

Chapter 4: Selecting a Preferred Partner

The purpose of this chapter is to outline the steps the municipality should take to select a preferred private partner. They include:

- ❁ Issue a Request For Expressions of Interest (RFI) or a Request For Qualifications (RFQ) and establish a short list (two-stage process only)
- ❁ Issue the Request for Proposals (RFP)
- ❁ Select a preferred partner
- ❁ Secure necessary approvals

Once the implementation plan is complete, the project team must focus its attention on selecting a preferred partner. The key word here is **preferred**. The selection of a preferred partner is basically a commitment to enter into negotiations with one party. If the project team is unable to negotiate an acceptable contract with this preferred partner, the entire process can be halted or initiated with another potential partner. The partnership does not legally begin until a contract has been signed.

Stages of The Partnership Building Process

1. Establish the
Internal
Framework

2. The Decision to
Partner

3. Develop the
Implementation
Plan

4. Selecting
a Preferred
Partner

5. Negotiating the
Contract

6. Working With
the Partner

4.1 Record the selection process

To begin the selection process the project team should appoint one team member to keep a record of the procurement proceedings. This record should include the following:

- ◆ A listing of all potential partners that responded to the RFI/RFQ and RFP;
- ◆ The reasons for eliminating potential partners at each stage of the evaluation process;
- ◆ Minutes of all meetings;
- ◆ A review of how the proposals were compared and evaluated;
- ◆ A record of all requests for additional or clarifying information and a description of how these requests were handled, and
- ◆ A record of debriefing sessions with unsuccessful potential partners.

Keeping a record will help to assure the public and any unsuccessful companies that the selection process was fair, open, and transparent.

4.2 Issue the Request for an Expression of Interest (RFI) / Request for Qualifications (RFQ) and establish a short list (two-stage process)

Chapter 3 discussed the conditions for using a one-stage or two-stage procurement process (*See pages***). If the project team has decided to follow a two-stage process, it must first draft and issue a RFI or a RFQ. While both these documents are similar in their content and submission requirements, each serves a unique purpose and should be used only when the proper conditions exist.

As described in the previous chapter, the RFI is used when the project team has a general idea of what it wants to achieve from a PPP, but is unsure of how to get there. It allows the project team to seek help from the private sector before drafting the RFP. The RFQ is used when the project is well defined but it is not known which firms, if any, have the skills and experience required to undertake the project in the specified time.

The RFQ is a short listing exercise whereas the RFI is a means of gathering enough information from the private sector to draft a full RFP.

A. Drafting the RFI/RFQ document

Both the RFI and the RFQ documents will include the following elements:

- The municipality's objectives in seeking a PPP;
- A description of the existing service and budget framework (if applicable);
- The nature of the partnership (if it is known), including the proposed contribution and skills of the preferred partner;
- Mandatory submission requirements and instructions to respondents;
- The complete evaluation scheme including relative weightings, points or other considerations that will be applied to each element of the evaluation, and
- The full selection process including timetables.

While neither of these documents should be extensive, the RFQ will contain more information than the RFI (remember - the purpose of the RFI is to gather needed information - information that the project team will already have if it is using an RFQ). Sample RFI and RFQ documents are included in *Appendix ? and ?* of this guide.

Communication between potential partners and the project team should be kept to a minimum. One project team member should be designated a contact person for all inquiries. A process should be established for written questions and answers ensuring that all potential partners have access to the same information.

B. Advertising the RFI/RFQ

Both the RFI and RFQ should be advertised as widely as possible to maximize response and promote fairness, and equity. Local and national newspapers, electronic media, the world wide web, professional journals, and personal contact with local firms are suggested means of communication.

Advertisements should include the following content:

- ⊗ A brief description of the project
- ⊗ The role of the successful private partner
- ⊗ The number of companies to be short listed
- ⊗ The location and deadline for submissions

- ❁ A contact name

- ❁ An address where the full RFI/RFQ document can be picked up.

A sample newspaper advertisement is provided in *Appendix ?*.

Potential partners should be given 30-60 days from the date of the advertisement to prepare their submissions.

