CASTALIA
Strategic advisors

in Association with

UKHAMBA
ADVISORY SERVICES

Key Challenges to Public Private Partnerships in South Africa

Finding a Way Forward

For the Support Programme for Accelerated Infrastructure Development (SPAID)

An Initiative of the Presidency of the Republic of South Africa and the Business Trust

2007

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What is the purpose of this paper?

The Office of the Presidency of South Africa and the Business Trust asked Castalia Ltd and Ukhamba Advisory Services to identify challenges facing Public Private Partnerships (PPPs) in South Africa, and recommend solutions based on discussions with the most important players in the country's PPP arena. The purpose of this paper is to distil the recommendations made at a 3 May 2007 workshop on PPPs and translate those recommendations into a plan of specific actions for South Africa.

What are the priority challenges to PPPs in South Africa?

Participants at the 3 May workshop identified the principal institutional and legal challenges to PPPs in South Africa as the following:

- **PPPs are not integrated into sector planning.** The process for planning PPPs in South Africa is not integrated into the overall sector planning by the relevant implementing agencies. As a result, PPPs are sporadic rather than systematic
- **No champion for PPPs exists where they are most needed.** A champion for specific PPP transactions was needed in the transformational infrastructure sectors, and at the municipal level
- **A bias against objective consideration of the best mode of service delivery.** Implementing agencies currently have to go through very detailed analysis to justify PPPs, but no comparable analysis is required to justify the use of traditional public procurement, nor is analysis required to justify the selection of a public sector provider
- **The operational definition of PPPs remains unclear.** Considerable confusion exists among implementing agencies, in particular the municipalities, over what the PPP Unit considers to be "substantial financial, technical and operational risks" under Treasury Regulation 16, and hence what type of arrangements can be defined as PPPs
- **Unnecessary regulation by the PPP Unit.** The PPP Unit's level of oversight has been more extensive than necessary to ensure the flow of high quality PPP transactions in South Africa.

How to address the challenges?

We summarized in our first paper a number of ideas interviewees proposed to address the challenges facing PPPs in South Africa. Many of these ideas resurfaced in the workshop discussions.

Establish a sector-specific planning process

Several workshop participants attributed South Africa's most successful PPP transactions to careful, sector specific analysis and implementation. South Africa could build on this model by:

- In the short-term, developing a methodology for sector-specific analysis of PPP options and selecting a single transformational infrastructure sector in which to pilot the methodology and a PPP transaction
- In the medium-term, replicating this new approach to other transformational infrastructure sectors

Create a new entity to focus on marketing PPPs in transformational infrastructure, and new procedures for unsolicited proposals

We recommend a new entity be created to undertake sector-specific analysis described above, and focus on marketing specific PPP transactions in the transformational infrastructure sectors. The new entity's board and staff structure should have representation from the PPP Unit, the private sector, and national, provincial and municipal governments.

Consistent with the idea (expressed by participants in the 3 May workshop) of letting the private sector contribute to advancing PPPs, we also recommend this new entity develop procedures for unsolicited proposals.

The new entity would begin by focusing on a single transformational infrastructure sector, and expanding its approach to other transformational infrastructure sectors as it gains experience.

Adopt an even-handed approach to weighing service delivery options

Adopting a more even-handed approach which considers the best mode of service delivery. This means

- Setting a threshold above which all projects are subject to the same rigorous evaluation and procurement as PPPs are currently
- Amending the Municipal Systems Act to make mandatory the objective comparison of internal and external solutions
- Exploring options to extend the term of Municipal Infrastructure Grants so that such grants could be used to meet long-term infrastructure financing needs, through PPPs or otherwise

Clarify definition of PPPs

We recommend the PPP Unit clarify that "substantial financial, technical and operational risks" are limited to contracts in which the private partner is responsible for some level of capital expenditure. In such cases, the PPP Unit has a significant role and the transaction must adhere to the guidelines established by the PPP Unit. If, on the other hand, the private partner's responsibilities and risk are limited to operating and maintenance expenditures, the PPP Unit does not need to have a significant role

Simplify oversight

The PPP Unit may be able to simplify its oversight without compromising its responsibilities. With a capable, dedicated team advancing PPPs in transformational infrastructure sectors, the PPP Unit can consider relaxing its regulatory oversight by granting exemptions from Treasury approvals for contracts which follow standard form for each sector, and for transactions which fit within the pre-approved sector plan. Over the medium-term, Treasury may want to consider shifting responsibility for approvals to provincial treasuries or using a more cursory "deemed-to-satisfy" approach to municipal PPPs.

1 Introduction

The Office of the Presidency of South Africa and the Business Trust asked Castalia Ltd and Ukhamba Advisory Services (the Castalia Consortium) to identify challenges facing Public Private Partnerships (PPPs) in South Africa, and recommend solutions based on discussions with the most important players in the country's PPP arena. The purpose of this paper is to:

- Summarize the findings of a 3 May 2007 workshop (the workshop) on PPPs which involved representatives from:
  - The private sector
  - Implementing agencies (national, provincial, and municipal governments in charge of implementing PPPs), and
  - Treasury and the National Treasury PPP Unit
- Distil the recommendations made at the workshop on how best to address the most significant challenges to PPPs
- Translate the recommendations into a plan of specific actions for South Africa.

This paper is the second and final document required by our scope of work. Our first paper (Summary of Interview Findings) summarized our interviews with 40 individuals who work or have worked, at senior levels, in entities involved in PPPs in South Africa. The findings in the first paper drove the discussions of the 3 May 2007 workshop.

We expect this final paper will serve as the basis for future discussions between parties invited to the workshop. We hope it will also serve as a point of departure for future action.

How this paper is organized

We begin in Section 2 by summarizing what most workshop participants agreed were the most significant challenges for PPPs in South Africa. We present, in Section 3, potential solutions for each challenge. These solutions draw on the workshop discussions but we have fleshed out the solutions based on our own analysis of the challenges the solutions are meant to address, and our experience with PPPs in other countries. We conclude, in Section 3.6, by presenting a timetable which summarizes the specific actions we recommend in Sections 3.3 through 3.5.

2 What are the Priority Challenges for Public Private Partnerships in South Africa?

The 3 May 2007 workshop discussions confirmed the findings of our first paper but also revealed the need to focus on concrete institutional and legal challenges to PPPs rather than high level ideological challenges. PPPs face ideological challenges in every country. Workshop participants agreed that South Africa needed to think first about letting PPPs happen where they can. If PPPs prove helpful in improving infrastructure service delivery in areas where there is existing political willingness to use the private sector, broader political commitment will follow and ideologies will change.

