEMENT

From the perspective of the institution, the management of PPP agreements requires a relatively hands-off approach that respects that the performance of key institutional functions has been contracted to the private party.

Effective PPP agreement management requires the institution to move away from traditional public service methods of contract management (which tend to keep the service provider at a distance, focus on inputs, and often become adversarial) and towards building constructive partnerships with the private party. The focus is on the service outcomes to be achieved, using appropriate mechanisms for quality assurance, spot-checking, performance monitoring and corrective action.

The management of a PPP agreement requires a range of 'soft' skills in both the institution and the private party. The approach which the institution adopts will have an important bearing on the chances for project success. Too much intervention could sour relations with the private party and stifle innovation; too little intervention could lead to end-user dissatisfaction or expose the institution to unnecessary risk. There is a balance that should be achieved in the PPP agreement, elaborated in the PPP agreement management plan, and implemented after the signing of the PPP agreement.

The institution's approach should to a large extent be determined by the sector in which the PPP project operates, the risk profile of the project, and the particular phase of PPP agreement management that has been reached at any given point. Thus, where the consequences of private party performance failure would be severe – for example, hygiene in a hospital operating theatre – a rigorous monitoring regime would be required. In less exacting circumstances, a more flexible monitoring system might be possible. Similarly, the penalty deduction mechanism might be applied with greater flexibility during the development phase compared to during the delivery phase.

While the PPP agreement should include provisions for the PPP agreement management approach required by the institution, in practice many aspects of the approach will depend upon the skill, judgment and creativity of the project officer and the PPP agreement management team after the PPP agreement has been signed.

Critical success factors

Broadly speaking, a PPP agreement is being managed successfully if the following conditions are being met:

- the arrangements for service delivery continue to be satisfactory to both the institution and the private party
- expected PPP benefits, value for money and innovation are being realised
- there is a good relationship between the institution and the private party
- the institution is aware of its contractual obligations and has the necessary resources and expertise to honour them

- knowledge management and succession planning are used to retain intellectual capital and the expertise of key staff
- disputes are resolved at the appropriate level through the partnership management system without recourse to external dispute resolution
- changing service delivery requirements are anticipated, and variation procedures are used to minimise any negative consequences and maximise any opportunities brought about by change.

What can go wrong, and why

If the PPP agreement is not well managed by the institution, any or all of the following may happen:

- the institution loses control, resulting in unbalanced decisions that do not serve the institution's interests
- decisions are not taken at the right time – or are not taken at all
- new business processes do not integrate effectively with existing processes, and therefore fail
- people (from both sides) fail to understand their obligations and responsibilities, leading to unnecessary disputes
- too many issues are escalated inappropriately, which can slow down decision-making
- the intended benefits are not realised
- opportunities to improve value for money and performance are missed.

Ultimately, the PPP agreement becomes unworkable.

If PPP agreement management is failing, it is likely to be due to any one or more of these factors:

- a poorly drafted PPP agreement
- the people involved in negotiating the PPP agreement are not the same as those given responsibility for managing it
- inadequate resources are assigned to PPP agreement management
- poor institutional leadership and/or misunderstanding of the PPP agreement
- the institution team does not match the private party team in terms of skills or experience (or both)
- the wrong people are put in place, leading to personality clashes or ineffective management
- the context, complexities and dependencies of the PPP agreement are not well understood
- there is a failure to assess private party or institutional assumptions adequately
- authorities or responsibilities relating to commercial decisions are not clear
- a lack of independent reviews of the PPP agreement management arrangements
- a focus on current arrangements rather than on what is possible or the potential for improvement
- a failure to monitor and manage institution risks.

SECTION 4: PARTNERSHIP MANAGEMENT

Partnership management, also known as relationship management, involves the development of processes to ensure accountability and to manage the relationship between the institution and the private party.

A successful PPP delivers the services that meet the requirements of the output specifications through a commercial arrangement that is acceptable to both parties – offering value for money for the institution and adequate profit for the private party. In addition, the way the institution and the private party regard each other and the way their relationship operates are vital.

Take note

The partners in a PPP agreement have different but complementary interests, not necessarily common interests.

Five key dimensions of PPP partnership management

Five key dimensions of PPP partnership management
1. Corporate governance 2. Trust and attitudes 3. Communication and information sharing 4. Relationship assessment 5. Dispute resolution

1. Corporate governance

Corporate governance is concerned with structures, systems, policies and other mechanisms of accountability within an organisation.

The King Code

In South Africa the policy framework for corporate governance is contained in the *King Code of Corporate Practices and Conduct*, which puts forward an inclusive and balanced scorecard approach for a company board to:

- move from the single bottom-line of financial performance to the triple bottom-line, which embraces the financial, environmental and social aspects of a company's activities
- apply the tests of fairness, accountability, responsibility and transparency to all acts and omissions
- be accountable to the company
- be responsive and responsible towards key stakeholders.

It includes: the role and responsibilities of company boards and directors; risk management; internal audit; integrated sustainability reporting; accounting and auditing; relations with shareholders; and corporate communications.

The King Code should be an important reference in PPP partnership management and should relate to the liaison and reporting requirements of *Standardised PPP Provisions* (Part H: 38). The governance structure should be consistent with the King Code and headed by the accounting officer/authority on the institution side, and the chief executive or equivalent officer on the private party's side.

Other corporate governance guidance and obligations

In applying the King Code tests of fairness, accountability, responsibility and transparency in its monitoring of the private party, the project officer should be guided by the provisions of the Promotion of Access to Information Act, 2000, and the Promotion of Administrative Justice Act, 2000.

The private party's reporting and disclosure obligations will be specified in the PPP agreement[13] and must mirror the institution's disclosure obligations to the Accountant-General[14] and the Auditor-General.[15]

2. 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.

