

Chapter 6: Working With the Partner

The purpose of this chapter is to describe the steps the municipality should take to work effectively with a private partner. The chapter has been divided into the following subheadings:

- ⚙ Accountability
- ⚙ Communications Strategy
- ⚙ Conflict Resolution
- ⚙ Exercise Off Ramps
- ⚙ Dissolving the Partnership

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

Management of a PPP requires acquiring a whole new set of skills - the municipality has to remove itself from hands-on service delivery and become a manager focussing on service, products or outcomes.

At the same time, the municipality must endeavour to keep abreast of developments in the industry or service which is being contracted out. This is essential for three reasons:

- ❁ To ensure smooth communication between the private partner and the municipality
- ❁ To be able to fully comprehend the information being provided by the private partner, and
- ❁ To retain corporate memory to assist with future decision-making:
 - sole sourcing,
 - sending out a new RFP, or
 - bringing the service back into the municipality at the end of the PPP.

The first PPP will be a learning process, so much care should be taken to stress flexibility.

In order for the PPP relationship to succeed, the following points should be remembered:

- ❁ Contracting out via a PPP does not diminish the municipality's responsibility for providing services and infrastructure for its residents;
- ❁ The municipality must formally and regularly monitor the performance of the private partner to ensure performance standards are being met. When the private partner supplies performance data, the municipality must be able to carry out an independent audit to verify the accuracy of the data;
- ❁ Both partners need to recognize their mutual dependence on one another during the life of the contract and try to work cooperatively rather than as adversaries, and
- ❁ Non-performance by the private partner, dispute resolution mechanisms and arrangements for smooth transfer, either back to the municipality or to another private partner must be provided for in the contract.

6.1 Accountability

Once the contract has been signed, the final task of the project team is to assign a contract manager. This individual will provide the private partner with a single point of contact within the municipality.

The contract manager must have both the authority and knowledge base to manage the contract. This is essential so that they can properly evaluate the information received from the private partner prior to signing off at the various end points during the contract. (Ideally this person would have a second-in-command to ensure continuity throughout the life of the contract.)

Failure to have a contract manager with appropriate qualifications can lead to disorganization, a lack of accountability, and the potential that the private partner will not properly meet the specifications outlined in the contract.

The contract manager's role is to be responsible for the day-to-day management by:

- ◆ Monitoring the private partner's performance;
- ◆ Ensuring that there are adequate, regular, formal reporting mechanisms;
- ◆ Using information from external sources (benchmarking) to chart the partnership's progress, and
- ◆ Dealing with complaints from citizens/users of the facility.

The contract manager will also play the lead role in settling disputes and dissolving the partnership should the need arise.

A PPP has a better chance of being successful when both partners are comfortable with the roles they are to play (the municipality as the contract's manager and the private partner as the provider.)

This happens when both the municipality and the private partner:

- ⊗ Approach the PPP with corporate objectives that encourage flexibility, innovation, and risk-taking and that do not stifle creativity;
- ⊗ Take advantage of the strengths each partner brings to the project, in terms of human and financial resources, and standing in the community, and
- ⊗ Keep service to the final customer, the citizen, foremost in their sights.

A. Performance monitoring

The contract manager has two major responsibilities: establishing targets for measurement, and monitoring to ensure that they are being met.

Generally, the project manager monitors the PPP for:

- ◆ Economy
- ◆ Efficiency
- ◆ Effectiveness
- ◆ Quality of service
- ◆ Financial results
- ◆ Customer satisfaction

The approach taken by the municipality in monitoring the PPP is crucial - there has to be a close, honest, and trusting working relationship between the project manager for the municipality and their equivalent in the PPP. This should be encouraged right from the beginning.

In fact, it might be helpful for both partners to meet after the contract has been signed to review the mutually-agreed upon targets for performance.

These targets should be focused more towards results, not inputs (as has been the traditional way of measurement in government.) The final results should be specified as clearly as possible but the municipality must allow a measure of flexibility to enable the private partner to come up with innovative and creative solutions to situations that arise.

The types of performance measurement include establishing:

- Parameters;
- Benchmarks;
- Performance goals;
- Minimum and maximum tolerances, and
- Deciding on the triggers for service level adjustment, and then keeping those measurement criteria in place over time so that trends can easily be spotted.

B. Reporting mechanisms

Depending on the type of partnership structure, contact between the partners may be daily. In some PPPs, it's possible that the contract manager will have a permanent office on site.