The workshop identified the principal institutional and legal challenges to PPPs in South Africa as the following:

- **PPPs are not integrated into sector planning.** The process for planning PPPs in South Africa is not integrated into the overall sector planning by the relevant implementing agency. Instead, PPPs are often done on an opportunistic basis which limits the extent to which they can be used effectively in any sector

- **No champion for PPPs exists where they are most needed. The** National Treasury PPP Unit is a champion for the concept of PPPs in general, and for principles of good implementation of PPPs, but the PPP Unit is limited in its resources and therefore in its ability to advance PPPs in specific sectors, as well as in advancing PPPs to sub-national governments. More specifically:

  – Participants seemed to agree that it was most important to find ways to meet much-needed transformational infrastructure needs in South Africa.[1] PPPs are viewed as one effective way of meeting these needs

  – Municipalities in South Africa have the most dire infrastructure needs, yet PPPs are hardest to do at the municipal level because of concrete legal, institutional, and financial obstacles.[2]

- **A bias against objective consideration of the best mode of service delivery.** Implementing agencies currently have to go through very detailed analysis to justify PPPs, but no comparable analysis is required to justify the use of traditional public procurement, nor is analysis required to justify the selection of a public sector provider

- **The operational definition of PPPs remains unclear.** Workshop participants generally agreed that the definition of PPPs in South Africa needs additional clarity. Considerable confusion exists among implementing agencies, in particular the municipalities, over the degree of risk sharing the PPP Unit would consider "substantial" under Treasury Regulation 16. Many municipalities assume any involvement of the private sector requires a feasibility study under the Municipal Finance Management Act (MFMA) and Municipal Systems Act (MSA). Municipalities may therefore avoid entering into, for example, management contracts or other arrangements which could be beneficial because they perceive the regulations as onerous relative to the small size of the management contract

- **Unnecessary regulation by the PPP Unit.** Workshop participants from the private sector and from some implementing agencies believe the PPP Unit's level of oversight has been more extensive than necessary to ensure the flow of high quality PPP transactions in South Africa.

We discuss in Section 3 solutions to each of these challenges.

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1 According to the financial sector charter, Transformational Infrastructure includes projects "that support economic development in underdeveloped areas and contribute towards equitable access to economic resources. Such infrastructure projects may be in the following sectors: transport; telecommunications; water, wastewater and solid waste; energy; social infrastructure such as health, education and correctional services facilities; and municipal infrastructure and services".

2 The workshop discussions went into considerable detail on challenges to doing PPPs at the municipal level. We include as Appendix A a summary, additional to the summary in our first report, of what we understand these challenges to be.

3 How Can South Africa Address these Challenges?

We summarized in our first paper a number of ideas interviewees proposed to address the challenges facing PPPs in South Africa. Many of these ideas resurfaced in the workshop discussions. We describe in the subsections that follow the solutions on which we understood there to be most consensus at the workshop. We also provide examples of how similar solutions have worked in different sectors or at different times in South Africa, or how they have worked in other countries.

3.1 Establish a Sector-Specific Project Planning Process for Public Private Partnerships

Several workshop participants attributed South Africa's most successful PPP transactions to careful, sector-specific analysis and implementation. We agree, and recommend South Africa approach transformational infrastructure sectors in the same way.

South Africa has clearly learned to do better PPPs through experience. For example:

- The PPP Unit is growing increasingly adept at doing PPPs in certain sectors where they have prior experience. Government office accommodation and tourism are two sectors in which the PPP Unit has established a strong record
- The National Roads Agency, thanks to many years of experience implementing PPPs in its sector, has become an internationally-recognized center of expertise for PPPs in roads. Most importantly, the National Roads Agency has a clear idea of how specific PPP opportunities fit into its overall development strategy.

In contrast to these good examples, South Africa appears to have run into particular difficulty applying good principles to 'one-off' PPPs in sectors where PPPs are not yet part of comprehensive sector planning. We believe the ongoing, but considerably delayed, effort to tender for an independent power producer (IPP) is a good example of how PPPs can become difficult without an overarching sector-specific strategy.

Standardization of process and documents is excellent insofar as it saves time preparing the tender documents for PPPs. Some interviewees suggested, however, that standardization in South Africa's PPP environment may have had the opposite effect in some sectors by limiting flexibility required outside of the sectors in which the PPP Unit had already overseen successful transactions. Standardization can be helpful, but we believe experience has shown it will be more helpful if the standardized documents are tailored to specific sectors, as the PPP Unit has done, for example with the tourism toolkit.

What would a sector-specific analysis entail?

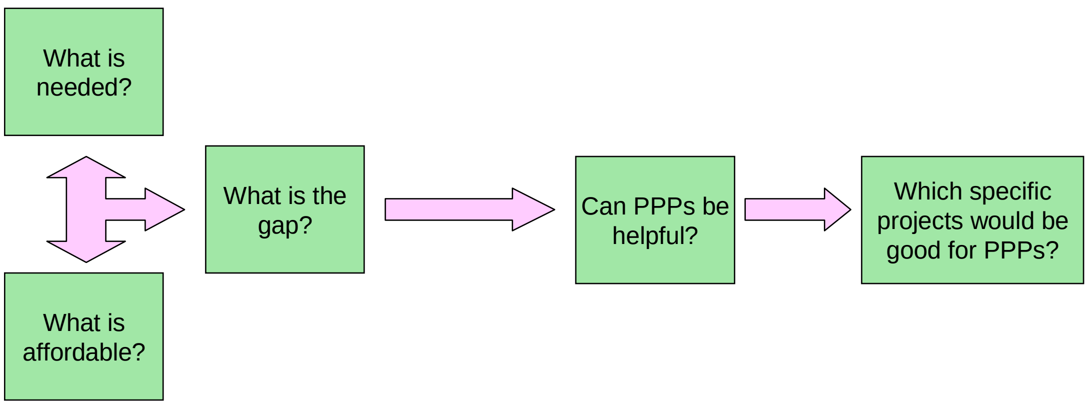
A sector-specific analysis considers the circumstances under which PPPs are possible in a given sector. We recommend the analysis begin with the premise that it does not matter which level of government has responsibility for providing the service (national, provincial, or municipal). The level of government is clearly relevant in the final analysis and eventual implementation, but suspending this consideration until the end of the analysis allows for some innovation in thinking about how best to structure the PPPs in any given sector. We know, for example, that there has been some talk of regionalization of certain municipal services in South Africa. An analysis that presumes municipalities are responsible for their own service provision might miss the opportunity for PPPs at a regional level.

As shown in Figure 3.1, the sector-specific assessment should:

- Identify the specific infrastructure needs in the sector
- Assess the availability of current resources (financial and human) to meet those infrastructure and services needs
- Assess the 'gap' between needs and availability of current resources
- Identify the likely nature of private sector involvement in filling the gap (for example, simple procurement of goods from private purveyors, service contracts, management contracts, leases, concessions, or other types of PPP contracts).

We recommend South Africa start with a single transformational infrastructure sector in which to conduct sector-specific analysis and pilot several transactions. The structure and format for the analysis, once adopted, can then be replicated over the medium-term to other sectors.

Figure 3.1: Sector-by-Sector Analysis—Overview of the Steps



Source: Castalia

Who would do the sector-specific analysis?

The entity best suited to undertake the sector-specific analysis will depend to some extent on the acceptance of our recommendation in Section 3.2. We recommend in, Section 3.2, the creation of a separate public-private entity designed to study and implement PPPs in a specific pilot sector.

We suggest this new entity be responsible for the sector-specific analysis for the pilot, but also acknowledge that South Africa may choose not to follow our recommendation. The PPP Unit is, of course, also well-suited to undertake this analysis; however, as we discuss in Section 3.2, its current focus, workload, and perceived role as a PPP 'regulator' may make it better to move this analytical task to a separate entity.

3.2 Create Transaction Champion for Public Private Partnerships in Transformational Infrastructure

We recommend that significant additional resources be focused on advancing PPPs in transformational infrastructure sectors, irrespective of the levels of government responsible for providing that infrastructure. We believe this will require creating a new entity to market PPPs in these sectors.

The National Treasury PPP Unit clearly plays an important role in promoting good quality PPPs, and educating implementing agencies on how to go about procuring PPPs. We recommend that the PPP Unit continue to do the work it has been doing, but that a separate entity be established to focus, in the short-term, on a single transformational infrastructure sector. This entity would focus on project origination and development, and technical assistance to the implementing agencies. In the medium-term this new entity can replicate its approach to additional transformational infrastructure sectors.

