

## **Private Public Partnerships in the tourism sector: Report 3**

An outline of a generic institutional system enabling institutions to manage a tourism PPP programme to the standards set by Treasury Regulation 16 to the Public Finance Management Act.

This is the third of four reports commissioned by National Treasury and overseen by a multi-institution Task Team, as the preliminary work (Stages 1-4) for the development of South Africa's *Tourism PPPs Toolkit*. Report 1 is an analytical review of tourism PPPs conducted in South Africa to date, and a scan of international trends in similar projects. Report 2 is an overview of typical tourism products that can be developed and operated by private parties acquiring rights to use institution property, and an outline of how the relevant institutions can optimally plan, procure and manage these PPPs. The Toolkit will be drafted after the key findings and recommendations of these three reports have been reviewed at a national consultative workshop in December 2004, the outcome of which will constitute Report 4. The *Tourism PPPs Toolkit* will be issued in mid-2005 as a National Treasury PPP Practice Note in terms of S76(4)(g) of the PFMA, applicable to national and provincial departments and schedule 3 public entities.

**Third draft**

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For comment only

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# Generic Institutional System Report

## 1 Introduction

Selected South African tourism PPPs were analysed in the first stage of developing the tourism PPP Toolkit. A key finding was that the institutional capacity plays a pivotal role in the success of these projects. In the second stage of the Toolkit development products were categorised and standard systems proposed for the PPP processes. This report describes a proposed generic institutional system for the PPP processes outlined in the stage two report.

The generic system has been developed using the research findings from the first stage of the toolkit and the experience of the consulting team. The system proposed is principle driven rather than prescriptive owing to the diversity of tourism PPP products. The report also provides summaries of how a number of PPPs have been undertaken institutionally. It is proposed that this information is included in the Toolkit to assist institutional managers in creating appropriate structures for their particular projects.

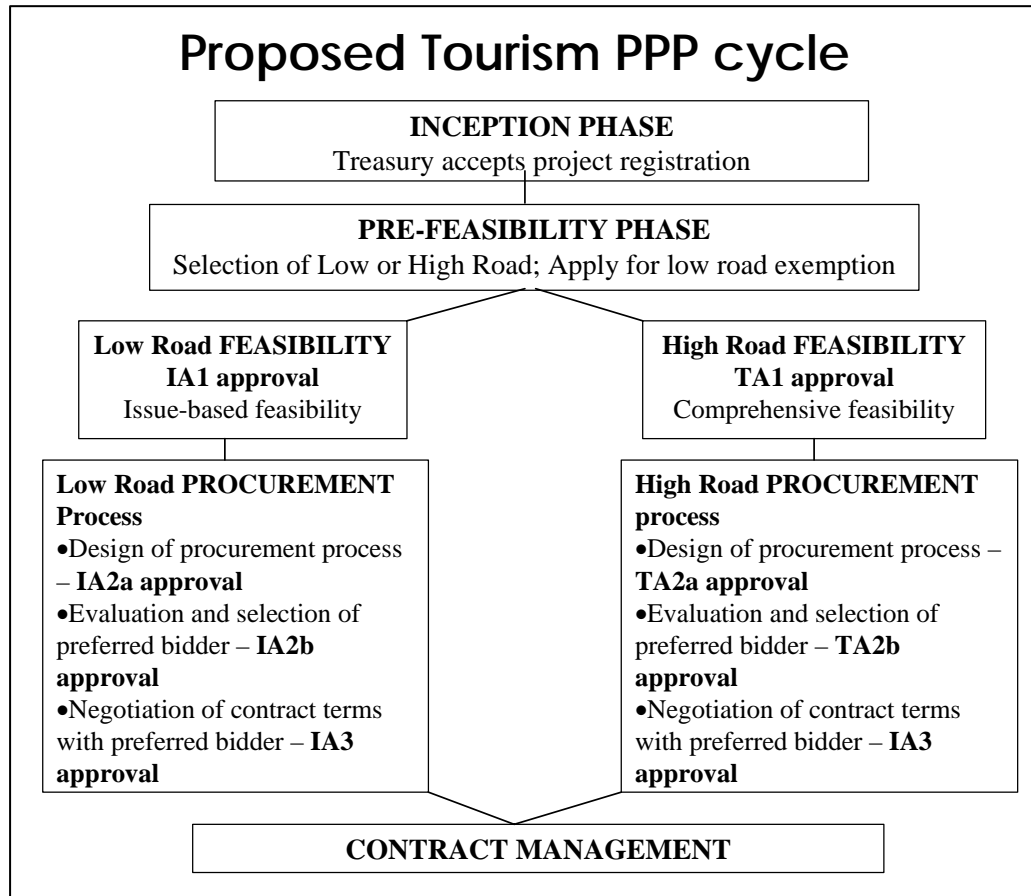
The institutional system proposed addresses the following:

- ◆ Project Officer job description and skills
- ◆ Project Management Committee and supporting personnel requirements
- ◆ Institutional due diligence
- ◆ Strategic issues to be addressed
- ◆ Institutional structures
- ◆ The use of Transaction Advisors
- ◆ Treasury exemption requirements
- ◆ Unsolicited proposal management
- ◆ Management of contracts
- ◆ Renegotiation

The report concludes with a proposed National monitoring mechanism for the toolkit.

## 2 Overview of proposed Tourism PPP cycle

The institution must be capacitated and structured to undertake all the stages in the proposed PPP cycle. This report has therefore been structured to reflect the institutional requirements in each stage of the cycle. The PPP cycle proposed in stage two report is presented diagrammatically below.



## 3 Inception Phase

In the Inception phase the institution is required to:

- ◆ complete a Strategic Plan for Commercialisation
- ◆ appoint a Project Officer
- ◆ register the project with the relevant Treasury
- ◆ inform Treasury of capacity to proceed with a PPP

When Treasury registers a project they have the right to request that a Transaction advisor be appointed to assist in the PPP process. On completion of the inception phase Treasury will direct the institution on the need for Transaction Advisory skills for the subsequent stages of the PPP cycle. The use of Transaction Advisors is further discussed in section 8 of this report.

In this section of the report the following institutional aspects have been addressed:

- ◆ Strategic issues and Accounting Officer / Authority requirements
- ◆ Strategic issues and institutional due diligence
- ◆ Institutional structures
- ◆ Institutional decision making
- ◆ Project Officer requirements
- ◆ PPP Project Management Committee

### **3.1 Strategic issues and Accounting Officer/ Authority requirements**

There has been a high expectation by some managers of conservation bodies of the potential benefits which may be gained through partnering with the private sector. This has been driven in some part by the progress made in the Kruger process and in Madikwe. However for many smaller reserves which do not hold the 'big five' and for which no existing product already exists, the reality is far removed from the expectation. Here there needs to be a very clear focus on why the concession is being done. In some instances this has not always been very well or clearly articulated. The reasons for concessioning can range from economic development, income generation to loss minimisation. Conservation institutions must clearly understand why they wish to pursue a partnership with a private party.