C. Submission requirements

Since one of the reasons for using a two-stage process is to spare unqualified firms the expense of preparing a full proposal, the submission requirements for both the RFI and RFQ should be kept to a minimum. Submissions should include the following information:

- ❁ An understanding of the municipality's needs and the scope of the project;

- ❁ A profile of the potential partner (including members of a consortium - if one has been formed for the purpose of bidding on this PPP), its principal business, and how long it has been in operation;

- ❁ A statement of financial stability (evaluated on a pass/fail basis);

- ❁ A statement of financial capability including access to capital (debt and equity), and

- ❁ A statement of performance capability.

This will include an overview of the potential partner's experience, approach to similar projects, references, project methodology (RFI only), senior management's expertise, and ability to obtain necessary resources (i.e., insurance, bonding, subcontractors).

D. Evaluating the submissions

If an RFI has been used, the project team may wish to host one or a series of meetings with potential partners to allow the project team to gather the information required to draft a detailed RFP. Another purpose of bringing all potential partners together at one meeting is to promote strategic alliances. Following these meetings, the project team can use its stated evaluation criteria to establish a short list or it may allow each proponent to respond to the RFP.

If an RFQ has been used, the project team can move directly to the evaluation of the written proposals. There is no requirement to meet with potential partners at this stage in the process, although there may be benefits in doing so. The purpose of the RFQ is to reduce the number of potential partners to a manageable number - usually three. The project team is not seeking service delivery information at this stage, just information on their qualifications.

The first step in the evaluation process is to verify that each proposal contains the mandatory requirements detailed in the RFI/RFQ document. If proposals do not comply they may be disqualified at this stage.

The second step is to evaluate the remaining proposals on those criteria that have been defined as pass/fail, such as financial stability. Potential partners failing to meet the minimum requirements in these categories will be eliminated next.

The remaining proposals are then rated according to the evaluation criteria detailed in the RFI/RFQ. Individual rankings can be assigned by each member of the project team and then aggregated, or one ranking can be assigned through group consensus. A short list of the three highest rated submissions are then invited to respond to a detailed RFP.

Unsuccessful potential partners should be advised of the final outcome immediately following notification of the preferred partner. A debriefing session involving all the unsuccessful potential partners is advised.

4.3 Issue the Request for Proposals (RFP)

The RFP document is the foundation of the selection process. It is a comprehensive document providing detailed information on the municipality's goals, objectives, and requirements. It provides specific instructions on submitting a proposal and describes the evaluation process to be used in selecting a preferred partner. A well-drafted RFP document will ensure the following:

- ⊗ Proposals will be submitted in a standardized format that allows for equal and fair evaluation;
- ⊗ Enough flexibility to encourage innovative and lower cost service delivery alternatives from the private partner, and
- ⊗ A smooth transition from the RFP document to a draft contract.

A poorly drafted RFP will communicate to potential private

partners that the municipality is not entirely committed to going ahead with a partnership, thus discouraging potential partners from participating. It also has the potential to make the evaluation process more difficult, discourage innovation on the part of the private partner, and increase the level of effort required to negotiate a contract.

It's in the best interest of the project team to dedicate the time and resources required to do the job properly. Clarity of purpose and attention to detail will start the project off on the right foot and result in tangible benefits throughout the life of the partnership.

A. Drafting the RFP document

The information included in the RFP document will come from one of two sources. If the project team was able to refine the scope of the project, prepare a conceptual budget, and choose a selection process during the implementation planning stage (*Chapter 3*), it will have much of the information required to draft the RFP document. Alternatively, the project team may have relied upon an RFI and interviews with potential partners to gather this information.

In any event, the RFP document should contain the following categories of information (The sample RFP document in *Appendix ?* includes the subheadings for each category):

- Introduction
- Proposal format and mandatory submission requirements (*see Section C on submission requirements*)
- Design and construction requirements
- Management and operating requirements
- Proposed business plan
- Financial information and proposed financing plan
- Legal considerations
- Proposal evaluation process and contract award
- Instructions to proponents
- Appendices (municipality's PPP and Human Resources policy, shadow bid, previous studies etc.)

Keep in mind that much of the information contained in the RFP document will be subject to negotiation once the preferred

partner has been selected. The reason for including this information in the RFP is to establish the framework for contract negotiations. The first stage of the contract negotiation will concern areas where the successful proposal deviates from the contents of the RFP document.