Most workshop participants agreed that more resources need to be devoted to doing PPPs. Opinions differed on where to put those resources. Some participants favored creation of a new entity, entirely separate from the PPP Unit. Others favored creating a new team or task force within the PPP Unit or within some other part of National Treasury. We prefer an approach which captures the existing expertise of the PPP Unit, while also allowing for a somewhat different approach to the advancement of PPPs.

Based on the workshop discussions, we recommend the new entity adhere to the following principles:

- **Recognize the perceptions of implementing agencies.** The PPP Unit is viewed by some implementing agencies, fairly or unfairly, as a regulator, not as a resource center or partner for implementing agencies considering PPPs. Implementing agencies are therefore reluctant to approach the PPP Unit for assistance in preparing PPPs without a well-prepared transaction already in place. The new entity can be located and structured in such a way that implementing agencies view it as a (much-needed) source of assistance, and not as a regulator.

  We believe this supports the argument to create an entity separate from National Treasury and the PPP Unit, but with board representation from National Treasury and from the PPP Unit, and possibly secondments of some staff from the PPP Unit

- **Change the approach to PPP promotion:**
  - **Sector-specific focus.** As we have described in Section 3.1, advancing PPPs in transformational infrastructure requires sector-specific analysis. This approach is somewhat different to the approach currently used by the PPP Unit, which has the daunting responsibility of prescribing standardized rules, processes, and documentation for PPPs for a wide range of very different sectors. A new entity would have the flexibility to take a somewhat different approach than the National Treasury PPP Unit
  - **More active marketing of specific PPPs.** The new entity should be a much more active marketer of specific PPP transactions than the PPP Unit, which we perceive as marketing PPP concepts and principles in general, rather than specific transactions. Implementing this recommendation will require some analysis of how to design the new entity in such a way that it has incentives to market specific transactions. A Partnerships UK model may be appropriate, where the entity is able to charge fees for its services and possibly also earns success fees associated with successful transactions.

- **Clearly earmark resources.** The resources of the PPP Unit are focused on advancing the PPPs currently in its pipeline. It is our perception that this leaves too few resources for sector-specific analysis, active marketing of specific transaction ideas, and technical assistance 'hand holding' for the implementing agencies.

Significant additional resources would be needed for a sector-specific approach to transformational infrastructure PPPs. We believe it will be most effective to concentrate these resources in a single, separate entity.

- **Involve all stakeholders.** As we noted in our first paper, the relationships between the implementing agencies, the private sector, and the PPP Unit has become, to some extent, adversarial. The purpose of the joint sponsorship behind our Terms of Reference is to improve those relationships, and improve cooperation. We heard at the workshop:

  - Calls from the PPP Unit and from the private sector for greater private sector involvement in building capacity and promoting PPPs
  - Calls for greater involvement of the implementing agencies themselves, in particular the municipal governments, and
  - Calls for greater involvement of customer groups or labor.

  The current process for developing PPPs does not allow for such cooperation in any formal way, except for interaction related to specific transactions. A new entity could be structured specifically with the goal of involving a wider range of stakeholders in thinking about PPPs at a higher level, before they come to the project development stage. We therefore would recommend that the new entity's board have representation from:

  - National Treasury and the National Treasury PPP Unit
  - Private sector project sponsors, with representation on a rotating basis for a board member from each of the following:[3]
    - Investment banks
    - EPC contractors or operating companies
    - Transaction advisors or consultants
  - Implementing agencies with representation on a rotating basis for a board member from each of the following levels of government:
    - National
    - Provincial
    - Local

    As noted at the beginning of this section, and in Section 3.1, we recommend the new entity focus initially on a single 'pilot' sector. Representatives from national, provincial, and municipal governments should accordingly be those responsible for whatever pilot sector is selected
  - Labor and consumer organizations, as non-voting advisory members.

  We further recommend that, in staffing the new entity, South Africa consider blending expertise from the public and private sector entities involved in

[3] Appropriate conflict-of-interest rules would, of course, have to be developed for private sector board members

PPPs, through secondments from the PPP Unit, from implementing agencies and from the private sector. Such arrangements of course require careful thought—especially if secondments are to come from the private sector—about how to deal with conflicts of interest and salary differentials, but there are precedents on how to deal with these challenges. The UK Treasury PPP Task Force, for example, has taken secondments from private sector firms in the past, with the private firm covering the difference between their employee's salary and the salary from Treasury because the private firm sees value in the experience gained by their employee

- **Let the private sector originate PPPs.** As noted in the previous bullet, we heard calls in the workshop for the private sector to do its part in advancing PPPs. The private sector can best advance PPPs if it is given avenues to originate PPPs. This means the new entity will have to develop procedures which:

  - Allow for the submission of unsolicited proposals, and make clear how those proposals are evaluated
  - Reimburse project originators for their effort in originating viable projects.

  With procedures to accept and evaluate unsolicited proposals, the private sector can take on some of the burden of origination and project development from the new entity. Appendix C briefly summarizes different ways of handling unsolicited proposals.

  In the short-term, the procedures for unsolicited proposals would apply only to the single, pilot transformational infrastructure sector in which the new entity is attempting to develop PPPs. These procedures could be broadened to other sectors as the responsibilities of the new entity expand to other sectors. In developing the procedures for unsolicited proposals, the new entity can look to how the PPP Unit has handled unsolicited proposals for tourism PPPs

- **Have clear authority for PPPs, and clear lines of reporting to other levels of government.** We understand that one of the problems experienced by the Municipal Infrastructure Investment Unit (MIIU) was a result of its disembodiment from any particular government agency, and the fact that it found itself, at various times, caught between the priorities of National Treasury, the Department of Local Government and other line departments with responsibilities for service delivery in the municipalities. We recommend South Africa consider carefully how to locate the new entity, and how to safeguard its independence or make clear its responsibilities to other government agencies. One good way of addressing this problem might be to take the Partnerships UK approach, making the new entity a PPP between National Treasury and the private sector.

3.3 Even-Handedness in Considering Service Delivery Modes

Several workshop participants stressed that PPPs are simply one way of delivering infrastructure assets and services. Therefore, any meaningful debate over PPPs should be about how best to deliver assets and services, not about whether to use PPPs or not use PPPs. Such debate is scarce in South Africa, however, because objective and systematic evaluation of the best mode of service delivery is not required. Implementing agencies only have to evaluate PPPs if they are inclined to consider a PPP in the first place. We recommend National Treasury change this, by requiring the same analysis as required for PPPs for all infrastructure projects above a certain Rand value.

In some other successful PPP markets the procuring agency must, for projects of a certain value or with certain characteristics, always analyze whether PPPs offer the best value for money. The procuring agency must therefore first consider a PPP for a given project and then conduct an objective analysis of whether traditional government procurement or a PPP would provide better value-for-money. For example, an evaluation of the best mode of service delivery must be performed:

- In Victoria, Australia, for all public infrastructure projects in which the present value of payments to be made by the Government or by consumers of a service (or both) are greater than AUS$10 million
- In Portugal, for all public infrastructure projects in which:
  - The present value of public payments to the private partners are greater than €10 million, or
  - The value of the investment is greater than €25 million.

Because such tests are not required in South Africa, we therefore referred in our first report to a 'bias' toward traditional procurement and against PPPs in South Africa. This can more accurately be called a bias against objective consideration of the best mode of service delivery.