Once the Accounting Officer/authority has taken the resolution to review the potential of PPPs the institution should develop the Strategic Plan for Commercialisation. A key aspect in this plan is an evaluation of the institution's ability to undertake the PPP process. The following is proposed as contents in an institution's strategic commercialisation plan:

- ◆ **Institution's vision, mission, objectives, activities.**

- ◆ **Commercialisation policy**

The written commercialisation policy will be the guiding document for the commercialisation process. It should include the motivation for commercialisation, the strategy, organisational structure, legal process, planned way forward and budget. The policy should provide a concessioning framework that indicates at what level and at what scale decisions can be made. These must ensure that the process is fair, equitable and transparent, yet still sufficiently efficient to allow for rapid decision making at the appropriate level.

The policy must include a BBBEE policy that complies with the overall strategic objectives of the institution. The BBBEE Act, the Tourism Charter, the Code of Good Practice for BEE in PPPs, and the indicative BBBEE scorecards provided in the Tourism PPPs Toolkit should guide the institution's BBBEE policy objectives.

The policy is to be adopted by the relevant accounting authority/officer and endorsed by the relevant executive authority.

- ◆ **Personnel, budgetary and systems capacity for PPPs**

This should address the following:

- Project Officer: job description, skills, experience specified, expertise of person appointed and support personnel in place;
- medium term expenditure framework and allocated budget;
- planning, procurement and management systems;
- the institution's approval processes for each phase of the PPP cycle

Before an institution should consider contracting with the private sector in its tourism products, it must ensure its own management and administrative structures are in place and functioning. When the private sector is engaged there must be sufficient capacity to interact with them as an equal partner. To achieve this there must be a basic understanding of the problems and challenges which the private party will face. There must equally be a clear understanding of the additional costs which the institution will have to take on board to accommodate the new partner and the impacts this may have on funding other priorities, especially biodiversity.

◆ **Legal capacity for PPPs**

This should focus on both the institution's rights to contract and on the institution's authority to retain revenues.

◆ **Conceptual strategic plan for each of the commercial opportunities identified**

The conceptual strategic plan for the commercial opportunities identified should provide a framework for ensuring that sites can achieve goals set for commercialisation and will be attractive to the private sector. The plan should address the following:

- is it a PPP by definition?;
- is the legal mandate in place for a PPP on the site?;
- is there any known private sector interest?;
- is there a budget to implement?;
- does the project have the support of reserve management?;
- are there any human resource issues at stake?;
- are there any major environmental issues at stake?;
- are there any special considerations (eg if it is a World Heritage Site, what conditions would apply?); and
- what are the likely value for money benchmarks?

◆ **Identification of any external support required by the institution to implement its commercialisation strategy.**

This includes the need for Transaction Advisory services at each stage of the PPP cycle.

The outputs of the inception phase are to ensure that the institution has the fundamentals in place for a successful PPP process. If these are not in place the

institution will waste its own and private sectors time, money and effort unnecessarily. To prevent this it is proposed that Treasury only register the project (see Regulation 16.3) once the institution has completed a suitable Strategic Plan for Commercialisation and has created the necessary internal capacity.

### 3.2 Institutional structures

The Accounting Officer / Authority must decide on the most appropriate structure that should be used to manage the PPP process. Each institution has peculiar challenges and each site is unique. A blanket approach to the correct institutional structure per product category is therefore not recommended. A principle driven approach is therefore proposed. The key principles to be applied are as follows:

- ◆ the structure is appropriate to its function (i.e. efficient and effective);
- ◆ the structure is sufficiently flexible to adapt to change;
- ◆ good corporate governance is applied;
- ◆ complies with administrative justice and the PFMA or MFMA;
- ◆ Comply with regulatory requirements. For example:
  - Statutory bodies – e.g. WCNCB, Ezemvelo KZN Wildlife and ECPB;
  - Departments with mandated conservation functions -e.g. Free State, Gauteng.;
- ◆ Only in exceptional circumstances should a new institution to be formed. For example:
  - Greater St Lucia Wetlands Park Authority (GSLWPA) was created as a new public entity to provide an authority to run this world heritage site. It was not created primarily for the purpose of PPPs.
  - For Cradle of Humankind Interpretation Centre Complex (Cradle of Humankind) a Gauteng department could be appointed as the authority in terms of the World Heritage Convention Act. A Trust was however used to manage the concession proceeds since the facility was built on provincial and university owned land.
- ◆ Public institutions should not take equity positions in private companies. This is considered 'anti-competitive and skews the risk profile of the project of government.' Treasury is extremely unlikely to allow a Pilanesburg or Dirapeng scenario to happen again

Various structures have been distilled from the research findings of the first stage of the toolkit and from the experience of the consulting team. The institution will need to evaluate the pros and cons of each institutional structure system to find the correct fit for them. Hybrid structures can also be developed as long as they are appropriate, effective and legal (i.e. the institution has the legal right to use the selected structure). The table overleaf summarises a number of institutional structures that have been used for the management and monitoring of tourism PPPs. Some approaches will now only be used in exceptional circumstances but are listed for completeness and historical perspective. The institution should evaluate the suitability of these structures for their particular project in light of the principles previously listed.

It is typically not necessary for a new institutional structure to be created to enter into a PPP agreement since Regulation 16 gives full authority to the Accounting Officer / Authority to enter into the agreement.

Generic Institutional arrangements	Specific types	Examples	When used	Critical success factors	Pros of approach	Cons and issues to be aware of	Key staff capacitation issues
<b>Internally managed</b>			<b>This is the preferred option for Treasury</b>				
	<b>Division within institution</b>	WCNCB and NWP&TB and Limpopo 2004 and SANParks	When institutional capacity exists and there is a clear vision and understanding as to where the process is heading.	Must have an institutional vision for commercialisation and clearly understand the role it is to play within the organisation. There must be capacity to do this and a culture within the organisation of working with partners. Specific divisions if necessary must be set up to deal with this process.	The institution grows and develops with the process and develops 'institutional memory' of the process. It is more likely to be grasped and understood and this may lead to better implementation with the institution taking ownership and control of the concession from the early stages.	There may not be the institutional capacity to manage the process. These arrangements are relatively new and the skills are not generally found within conservation bodies. Salary scales also do not allow for good competent staff to be employed with skills and importantly experience.	Business skills are critical but also the process of interacting with private partners on a daily basis at all levels within an organisation are critical. The need to run efficient and proper management systems at all levels are essential.
	<b>Manage outsourced providers</b>	None	Here the ongoing concession monitoring can be undertaken by an outside third party, similar to the financial auditing of the organisation. The management of Investment Facilitators also falls in this category. <b>This will only be used in exceptional circumstances.</b>	The outsourced company must be able to achieve this at a standard and level which is appropriate to the agreements but also at a cost which is still affordable once it has been deducted from any income which the product may generate. The key aspect for managing Investment Facilitators is that the agreement is well structured and it is monitored.	A wide range of very good skills can be acquired.	The day to day management will still need to be done in house as it is unlikely that this can be outsourced. This is still a critical area for many of these concessions.	Staff require many skills including legal, social, broad management, financial, environmental etc. These in a specific context where experience is very important.
<b>Create separate entity to manage concessions and lease once being implemented</b>			<b>Only exceptional circumstances should drive this approach owing to the guiding principles listed.</b> Essentially the major reasons for doing this is to ring fence the costs and income of the conservation area, ensure risks of failure by the institution in managing the wider assets are reduced, and policy requirements.	Commercial focus. CEO incentivised. The process must be driven by a business plan with defined outputs and measurable goals		Only to be adopted in exceptional circumstances	

