

Municipal services

Public-private partnerships

Public-private partnerships (PPPs) are another form of an external service delivery mechanism that municipalities may consider using. Government currently views PPPs as an alternative service delivery mechanism, (rather than municipalities rendering the service themselves), that could be used to address the deteriorating condition of public infrastructure and avert the escalating cost of rehabilitating state assets. On 6 May 2003 the *Draft standardised PPP provisions* were launched, aimed at the national and provincial spheres of government. At the launch, the Minister of Finance, Trevor Manuel, commented that this deterioration was “particularly evident at the provincial and local spheres of government where budgetary and capacity constraints [have] led to a marked reduction in infrastructure spending in recent years”.

Government wants PPPs to deliver infrastructure that is affordable, provides value for money and transfers technical operations and financial risk from government to the private sector partner.

What is a public-private partnership?

The provisions of Chapter 8 of the Municipal Systems Act have introduced PPPs as an alternative municipal service delivery mechanisms and it can take many forms. Generally, three essential elements would be part of such a partnership: it is a *contractual agreement that transfers a substantial risk to the private partner and ensures outcomes-based financial rewards* for that partner. In the local government context, a PPP may therefore be defined as a contractual service delivery agreement between a municipality and a private sector partner, whereby the private partner performs a municipal service in accordance with an output-based specification for a specified period of time in return for a benefit, usually in the form of financial remuneration.

In such a partnership some or all elements of the associated service delivery risk may be transferred to the private partner, though the municipality retains an important role as the main enabler of the agreement accountable to the community.

PPPs versus privatisation

The *White Paper on Local Government* (hereafter 'the White Paper') embodies a new approach to municipal service delivery and presents mechanisms to transform municipal service delivery systems and leverage private sector investment in municipal infrastructure. Among other things, it distinguishes between PPPs and privatisation as alternative service delivery mechanisms.

PPPs are viewed as being in the form of leases and concessions that are most common for services requiring large-scale capital investment. PPPs differ from a situation in which the municipality contracts with a specialist private company to provide a specialised aspect of a particular service (a so-called service contract). When services are contracted out, for example meter reading and billing and collection, the municipality pays a fee to a private partner to provide specific operational services and the municipality protects standards and, through a tender evaluation process, promotes contract specifications and contract monitoring and compliance techniques.

- PPPs are contractual service delivery agreements that transfer substantial risk from municipalities to private sector partners and ensure outcomes-based financial rewards.
- When a municipality sells off an asset to a private sector entity and ownership is transferred together with the responsibility for managing the complete delivery of the service attached to the asset in question, this is privatisation.
- Core municipal services, such as water, electricity and solid waste collection and disposal, should not be privatised.
- Core municipal services could be the object of PPPs so as to ensure improvements in service delivery efficiency.
- PPPs are a useful service delivery option from both an operational and a strategic perspective.
- Before entering into a PPP, a municipality needs to select a private partner through a competitive bidding process.

As discussed above, PPPs are characterised by three important elements, namely:

- the duration of the contractual agreement (not less than 10 years);
- the private partner takes charge of the assets and infrastructure associated with the service, and invests in it; and
- the risk carried by the private partner for infrastructure development is accompanied by the responsibility for revenue collection in the form of user charges.

A popular type of PPP is the so-called Build-Operate-Transfer (BOT), where the private partner builds the asset, operates it for a period and then transfers it back to the municipality.

When a municipality sells off an asset to a private sector entity and ownership is transferred together with the responsibility for managing the complete delivery of the service attached to the

asset, it is referred to as *privatisation*. It is argued in the White Paper that core municipal services, such as water, electricity and solid waste collection and disposal, should not be privatised. The reason is that these services play a central role in meeting the material, social and economic needs of the community and therefore the municipal ownership of the associated infrastructure and assets should not be removed from the local sphere of government. However, the privatisation of non-core functions will boost a municipality's capacity and revenue, enabling it to focus on the sustainable delivery of core services. Non-core services are not aimed at meeting the basic needs of the community. This means that a municipality may not privatise its basic municipal services, but it may enter into a PPP as an alternative external service delivery mechanism.

Benefits of PPPs

The *White Paper on Municipal Service Partnerships* argues that if PPPs are well structured and properly implemented, it can lead to a significant improvement in service delivery efficiency. Greater efficiency means that significantly more services can be delivered without challenging a municipality's budget limits. PPPs are thus a useful service delivery option from both an operational and a strategic perspective. The National Treasury is of the opinion that all stakeholders can benefit from PPPs, because:

- for the municipality, a PPP is an accessible, relevant, viable and beneficial service delivery mechanism;
- for the end users, a PPP results in accessible, affordable and safe services that meet acceptable standards of quality;
- for the community in general, a PPP promotes goals such as social equality, economic empowerment, efficient utilisation of scarce resources and the protection of the environment; and
- for the private partner, a PPP is sufficiently rewarding in relation to the investment made and the risk undertaken.

For the end users, a PPP results in accessible, affordable and safe services that meet acceptable standards of quality.

Additional legislative requirements

The legislative process applicable to public-public partnerships (PUPs) (explained in *LG Bulletin* 5(3): 10–11), also applies to a PPP, but Chapter 8 (Part 3) of the Municipal Systems Act (hereafter 'the Act') provides a few more checks and balances when a municipality considers entering into a PPP.

If a municipality decides to provide a municipal service through a service delivery agreement with a private partner (any juristic or natural person, institution or entity not mentioned in section 80(1)(a) of the Act), such a partner needs to be selected through a process specified in section 83 of the Act. This selection process must:

- be competitive, fair, transparent, equitable and cost-effective;
- allow all prospective service providers to have equal and simultaneous access to information relevant to the bidding process;
- minimise the possibility of fraud and corruption;
- make the municipality accountable to the community regarding the selection process, as well as the reasons for the decision; and
- take into account the need to promote the empowerment of small and emerging enterprises.

The municipality is allowed to develop a preference for categories of private partners in order to advance the interest of persons disadvantaged by unfair discrimination.

This right is subject to the provisions of the Preferential Procurement Policy Framework Act of 2000, as well as the fact that such preference may not compromise or limit the quality, coverage, cost or developmental impact of the service in question.

Furthermore, the municipality should also apply the criteria listed in section 78 of the Act when selecting a private service provider (see *LG Bulletin* 5(2): 10).

All documentation that formed part of the

competitive bidding process will form the basis for negotiating the final service delivery agreement with the private service provider.

After entering into a PPP, the municipality must:

- make copies of the service agreement available to the public during office hours; and
- give notice in the media of the particulars of the service in question, the name of the selected private partner and the place where the service agreement is available for public scrutiny.

Conclusion

Examples of PPPs in the local government sphere that have successfully been completed between March 1998 and February 2002 can be viewed on the website of the Municipal Infrastructure Investment Unit (MIIU) at www.miiu.org.za/proj_complete.html.

It is important to note that all of the 23 service delivery agreements were entered into prior to December 2002, meaning that the provisions in Chapter 8 of the Act did not apply.

In the next edition of the *Local Government Bulletin*, the role of municipal entities and municipal services districts in assisting municipalities considering alternative service delivery mechanisms will be discussed.

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