We therefore agree with the recommendation of many interviewees and workshop participants that public and private service delivery solutions should be subject to the same tests, even if the implementing agencies are not required to act according to the results of the tests. We propose in the following sub-sections what we understand would need to be done to implement this recommendation at the national and provincial level (in Section 3.3.1), and at the municipal level of government (in Section 3.3.2).

3.3.1 National and Provincial Government

We recommend South Africa set a Rand value threshold above which all infrastructure projects should be subject to the same analysis as currently required for PPPs.

We understand that the PPP Unit has already begun to go down this path with a Rand threshold for 'Mega Projects', above which projects must undergo feasibility studies to determine whether PPPs offer better value-for-money. We recommend that as part of this process the PPP Unit analyze, in conjunction with the private sector and implementing agencies:

- Whether the threshold value should refer to the project's total capital investment or net present value of benefits
- The appropriate level for the threshold. The threshold must be low enough to capture projects where there are significant potential gains to be made. On the other hand, public sector comparator analysis can be expensive and time consuming. Such analysis obviously makes no sense if its cost exceeds the value of the project itself or even the value for money available by delivering the project as a PPP. The UK PFI program has learned from experience, for example, that PFI projects above £20 million have generally not yielded benefits sufficient to justify the PFI analysis and procurement process.

The goal of the feasibility studies is not necessarily to do PPPs in the short-term, but to strengthen analysis of in which sectors and under what circumstances PPPs are the better mode of service delivery South Africa. Implementing agencies will be free to choose what mode of service delivery they prefer, but the analysis will at least make clearer the consequences of that choice.

With more information on the circumstances under which PPPs can work, South Africa may eventually wish to set additional non-monetary characteristics to circumscribe which projects must be considered as possible candidates for PPPs. For example, the UK PFI program has discovered that Information Technology projects are poorly suited for PPPs because such projects demand short-term flexibility to change service requirements. We say more in Section 3.1 about the value of sector-specific analysis.

3.3.2 Municipal Government

Municipal projects require additional attention because the bias against the best mode of service delivery is deeper at the municipal government level than at the national and provincial level. Changes need to be made to the MSA in order to remove an inherent legal bias against considering the best mode of service delivery.

Our first report described in general terms some of the problems with the environment for PPPs at the municipal level. The workshop brought out a fuller discussion of these problems. We therefore include, as Appendix A, a description of what we understand from the interviews and workshop to be the most serious problems in the facing PPPs at the municipal level.

Solutions to problems in the legal environment for municipal public private partnerships

Most workshop participants agreed that the laws applying to PPPs at the municipal level ensure that few municipalities will consider engaging a private partner for anything other than the most basic outsourcing or procurement of goods.

The PPP Unit has drafted a set of guidelines for the municipalities but it is not clear that 'work arounds' are sufficient to address the more fundamental conflicts between the requirements of the MFMA and MSA.

In the medium term, we recommend the MSA or the MFMA (or both) be amended to:

- Make mandatory the objective comparison of internal and external solutions, for transactions above a certain threshold value (whether net present value (NPV) or investment value) and with certain characteristics
- Because external providers offer different levels and quality of service at different prices, make competitive procurement mandatory for these transactions.

Solutions to municipalities' financial difficulties in doing public private partnerships

Municipalities also face what some of the interviewees and workshop participants identified as obstacles to doing PPPs, because of affordability problems. These affordability problems also create a bias against selecting the best service delivery option.

The workshop discussions suggested that there are two possible solutions to this problem, one to be explored over the short-term, the other (if necessary) over the medium-term:

- **Short-term.** Representatives from National Treasury suggested that Treasury may be able to come up with mechanisms for extending the term of the

Municipal Infrastructure Grants (MIGs), if municipalities were to request it for a PPP

- **Medium-term.** Several interviewees suggested the possibility of securitizing MIGs to allow municipalities more certainty in taking on the longer-term obligations required by PPPs. Box 3.1 describes the example of how, in the United States, funds from federal government are used by individual states to fund municipal infrastructure, often on concessional terms.

Under either solution, the PPPs would of course have to meet all relevant Treasury regulations in order to be eligible for funding.

Box 3.1: Use of State Revolving Funds in the United States

In the United States, individual states often pool federal and state grant money into "state revolving funds" (SRFs). SRFs have been used to finance municipal drinking water and wastewater projects on terms better than the municipalities would be able to find in the market. Loan terms run up to 20 years, and interest rates range from 0% to market rates. Municipalities' repayments of the loans are in turn used to replenish the SRFs so more loans can be made.

Priority for award financing on concessional terms is given to:

- Municipalities where there is a health risk associated with their water or sewage system
- Municipalities most at risk of violating the Safe Drinking Water Act
- Municipalities most in need, based on household affordability.

Source: Castalia

3.4 Clarify Operational Definition of Public Private Partnerships

We recommend the PPP Unit clarify what is meant by "substantial financial, technical and operational risks" in the current definition of PPPs. National Treasury will understandably have an interest in overseeing any transaction that imposes a potentially large long-term risk on the fiscus. For shorter-term contracts, however, with more limited risk sharing, we believe the PPP Unit should make clear that it does not have a regulatory role in the process, unless its involvement is requested by the implementing agency.

We recommend drawing the line of responsibility for the PPP Unit's involvement at capital expenditure. If an agreement with a private operator requires capital expenditure by the private operator (which the implementing agency or customers must eventually pay back), the project involves significant commercial, technical and operational risk transfer to the private sector, the PPP Unit should have a significant role. In such a case, the transaction must adhere to the guidelines established by the PPP Unit.

If, on the other hand, the outlays required by the implementing agency in relation to an agreement with a private operator are related to operating and maintenance expenditures (such as in an operations and maintenance contract), the private partner takes on some technical and possibly some limited operational risk, and the PPP Unit does not need to have a significant role. [4]

It is possible to think of examples in which, even without capital investment required by the private operator, a contract could be devised so as to impose significant liabilities on national government. A management contract, for example, could have large enough

[4] Appendix B contains a discussion of the taxonomy of what are typically considered PPPs in other parts of the world.

variable incentive payments so as to impose short-term risks on the fiscus. Government guarantees could also put the fiscus at risk.

Such examples show that the PPP Unit does need to have some role, but its reviews and approvals need not be as extensive as for PPPs in which the private sector is responsible for capital outlays. More generally, we would also recommend National Treasury develop a specific methodology for valuing contingent liabilities associated with contracts in which the private sector plays a role, whether these contracts fall under the formal definition of PPPs or not.

In the short term, we recommend the PPP Unit make clear to implementing agencies and the private sector, on an informal basis, its understanding of the scope of definition of PPP. In the medium-term, we recommend the PPP Unit issue separate guidelines to the Public Finance Management Act (PFMA) and MFMA to clarify the definition of PPPs.

3.5 Simplify Oversight

We draw as a final recommendation from the workshop the idea that the PPP Unit may be able to simplify its oversight without compromising its responsibilities. Simplifying oversight promises to have the benefits of:

- Freeing up the PPP Unit's time and resources to help develop more PPPs like those it has already done
- Changing the perception of implementing agencies that the PPP Unit is a primarily regulator and not a partner or facilitator of transactions. This may in turn encourage more deal flow.

We have already recommended two changes that will reduce the need for oversight by the PPP Unit, without compromising its ability to protect the fiscus from the risks imposed by PPPs:

- Clearly defining PPPs will have the effect of isolating the PPP Unit's oversight to those transactions which present the greatest risk of a significant long-term burden to the fiscus
- Putting in place a capable, dedicated team to advance PPPs in select transformational infrastructure sectors will allow the PPP Unit to relax its oversight of those sectors as the capabilities of the relevant implementing agencies improve. We expect this can be done without a change in law, as the PPP Unit has the ability under Treasury Regulation 16 to grant exemptions to implementing agencies that have shown expertise in doing PPPs. The PPP Unit has already taken such a streamlined approach in the tourism sector.