Other issues to consider when drafting an RFP document include:

- ❁ If a one-stage selection process is being used, consider requiring a fee or deposit for the RFP documents. This will restrict the circulation of information to serious potential partners;
- ❁ Consider requiring a bid deposit at the time the proposal is submitted as security against the potential partner's not honouring its proposal;
- ❁ For large scale projects, consider compensating short listed potential partners for some or all of the cost of preparing their proposal. This may include purchasing intellectual property which can then be used by the successful private partner;
- ❁ Include safeguards in the RFP to ensure that consortia formed specifically to bid on a project remain together once it has been selected as the preferred partner, and
- ❁ For large scale and/or high profile projects, consider appointing a fairness commissioner who can assure both the public and unsuccessful potential partners that a fair, open, and transparent selection process was used.

B. Advertising the RFP

If the project team is using a one-stage selection process, the RFP should be advertised widely to allow broad access to the project (see section on advertising the RFI/RFQ). The RFP documents should be made available for pick up one week after the first advertisement is published. This will ensure that all potential partners are given the same amount of time to prepare their proposals.

A fee or deposit for the RFP documents can be used to limit competition to potential partner with a serious interest in the project. Be sure to keep a record of everyone who received the RFP documentation so that additional information or responses to questions can be made available to all potential partners.

If a two-stage process has been used, the RFP can be issued exclusively to the short listed potential partners, If

the RFP document contains sensitive or confidential information, safeguards should be included to restrict circulation to a limited number of individuals within each firm.

Depending upon the scope and complexity of the project, potential partners should be given anywhere from 45 to 90 days from the release date of the RFP documents to submit their proposals. Extensions should be granted only under extreme circumstances. If an extension is granted, it should be made available to all potential partners.

C. Submission requirements

If a one-stage selection process is being used, potential partners should be required to submit some of the information that would normally be included in an RFQ (such as a company profile, statement of financial stability, and capability). This information can be used to screen proposals if the number of proposals is very high.

If the RFP has been issued exclusively to a short list of potential partners, the proposal should focus on the potential partner's approach to the project as opposed to its general qualifications.

Each proposal should be required to include:

- **Covering letter** signed by the principals of firms comprising the proponent's team;
- **Table of contents;**
- **Executive summary** of the submission;
- **Potential partner's identification:** Member firms and legal structure;
- **Summary of proponent's qualifications** (not required for a two-stage process);
- **Design and construction delivery plan** (infrastructure projects only): Includes design work, scheduling, permitting, power requirements, commissioning, provisions for expansion, and modification;
- **Management and operations plan:** Includes staffing arrangements, maintenance, regulatory compliance, non-municipal users, operating manuals, training, accounting and reporting, audits and the relationship with municipal staff;
- **Business plan:** Includes partnership structure and

length, terms of payment, maintenance costs and reserves, risk management, force majeure, economic benefits, pro forma financial statements, tax expectations;

- **Financing plan:** Includes detailed cost schedule, financing structure, financial sources, mechanism for financing improvements;
- **Legal arrangements:** Includes structure of legal agreements, special terms and conditions, events of default, dispute resolution procedure, indemnities, and
- **Value engineering component:** Deviations from the project team's proposed approach and the resulting benefits.

The project team may wish to consider requiring potential partners to submit their financial offer separately from the main body of the proposal. This is known as a "two-envelope system" and is appropriate when there is a need to ensure that each proposal is reviewed objectively according to its technical merit. If the successful proposal meets the project team's technical criteria, the financial offer is then opened and assessed.

D. Compensating Unsuccessful Potential Partners

In a large scale partnership initiative, the municipality may choose to compensate unsuccessful short-listed potential partners. Considerable cost can be incurred by the potential partners in preparing detailed RFP proposals. Compensation is an indication of commitment by the municipality to PPP and may be necessary to attract well-qualified partners.

E. Managing the flow of information

The period between the release of the RFP document and the deadline for proposals is a critical one. Carefully planned and drafted RFP documents will reduce the need for clarifications and additional information, but it will not eliminate it entirely. The following are some guidelines to assist the project team in managing the flow of information to and from potential partners:

- ◆ Assign a single contact person from the project team to receive and respond to all queries;
- ◆ Consider a black out period when potential partners are not permitted to lobby or contact elected officials or municipal staff other than the official contact person.
- ◆ Explicitly prohibit potential partners from communicating with municipal staff and Council. **Communication with**

anyone but the appointed contact person is grounds for disqualification;

- ◆ Questions and responses should be in written form and circulated to all potential partners that received the RFP documents;
- ◆ If the number of questions or requests for clarifications is very high, consider hosting a bidder's meeting or offering a site tour;
- Consider providing each potential partner with access to a data room containing relevant background material, and
- While submitted proposals are not yet subject to the Freedom of Information and Protection of Privacy Act, it's best to abide by the municipality's policy on releasing information and, if at all possible, treat the submitted information as confidential.