Trust cannot be mandated in the PPP agreement, and although it may be anticipated, ultimately it has to be built and earned through actions and behaviours, rather than assertions. Trust is tested when problems and disagreements arise. Trust can seem a very intangible concept, but tangible efforts can be made to try to engender or promote a spirit of trust within the partnership. State publicly the principle and expectation that trust should be a feature of working relationships, and make it a feature of awareness campaigns.

The behaviour of individuals in a contractual relationship is a reflection of their attitudes, and the right attitudes will lead to the right behaviour.

The accounting officer/authority, the project officer and others responsible for managing the partnership have a major influence on the way behaviours develop and are perceived by people in the private party. Careful thought should be given to identifying the values and attitudes required of the staff who will fill key posts. This is not to say that the institution's PPP agreement management team should become a 'soft touch'. Commitment to managing the partnership and to long-term success requires active and assertive, not passive and submissive, behaviour.

13. See *Standardised PPP Provisions*: Part H and Part P.
14. See *Module 8: Accounting Treatment for PPPs*.
15. See *Module 7: Auditing PPPs.*

3. Communication

Good communication is often the make or break in managing a partnership.

It is vital that the parties agree to formal disciplines about how they communicate in the project, and that they do not break protocols or stray into informalities. For example, discussions on a golf course between a government minister and a senior manager in the private party are not an appropriate way to make decisions in a PPP project.

Many cases of mistrust or concern over poor performance in a service relationship result from a failure to communicate at senior management level, or from each party's failure to understand the business goals or intentions of the other side.

Levels of communication

The relationship between the institution and the private party should generally operate at different organisational levels, with channels of communication running horizontally between equivalent levels on both sides. An example of an arrangement with three formal levels of communication is shown in Figure 6.3 below. This large-scale PPP project has information flowing at several levels.

Figure 6.3: Levels of communication in a large-scale PPP project

	Institution	Communication focus	Private party
Strategic level	Accounting officer/authority	Contracting parties Commitment Corporate governance Dispute resolution	Chief executive
Business level	Project officer and project team staff	Partnership management Service delivery management PPP agreement administration	Chief executive and managers
Operational level	End users (government staff and general public)	Service delivery Technical support	Service delivery management

Source: Adapted from UK Office of Government Commerce, *Contract Management Guidelines*, 2002.

The strategic level

The accounting officer/authority and the chief executive are the contracting parties. To this end, they need to establish commitment to making the partnership work, mobilising political and financial support, and 'leading from the front.' Ultimately this level must deal with dispute resolution if difficulties cannot be resolved at the business level by the project officer.

This is not, and should not be allowed to become, the level where day-to-day project matters are managed. The chief executive of the private party and the accounting officer/authority must be careful to manage this level of the partnership accordingly.

The business level

The business level is the level at which the PPP agreement is formally managed by the institution's project officer (with his or her project team) and his or her private party counterpart (with his or her managers). This is where the day-to-day partnership is managed, services are planned and their delivery is monitored.

The operational level

The operational level is where services are delivered to end users comprised of staff in the institution and the general public. Staff order or call off components as they require them and receive technical support as necessary from the private party's service delivery management. The private party and its subcontractors provide the service to agreed levels. A call-centre may be used to log levels of satisfaction from end users. Day-to-day problems in the delivery of services may be resolved here. If this is not possible, they can be escalated to the relevant member of the project officer's project team and, if necessary, to the project officer at the business level.

Channels of communication

These levels of communication should be preserved even when problems arise, and diagonal lines of communication avoided. For example, if end-user institutional employees feel the service is not being delivered to the required standards, they should refer this to the relevant member of the institution's project team, who will liaise with his or her counterpart in the private party. It would not be appropriate for them to go 'straight to the top' and liaise directly with the private party chief executive; doing so would undermine the key business level management of the PPP agreement. Similarly, it would be inappropriate for service delivery management on the private party side to complain about their workload to the project officer.

The ideal is a combination of vertical communication between levels within each organisation and horizontal, peer-to-peer communication between organisations.

Consistency

Consistent communication between levels is also important, or differences in perspective between, say, the accounting officer/authority and the project officer may create difficulties in the partnership.

The physical location of the partners

A mechanism that has proved to be effective in enhancing communication and other aspects of the partnership between the institution and the private party is the co-location of PPP agreement management staff from both sides in common premises. Having a base in the same building can help to build communication channels and trust, which in turn can help to smooth the way for more formal contractual negotiations.

Trust

Sharing information between the institution and the private party may raise legitimate concerns about how information will be used. There may, for example, be a concern that information about the institution's plans, finances and resources will be exploited by the private party for its commercial advantage. Willingness to share information openly depends largely on the element of trust. However, there should be a realistic balance between openness and reserving negotiating positions.

4. Relationship assessment

As well as measuring performance against financial and service performance measures, a way of assessing other aspects of the partnership between the institution and the private party should be put in place. This may involve hiring an independent reviewer every few years, on a shared-cost basis, to identify problem areas and how these can be resolved. This will be valuable in highlighting areas that are perceived to be working well and those that require attention.

Periodic assessments might address issues such as:

- whether each party is getting the expected benefits when the PPP agreement was signed
- how well the management structures are seen to be operating
- how successful communication is seen to be
- the degree to which information is shared freely and openly between the parties
- whether conflicts are being avoided or resolved effectively
- end-user satisfaction and perceptions of the relationship.

While issues like these may be perceived subjectively to a large extent, these perceptions by each party of the relationship can have a material effect on PPP agreement management, regardless of their validity. There should be a willingness to learn from mistakes and, if necessary, to take part in partnership development programmes if they will help to strengthen the relationship.