Workshop participants also discussed other ideas for eventually scaling back the oversight of the PPP Unit, namely:

- Delegating regulation of some PPPs to provincial treasuries (as the PPP Unit is already planning to do)
- Consistent with the policy of decentralization in South Africa, allowing municipalities to simply take their own risks when it comes to PPPs, and ultimately allowing for the possibility that some PPPs may fail. This may mean using a more relaxed approach (again, possibly through exemptions) in evaluating whether these PPPs comply with Treasury regulations and guidelines.

These last two recommendations are easy to discuss in conceptual terms but much more difficult to put into practice. National Treasury must calculate the risks of failure in each particular case and decide on the risk-weighted cost of failure it would be willing to assume in the interest of advancing PPPs at the provincial and municipal levels. Decisions such as these are difficult policy decisions which require considerable debate. We raise them here as recommendations South Africa can consider for the medium-term.

3.6 Timetable for Addressing the Challenges

We summarize in Table 3.1 a possible timetable for implementing the recommendations in Sections 3.3 through 3.6.

Table 3.1: Timetable for Addressing PPP Challenges

Challenge	How to Address the Challenge	Short-term Actions (1 year)	Medium-term Actions (2-5 years)
PPPs not integrated into sector planning	Establish sector-specific project planning pipeline for transformational infrastructure	▪ Develop methodology for sector-specific analysis ▪ Select a single transformational infrastructure sector in which to pilot the methodology and a specific transaction.	Replicate the sector-specific methodology to other sectors
Bias against objective consideration of best mode of service delivery	Even-handedness in considering service delivery modes	▪ Undertake analysis to determine appropriate threshold above which all projects should be subject to analysis as rigorous as for PPPs ▪ Begin analyzing what specific changes need to be made to MSA and MFMA ▪ Discuss with treasury possibility of extending term of MIGs ▪ Explore possible securitization of MIGs	▪ Set threshold above which all infrastructure projects are subject to same rigorous evaluation as PPPs ▪ Amend MSA and, as necessary, MFMA to: – Make mandatory an objective comparison of internal and external solutions (above a certain threshold) – Make competitive procurement mandatory for these transactions ▪ Implement solutions for extending term of MIGs.
No champion for PPPs where needed most	Create transaction champion for PPPs in Transformational Infrastructure	▪ Design and convene new entity ▪ Begin work in pilot transformational infrastructure sector	▪ Deepen and strengthen new entity ▪ Begin developing transactions in pilot transformational infrastructure sector, eventually replicating to other sectors
Unclear operational definition of PPPs	Clarify operational definition of PPPs	PPP Unit to make clear to the implementing agencies and private sector, on an informal basis, the PPP Unit's understanding of the scope and definition of PPPs	▪ Issue separate guidelines to the PFMA and MFMA to add specificity to the definition of PPPs in terms of risk-sharing, by drawing the line at whether the private sector is responsible for a capital investment ▪ Develop methodology for valuing contingent

Challenge	How to Address the Challenge	Short-term Actions (1 year)	Medium-term Actions (2-5 years)
			liabilities in contracts with the private sector
Unnecessary regulation by PPP Unit	Simplify oversight of PPP Unit	▪ Clearly define PPPs in terms of risk to fiscus ▪ Grant exemptions from certain Treasury reviews for transactions advanced by new entity	▪ Consider delegating regulation of some PPPs to provincial treasuries ▪ Consider a more relaxed approach to review of municipal PPPs

Source: Castalia

Appendix A: Challenges for Municipal Public Private Partnerships

The following sections describe our understanding of the challenges to PPPs at the municipal level.

A.1 Legal and Regulatory Challenges to Public Private Partnerships in Municipalities

The MSA requires local governments to first consider (in Section 78(1)) whether services can be provided through 'internal mechanisms', in other words, by government organizations and staff within the municipality. The municipality **may** then consider delivering services through external provision but has no obligation to do so (Section 78(2)). If a municipality does wish to consider external provision, Section 78(3) outlines criteria, similar to Section 78(1), for evaluating the option. Only after that (optional) review of the external service delivery option does the municipality decide which service delivery option offers the 'best outcome'.

If opting for an external mechanism, a municipality may choose between:

- A municipal entity
- Another municipality
- An organ of state including
  - A water committee
  - A licensed service provider registered or recognized in national legislation
  - A traditional authority
- A community based organization or non-governmental organization
- Any other institution, entity, or person legally competent to operate a business activity.

If the municipality enters into an agreement for provision of services with a municipal entity, another municipality or a national or provincial organ of state, the municipality may negotiate the terms of service directly, without competitive procurement. Competitive procurement is required with any other entity.

No guidelines have yet been issued under the MSA, a fact which adds to the difficulty of interpreting and complying with it. The scope of the studies and reviews required under Section 78(1) and Section 78(3) remain unclear, as do the criteria for 'best outcome' on which a municipality should decide whether—if they even choose to consider the external service delivery option, which they may not—to proceed with internal or external service delivery.

Municipalities thus far appear to have interpreted Section 78 as a requirement for fairly complex feasibility studies of service delivery options, in addition to the feasibility studies required by Treasury under the MFMA.

The absence of any requirement of competitive procurement from government entities further disfavors the private sector. In the water and sewerage sector, for example, many municipalities contract directly with Rand Water for rehabilitation of their water distribution networks, without comparing offers of private operators.

A.2 Financial Challenges to Public Private Partnerships in Municipalities

In some PPPs, municipal users of a service cannot pay the full cost of that service, policymakers do not want to impose the full costs of a service, or policymakers cannot impose the cost of a service through user fees because it is practically difficult to enforce. In such cases the government must pay the difference between whatever end-users pay directly (which is sometimes zero), and the full cost of service.

Municipalities in South Africa must pay for such services out of:

- Municipal tax revenues or
- Allocations from the central government as equitable shares or conditional MIGs.

Treasury allocations through equitable shares or conditional grants are typically guaranteed for one year, not the 20–30 year timeframe over which most PPPs typically run. The remainder of payments for any service therefore need to come from municipal tax revenues, yet many municipalities have been reluctant to use their full revenue raising powers.

Appendix B: Taxonomy of PPPs

A PPP is an agreement between a government and a private firm under which the private firm delivers an asset, a service, or both, in return for payments. These payments are contingent to some extent on the long-term quality or other characteristics of outputs delivered.

Table B.1 shows definitions of PPPs used in three countries. In the countries shown as examples, many definitions of PPP have been formed for convenience and consistency with existing laws and other private sector participation programs, but not for theoretical precision. Distinctions are made among sectors, transaction size, and degree of private sector participation (design, build, operate, finance, lease, and so forth).