No matter how often there is contact between partners, it is essential that the private partner provides the municipality with regularly scheduled formal monthly, quarterly and annual reports. An annual report is to be submitted to council and should be made available to the public.

The elements of a good reporting system include:

- Details of work completed to date;
- Comparisons of performance with the provisions of the contract and the previous period's performance or with industry standards for similar projects;
- In some partnerships, lists of expenditures - services, materials, labour and equipment, and revenues to date;
- If the contract is a cost-plus agreement, then audited financial statements may be required;
- Forecasts for the entire contract period;
- A narrative of problems encountered and the solutions employed to overcome them; and
- Indicating any adjustments to the contract that are necessary.

Such reports can be considered the private partner's formal statement of compliance with the contract.

In addition, the municipality should conduct on-site inspections frequently. These should be a combination of scheduled and unscheduled visits so that the municipality can compare accomplishments with the contract's specifications.

C. External evaluation

In keeping with its role as a servant of the residents within its boundaries, the municipality must be constantly watching and listening for issues that are of concern.

Tracking complaints from members of the public - frequency, the subject of the complaint, trends - is one effective method of determining the public's satisfaction with the services being delivered through the PPP.

The key to minimizing customer complaints is to set up a

cohesive system for dealing with them by:

- ◆ Identifying who is responsible for dealing with complaints. (In all likelihood it will be the contract manager.) Make sure councillors and municipal staff are aware that this is the person who should be contacted.
- ◆ Making it easy to complain: publish local telephone numbers, 1-800 numbers, fax numbers, e-mail and street addresses. Have customer comment cards available if appropriate.
- ◆ Endeavouring to resolve complaints at the first contact. Quick resolution builds customer confidence.
- ◆ Maintaining a data base of complaints so that trends can be investigated and recurring problems fixed.
- ◆ Commissioning a customer service survey might be an appropriate activity in certain PPPs to monitor the public's satisfaction with the services being provided and use the results as a set of guidelines for fine-tuning the PPP contract.
- ◆ Both parties to the PPP must place the citizen/customer satisfaction with a service as the highest performance measurement. Feedback is necessary so that the service provider can be assessed.

Being a steward of the public's money also involves carrying out independent audits to ensure financial accountability throughout all phases of the PPP.

If the contract contains bonus or penalty clauses based on performance, reports, on-site inspections, and external evaluations are crucial for the municipality to track whether incentives must be awarded or penalties be incurred.

6.2 Communications

The Government and Competitiveness Project at Queens University has determined that lack of communications between partners is a major cause of failure in a PPP.

A PPP brings together two completely different cultures so it may take time for each partner to become familiar with the other's corporate language, culture, and approach to the business at hand.

In addition to having to learn to communicate within the partnership, other audiences may need to be addressed during the PPP's lifetime. Therefore the communications strategy

should form an important part of the implementation plan.

In many municipalities, the responsibility for communications falls on the shoulders of the mayor/warden and senior staff members. If resources are available, it is ideal to have the communications process managed by a professional communicator - preferably a staff person. If that is not possible, there are two alternatives - contract with an independent communications consultant or a full-service public relations/advertising agency.

A. Communications strategy

A complete communications strategy for the life of the PPP should address:

- ❁ Internal communications
- ❁ External communications
- ❁ Media relations
- ❁ Crisis communications
- ❁ Evaluation

A.(i) Internal communications

Developing an internal communications network so that all members of the PPP can share in the flow of information is imperative. The project manager should guide internal communications, with assistance, as required, from a communications professional.

The operation must be transparent so that all members of the partnership are operating from the same set of guidelines, principles, and goals, without hidden agendas.

Communications vehicles that could be used include:

- Regular meetings
- Secondments between members of the partnership
- An internal newsletter
- E-mail, intranets, faxes, and other electronic communications tools
- A communications committee made up of representatives from both the public and private partner
- Reports to municipal council

A. (ii). External communication

Depending on the nature of the PPP, there may be a need for regular communication with external audiences - the users of a facility or service, politicians from all levels of government, and the public at large.

This can be accomplished using a number of pro-active vehicles including:

- Open houses or tours of the facility
- Brochures
- Newsletters
- Websites (which must be updated on a regular basis and include an e-mail link back to the municipality)
- Toll free numbers/voice mail systems
- Advertisements - newspapers, television, radio, bus shelters, buses (interior and exterior ads)
- Annual reports

A. (iii) Media relations

It is essential to have a media relations strategy for pro-active public relations activities (coverage of activities, feature articles, television and radio coverage) as well as to deal with emergency or crisis situations.