5. Dispute resolution

***Standardised PPP Provisions* (Part S: 86) prescribe a dispute resolution procedure that must be included in the PPP agreement.**

The prescribed dispute resolution procedure requires that all disputes should, in the first instance, be referred to the institution and private party liaison officers (in the case of the institution, the project officer) for them to try to find a solution. If they are unable to do this within an agreed period, the dispute should be referred to the accounting officer/authority of the institution and the chief executive of the private party. If PPP agreement cannot be reached at this level either, the matter should be referred to an independent mediator or to an adjudicator to determine the out-come as part of the fast-track dispute resolution procedure. Only if the informal and formal procedures of this escalation process have been exhausted should the dispute be settled in the courts.

The project officer therefore has an important role to play in ensuring that all members of the PPP agreement management team properly understand the dispute resolution procedure. His or her counterpart in the private party has a concomitant role.

The main goal of the project officer should be to anticipate and prevent disputes from arising in the first place.

When this is not possible, he or she should facilitate co-operation between both sides to ensure that problems are recognised and resolved quickly and effectively. If it is necessary to involve a higher level of authority, the project officer should attempt to create the best possible atmosphere for an agreement to be reached.

Whatever the nature of the problem, the project officer should ensure that:

- problems are recorded as they occur
- the private party is notified of problems using the mechanism set out in the PPP agreement
- approaches to resolving problems are clear and documented
- the escalation procedures set out in the PPP agreement are followed.

Developing the partnership management plan

The partnership management plan provides an essential vehicle for addressing corporate governance, trust, communication, partnership assessment and dispute resolution. The project officer should develop a partnership management plan, based on the liaison and reporting provisions in the PPP agreement, as part of the PPP agreement management plan,[16] in the procurement phase of the PPP project cycle.

The partnership management plan should include:

- a statement of the principles that will govern the partnership

16. See *Module 5: PPP Procurement*.

- 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 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 PPP agreement has been signed, the project officer will need to ensure that the partnership management plan is implemented.

SECTION 5: SERVICE DELIVERY MANAGEMENT

Service delivery management in a PPP context can be divided into two principal categories:

- **Risk management** involves keeping the exposure of the project to any potential threats at an acceptable level by taking appropriate action.
- **Performance management** is concerned with ensuring that the PPP project remains affordable for the institution and manages service delivery, value for money, quality and performance improvement.

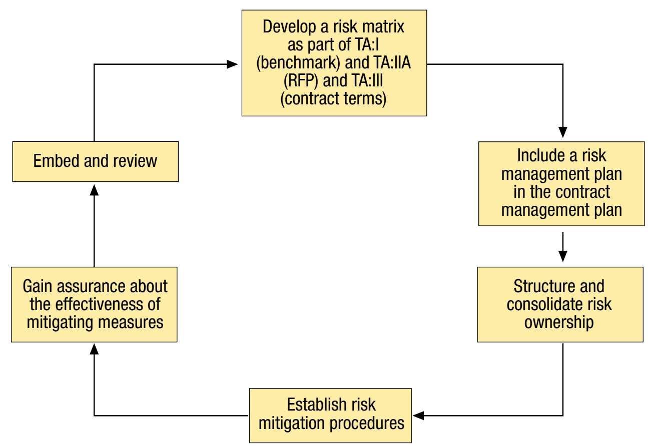
Take note

The institution's performance management role in a PPP project is in many ways quite different from the performance management role that government departments normally play. In PPPs, managing the performance of the private party has more to do with regulation than 'management' in the traditional sense.

Risk management

Risk management is a central component of the PPP procurement process, and additional risk management procedures are required after the signing of the PPP agreement.

Figure 6.4: PPP risk management framework for after the signing of the PPP agreement



Source: Adapted from UK HM Treasury, *Management of Risk – A Strategic Overview*, (The Orange Book), 2001.

1. Develop a risk matrix

The PPP agreement will contain detailed provisions about the allocation of risk between the institution and the private party. For TA:I and TA:IIB in particular, and then during PPP agreement negotiations, this risk allocation would have been reduced to a risk matrix[17] in which all risks would be specified, assigned, mitigation measures identified, and probabilities and costings calculated.

2. Include a risk management plan in the PPP agreement management plan

As part of the process of developing the PPP agreement management plan[18] during the procurement phase of the project cycle, the project officer should develop a risk management plan based on the risk matrix.

For each institutional or shared risk, the risk management plan should set out:

- an evaluation of the different options for treating the risk
- the institution official who will be responsible for managing the risk
- the procedures and mechanisms that will be used to control the risk
- an estimate of the resources that the institution will allocate to managing the risk.

For each private party risk, the risk management plan should set out:

- the obligations and reporting requirements which the institution has imposed on the private party to ensure that risk is managed
- the institution official who will be responsible for monitoring the risk
- an estimate of the resources that the institution will devote to monitoring the risk
- the mechanisms that will be used by the institution to deal with any failure of the private party to manage the risk, namely penalty deductions, step-in, etc.
- the business contingency plan that the institution will follow to ensure continued service delivery in the event that the private party cannot maintain the service or the institution is forced to terminate the PPP agreement for whatever reason.

3. Structure and consolidate risk ownership

After the signing of the PPP agreement a critical next step for the institution in risk management is to structure and consolidate the ownership of each risk. While the risk management plan will identify risk management responsibilities, this will need to be institutionalised. Ownership of each risk must be clearly defined, documented and agreed with the individual owners at all levels, so that they understand their various roles, responsibilities and ultimate accountability. The owner of the risk may not be the person tasked with the assessment or management of the risk, but he or she is responsible for ensuring the process is applied.

Each risk must have an owner. There may also be separate owners for the actions to mitigate the risk.

17. See *Module 4: PPP Feasibility Study.*
18. *See Module 5: PPP Procurement.*

4. Establish risk mitigation procedures

While the risk management plan will explain the mechanisms and procedures that the institution will use to manage, monitor and mitigate risk, the project officer should ensure that these mechanisms are put in place after the signing of the PPP agreement.

Two highly effective risk mitigation instruments are

- the risk register
- the summary risk profile.