Table B.1: Examples of Definitions of PPPs

Jurisdiction	Definition of PPP
Victoria, Australia	▪ "… applies to the provision of infrastructure and any related ancillary services which involve private investment or financing. The term 'infrastructure' can extend beyond physical assets to encompass major information technology procurements". Examples of "related ancillary service" include building-related services such as maintenance ▪ "… applies to public infrastructure projects when the present value of payments to be made by the Government (and/or by consumers of a service will exceed AUS$10 million during the period of a partnership" ▪ "… does not apply to the general procurement of services by the Government where public infrastructure is not being provided (e.g. professional consulting services and printing services)" ▪ "… applies to all such projects entered into by Government departments, unless a specific Government decision advises that other provisions will apply" ▪ In practice, excludes privatizations and service contracts
Portugal	▪ "public private partnership shall mean the contract or contracts by which private parties… accept the obligation and make their commitment to provide the public partner with efforts to satisfactorily address a collective need, and in which the funding and responsibility for the investment and undertaking are assumed, in whole or part, by the private partners" ▪ Excludes: – public works contracts – rents and leases – public contracts of supply – any public-private partnership involving present value of public payments to the private partners of less than 10 million euros or an investment of less than 25 million euros, excluding from these sums funds obtained from European Community sources – any other contract(s) for the supply of goods or services for a period of time equal to or less than three years that do(es) not involve the automatic assumption of obligations on the part of the public partner coming at the end of the contract period. ▪ Parpública SA does deal with privatizations, but the Finance Ministry PPP Unit within Parpública focuses exclusively on PPPs.
The Philippines	▪ Projects may include "power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the appropriate agency pursuant to this Act

Jurisdiction	Definition of PPP
	▪ Applies to the following types of contracts: Build-Operate-Transfer, Build and Transfer, Build Own Operate (but with Presidential approval only), Build-Lease-Transfer, Build-Transfer-Operate, Contract-Add-Operate, Develop-Operate-Transfer, Rehabilitate-Operate-Transfer, and Rehabilitate-Own-Operate ▪ Smaller municipal projects (less than 200 million Philippines Pesos) do not require approval at the national level ▪ A separate privatization office deals with divestiture (formerly the Asset Privatization Trust)

Source: Partnerships Victoria Policy 2000 (Victoria), Decreto-Lei 86/2003 (Portugal), Republic Act No. 7718 (Philippines), Treasury Regulation 16 of Public Finance Management Act.

B.1 What PPPs Are Not

A PPP lies between the extremes of public and private provision of goods or services. Figure B.1 shows a range of possible types of agreement between the public and private sector. These agreements differ primarily in terms of the degree of responsibility and risk taken by the public and private sector partners for asset design, construction, operation, management, and capital investment. At each extreme lies:

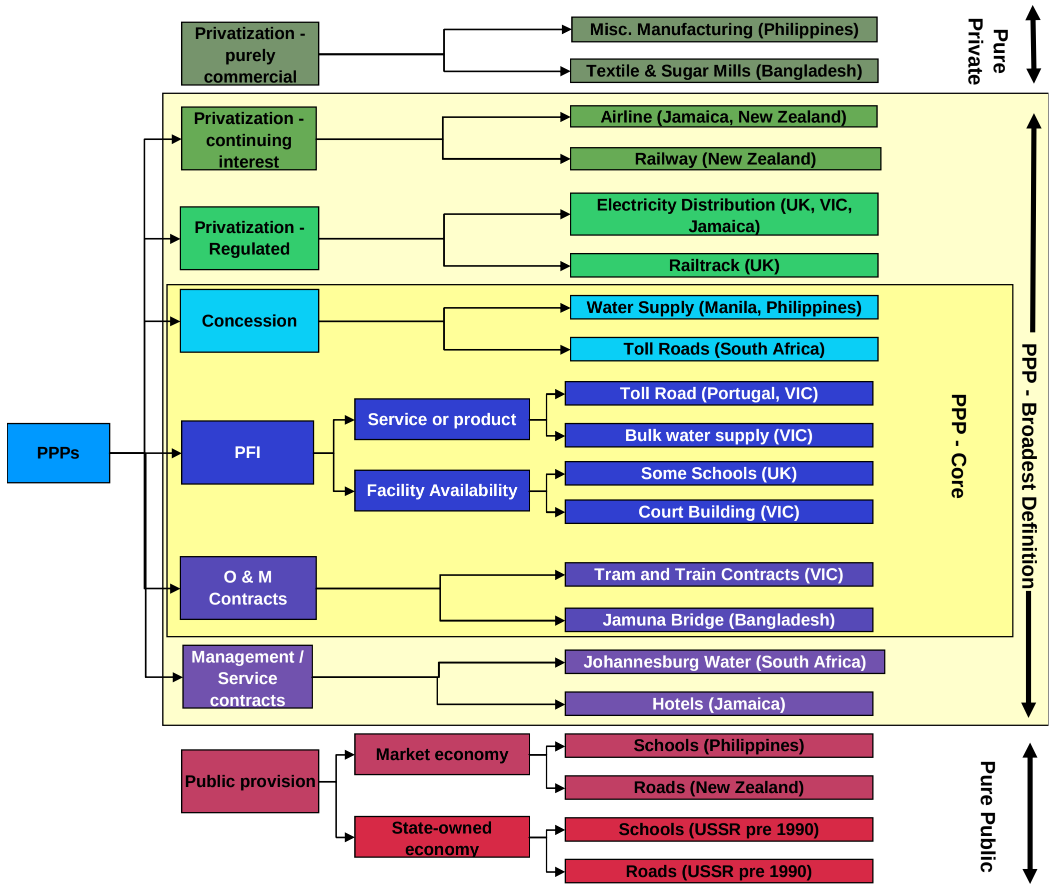
- Public provision. A government directly delivers an asset or service or both to the population. The government is the full owner of the asset, takes responsibility for financing the investment required to build the asset, and provides the people and resources necessary to manage and operate the asset over time.
- Private Provision. A private firm delivers an asset or service or both in response to market signals. The private firm is the full owner of the asset, takes responsibility for financing the investment required to build the asset, and provides the people and resources necessary to manage and operate the asset over time. The provider collects its revenue entirely from service users.

Public provision is never "purely public," nor is private provision "purely private." In most countries, even when the government wants to be sole financier, owner, and operator of an asset, it will hire private contractors to design and build the facilities. In most such cases, the private sector contractor assumes some risk for delivery of the facility. If construction is delayed by a fault of the contractor, for example, the private contractor will usually have to assume construction costs associated with those delays.

Moreover, even in public provision of services, private contractors are nearly always hired to supply goods and provide services. Most U.S. public schools, for example, purchase supplies from private companies, employ private firms to undertake routine maintenance and repair of school facilities, and may outsource cafeteria staffing to a private agency.

Private provision, moreover, is rarely driven entirely by market signals. The government always has some role, if only tacit, in controlling the range of action of the private firm. The government may exercise this control through formal antitrust laws, or through an implicit regulatory threat that, if a firm is able to exercise monopoly power, the government will step in to curtail that power.

Figure B.1: Range of PPPs



Source: Castalia

Examples of pure private provision appear at the top of Figure B.1. Examples of pure public provision appear at the bottom. Despite the "impurities" in public and private provision described above, it is possible to draw rough conceptual boundaries around PPPs. In order to recognize these boundaries, we begin with a core—the most common understanding of PFI—and work outward toward both extremes.

B.2 Core PPPs

The UK Private Finance Initiative (PFI) has driven much of the world's thinking about PPPs. Many countries borrowed heavily form the UK's PFI program in shaping their own PPP programs, and common definitions of PPP therefore draw heavily on characteristics of PFI. Box B.1 describes the scope of PPP as typically understood in the UK's PFI program.

Under this core PPP, the private operator either:

- Agrees to make a facility available for some period of time, and to ensure that, during that time period the facility meets certain standards defined in the agreement, or

- Agrees to deliver a service over a period of time, and to ensure that the service meets certain standards defined in the agreement.