Ideally, good relations with the local media are established by the PPP either on a fairly informal basis through personal contact or through more formal mechanisms - news releases, news conferences, site tours and meetings with senior staff.

A.(iv) Crisis communications

The initial response is critical if a crisis occurs. An unprepared remark or failure to respond to reporters' calls can wipe out years of diligent relationship building between the PPP and the media in an instant.

There are two elements to a crisis communications plan - the first is the message, the second is the team that is in place to deliver it.

The Message

The foundation for almost every crisis message should contain these elements:

1. Acknowledge that the problem has occurred and relate

what has transpired;

2. Cautiously acknowledge fault and express regret (when and if appropriate) - cover-ups don't work;
3. Express sympathy towards any persons who have been affected (if appropriate);
4. Tell what steps are being taken immediately to assist with the immediate situation;
5. Report on the actions that will be taken to make amends, if that applies to the situation, and
6. Stress actions that will be taken in future so the incident will not be repeated.

The Communications Team

A team should be assembled to develop and regularly review a crisis communications plan. It should be coordinated by the communications manager and include:

- ❁ The CEO of the PPP or the CAO of the municipality
- ❁ Operations manager
- ❁ Legal advisors
- ❁ Human resources personnel
- ❁ Financial representative
- ❁ Technical assistance

A.(v) Evaluation

The communications strategy must also be subjected to regular evaluation to determine:

- ❁ The effectiveness of key messages, programs, and materials
- ❁ The frequency of and types of requests for information
- ❁ Benchmarks for future evaluation
- ❁ Future communications planning

The evaluation should focus on both internal and external audiences and can be done using a variety of techniques including:

- ◆ Interviews with senior management to determine their

concept of the PPP's key message(s);

- ◆ Focus groups with internal and external stakeholders;
- ◆ Analysis of media coverage, and
- ◆ Evaluation of printed materials to assess their effectiveness.

6.3 Conflict resolution

Human nature being what it is, there will be conflicts arising throughout the life of the PPP. How they are resolved will have a significant impact on the success or failure of the PPP. The ultimate goal is to resolve any difficulties quickly, in privacy, without disruption in the operation of the PPP, in a manner that opens channels of communications and reduces the potential for disputes further on in the life of the PPP. Therefore, it is imperative that the contract contain a step-by-step guide for resolving conflicts laying out the procedures that should be followed before the partners consider legal action.

There are many forms of alternate dispute resolution including negotiation between the partners or their representatives; neutral arbitration where an impartial expert listens to the facts; mediation, and arbitration.

Deciding on the type of alternate dispute mechanism to use depends on a variety of factors including the nature of the dispute, the relationship between the two partners, the sensitivity of the issues involved, and the likely outcome and cost of litigation. When these factors are considered, mediation and/or arbitration are the most commonly chosen options.

A. Mediation

Mediation serves to satisfy the needs of the two disputing partners, while at the same time, preserving or strengthening their future relationship. A mediator sits down with the two partners and guides their discussion. They are a neutral third party, with no independent authority or ability to impose a settlement - their role is **not** to make the final decision but to guide the partners to a mutually agreed-upon solution.

Mediation works best when the partners want to retain control over the outcome of the conflict resolution process.

B. Arbitration

Arbitration differs from mediation in that partners argue their case (with or without legal counsel) in front of a neutral third person. In most cases, the arbitrator's decision is final (unless the partners have agreed otherwise beforehand) and the awards are enforceable and cannot be appealed.

In addition to saving time and money, the advantages of using either of these methods include:

- Confidentiality - discussions to remedy the dispute are conducted in private, in front of a mediator or arbitrator, not in a public courtroom;
- The business relationship which might be lost in the acrimonious environment of the courthouse can be preserved;
- The dispute can be resolved privately and by using terms that both partners have agreed to in advance;
- Complicated facts can be considered, with the advice of outside experts from the field, if necessary, rather than by a judge or jury composed of lay people, and
- The distractions that can be caused among employees when litigation is involved are minimized.