The risk register

The risk register, or risk log, describes each risk and keeps all the information on the risk in one place so that a complete picture of risk exposure can be built up. Figure 6.5 below provides a basic set of contents which can be tailored as required.

Figure 6.5: Example risk register

Risk number	Date of registration	Description of risk	Impact			Probability	Possible responses	Target date for action	Owner	Action
			Time	Cost	Quality					
			L	L	M	VL				
			H	M	M	M				
			H	L	VH	H				

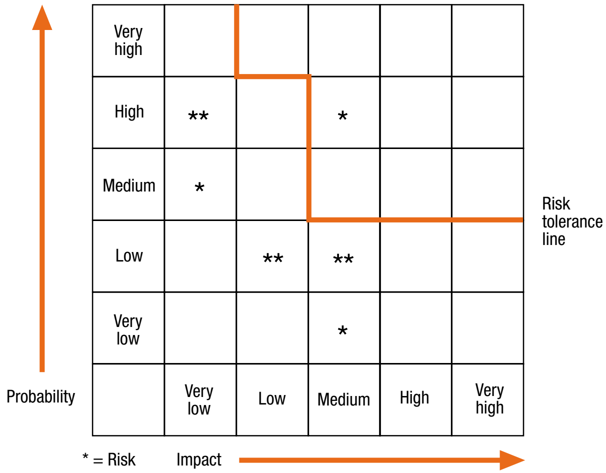
VL: Very low; L: Low; M: Medium; H: High; VH: Very high

Source: UK Office of Government Commerce, *Guidelines on Managing Risk*, 2001.

The summary risk profile

The summary risk profile is a simple mechanism designed to increase the visibility of risks. It is a graphical representation of information contained in the risk register. The project officer should update the risk register regularly, and then generate the graph which shows risks in terms of probability and impact, with the effects of mitigating action taken into account.

Figure 6.6: Example summary risk profile



Source: UK Office of Government Commerce, *Guidelines on Managing Risk*, 2001.

The summary risk profile shows all key project risks as one picture, so that managers can gain an overall impression of the total exposure to risk.

A key feature of this picture is the risk tolerance line. It shows the overall level of risk that the institution is prepared to tolerate. If the overall exposure to risk is above and to the right of this line, the project officer and the PPP agreement management team will be able to see that they must take prompt action with upward referral of relevant risks.

Setting the risk tolerance line is a task for experienced risk managers: it reflects the institution's attitudes to risk in general and to a specific set of risks within a project.

The parameters of the risk tolerance line should be agreed between the project officer and the accounting officer/authority and regularly reviewed.

Effective risk mitigation instruments like the risk register and the summary risk profile will indicate courses of action to be taken to mitigate risk.[19] Using such instruments, the project officer and the PPP agreement management team will need to ensure that they have the necessary resources, expertise and authority to implement the appropriate mitigation responses.

19. For a more detailed explanation of the risk register, the summary risk profile and other risk management tools, see UK Office of Government Commerce, *Management of Risks – Guidelines for Practitioners*, 2003.

5. Gain assurance about the effectiveness of mitigation measures

Once mitigation measures have been established and responses implemented, it is essential to be sure about the effectiveness of these. A reporting system should be established to enable upward reporting about how risk is being managed. This reporting system should be owned by, and ultimately report to, the accounting officer/authority. The project officer should provide regular reports on the work done to keep risk mitigation procedures up to date and in line with PPP agreement management objectives.

Internal audit provides another important assurance mechanism. The work of internal audit should provide an independent assessment of how well the institution is managing risk.

6. Embed and review

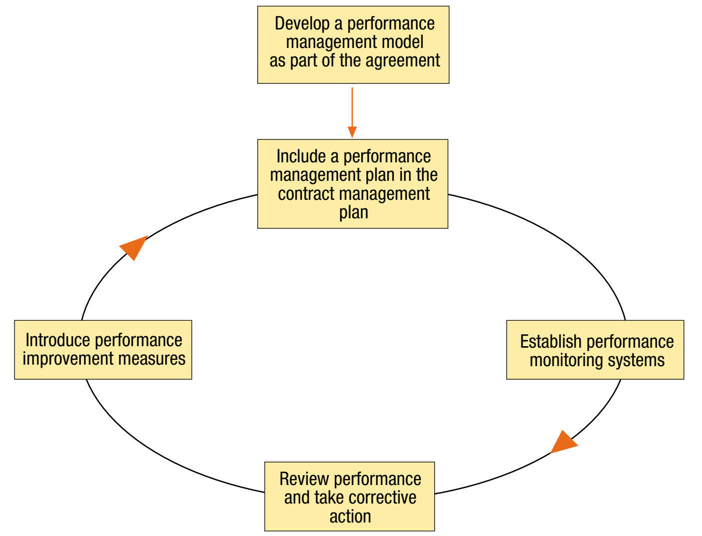
Risk management needs to be embedded in the institution by ensuring that there is an appropriate awareness of, and responsibility for, risk at all levels of the PPP agreement management team. Risk management should become an intrinsic part of the way the institution relates to the private party, and form the core of the PPP agreement management approach.

Over the life of a PPP project the risk environment is likely to change significantly, and thus the institution's priorities and the relative importance of risks will shift and change. The summary risk profile and the risk matrix itself will have to be revisited on a regular basis and reconsidered in order to ensure that the risk profile contained in the PPP agreement remains valid. If necessary, amendments will need to be made to the PPP agreement through the variation procedures to ensure that there continues to be appropriate risk transfer to the private party. (See Section 6.)

Performance management

Affordability, service delivery, quality, value for money and performance improvement are major considerations from the inception of the PPP project and other modules of *National Treasury's PPP Manual* address these issues. PPP agreement management requires additional procedures for dealing with these.