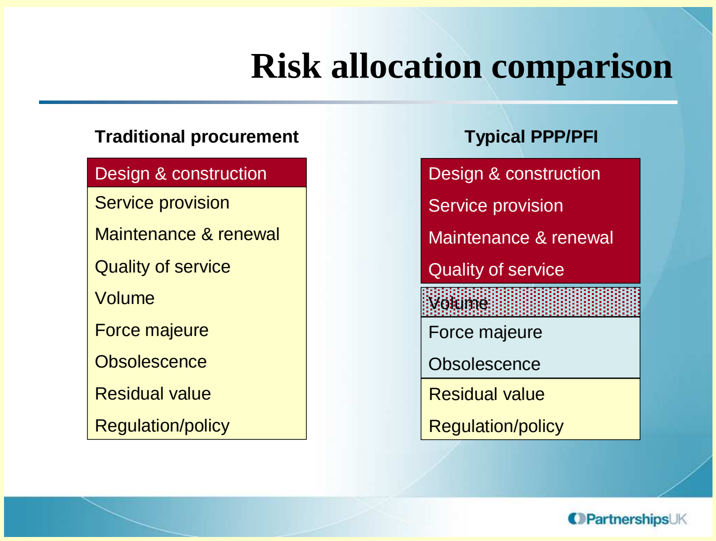
In either case, payment is contingent upon outputs, where the output is making a facility available to a given standard, or delivering a service that meets a given standard. Under the PFI variety of PPP, however, the private firm's payments do not usually depend on whether the government or consumers actually need, want, or use the facility or service.

Box B.1: PFI in the UK

The UK's PFI program primarily includes Design Build Operate Finance contracts, which typically last 20-30 years. PFI transactions typically have the following characteristics:

- Government transfers responsibility and risk for asset or service to private contractor.
- Private contractor takes on obligations for roughly 20-30 years.
- Private contractor designs, builds, manages, maintains asset, and provides services.
- Lenders fund contractor on limited recourse basis.
- Authority pays "Unitary Charge" for available/acceptable service.

The figure below contrasts public and private responsibilities (or risk allocation) in traditional procurement, and public and private responsibilities in PFI.



Source: Presentation by Ed Farquarson of Partnerships UK, 22 March 2006 at the World Bank.

B.3 Moving Toward "Purely Private"

Working upward from the "core" PPP, toward pure private service provision, the private firm takes on increasing responsibility and risk. Within this range, this study considers all of the following to be PPPs:

- Concessions. Under a concession contract, the private partner takes responsibility for operating, financing, and (if new, designing and building the facility. The private firm also takes the risk that, if demand for the facility or service is not as high as forecast, revenues from user fees may not cover all of its costs (which include the cost of debt and equity). The government formally retains ownership of the asset or rights to service delivery.

- Privatization (Heavily Regulated). Moving further from the core, the government cedes its formal ownership claim to the asset and the right to provide service. In many cases, especially where the transaction involves a monopoly service (for example, electricity distribution), the government maintains a firm regulatory hand to prevent the private owner from abusing that monopoly power.

Under privatization, the owner assumes the risk that the asset it has purchased will lose all of its value. However, the owner can also reap the full dividends of owning an asset that is successful and increases in value. With heavily regulated industries, however, price regulation often ensures that the owner neither suffers all of the downside, nor enjoys all of the upside of ownership. Again using the example of electricity distribution, the government cannot afford the political costs of letting the company go bankrupt, nor letting the company reap enormous profits at the expense of customers. Some form of regulation usually ensures that prices are maintained at "reasonable" levels

- Privatization (Continuing Interest). Some privatizations involve industries that are not controlled by any clear or robust regulatory regime but that remain of "continuing interest" to the government, despite the transfer of ownership. A combination of factual circumstances and local policy determines whether a government has a continuing interest in a privatized company. For example:
  - Governments have an interest in making sure their people have access to sufficient food supplies. In most countries, suppliers compete to provide enough food to meet demand at prices the government finds reasonable. However, in countries at risk of famine or with high levels of malnutrition, the government may understandably have a continuing interest in maintaining adequate and affordable food supply. Cape Verde is one country that has considered entering into PPPs for food distribution.
  - Jamaica, like many other countries, has shown continued willingness to bail out its privately owned airline during the last decade, despite an abundance of competitive carriers in the region. For Jamaica a flagship airline is a continuing interest.

Only purely private provision lies outside our broadest definition of PPPs at this extreme. In purely private provision, governments will generally be willing to let the market determine whether individual companies succeed or fail.

B.4 Moving Toward "Purely Public"

Working downward from the "core" PPP, toward pure public provision of service, the public sector takes on increasing responsibility and risk. Within this range, this study considers all of the following to be PPPs:

- Operation and Maintenance (O&M) Contracts. Under an O&M contract, the private operator takes responsibility for all aspects of operation and maintenance. The operator does not usually take any responsibility for financing any capital investments, but may manage a capital investment fund, and decide in conjunction with the public owner how that fund should be used. A separate entity will have already designed and built the facility (or perhaps the same private firm, but under a separate contract). The O&M contractor usually receives a fixed annual fee and an additional fee tied to the asset's overall performance. With an O&M contract for provision of water and sanitation services, for example, the private contractor might receive a performance bonus for reductions in nonrevenue water, increases in hours of service availability, or improvements in operating profitability. The O&M contract may also include explicit penalties for failure to meet targets

- Management or Service Contracts. Under a management or service contract, the private firm is usually given explicit responsibility for some, but not all, aspects of operations and management. Many management contracts, for example, limit a private contractor's ability to hire, fire, or reassign staff. Under a management contract, performance bonuses are often available, but the bonuses are (or should be) tied to outputs the management contractor is able to control, given its limited responsibilities.

  The term service contract is generally reserved for agreements under which the private firm is asked to undertake one or two specific tasks only. Many agreements referred to as management contracts are actually service contracts, because the private contractor's responsibilities are quite limited. As with management contracts, payments for service contracts may include a performance contingency payment of some kind.

As mentioned earlier, purely private enterprises transact regularly with the private sector for supplies, maintenance, and other services. Such transactions are not typically viewed as PPPs, nor do we view them as such for the purpose of this study.

Two distinctions are often made between simple contracts for goods and services and PPP contracts:

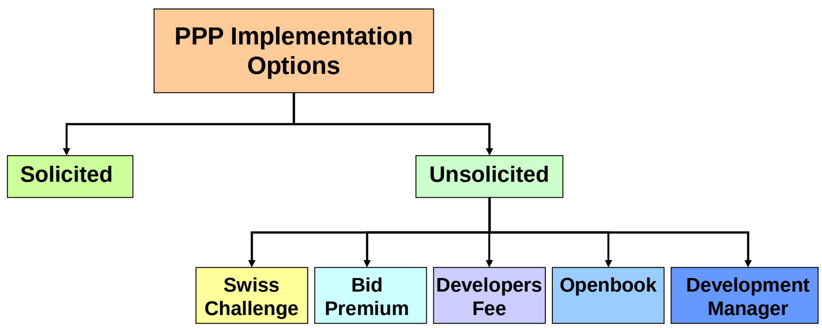
- Under a PPP, the private contractor's payment depends, at least to some extent, on whether the contractor is able to deliver results or outputs, not simply inputs.
- Under a PPP, the private sector is responsible for delivering a set of guaranteed outputs over a longer period of time than in a standard service contract. What "longer" means is a matter for interpretation, but PriceWaterhouseCoopers has made the useful distinction that PPPs offer guarantees on outputs that last longer than the standard warranty period for the asset or service that is being provided.[5]

[5] *Delivering the PPP Promise*. PriceWaterHouseCoopers. 2005.