If your municipality has access to the Internet, the posting of questions and answers on a homepage is a fast and cost-effective means of communicating with potential partners.

4.4 Select a preferred partner

The process of evaluating proposals and selecting a preferred partner is the one in which the project team is most vulnerable to claims of favouritism and abuse. In an effort to assure the public and the private sector that a fair, open and transparent process is being used, the project team should establish a separate and independent selection panel for this purpose.

A. Composition of the selection panel

The selection panel usually consists of seven members - if there are seven members, five should be voting members and two, nonvoting members. The five voting members should include two representatives of the municipality with related technical expertise (such as engineering and finance) and three independent members. The independent members can come from the private sector, user groups or the general public and should be knowledgeable of the service or infrastructure in question. Voting members should **not** come from the following groups:

- ⊗ Municipal council,
- ⊗ The project team,
- ⊗ Persons directly involved with administering the project,

- ❁ Individuals directly or indirectly involved with the preparation of the RFP document.

The two nonvoting members usually are the project team leader, who acts as chair of the panel, and an independent observer. It is the responsibility of the independent observer to ensure the integrity of the process and to record the decision and the reasons for that decision. If a fairness commissioner has been involved with the process to date, they could fulfil the role of independent observer. Other options include a well known and respected member of the community, a representative from the Department of Housing and Municipal Affairs, or a representative of the local business community. If a larger selection panel is deemed necessary, additional voting and nonvoting members can be added. Steps should also be taken to ensure that no members of the panel are in any type of a conflict of interest situation. In all cases, however, the number of independent voting members must outnumber those from the municipality. Again, this is to ensure that the process is, and is seen to be, impartial and fair.

B. Evaluating the written proposal

If the project team has selected a one-stage selection process, the written proposals can be used to establish a short list. As with the RFI/RFQ, proposals should be evaluated for the compliance with mandatory requirements first. Noncompliant proposals can be disqualified from further evaluation at this stage. Proposals failing to illustrate sufficient financial capability and experience, as outlined in the RFP documents, can also be eliminated. The remaining proposals will then be rated according to the evaluation criteria specified in the RFP.

The criteria used to evaluate written submissions will vary with the scope of the project and the municipality's objectives in seeking a partnership. A sample evaluation form is included in *Appendix ?* of this guide. Other important considerations when evaluating proposals include:

- Masking the identity of the potential partners when evaluating written proposals to eliminate the perception of bias;
- Making sure all proposals are being evaluated using standard assumptions (e.g. demand, inflation, cost of capital). Some of the potential partner's figures may have to be adjusted to meet these standard assumptions;
- Assessing both the financial capability of the potential partner and the attractiveness of the offer;
- Including sensitivity analysis to identify the financial risks

of each proposal;

- Assessing the value of proposals that exceed the minimum technical requirements. The municipality may wish to pay a higher price to obtain these benefits;
- Identifying the best combination of financial and non-financial benefits. Remember best value as opposed to lowest price should be the primary consideration.

Written proposals will be expected to meet a minimum qualifying score. This qualifying minimum will be detailed in the RFP document as part of the evaluation scheme. Of the proposals that meet this minimum, the top three will be selected for the short list. If fewer than three proposals meet the minimum, the evaluation panel may choose to proceed with the oral presentations, or, as a last resort, cancel the competition.

The evaluation of written proposals should be completed within 14 days of the closing date for the competition. All respondents to the RFP will be notified by letter of the results of the written evaluations. The short list of potential partners will be presented in alphabetical order. Scores should not be included.

Potential partners that fail to make the short list should be debriefed on an as-requested basis. Copies of the potential partner's aggregate score sheet and relevant comments should be made available, if requested. Score sheets from individual members of the selection team should not be made available to the proponent.