Figure 6.7: The PPP performance management process



1. Develop a performance management model as part of the PPP agreement

Standardised PPP Provisions (Part F: 33) require the institution to include in the PPP agreement a performance monitoring methodology, namely a performance management model, comprised of three key elements:

- **The level of performance required to achieve the output specifications**
  In setting the performance level, ensure that standards are reasonable and objectively measurable.
- **The means that the institution will use to monitor private party performance**
  The monitoring methodology included in the PPP agreement should occur at three levels: a systematic self-monitoring by the private party through a quality management system; a review of the private party's quality management system by the institution or an independent third party; and end-user feedback on the quality and effectiveness of service delivery. The PPP agreement must also specify the way in which performance is reported for monitoring purposes.
- **The consequences for the private party of a failure to meet the required level**
  The consequences of poor performance on the part of the private party must be handled in accordance with the PPP agreement, which should contain provisions for a number of responses to performance failure, ranging from formal warnings and penalty deductions to eventual termination for private party default.

2. Include a performance management plan in the PPP agreement management plan

As part of the process of developing the PPP agreement management plan, the project officer should develop a performance management plan to ensure that the requirements of the PPP agreement and the output specifications are met in terms of affordability, service delivery, quality, and value for money. The performance management plan should be based on the performance management model and include details of:

- the reporting obligations that will be imposed on the private party in relation to self-monitoring
- the performance management system that will be used by the institution and/or independent third parties to review the private party's quality management system
- the mechanisms that will be established to solicit end-user feedback, including a complaints procedure
- the institution officials who will be responsible for monitoring affordability, service delivery, value for money, quality and performance improvement
- an estimate of the resources that the institution will allocate to managing private party performance.

3. Establish performance monitoring systems

The performance management plan will describe the mechanisms that the institution will use to monitor private party performance. The project officer should ensure that these mechanisms are implemented after the signing of the PPP agreement. In particular, performance monitoring systems should be established to enable the PPP agreement management team to:

- regularly check progress to ensure that project milestones are met, including site visits where necessary
- hold regular progress meetings with the private party and consider performance reports
- conduct regular and random inspections of the supplied goods and services
- check that all performance conditions and clauses in the PPP agreement are acted upon
- develop effective mechanisms for obtaining feedback from end users and other key stakeholders
- review third party monitoring reports
- inspect deliverables to ensure inferior goods or services are not accepted
- maintain comprehensive documentation on performance monitoring.

The project officer will need to assign particular monitoring responsibilities to individual members of the PPP agreement management team and ensure that they have the expertise, resources and delegated authority necessary to perform their duties.

4. Review performance review and take corrective action

Effective monitoring should provide the basis for reviewing actual private party performance against the output specifications and other obligations contained in the PPP agreement. Like monitoring, reviews can be carried out by the institution and/or independent third parties. In carrying out such reviews, the project officer should consider the use of a generic quality assurance system, such as the South African Excellence Foundation Public Service Excellence Model,[20] or industry specific systems, to evaluate the effectiveness of the private party's quality management system.

The action taken by the institution to correct private party performance must be in line with the provisions in the PPP agreement and commensurate with the severity of the transgression. The application of formal warnings, penalty deductions, step-in and other responses should be undertaken in a manner that is likely to achieve the best result from the institution's point of view. An overly rigid approach may jeopardise continuing service delivery to end users, while too much lenience could encourage the private party to commit further breaches.

5. Introduce performance improvement measures

Seeking improvements is not about extracting more from the private party against their will, but about working together to improve quality, performance, value for money, or other aspects, in a way that benefits both parties.

In the PPP agreement

Given the length of time over which a typical PPP project will run and the difficulties of predicting technological and other productivity improvements that may occur, it is important to ensure that adequate attention is devoted to the issue of performance improvement. Ideally, the requirement for improvement should be embodied in the terms of the PPP agreement.

The payment mechanism[21] contained in the PPP agreement provides some incentive for the private party to seek improvements in performance. If prices are fixed, they can increase their profit by improving efficiency; if profits are shared, they are motivated to improve economy. The institution can also provide incentives to the private party for early commencement of services if this is affordable and provides value for money.

A joint commitment agreement

However, the terms of the agreement may not necessarily encourage the private party to seek improvements in other areas that might benefit the institution, especially if there is no explicit or tangible benefit for the private party. Moreover,

20. South African Excellence Foundation, *Level 3 Criteria for Public Service Performance Excellence: Self-Assessment and Certificates*, 1997.
21. See *Module 5: PPP Procuremen: 'Annexure 1: The payment mechanism'*.

many potential improvements cannot be foreseen when the PPP agreement is signed. Thus, part of the improvement process should be to aim for a joint commitment towards improvement so that both parties are actively pursuing this goal and deriving benefits when the goal is achieved.

Adding value

Incentives for performance improvement, which could be both financial and non-financial, should be affordable for the institution and introduced through the variation procedures. (See Section 6.) They should also be linked to circumstances in which the private party can provide added value. Added value means bringing something to the partnership that is genuinely worthwhile to the institution and beyond what was originally envisaged in the PPP agreement.

Examples of adding value include:

- eliminating aspects of the service that are no longer required
- the use of new technologies that would provide a cheaper and more effective service
- changes in procedures or working practices that provide more efficient ways of delivering the service
- opportunities for innovation, where the private party is given the chance to implement or devise new solutions that will improve the performance of the service.

PPP agreement management systems

Performance improvement is also an important issue for the institution in terms of PPP agreement management systems. Steps should be taken to ensure that PPP agreement management procedures and ways of working are as robust as possible. One way to achieve this is to review and revise the PPP agreement management plan every three years. Another way is for the institution to commission a comprehensive independent review of the project. Such reviews should again be undertaken in accordance with the strategies outlined in the PPP agreement management plan, and used to identify opportunities to improve PPP agreement management arrangements, quality, value for money and the scope for innovation.

SECTION 6: PPP AGREEMENT ADMINISTRATION

PPP agreement administration involves the establishment of administrative processes to ensure that all the procedures and documentation relating to the PPP agreement are effectively managed.