Generic Institutional arrangements	Specific types	Examples	When used	Critical success factors	Pros of approach	Cons and issues to be aware of	Key staff capacitation issues
	<b>Trust</b>	Cradle of Humankind	When there are community or other stakeholders that are directly involved in managing the process. For Cradle of Humankind the concession fees need to be shared with a university and provincial government so a Trust was created to facilitate this. <b>Normally only used for the private party.</b>	The entity must not add significant admin costs and it must still achieve the objectives set up for the reserve. Probably to accommodate communities and ensure conservation of biodiversity	May create a more streamlined management and reduce leakage from the local economy. Devolves benefits and decision making to lower levels.	May be more costly to administer and skills shortage may impede the level the outputs which are required to achieve the goals.	Good business skills
	<b>Section 21 company</b>	Madikwe,	When communities need to be involved in managing the asset and/or when private parties want to secure the management of the conservation assets. This must ensure their concession fees or a part thereof return to the park to maintain and support the infrastructure of the park and the conservation assets	As for Trust above	As for Trust	As for Trust	As for Trust
	<b>Pty Ltd</b>	Pilanesberg (Pilanesberg Resorts); Dirapeng Pty Ltd (NWP&TB) Blyde; Blue IQ	<b>This is not a recommended option</b> since Government does not advocate public institutions taking equity positions in private companies. When the risk to the private party is large, either of the model failing or the product not being developed. Following on from this, if the institution wishes to initiate new products and investment in an area to build a new local or regional economy. Dirapeng was set up initially to act as an investment arm for the Bop Parks Board.	Must be sure to share the risk correctly and the goals of the two partners must be known. But the reason for the institution involvement must be clear and once achieved must have an agreed exit strategy. Allocation of risk and responsibility must be clear from the start, this is often difficult to achieve.	May help to improve private party confidence in an area and it must reduce risk.	Government having equity ownership can result in skewing the risk profile of the project of government. This calls for very astute institution management who must understand their roles and responsibilities. This is where the highest risk lies and if not managed extremely well can result in risk not being properly allocated and failure to achieve the goals for the institution and possibly the entire project.	Staff must have good business and negotiation skills and fully understand the management of the entity and how to deal with risk. These skills are expensive and generally not found and/or affordable in institution employment structures.
	<b>Statutory authority</b>	St Lucia	The GSLWPA was created as a new public entity since the area was declared a world heritage site and needed an authority to run it specifically – it was not created primarily for purpose of PPPs. The institution can create separate divisions that focus on building the product and on managing the wildlife according to defined standards and performance. This enforces the feedback loop of funding to maintain conservation infrastructure from concession fees	As for Trust above	As for Trust	As for Trust	As for Trust

### 3.3 Institutional decision making

Decisions need to be taken at various levels in institutions. For example at a political/executive level (i.e. Exco and MEC), policy formulation and monitoring level (i.e. Accounting Officer/Authority) and operational/implementation levels (i.e. Institution management). The enabling legislation framework for decision stakeholders must be identified in the inception phase to ensure that the stakeholders are correctly informed of the process. The decision making will depend on the internal organisational structure of the particular institution and where a specific entity is created for the project, on the nature of that particular institutional entity. The enabling legislation in each instance will be the key consideration.

A key aspect in the efficiency of the feasibility process is the review and decision making processes used. The Project Officer must create an effective reviewing mechanism in conjunction with the Transaction Advisor to ensure that the relevant decisions are made timeously and at the appropriate level.

A system of check and controls must be implemented which ensures that any major decisions are taken at the appropriate level. The commercialisation policy developed in the inception phase must provide a suitable decision making framework which has been approved by the institution. This must clearly indicate at what level and at what scale decisions can be made.

### 3.4 Project Officer

Treasury Regulation 16.3 requires that the Accounting Officer/ Authority must appoint in writing a Project Officer “as soon as the institution identifies a project that may be concluded as a PPP”. Therefore once the project has been sufficiently defined and budget allocated a specific Project Officer (PO) should be appointed as soon as possible. Ideally the PO should assist in developing the Strategic Plan for Commercialisation but this may not always be possible especially if the PO is sourced externally. The appointment should however be made prior to undertaking the pre-feasibility process. The PO should ideally be full time on the project particularly if there are a number of concessions being undertaken.

The PO should preferably have the following attributes:

- ◆ Effective project manager
- ◆ Understand and have experience in commercialisation and tourism
- ◆ Understand the PPP process
- ◆ Understand the strategic context of the institution
- ◆ Understand protected areas and environmental management
- ◆ Have a working understanding of finance and contracts
- ◆ Experienced contractual negotiator
- ◆ Be able to communicate effectively

National Treasury’s PPP Manual (PPP Manual) provides a detailed list of duties and responsibilities of the PO (see Annexure 1 of Module 3 in the manual). A competency model for POs is also included in the Module 3 of the manual. These are useful guides to assist the recruiting, development and management of POs. The institution also needs to assess if the Project Officer is capacitated to implement BBBEE

issues during the PPP process as set out in National Treasury PPP Practice Note Number 03 of 2004 “Code of Good Practice for BEE in PPPs”.

PPPs are currently not regular work undertaken in conservation institutions and the PO skills requirements are very specific. POs are therefore normally new appointees or staff who do not have the full set of skills required. To address this skills deficit for high road projects a suggestion is that a central repository of POs is created. This repository would be a source of highly skilled POs that would be contracted in for the duration of the project. They would report directly to the institution’s Accounting Officer for the contracted period. On completion of the contract they would return to the repository for redeployment. In the periods when PO work was not forthcoming they could be used by Regional or National Treasury for other capital projects. Alternatively an experienced institution like SANParks could take the lead of the repository.

These repository POs would be appointed as senior managers in the institution and would work with a selected senior manager within the institution to facilitate skills transfer to the institution. The selected senior manager should understand the institution’s operation very well and provide the PO with the strategic context of the institution. This team approach will often be a more practical and effective approach than trying to find a suitable PO with the specific institutional experience. On contract signature the intention would be that the senior manager would undertake the contract monitoring function and the PO would move on to develop other high road tourism PPPs.