If a two-stage selection process is being used, a short list will already have been established at the RFI/RFQ stage. In this case, the evaluation of written proposals is used to ensure that the short listed proponents meet the minimum criteria set out in the RFP document.

The selection panel can select a preferred partner based entirely on the contents of the written proposal or it can require all short-listed potential partners to make an oral presentation. If time and available resources permit, selection based on an oral presentation is recommended.

C. Oral presentations

The objective of the oral presentation is to allow short-listed potential partners a chance to communicate their proposal more effectively to the selection panel. It also provides the evaluation panel with the opportunity to ask specific questions regarding the written proposal.

The oral presentation should take place within seven calendar days of the short-listing decision. The times and order of oral presentations should be determined by random selection and all potential partners should be notified of the complete schedule. If possible, all presentations should take place on a single working day. If this is not possible, the presentations should be spread out over two consecutive working days with no weekend in between.

In some cases, the selection panel hearing the oral presentations is totally different from the panel that evaluated the written documents. This adds an extra element of fairness to the procedure.

The presentations should generally be limited to 30 minutes, with an additional 30 minutes set aside for questions and answers. Potential partners should be required to provide all equipment and materials for their presentation. This is their insurance against malfunctioning equipment.

Any commitments made during the presentation or question and answer period become part of that potential partner's proposal and may be included in any contract negotiations. Therefore, it may be worthwhile to video-tape each of the sessions.

- D. Site Visit Members of the selection panel, the project team, and technical advisors may find a site visit useful or necessary. Costs of such a visit should be the responsibility of the municipality to maintain the integrity of the process.
- E. Evaluation criteria Selection of the preferred partner can be based solely on the results of the oral presentation or on a combination of the written and oral proposals and site visit. While the selection panel may decide to rank the written proposals by group consensus, the oral presentations should be ranked by each voting members and then added together.
- Potential evaluation criteria include:
- Project manager's suitability
 - Project team dynamics and interaction. Does the team work well as a unit? Do all members understand their roles?
 - Proposed solution for the municipality's needs
 - Proponent's experience and commitment to the project

- Any other priorities of the municipality - local content, use of existing employees, as spelled out in the PPP policy

As an example of how the preferred partner might be selected, assume one voting member of the selection panel ranked each of the short-listed proponents on the above criteria as follows:

Proponent A:	1st, 2nd, 1st, 1st, 2nd	= 7
Proponent B :	2nd, 1st, 3rd, 2nd, 1st	= 9
Proponent C:	3rd, 3rd, 2nd, 3rd, 3rd	= 14

These totals would then be added to those generated by the other voting members to reach the final total. The lowest scoring potential partner (i.e., highest combined ranking) will be announced as the preferred partner.

If a two-envelope process has been selected, the highest ranking potential partner's financial bid would be opened. If the bid is acceptable, that potential partner becomes the preferred partner. If the bid is not acceptable, the selection panel could attempt to negotiate a lower bid, or move to the second ranked potential partner.

All proponents should be notified of the panel's decision and are entitled to a debriefing on the application of the evaluation criteria to the written proposal and the oral presentation.