The importance of PPP agreement administration to the success of the PPP project, and to the partnership between the institution and private party, should not be underestimated. Clear administrative procedures can help to ensure that all parties to the PPP agreement understand who does what, when, and how.

Three main categories of PPP agreement administration

Three main categories of PPP agreement administration
1. Variation management 2. PPP agreement maintenance 3. Financial administration

1. Variation management

Treasury Regulation 16.8 deals with amendment and variation of PPP agreements as follows:

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.

Variation management is closely connected with PPP agreement maintenance and relates to the creation of mechanisms to enable changes to the PPP agreement to be made. Such changes may be necessary as a result of a change in circumstances that could not be anticipated or quantified when the PPP agreement was signed. Variations may involve changes to works, services or the form of delivery.

Four main categories of variation

Standardised PPP Provisions (Part K: 50) provide for four main categories of variation:

- variations that involve no additional costs
- small works variations
- institutional variations
- private party variations.

There are procedures for all these categories, which must be used for all changes to the PPP agreement regarding works, services and the means of delivery. Given the length and complexity of PPP agreements, it is likely that these procedures will be invoked from time to time to deal with changing project needs.

Variation management is a critical element of the development, delivery and exit phases of the project term.

It must be used effectively to ensure that other important functions, such as performance management and risk management, continue to operate in line with contractual requirements and changing service delivery imperatives. The project officer must become familiar with all the intricacies of each variation procedure and ensure that the correct steps are followed whenever the need arises.

Take note

The relevant treasury must be notified of all material amendments and variations before they are implemented. Variations that will have an impact on affordability or result in an increase in the unitary payment will require new TA:I and TA:III approvals.

Variations that involve no additional costs

In circumstances where a proposed variation involves no additional costs for either party, no formal variation procedure is required. The institution and the private party should meet to discuss the best way of implementing the proposed change. If the variation will result in a reduction in costs, then the two parties will need to reach agreement about how to distribute such savings. In the case of a variation proposed by the institution, savings should accrue to the institution and/or end users, while savings derived from a variation proposed by the private party should be divided between the institution, the private party and end users. The two parties would be expected to reach agreement on implementing this category of variation without recourse to dispute resolution procedures.

Small works variations

The small works variations procedure is designed to provide an efficient mechanism for dealing with additional capital works required by the institution. Where the threshold for such works is sufficiently low for the private party to manage, a clause should be included in the PPP agreement requiring the private party to provide a schedule of rates for small works at the beginning of each year. Any dispute between the parties relating to small works variations must be determined in accordance with the dispute resolution procedures.

Institutional variations
Institutional variations should be limited to changes to the services requirements, the specified constraints on inputs, and the limits or scope of the project insurances. If the institution wishes to make a change to the project deliverables, it must first submit an institution variation proposal to the private party. The variation proposal must describe the nature of the variation, and require the private party to provide an assessment of the technical, financial, contractual and timetable implications of the proposed change within a specified period. After meeting with the private party to consider its response, the institution must, subject to treasury approval in terms of Treasury Regulation 16.8, decide whether the private party or the institution should put the funding in place to implement the variation. Depending on who provides the funding, payment for the variation should be made by any necessary adjustments to the unitary payment or other forms of payment. Disputes between the parties relating to an institution variation (which does not involve a decrease in the scope of the service or adversely affect the private party's risk profile) must be resolved in accordance with the dispute resolution procedure.

In situations where the institution's requirements for variations can be foreseen to a reasonable degree before the signing of the PPP agreement, the institution should explore the feasibility of requiring the private party to commit to pricing pre-specified variations as part of the PPP agreement. This would provide for an accelerated variation procedure after the PPP agreement has been signed.

Private party variations
If the private party wishes to introduce a variation it must submit a private party variation proposal to the institution, setting out the details of the variation and the likely impact of the variation on the PPP agreement, particularly in relation to unitary charge payments. After meeting with the private party and providing it with an opportunity to modify its variation proposal if necessary, the institution must decide whether to accept it or not. If the institution decides to accept the proposal and has obtained the approval of the relevant treasury in terms of Treasury Regulation 16.8, it will need to make the necessary arrangements for payment depending on the funding regime that has been agreed.

2. PPP agreement maintenance
PPP agreement maintenance involves establishing procedures to ensure that the PPP agreement and related documentation are consistent, up-to-date and accessible to all the relevant parties. It also involves taking action to allow all parties to develop a common view of contractual obligations. One of the key tasks of PPP agreement maintenance is the development and updating of the PPP agreement management manual, which is designed to provide a repository for the PPP agreement itself and all related documents.

3. Financial administration
Effective financial administration involves the development of systems and proced-

ures to make and receive financial payments, and to keep records of financial transactions. In preparing the PPP agreement, the institution should include procedures for: making unitary payments and additional payments to the private party; administering penalty deductions; calculating inflation; dealing with late payments; and receiving reports linked to unitary payments and additional payments.

Planning and implementing PPP agreement administration

In preparing the PPP agreement management plan, give due consideration to PPP agreement administration responsibilities.

The project officer should develop a PPP agreement administration plan, which sets out:

- a summary of the proposed systems and procedures for variation management, PPP agreement maintenance and financial administration
- the roles and responsibilities of the institution and the private party in relation to variation management, PPP agreement maintenance and financial administration
- the plans for the development of the PPP agreement management manual that will be used to provide details of all documents relating to the PPP agreement, and the variation management, PPP agreement maintenance and financial administration procedures
- an estimate of the resources that the institution will devote to variation management, PPP agreement maintenance and financial administration.

After the PPP agreement has been signed, the project officer must ensure that the PPP agreement administration plan is implemented, and that the PPP agreement management team has the resources and expertise necessary to deliver the plan. Particular attention should be devoted to the development and regular updating of the PPP agreement management manual.