Skills transfer between institutions should also be encouraged and institution staff could be seconded to capacitated institutions like SANParks and GSLWPA for a one year mentored position. After a year they can return to their institutions and undertake new PPP projects.

The PO position is a senior position accountable to the Accounting officer/authority for managing the tourism-related PPP process on behalf of the institution. The PO should therefore be delegated the necessary authority to undertake the feasibility study and to obtain all relevant information from the staff.

It is also important that the PO and institution understands the difference between commercialisation and business re-engineering. A key aspect of managing the commercialisation process is the management of communication with staff. The PO or Accounting officer/authority should therefore institute an effective reserve manager communication system.

The first tasks of the PO will be to understand the strategic commercialisation plan and prepare a plan of action. The following is recommended when developing the action plan:

- ◆ The Project Officer must draw from the processes followed and the lessons learnt in previous PPPs. It is vital to get other Project Officer and case study insights to facilitate institutional learning on the PPP process. Case studies can be obtained from the National Treasury PPP unit. The Project Officer should look at similar previous projects to ensure that the same errors are not made and that innovations are used to improve the success of the process.
- ◆ The technical and management expertise needed through the different PPP stages must be identified at the beginning of the process. Managers who understand the interactions between the different components within the institution are particularly valuable when determining the strategic direction of the opportunities. The identification of the opportunities is a vital step and needs sufficient evaluation with a clear focus on market demand. Technical

experts are needed to develop the development parameters of the sites and to evaluate the feasibility study and subsequent bids.

- ◆ The quality and quantity of input required for each technical and management area per work phase should be estimated at the outset.
- ◆ The available skills in the institution should be critically reviewed to determine what skills the institution can provide. The availability of the suitable personnel must also be assessed against the requirements. The outstanding skills for each phase can be sourced from other government institutions and from the private sector at the appropriate time.
- ◆ The scope of work and available budget needs to be defined for each member in the Project Management Committee and private sector consulting team.
- ◆ Request input and assistance from institutions and departments such as the Development Bank and National Treasury after developing the action plan.

### **3.5 Project Management Committee and supporting personnel**

The PO is required to set up a PPP Project Management Committee that consists primarily of staff drawn from the institution. The committee will have mandates from the Accounting Officer / Authority to undertake certain institutional decisions as defined in the strategic commercialisation plan. The members of the committee and the supporting staff necessary to complete the PPP process will vary considerably within the scope of tourism PPPs.

#### *Appointment of Project Management Committee members*

The Project Management Committee will be led by the Project Officer and should be kept as small as possible without losing critical representation. A suggested size is not more than eight people (excluding the Transaction Advisory team). The Project Management Committee members should have a clear mandate and the necessary authority to participate in the Project Management Committee. The scope of work and relevant responsibilities of the Project Management Committee members should be clearly communicated as per project management best practice.

The Project Management Committee will require the following skill set as a minimum:

- ◆ HR
- ◆ Reserve planning and zonation
- ◆ Ecological services
- ◆ Finance and budgeting (revenue and costs)
- ◆ Community participation and BBBEE

The Project Management Committee members should be responsible for collecting the necessary data within the institution.

It is recommended that at least two or three people in the institution complete the National Treasury PPP course. Suggested staff include the Chief Financial Officer, Project Officer and the senior operational managers.

### *Secretariat for PO*

For high road PPPs it is recommended that the PO obtains assistance in the administrative aspects of the work. A secretariat should be appointed to assist in this function. The PPP Manual gives guidance on the duties and responsibilities of the secretariat.

### *Management of input through the process*

The Project Officer should actively manage the inputs from the Project Management Committee members to ensure that the outputs are co-ordinated and integrated. The nature of these multi-disciplinary projects requires that the Project Officer has a good understanding of the key issues and ensures that there is sufficient debate and interaction in the Project Management Committee to identify problems and solutions. Effective delegation and communication should be used to maximise time spent discussing the issues. The Project Officer should create a culture of preparation for meetings by thinking through the issues, generating focused agendas, providing information timeously before meetings and requiring a disciplined input from the Project Management Committee members.

The steps in the PPP process require different skills and input and the Project Officer should be cognisant of this. For example the Transaction Advisor will join the Project Management Committee only once appointed and will normally be involved until signing of the deal (i.e. at the end of the procurement phase). For continuity the core Project Management Committee should take the project from conception to signing of the deal. Thereafter some of the Project Management Committee members should be involved in managing the contract. This is important to ensure that the knowledge gained in the negotiation process is not lost.

## **4 Treasury exemption requirements**

The exemption provision in Regulation 16.10.1 allows Treasury to exempt an institution, or a project, from the Treasury approvals. A capacitated institution undertaking a low road or a high road process will be granted exemption from Treasury Approvals in terms of the provisions stated in the PPP Manual. For high road projects the capacitation requirements are significant since the staff expertise and institutional processes must meet the same standards as applied by the PPP Unit at National Treasury.

The following extract from the National Treasury PPP Practice Note Number 02 of 2004 highlights the level of institutional capacity required for an institution to be given an institutional exemption from Treasury Approval.

“National Treasury views the past experience of the institution in successfully planning for, procuring and implementing PPP projects as the key factor in granting an institutional exemption. The application must therefore demonstrate the capacity of the institution established for procuring and managing all its possible PPPs through the phases and to the standards set in Treasury Regulation 16 without the oversight and approvals of the relevant treasury. The exemption may be granted for a specific period, and re-applied for after that. The application must state the extent to which such institutional capacity relies on the experience of specific individuals.” (National Treasury PPP Practice Note Number 02 of 2004)

The purpose of the inception phase is to ensure that minimum management and administrative issues are up to standard and any obvious legal constraints have been

identified. The institution can then apply for exemption for specific opportunities if it can demonstrate that it has an appropriate tender committee, and a policy and procedure regulating the planning and procurement phases. These opportunities will typically be low road opportunities since the high road capacity requirements will be difficult to achieve. In addition they will need to demonstrate that they have a draft contract (this may be developed from the Toolkit) and that the rights to contract are in place. The basic PPP process and regulatory tests must be undertaken but approvals for the various stages are given by the institution and not by Treasury in the exempted process.

If an institution has not achieved an institutional exemption for low road projects the institution must pass the inception and pre-feasibility phases before it can undertake the project. On completion of the inception phase the institution will submit its application for project registration. If the institutional capacity is lacking or the strategic commercialisation plan is fatally flawed the project will not be registered and the institution will need to sort out the problems before reapplying. No projects will be allowed to proceed if this phase is not suitably addressed.

If the institution has passed the inception phase and the project is registered, the pre-feasibility study will identify if the project is a low or high road project. On acceptance by Treasury that the project is a low road project, and on the granting of the necessary exemption, the institution will be permitted to undertake the project without any further Treasury approvals. The institution must apply the Treasury guidelines and processes contained in the Tourism PPPs Toolkit, but will not rely on Treasury for approvals for the remaining stages. The institution will award its own approvals at the predetermined approval stages. On a regular basis, the institution will be audited by the Auditor General to ensure that the institution is applying the necessary processes and guidelines for these exempted projects.