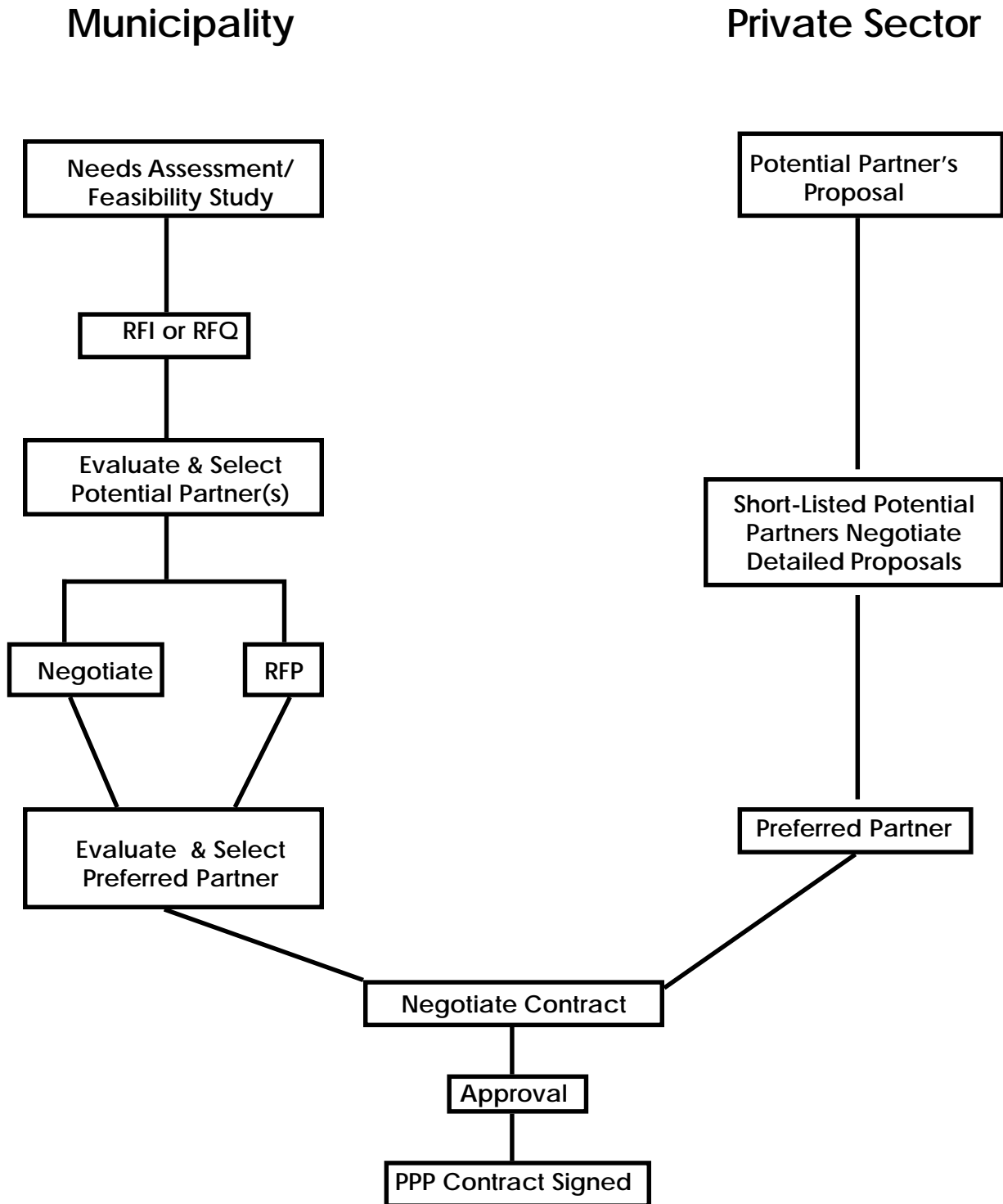
E. Obtain necessary approvals

Prior to notifying the successful potential partner, it may be necessary to report to council, or a committee thereof, on the results of the evaluation process. Council should be notified of the results of the selection process prior to entering into detailed negotiations with the preferred partner.

N.B. The Procurement Branch, Nova Scotia Dept. of Finance publishes 3 guides which may be of some benefit to municipalities engaging in PPPs:

1. Guide to Preparation of a Request for Proposal
2. Guide for the Evaluation of a Request for Proposal
3. A Process to Develop Co-operative Business Solutions

Figure 4. 1: The PPP Process



Best Practices

- ◆ Widely distribute and advertise notices of RFI/RFPs .
- ◆ Describe the evaluation criteria in the RFP documentation.
- ◆ Do not permit advisors acting for the municipality to have any role in the projects's execution and delivery.
- ◆ Decide how the final outcome will be determined - whether the proposal presenting the best value or the best solution will be chosen. The factors chosen to determine this should be objective, quantified, and weighted.
- ◆ A pass/fail system works best when combined with weighting.
- ◆ Make sure the evaluation process is full of conflict of interest.
- ◆ Use a black out period to stop potential partners from lobbying elected officials and municipal staff.
- ◆ Keep a record of procurement proceedings to ensure fairness and transparency of the process.
- ◆ Compensating unsuccessful potential partners is a sign of commitment to PPP by the municipality.
- ◆ Use the services of a fairness commissioner in more complex PPPs.
- ◆ Specify service requirements in terms of results not inputs.
- ◆ Specify what the service requirement is, not how it is to be performed. Operational flexibility is essential for the contractor to be innovative in performing the activity. Results should be specified as fully as possible, and should include appropriate service quality measures.