Appendix C: Different Systems for Dealing with Unsolicited Proposals

The difficulty with an unsolicited proposal is to balance the legitimate interest of the project developer to earn a profit on its development efforts against the public interest in getting the best deal through a competitive tender process. The dilemma is that if the developer of the deal has to then submit to a competitive tender, with no recompense for its efforts in promoting the project, it will not be financially viable to develop projects. On the other hand, government cannot simply negotiate a deal with a private developer without raising concerns about competitiveness, fairness and value for money. Other countries have developed a number of solutions to this dilemma. The possible solutions are outlined in Figure C.1.

Figure C.1: PPP Implementation



Type	Definition
Solicited	Public body is responsible for developing and bidding out the PPPs to the private sector
Unsolicited	Private consortia submit proposals to public bodies that bid out the project to ensure they get the best price. The original project developer receives some form of bonus or compensation
Swiss Challenge	The bidding process is conducted to see if anyone can offer a better price. The original proponent has the right to match the price of the winning bidder
Bid Premium	The original proponent receives percentage bonuses on their scores during the bidding process
Developers Fee	The original proponents gets their project development costs reimbursed by the winning bidder
Open Book	The Government signs the contract with the original proponent, but the original proponent must conduct a transparent bidding process for each part of the project in order to get the best price
Development Manager	The original proponent develops the project and conducts the bidding process on the behalf of Government. Original proponent is not allowed to bid for the project but receives a project development fee from the winning bidder

Source: Castalia

Appendix D: PPP Unit Comments (July 2007)

No	Page/ Section	Comment
1.	P.4/ Section 2	**Priority Challenges** There is one huge challenge that has not been identified by the report and that is the limited capacity of the sponsoring institution. This lack of capacity results in difficulty in obtaining data, lack of direction from the institution on what the project should accomplish, and delays in decision making. We suggest that in the solutions section an analysis be made as to how this challenge will be addressed. We are not sure whether a more proactive PPP Unit will address this particular problem. In order to address this problem, the PPP Unit will have to act as a "procuring agent" and have the authority to procure the PPP on behalf of the institution. Other challenges that should be mentioned/addressed somewhere include: - Allocation of risk, and who (between the Private or Public Sector) would be in the best position to manage the risk. Generally, governments' have very rarely, if at all, understood, yet alone managed this appropriately, and it will be a while before clients have a basic understanding of the requirements. - Trust between public and private sector. Our focus is primarily on a water tight contract rather than the promotion of a project management solution based on accountability and performance. Trust is encouraged through transparency and communication, both attributes falling within the auspices of project/contract management. - Political will and commitment. And this is quite understandable as "when something goes wrong in a public sector network, it tends to end up on the front page of the newspaper, instantly transforming a management issue into a political problem." Some partnerships do not allow for the ability to provide financial incentives to increase productivity and success of a partnership. However, alternative rewards, such as decision-making flexibility or public commendations, should be identified.
2.		**Operational definition of PPPs remains unclear** The lack of operational definition of PPPs is a problem one finds more with municipal than national and provincial PPPs. Hence references to TR 16 should either be replaced with and/or expanded to include the municipal equivalent of TR 16 which is Municipal PPP Regulations (Regulation 309). We agree that more clarity is needed on municipal PPPs. However, we do not agree with the proposal to use capital investment of a certain value as the defining criterion whereby anything below that value would be exempted from the PPP requirements. Many smaller projects still need to do some sort of feasibility study which would not be done if not regulated. Some O&M projects do not entail any capital investment but transfer significant operational and technical risk. We prefer to have a framework that recognizes

		different types of PPPs similar to the large/small cap framework for tourism PPPs and allows for less requirements or a framework that allows discretion on a project by project basis.
3.		**Even handedness in considering service delivery modes** The statement on "objective and systematic evaluation of the best mode of service delivery is not required" is a bit too general. CIDB (Construction Industry Development Board) certainly advocates a BEST PRACTICE approach through their Best Practice Guidelines promulgated through their statutory act and under the Treasury SCM regulations for engineering and construction works and being implemented through the IDIP programme of Treasury. With reference to the fourth paragraph mentioning the "bias against objective considerations". This is primarily due to the level of sophistication of client in developing an appropriate approach towards a contract strategy within a procurement system. The proposal to allow for MIG to be used for PPPs can be extended to include other governmental grants such as the Provincial Infrastructure Grant and the Hospital Revitalization Grant. In addition to securitizing the grant, one could also use the grant as upfront, once-off capital contribution by government.. While we agree that the Municipal Systems Act to needs to be amended, the recommendation of making mandatory objective comparison of internal and external solutions is off-target. The MSA already require internal and external assessments and there is nothing to suggest that they are not objective. The problem is the assessments cannot be done at the same time. Also the combined requirements of the MSA and MFMA result in a very extensive public and labor consultation process which might not always be appropriate in all projects.
4.	P.13, Section 3.5	**Simplify Oversight** 2nd bullet point on changing perception. It appears that the authors have misunderstood what the PPP unit does. Although the unit does have responsibility of being a regulator, it also performs the functions of influencing and establishing policy, promotion and training of PPP's, and providing technical expertise and advice to institutions on PPP's.
5.	All	**Transformational Infrastructure** In many years of having worked in the infrastructure environment, the term Transformational Infrastructure has never, until now made an appearance. Although a reference is made in a footnote as to a definition in terms of the financial sector charter, PPP's aren't only related to the development of underdeveloped areas. Suggest dropping the word transformational, as what is specific in one sector, financial in this case, may not be relevant in another.
6.		**Appendix B: Taxonomy of PPPs** Table B1 provides examples of Definitions of PPPs, how does this compare

		and what insights can be ascertained in terms of the SA PPP definition? Under the SA definition, PPP's are more likely to occur either as concessions, PFI's or O&M contracts in terms of the structure exhibited in Figure B1. This needs to be highlighted.
7.		**General comments** Although the title of the document reads "Key Challenges to Public Private Partnerships in South Africa Finding a Way Forward" the context is far too narrowly focused and certainly does not address some of the major concerns around PPP's. Far too much emphasis has been placed on the legislative and regulative arenas, and far too little on other areas governing PPP's. It is evident that not enough investigate/research study was performed on the delivery mechanisms or rather, the procurement (supply chain) processes available to the public sector, of which PPP's plays only one role. Taking a step back and taking a look at the definition of procurement: - "*Procurement may be defined as the process which creates, manages and fulfils contracts relating to the provision of supplies, services or engineering and construction works, the hiring of anything, disposals and the acquisition or granting of any rights and concessions"* Then by inference, only once a contract has been fulfilled does the procurement end. This would mean that some major deliverable or the attainment of a milestone has been completed. Now based on this definition the best approach to achieve the attainment should be viewed on a number of aspects, the first and foremost that being of risk implication and the best method to employ to ensure the best results. Both the Supply-Chain Management Regulations and PPP Regulations (under the PFMA and MFMA) allow for alternatives to be sought for such delivery. In light of the current PPP definition on PPP's and the reflection of which should or should not fall under this definition should not be confused under the generic phrase of a PPP internationally, which the authors have failed to address. For example, the South African Police Service secures the services of a security company to provide the security services at a local police station. Under the generic understanding of a PPP, this will be seen as a PPP, under the current SA regulatory regime, this is no more than a management contract (outsourced function) and is catered for quite adequately under the Supply-Chain Management Regulations and Practice notes.

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