The same process applies for institutions applying for high level project exemptions except that the institutional capacity is reviewed at the pre-feasibility phase to ensure that the institution can undertake the process. The institution will need to be highly capacitated in PPP project reviews to be granted a high road project exemption or a high road institutional exemption.

The PO will be required to drive these processes and the institution's strategic managers need to be sufficiently capacitated to undertake the necessary decisions. In initial projects appropriate consultants will probably need to be appointed to assist in this work but the focus should be to capacitate the PO and institutional staff so that they can drive projects more effectively in future.

## **5 Pre-feasibility Phase**

The main aims in the pre-feasibility are to confirm potential viability and identify specific issues that need to be dealt with in feasibility. This phase should result in the following outputs:

- Confirm pre-feasibility of proposed tourism products based on current and projected trends and market intelligence
- Provide an initial affordability assessment for the institution
- Provide initial risk transfer assessments
- Provide an initial value for money assessment
- Identify the package of external state support measures that are targeted for the PPP's BBBEE and social development intentions
- Confirm institution's capacity to proceed with the PPP, and whether or not transaction advisor support is required, and in which respect

- Show the results of the scoring process set out in the stage two report and motivate as to whether the high or low road should be followed
- If the low road process is requested, a motivation for the exemption from Treasury approvals by showing institutional capacity to manage approvals and apply regulatory tests

## 5.1 Capacity and information requirements

The PO will drive this process with the assistance of the staff on the Project Management Committee. If the institution lacks capacity to undertake this phase a Transaction Advisor can be appointed, as directed by Treasury. If this is the case skills transfer should occur so that the institution learns to undertake future pre-feasibilities without assistance.

Apart from the reserve management plans described in the following section the Project Management Committee members should collect and compile the necessary information required for the pre-feasibility study. To illustrate the information required the following is recommended for a nature reserve site:

- ◆ Revenue statistics and visitor details;
- ◆ HR details (staff names, designation, benefits, salaries, costs, age, etc);
- ◆ general information brochures;
- ◆ publicity materials;
- ◆ zoning maps;
- ◆ reserve management plan (this should be at least a preliminary management plan that includes short, medium and long term plans with zoning information and an ecological plan);
- ◆ all existing legal and service contracts; and
- ◆ current expenses (these should be ring fenced and include vehicles, facilities maintenance and general operations costs).

The institution's accounting authority/officer should instruct the Project Officer to undertake a compilation of what the targets for BBEE should be in terms of the strategic plan for commercialisation as well as the Toolkit's relevant BBEE scorecard. This would involve a broad secondary research process to establish any relevant factors pertinent to the institution regarding BBEE such as the involvement of adjacent and affected local communities, the size of projects contemplated and the broad product categories they would fall into. This function is the responsibility of the Project Officer or a resource that is contracted into the institution.

The Project Officer would need to make a preliminary analysis of the package of state support measures that would be targeted to ensure that the institution can achieve its BBEE and social development targets for the PPP in question.

The outputs of the pre-feasibility should be reviewed by the Accounting Officer / Authority prior to submission to Treasury.

## 5.2 Reserve Management Plans

Reserve management plans form a critical element of any PPP agreement undertaken in a reserve. In most instances these plans underpin the institution's role and responsibility and therefore these plans need to be given very careful consideration. In the pre-feasibility phase these plans need to be reviewed in light of the planned PPP and refined where necessary.

The management plans must indicate the broad strategic direction of the park or reserve and must indicate the overall vision for the area. The purpose is to provide a very clear indication to any private party where the park is heading regarding management of critical elements. These may need to be of a long term nature, as some concession contracts may extend beyond 30 years.

Management plans have existed and still do exist in many forms. Where they do exist, they are rarely consulted and implemented fully by management. They often contain a set of outputs for the ideal situation, which is often totally unaffordable. If these become part of the PPP agreement, the private party may demand performance on the issues in the plan by the institution. In most instances these would simply not be achievable and this could jeopardise the entire concession contract. These plans must be carefully reviewed and if necessary redrafted.

The plans must therefore focus on the policy framework which will drive decision making and expenditure in the reserve. For issues where significant costs are involved, they must be phrased so as to indicate when and under what circumstances the policy may be applied.

The management plans must be subjected to a basic financial feasibility assessment that indicates what it may cost to implement each aspect. Should the private partner wish to enforce certain provisions or policies which may arise from the plan the estimated costs will then be available. These must be for internal use only. If necessary the plans must indicate who is responsible for what and to what level. The plans must contain the following elements (note these are minimum requirements, some may require more detail):

### **Vision and broad objectives**

This must articulate why the park exists and what the most important management issues are for the area. It must be simple, concise and unambiguous.

### **Natural resource management**

A policy description of how the natural resources will be managed. It must be sufficiently detailed to cover issues such as game stocking rates (for those areas with significant wildlife populations), how the animal populations will be managed, how the vegetation will be managed, this may need to include the issues relating to fire management and the management of exotic or alien species. For issues where there is doubt then these must be stated and a framework for managing this in the future should be indicated. It will also need to address issues such as management of soil, water, landscapes, geology, minerals, mining and quarrying. It should cover how, if at all any, of the natural resources may be utilised.

### **Cultural, historical and archaeological resources**

As for the natural resources a broad policy description must be provided as to how these will be dealt with. If they form a critical element of the vision and objectives, then this section may be very detailed and more comprehensive. For most areas however it must provide a framework for accommodating this in future management and planning.

### **Zonation**

This is an extremely important element of the plan as it must provide insight into how the park will be managed for different uses in the future. It must indicate what may or may not happen in different areas. If other concessions are considered in the future, these must be dealt with in the zonation. If provision is not made for other sites in the future the private partner may object and prevent further development in the park during the currency of their agreement. However opting for the option of keeping the whole or large areas open for development may not be a solution as this may deter current private parties. The current concession fees may be reduced if they are not offered any 'exclusivity' and their business could be compromised by competition established on their marketing success in the future.

The zonation must link in with the vision and be built on the policy in the natural and cultural resources sections. Ideally it may be best to represent it graphically, but a description of each zone is still required. These descriptions must indicate what use is permitted in each zone and to what level.

### **Tourism**

A broad tourism policy must be articulated. This may need to detail what role tourism is expected to play in the reserve and to what level or scale. It should also indicate what types of markets and products will be covered in the tourism plan for the area. This may be required to provide the private party with some focus in building and developing a product or brand for the reserve. The financial implications and the role of tourism in funding other reserve management functions may also need to be provided.