As the PPP project comes to an end, as a result of termination or expiry, the project officer will need to undertake a new set of PPP agreement administration responsibilities. He or she will need to make suitable arrangements for: either (i) the hand back of the service to the institution and the delivery of the service by the institution; or (ii) the retendering of the service.

SECTION 7: KEY CHALLENGES AND TASKS OF PPP AGREEMENT MANAGEMENT

Each phase of PPP agreement management presents particular challenges that need to be addressed and tasks to be undertaken. The project officer and the PPP agreement management team should respond to these challenges and carry out or organise these tasks.

Figure 6.8 Key challenges and tasks during the procurement phase

Challenges	• Prepare the foundations for PPP agreement management • Assemble the PPP agreement management team and enable them to make inputs to the output specifications • Develop good relations with the winning bidder and involve them in the development of the PPP agreement management plan • Develop the PPP agreement management plan
Partnership management tasks	• Assess bidder's attitude towards PPP agreement provisions that relate to partnership working, such as joint governance arrangements and the co-location of staff • Include provisions for partnership management in the PPP agreement • Develop the partnership management plan as part of the PPP agreement management plan • Develop succession plans for the PPP agreement management team as part of the PPP agreement management plan
Service delivery management tasks	• Assess bidder's attitude towards PPP agreement provisions that relate to quality, value for money and performance improvement • Encourage bidders to propose innovative solutions to monitoring requirements • Develop the risk matrix as part of the PPP agreement • Develop the risk management plan as part of the PPP agreement management plan • Develop the performance management model as part of the PPP agreement • Develop the performance management plan as part of the PPP agreement management plan
PPP agreement administration tasks	• Develop the PPP agreement administration plan as part of the PPP agreement management plan

Figure 6.9 Key challenges and tasks during the development phase

Challenges	• Ensure that the takeover of any existing facilities or arrangements takes place as smoothly as possible • Establish systems and allocate resources and responsibilities in accordance with the PPP agreement management plan's strategies and plans • Monitor the development of the facility or service towards the service commencement date from the point of view of both quality and the timetable
Partnership management tasks	• Establish partnership management structures in accordance with the PPP agreement management plan • Establish close working relations with the private party, including the co-location of institution and private party PPP agreement management staff if provided for in the PPP agreement • Hire new members of the PPP agreement management team and technical advisors as necessary • Implement assigned roles of the PPP agreement management team • Review institution succession plans and ensure that the private party has succession planning in place for the key PPP agreement management staff • Develop and implement joint partnering courses for both the institution and private party PPP agreement management staff
Service delivery management tasks	• Establish risk control procedures and performance management structures in accordance with the PPP agreement management plan • Confirm resources and responsibilities for risk management and performance management • Monitor the private party's progress towards meeting the service commencement date in accordance with the timetables set out in the PPP agreement • Ensure compliance with any residual health and safety issues remaining with the institution • Ensure the integration into any existing operations and/or staff for which the institution maintains responsibility • Obtain a schedule of rates from the private party for small works variations which the institution may ask the private party to carry out • Use the small works variation procedures to address any minor additional capital works required by the institution • Monitor any ongoing construction work and deal with any contractual failures using the appropriate clauses in the PPP agreement • Deal with any compensation and/or relief events in accordance with the provisions of the PPP agreement • Determine whether any new facility is ready for occupation or use by the institution • Assess the effectiveness of the private party's quality assurance processes in relation to design and construction • Carry out building inspections and take action if any defects are uncovered • Monitor compliance with planning regulations • Organise specialised training or placements with commercial organisations for institution staff to enhance commercial awareness in the institution
PPP agreement administration	• Establish variation management and PPP agreement maintenance and procedures, and allocate agreed resources and responsibilities • Establish financial administration procedures, and allocate resources and responsibilities • Prepare the PPP agreement manual and update as necessary • Keep records of design and/or construction activities • Ensure that up-to-date job descriptions are available for institution and private party PPP agreement management staff

Figure 6.10: Key challenges and tasks during the delivery phase

Challenges	• Review private party performance against the output specifications and take corrective action where necessary • Implement risk control responses as necessary • Organise independent reviews of PPP agreement management arrangements as a whole at least every three years • Review the PPP agreement management plan and revise as necessary every three years • Assess the robustness of the exit strategy and any arrangements for re-letting the PPP agreement contained in the PPP agreement management plan
Partnership management tasks	• In consultation with the private party, review and revise as necessary the partnership management system and the relationship between the institution and the private party • Implement succession plans for institution PPP agreement management staff as necessary • Organise training and development programmes for the PPP agreement management team to ensure that their skills are in tune with the evolving requirements of PPP agreement management throughout the life of the project
Service delivery management tasks	• Gain assurance about the effectiveness of risk control procedures through upward reporting and internal audit • Implement risk control responses as necessary • Review and revise institution contingency plans as necessary • Embed and review risk management in the PPP agreement management team • If necessary, use the variation procedures to amend the PPP agreement to ensure that there continues to be appropriate risk transfer to the private party • Monitor and review private party performance against the output specifications and take corrective action as necessary • Implement any agreed performance improvement measures in consultation with the private party to enhance value for money, quality and innovation • Ensure that any latent and inherent defects are addressed by the private party in order to keep asset conditions up to the specified standards • Monitor compliance with appropriate regulations including health and safety policies, environmental standards, building and fire regulations and statutory obligations • Monitor the private party quality management system • Establish relations with any end-user representatives and respond to end-user feedback on private party performance • Produce monthly, quarterly and annual performance reports on behalf of the institution, covering workload, performance history, current and projected costs • Report on the management of the PPP agreement in the institution's annual report
PPP agreement administration tasks	• Update the PPP agreement management plan as required • Review and revise PPP agreement administration procedures as necessary • Manage variations • Ensure private party insurance and indemnities are maintained in force • Monitor the revenue generated from third parties where appropriate • Inspect the asset register maintained by the private party • Make unitary and additional payments to the private party, administering any penalty deductions or refinancing gains as necessary • Manage any private party requests for refinancing in accordance with the PPP agreement • Ensure the private party's books are audited in accordance with the provisions of the PPP agreement