C. Conflict resolution goals and objectives

In order to resolve a problem, using either mediation or arbitration, the partners should:

- ◆ Create an atmosphere - find neutral territory where the problem can be discussed civilly;
- ◆ Clarify perceptions - determine where each partner is coming from - perception is often stronger than the reality of the situation;
- ◆ Focus on individual and shared needs;
- ◆ Build shared power - find out what needs to be done so that both partners can work together rather than working against each other;
- ◆ Look to the future, then learn from the past by discussing how you have solved problems in the past;
- ◆ Generate options - brainstorm to find many options to solving the problem;
- ◆ Develop actual methods and tasks to solve the problem based on the solutions that came from the brainstorming session, and
- ◆ Make mutual benefit agreements to create the best solutions for both partners.

If using alternate dispute mechanisms fails, then the partners have two options - take the dispute to court or agree to exercise the off ramps in the contract and dissolve the partnership. Taking the case to court is the least preferred option - it increases the acrimony; it turns the conflict into a situation where the final outcome is a win-loss one, and pursuing legal action can be a drain on time and resources.

6.4 Exercise off ramps

Rather than taking the other party to court, it might be better for all concerned to realize that things aren't going to be resolved and fall back on the Off Ramp clauses that the contract contains to formally dissolve the partnership.

The reasons for invoking Off Ramp clauses must be spelled out in the contract and should cover such factors as dissolving the partnership because:

- ❁ Either partner feels that it should not continue in the relationship;
- ❁ The financial situation of the private partner;
- ❁ The scope of work or the price of subsequent phases of the project have been assessed as unrealistic;
- ❁ The private partner may not be able to successfully complete the project, or
- ❁ The municipality may be unable to achieve satisfactory participation from the private partner.

The municipality should have a backup plan at the ready, as a precaution, so that delivery of the program or service is not disrupted as a result of the dissolution of the partnership. Before an off ramp is exercised, a cost-benefit analysis should be conducted.

6.5 Dissolving the partnership

Dissolving a partnership is a formal, legal process which must be guided by the provisions of the contract and statutory law.

There are various elements which have been laid out in the original contract to deal with:

- ❁ The method of allocating net earnings or losses;
- ❁ Repayment of capital;

❁ Disposal of assets. If the assets are being returned to the public sector, i.e. in the case of a Build-Operate-Transfer or Build-Own-Operate-Transfer, there have to be assurances built in vis a vis the condition of the assets being returned and warranties to cover part, if not all, of the remaining life of the structure, and

❁ The method for paying liabilities.

Depending on the nature of the PPP, a variety of scenarios will be played out at the end of the contract:

- ◆ The infrastructure, facility or service will be returned to the municipality;
- ◆ The private partner will be sole-sourced to continue operating the facility or delivering the service;
- ◆ The contract will once again be put out to RFI and RFP; or
- ◆ The program, service, or facility may be totally closed down.

The transfer agreement in the contract should cover both the transfer from the municipality at the beginning and the probable outcome (given that time and circumstances have intervened in the meantime) at the conclusion of the contract. The ultimate goal is to have a smooth transition, with no breaks in service, back to the municipality or to another private partner at that time.

The final step may be to undertake an evaluation of the private partner. The objectives of this report/audit should be to:

- Assess the capabilities of the private partner for future opportunities;
- Identify areas where improvement would be required before that private partner would be used again;
- Identify obstacles which arose during the PPP;
- Explain changes to project schedule and in the quality or quantity of the products or services;
- Review the original RFP and contract vis a vis the above; and
- Make recommendations regarding specifications for future PPPs.

The report should contain information on:

- The original schedule for the PPP project as compared to the actual schedule;
- Reports from inspections, outside evaluations, and complaints;
- Information from the private partner explaining deviations from the original quality or quantity specified in the contract;
- Views of municipal officials on these deviations;
- There must be mechanisms for the public to indicate whether or not the partnered service is operating at an acceptable level;
- Future needs for the service and implications rising from this evaluation, and
- A list of contact names - people who have been involved in the PPP and their role in it.

Best Practices

- ◆ The municipality's responsibilities for providing services, facilities, or infrastructure are not diminished because of a PPP.
- ◆ Establish and agree on a comprehensive range of performance measures, reporting requirements and acceptable levels of performance - both targets to achieve and benefits resulting from achieving these targets - to avoid contract and payment disputes.
- ◆ Assess the implications of non-performance or financial default, provide remedies in the contract, take steps to minimize these risks, and have contingency plans in place.
- ◆ Remember that a PPP is a learning process and the knowledge gained during the life of the contract will provide a foundation for future PPPs.
- ◆ Communicate, communicate, communicate.