### **Collaboration and partnerships**

This may be more relevant in some reserves than others, but it should provide a broad policy on how collaboration with partners may be managed by the reserve management. Specifically the role of the private partner may be dealt with under this section. This provides a clear framework as to why the private partner is being accommodated in the reserve.

### **Community and social**

Many reserves now have a very strong community or social dimension. This must be stated in a policy. The expected community interaction with the park and its partners should be briefly described in the policy.

### **Land**

Many reserves may have expansion or land consolidation plans which need to be addressed in the plan if they impact on the private party. If the area does extend, will they have access to new areas, will the management costs increase and will their concession fees be diluted over a larger area? These are some likely issues which may have implications for private parties and may need to be addressed in the land policy.

### **Marketing**

This is an area where the private sector would like to see some support from the institution in marketing and building a product or brand for the product. The role the reserve management will play here needs to be spelt out in a policy to ensure the level of commitment, if any, is clearly defined.

### **Infrastructure**

This is potentially an extremely expensive area for reserve management. Many reserves have poorly maintained infrastructure. Private parties must be provided with some direction regarding the following:

- Where, what types and the scale of infrastructure permitted;
- What standards it will be maintained at and who is responsible for funding the maintenance;
- Impacts of infrastructure, especially visual aspects, and what standards will be applied to this;
- Provide a framework of how new infrastructure will be developed and how this relates to EIAs; and
- How waste and other products should be addressed.

### **Administration**

A broad policy is required on how the reserve will be managed, particularly relating to funding the reserve and its operations. It may also deal with issues such as security, management structures, reporting etc.

### **General**

There is specific legislation which now requires all reserves to have management plans but the legislative requirements are generally broader than the requirements of concessions.

As a minimum when preparing for concessioning, the management plans should be reviewed to identify and clarify the issues which involve or impact on the private party; and specifically, what their impact is on project affordability, risk transfer, and value for money for the institution. The long-term implications must always be borne in mind.

The plans may also need to be circulated for public comment before the concession process is initiated.

All reserve management plans must be subjected to a broad business plan to ensure the likely expenses of the different functions are priced, in addition to any income projected. This will provide a very good insight into the possible income required from the concessions to achieve the institution's commercialisation financial goals.

## **6 Feasibility Phase**

The scoring mechanism employed by the Toolkit will determine whether the institution can apply for an exemption from Treasury via a low road or whether it can seek approval for the institution to manage a high road PPP process. These have

different institutional implications for the institutional capacity and BEE issues and are explored in the relevant sections below.

### **Low Road Feasibility**

The risks identified in the pre-feasibility will determine the skills required to undertake this phase. The PO will manage this process, assisted by the Project Management Committee.

The Project Officer needs to consider the low road BBBEE scorecard targets in relation to the PPP the institution is putting out for concession, in order to determine the extent of the involvement of various external state bodies that may be able to assist in achieving these targets

The package of measures required for the achievement of BBBEE relate to support measures for BEE equity and subcontracting partners in the private party. These need to be formalised during the feasibility phase into Memoranda of Understanding (MOUs) with the relevant government agencies, which may include:

- the DFIs for debt, equity & grant funding and technical support
- the THETA to fund service providers to undertake skills training and development
- the various government departments such as DTI, DEAT, DPLG, District Municipalities to offer incentives, grants, & technical assistance.
- Other agencies such as Ntsika, NAMAC, donor organizations which offer support services

These MOUs would assign responsibilities of the institution and the relevant government agency for each project. The nature of the assistance agreed, service level clauses, the timing, nature and extent of the involvement of each agency in the PPP process, resources it will commit, and an undertaking to expedite requests from the institution within specified time frames. The Project Officer will thus need to negotiate these MOUs with the mandate of the Accounting Officer/Authority using the standardised MOUs provided in the Toolkit. It is expected that no legal expertise would need to be contracted for the process and that the governing structure or Accounting Officer/Authority would be able to decide if this is necessary.

### **High Road Feasibility**

For high road feasibility studies the PO will contract in Transaction Advisory expertise unless the institution has significant in-house experience and expertise. Refer to the Transaction Advisor section in this report for further comments on the skills and appropriate use of Transaction Advisors. The PO must be able to manage these professionals and their interaction with the institution.

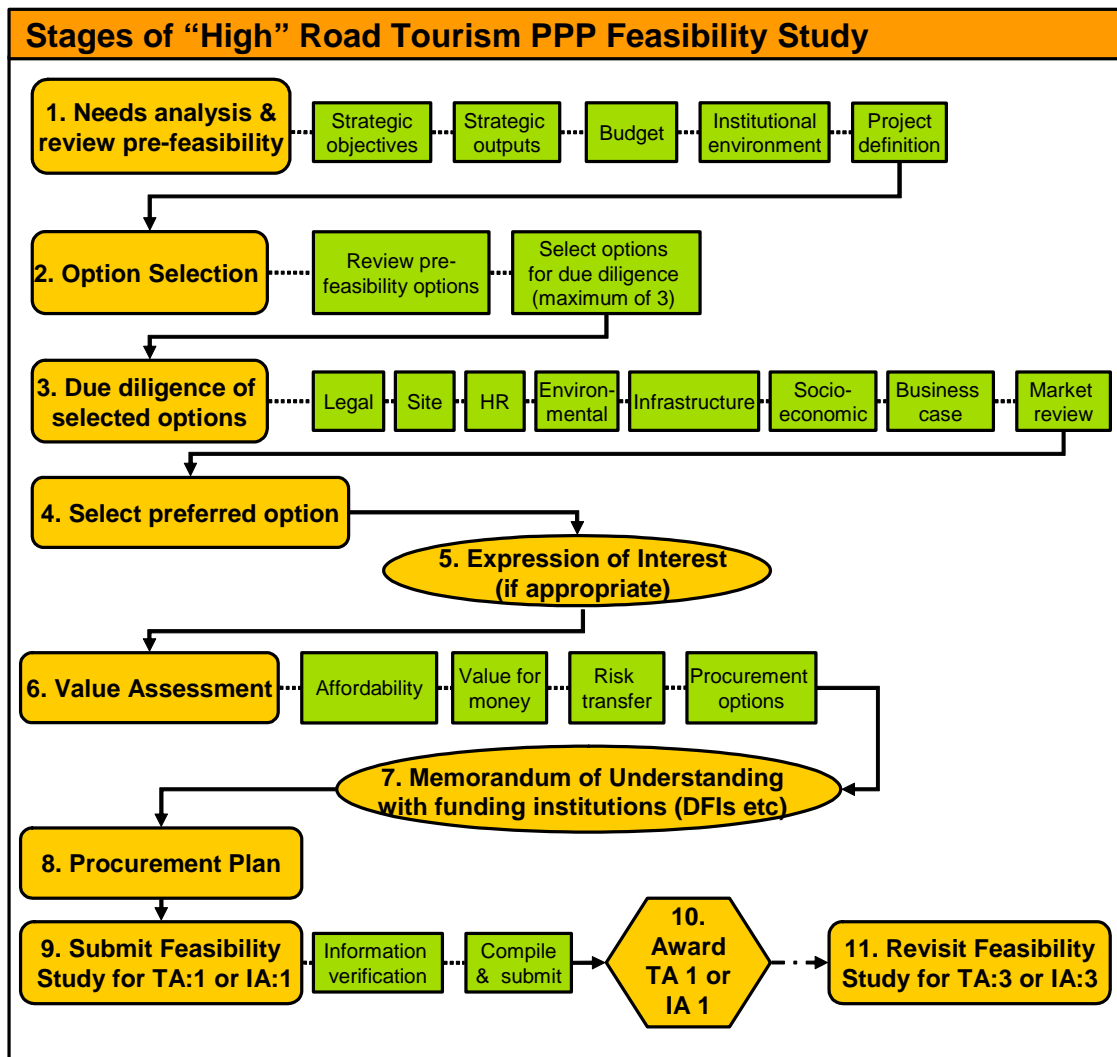
The Project Officer needs to consider the high road BBBEE scorecard targets in relation to the PPP the institution is putting out for concession, in order to determine the extent of the involvement of various external state bodies that may be able to assist in achieving these targets