Figure 6.11: Key challenges and tasks during the exit phase

Challenges	• Based on the provisions of the PPP agreement, review options for continuing the service after the termination/expiry date and implement the agreed exit strategy
Partnership management tasks	• Organise closure event to celebrate achievements and prepare PPP agreement management staff and end users for their new role • Integrate the lessons of the partnership into the day-to-day work of the institution
Service delivery management tasks	• Assess key deliverables, value for money, quality and innovation achieved by the project • Organise an independent post-implementation review of the project, which should be completed within six months of the expiry/termination date
PPP agreement administration tasks	• Ensure compliance with the hand-back procedures set out in the PPP agreement, which may involve surveys prior to termination/expiry and set-off of the unitary charge into a retention fund • Verify the assessment of the value and fitness for purpose of the assets, as provided for in the PPP agreement • In the event of termination, make arrangements for any compensation that might be due to the private party • Make arrangements for either: (i) the delivery of the service by the institution after termination/expiry or (ii) retendering the service • Deal with any implications of employee transfers from the private party to either the institution or a successor body, including terms and conditions of employment

SECTION 8: THE PPP AGREEMENT MANAGEMENT PLAN AND THE PPP AGREEMENT MANAGEMENT MANUAL

The PPP agreement management plan

The PPP agreement management plan provides one of the key pillars of effective PPP agreement management, and the project officer will need to ensure that adequate time and resources are devoted to its preparation. Preparing the PPP agreement management plan should send a clear message to the institution that while the award of the contract represents the end of the complex and challenging procurement phase, it also heralds the beginning of new phases of the PPP project that require a different level of institutional capability. The preferred bidder should be closely involved in developing the PPP agreement management plan towards the end of the procurement phase, and this should be part of the process of developing good working relations between the two parties.

The main purpose of the PPP agreement management plan is to:

- demonstrate to the relevant treasury the capacity of the institution to effectively enforce the PPP agreement as part of the TA:III process
- provide a strategic management tool to guide the PPP agreement management activities that the institution and the private party will undertake during each stage of the project
- clarify key institution roles and responsibilities during each stage of the project and identify the resources that the institution will require to undertake these responsibilities
- provide information on the PPP agreement management approach and PPP agreement management arrangements, which can be used to assess the performance of the institution in discharging its obligations and responsibilities as set out in the PPP agreement, and required by 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 behaviours).

After the initial PPP agreement management plan has been prepared as part of the TA:III process, it should be reviewed and updated every three years in consultation with the private party, so that it can respond to changing circumstances as the project unfolds. Changes in government policy, industry requirements, environmental standards, technology and end-user expectations could have important implications for the institution's approach to PPP agreement management.

Figure 6.12: Template PPP agreement management plan

Sections	Subsections	Summary of contents
1. Purpose and approach	1.1 Purpose	• Purpose of the PPP agreement management plan
	1.2 Approach	• Partnership principles • Benefits to the institution and the private party of a successful partnership • The institution's approach to PPP agreement management (see Section 3)
2. Strategic objectives and key deliverables	2.1 Objectives	• Summary of project objectives
	2.2 Key deliverables	• Summary of the output specifications and key deliverables
3. Partnership management	3.1 Partnership management plan	• Partnership management plan (see Section 4)
4. Service delivery management	4.1 Risk management	• Risk management plan (see Section 5)
	4.2 Performance management	• Performance management plan (see Section 5)
5. PPP agreement administration	5.1 PPP agreement administration	• PPP agreement administration plan (see Section 6)
6. Exit strategy	6.1 Exit strategy	• Evaluation of the options for continuing the service after termination/expiry based on the provisions of the PPP agreement • Outline of the procedures, roles and responsibilities and resources required for a smooth transition to the new service delivery arrangements (see Section 1)
7. Implementation plan (see Figure 6.13)	7.1 Development phase	• Table with key tasks, target dates, responsibility and institution budget
	7.2 Delivery phase	• Table with key tasks, target dates, responsibility and institution budget
	7.3 Exit phase	• Table with key tasks, target dates, responsibility and institution budget

Figure 6.13: Template implementation plan

Key tasks	Target date	Responsibility	Institution budget
1. Development phase Establish partnership management structure Establish performance monitoring system Arrange staff transfers Survey end-user requirements Other			
2. Delivery phase Conduct quality assurance review Prepare performance report Review and revise the PPP agreement management plan Conduct regular review meetings Other			
3. Exit phase Evaluate exit options Review PPP agreement termination/ expiry conditions Other			

The PPP agreement management manual

The PPP agreement management manual provides another key pillar of effective PPP agreement management, and the project officer and the PPP agreement management team should ensure that adequate time and resources are devoted to its preparation.

The main purpose of the PPP agreement management manual is to provide:

- a repository of PPP agreement management procedures, key stakeholder details and all the important documents relating to the PPP agreement
- a document management tool
- a resource that can be used to train newly-appointed PPP agreement management staff, and orientate technical advisors and end users.

Work on the PPP agreement management manual should begin immediately after the signing of the PPP agreement, and the private party should be involved in its preparation. The different sections of the manual should be updated as necessary so that it provides a consistent, accurate and up-to-date record of PPP agreement management procedures and documents.

The PPP agreement management manual should contain the following documents:

- the PPP agreement
- all schedules contained in the PPP agreement
- all financing agreements
- financial models
- the close-out report
- the PPP agreement management plan
- variation procedures
- the names, roles and contact details of key individuals in: the institution; the private party; third party entities; end-user organisations; and other key stakeholder groups
- all other documents relating to the PPP agreement.