The institution needs to decide on the specific package of support measures and procurement terms that will best achieve its intended BBBEE outcomes for the project in order to line up the necessary support from external bodies identified.

The institution is also expected to enter into a specific MOUs and Service Level Agreements with DFIs, DTI, DEAT, THETA, NTSIKA, NAMAC etc depending on the most appropriate package of assistance to secure their specific interventions and

resources at specific times in the procurement of the PPP and during its development and operational phases. These MOUs would assign responsibilities of the institution and the relevant government agency for each project. The nature of the assistance agreed, service level clauses, the timing, nature and extent of involvement of the agency in the PPP process, resources it will commit, and an undertaking to expedite requests from the institution within specified time frames. The Project Officer will thus need to negotiate these MOUs with the mandate of the Accounting Officer/Autority using standardised MOUs provided in the Toolkit. The necessary expertise in assisting with these MOUs may need to be contracted by the institution.

A typical work flow for a high road feasibility study should be as per the flow diagram below. The process undertaken for the low road feasibility will be determined by the risks identified in the pre-feasibility phase.



## 7 Procurement Phase

If at the end of the feasibility process the feasibility study indicates that the project is viable (i.e Treasury Approval I is achieved for high road or the institutional approval for the feasibility study result in the low road) then the institution can proceed with the procurement process. The scope of work is typically as follows:

Phase	Work	Deliverables	Approvals
1	<b>Preparation of bid documentation</b>	Draft Request for Qualifications (where relevant); Draft Request for Proposals; Draft PPP Agreement(s). Application for Treasury Approval IIA	Accounting officer/authority and if “high” road National Treasury for TAIIA
2	<b>Procurement</b>	Fair, equitable, transparent, competitive, cost-effective bid process(es). Evaluation of bids. Selection of preferred bidders. Value-for-money Report. Application for Treasury Approval IIB.	Accounting officer/authority and if “high” road National Treasury TAIIB
3	<b>Negotiations and Contracts Management Plan</b>	Negotiated agreements with each selected private party. PPP Contracts Management Plan. Application for Treasury Approval III.	Accounting officer/authority and if “high” road National Treasury for TAIII
4	<b>Signing of PPP agreements</b>	Signed agreements. Close-out Report. Case Study.	Accounting officer/authority

The low or high road procurement phase requires that different BBBEE requirements are adhered to by the institution with attendant institutional implications. These indicative scorecards are provided in Report 2.

#### **BBBEE for Low Road Procurement**

The application of the low road scorecard is intended to assist the institution to apply this tool in a simple manner. It is designed to be utilized by the procurement panel without resort to specialist assistance. It is expected that the Project Officer and PPP Project Management Committee will have had access to the PPP Units training course and understand the basics of the “Code of Good Practice for BEE in PPPs” as well as the low road scorecard for tourism PPPs.

#### **BBBEE for High Road Procurement**

The high road scorecard is a simplified version of the scorecard set out in the “Code of Good Practice for BEE in PPPs” . It is designed to be used by institutions without the need for external assistance. Further it is expected that the Project Officer and PPP Project Management Committee will have had access to the PPP Units training courses. Transaction Advisors in this process should be able to assist the institution in this regard and procurement panels can rely on them to provide clarity on BBBEE scoring of bids.

## **8 Use of Transaction Advisors**

### *Appropriate use of TAs*

Transaction Advisors add value to the PPP process by bringing in expert skills and experience. The skills however need to be tailored to the institution’s needs and capacity. The skills required in the inception phase differ from the feasibility (TA 1) and procurement phases (TA 2 and 3). The Transaction Advisor team for inception would have a strong focus on organisational management and structures as well as legal skills which could audit the legal issues related to contracting. The feasibility phase team would focus on the tourism and conservation products and the procurement process.

Typically the Transaction Advisor undertaking TA 1 to 3 should have the following skills and experience in Tourism PPPs:

- ◆ Project management
- ◆ Legal
- ◆ Financial
- ◆ Tourism
- ◆ Business acumen and market evaluation
- ◆ Environmental and heritage
- ◆ Infrastructure assessment and related technical expertise
- ◆ Negotiation

#### *Generic terms of reference for Transaction Advisors*

It is envisioned that there will be two generic Terms of Reference (TOR) in the tourism Toolkit, one for the high road process and one for the low road process proposed in the stage 2 report. The terms of reference will cater for the pre-feasibility, feasibility and procurement phases.

The terms of reference should address the following:

- The transaction advisors TORs should follow a similar structure to the current PPP Manual. The institution and National Treasury should have the same understanding of key components and processes to be followed for a PPP. To mitigate this problem the PO should be trained in the PPP Toolkit and it is also recommended that National Treasury and the institution work through the fundamental requirements and perspectives prior to advertising for transaction advisors. Transaction advisors need to have a clear frame of reference;
- A correct reflection of the current status of the organisation in terms of organisational transformation must be reflected in the TOR and the transaction advisor's role clearly outlined within the broader transformation. The transaction advisor must also be given a clear understanding of any future reorganisation of the institution. Organisational transformation is a far broader issue than commercialising a few sites. The requirements for the inception and feasibility phases must be clearly defined;
- Sites should be grouped together according to product types to assist effective programming and implementation. Sites differ considerably and have unique issues to be addressed. The result is that when a number of sites are concessioned the feasibility and the procurement processes often become unwieldy.
- The transaction advisor's TOR should highlight the time required to prepare and present results to stakeholders. This communication component should

be quantified by the institution so that the transaction advisors can cost this component and the institution is fully aware of its responsibilities. The institutional capacity of the organisation has a direct bearing on the amount of time spent on these presentations. If officials are not capable or do not have the time to communicate the results within the system the transaction advisor is given this work by default.

- The transaction advisors fees and costs could be minimised if all documentation has been collected and is readily available. In particular, the list in the Pre-feasibility section should be available. Information gathering is a significant cost component in the preparation of PPP projects.

## 9 Contract Management Phase

### 9.1 Institutional requirements

The management of concessions is in many ways more difficult and complex than the bidding process. The bidding process has predetermined milestones and can be managed with outside support, if necessary. The day to day and ongoing management is where any institutional weaknesses will be identified and possibly exploited by the private party. All agreements no matter how well they are drafted will always reach a point where there is some discussion over 'grey' areas. It is here that the working relationship of the partnership is built and developed. This always calls for judgement and an understanding of the other parties' perspective. This is not to say that all issues must be conceded, but rather how they are dealt with. Agreements will need some latitude in implementation and interpretation of outputs, this will inevitably happen on both sides. It is here that good skills are required which understand the wider framework and the implications to the institution of any policies or laws which may be compromised in the process.

This is likely to be an area where management of complex concessions with large capital investment by the private party where their risks are high will require very skilled and efficient management. Issues need to be dealt with properly in a structured manner, with good communication, record keeping and administration at all levels. As the level of investment, the period of the agreement and the turnover of the business declines so the need for more sophisticated monitoring can be relaxed.

The issues to be managed will be regulated by the specific conditions of the agreement, but they must broadly include all the following items:

- ◆ Environmental;
- ◆ All issues relating to the agreement;
- ◆ The RoD from the EIA; and
- ◆ Issues which may stem from the management plan and any other items (e.g. management of waste is usually a critically important issues which requires frequent monitoring.)

The responsibility to manage the contract should be clearly delegated to a specific individual. If possible this person should be the PO since he/she has been through the feasibility, bidding and negotiation process. If not the PO must fully brief the designated contract manager. The contract manager needs to be trained to manage

the contract. Particular areas of training include an understanding of the fundamentals of the business drivers such as financing, marketing, operations, legal context and human resources. Where there are a number of deals within an institution a contract managing unit can be established. The contract manager should report to the Accounting officer/authority.

The institution may need to obtain independent technical, legal, environmental and/or financial assistance from time to time during contract management. This will vary from project to project, depending on the internal capacity of the institution. In addition, there may be good reason for the PPP agreement to provide for an independent monitor to be appointed by both parties for particular monitoring functions during the project term. This was successfully done in the SANParks agreements, with the appointment of an independent environmental officer.

The current PPP Manual further describes the competencies, responsibilities and support that are generally required for the PO to undertake the management of the PPP agreement (see module 6 of the PPP Manual).

### **BBEE for Contract management phase**

Section 16.7 of the Treasury Reg. 16 dictates the procedures for managing PPP contracts. The major implication for BBEE is to ensure that provisions for BBEE in PPP contract are being adhered to. This requires that the Project Officer set up dedicated mechanisms in the institution such as self reporting by the private party and monitoring mechanisms of BBEE targets achieved on a regular basis to ensure that annual reporting mandated by the Regulations are complied with. This requires specialist skills and the Project Officer would need to acquire this or contract in specialist advice in this regard. This has a budgetary implication and would need to be considered as part of the value for money proposal.

## **9.2 Renegotiation**

All concessions involve some renegotiation. This is a potentially problematic area as it creates an opportunity for deviating from the tender. The first step while renegotiated aspects of the agreement is to determine if the proposed changes are material. If so the amendments are subject to Treasury Regulation 16.8 which requires that Treasury must give written approval of the amended agreement. Approval will only be given if the PPP agreement continues to provide value for money, affordability and substantial risk transfer.

To obtain Treasury approval of amended PPP agreements the Accounting Officer / Authority must substantially follow the TA 1 and TA 3 procedures in Regulation 16.

The renegotiated agreement is therefore done within the framework in which the original tender was regulated. A key principle is that renegotiations and decisions relating thereto should be treated in the same manner and at the same level within the particular institution as when the original terms of the agreement were agreed.

If renegotiation on the contract is required the contract manager should obtain expert skills to assist in the process. It is important to obtain appropriate legal advice before any steps are taken by the contract manager to attempt to renegotiate, as the wrong initial steps could prejudice the renegotiation. The Accounting Officer/Authority will need to assess the contract manager's skills and experience to negotiate on its behalf. The contract manager's scope of delegated authority should be very clear and the legal right to renegotiate must be supported by legal opinion. The Accounting Officer/Authority will need to assess the magnitude and implications of the

renegotiation recommendations and capacitate the contract manager with the necessary skills and expert opinion.

## 10 Unsolicited proposal management

Feedback from the private sector that assists in identifying additional potential concessions is encouraged and should be welcomed by the institution. Unsolicited proposals are usually incomplete and fraught with good governance complications. Alternative feedback methods should therefore be used if possible. If an unsolicited proposal is received the institution has a duty of care to evaluate it according to Treasury guidelines. The recommended process is as follows:

- ◆ Receive an unsolicited proposal
- ◆ If the proposal has merit, the institution will inform the proposer about the PPP project cycle, and that if the institution finds the project to be feasible, a procurement process will be announced, at which point he/she is welcome to bid.
- ◆ The institution will follow the project cycle from Inception, as specified in the Toolkit.
- ◆ In the event of an unsolicited proposal having intellectual property rights, the institution will not acquire these rights. From experience to date, the likelihood of such rights being part of an unsolicited proposal is remote, but should they arise, the institution should seek the necessary legal advice. The institution should not enter into any contractual relations (e.g. confidentiality agreements) with unsolicited proposers.

Through regular and standardised advertising of low road PPP opportunities by the institutions, it is likely that unsolicited proposals can be quickly and appropriately channelled into the formal PPP planning and procurement processes that should be run as standard practice, once the institutions have established the necessary capacity and systems to do so.

## 11 National monitoring mechanism for the toolkit

The Toolkit should be considered as a living document that needs to be updated on a regular basis. Initially it is proposed that the Toolkit be revised every second or third year but this will depend on the feedback received. A feedback mechanism should be instigated that would allow parties to submit comment by e-mail, fax or letter. Institutions are to be encouraged to mark up their copies as issues arise so that lessons learnt and improvements are not lost. In the year of review additional feedback should be solicited, particularly on new approaches that have been used in tourism and other PPP sectors.

National Treasury is the custodian of the PPP Toolkit and therefore needs to be suitably capacitated to undertake this function. It is proposed that a dedicated senior project advisor should be appointed in the PPP Unit National Treasury to deal with tourism PPPs. This person will provide the technical assistance to all conservation institutions' PPP Project Officers throughout the project cycle, and make recommendations to National Treasury in respect of the regulatory approval and exemption applications received from the institutions as they proceed with their PPP projects. This person must establish a suitable system of communication with DEAT

and related institutions, and must ensure that, in a structured and consultative manner, the Tourism PPPs Toolkit is amended from time to time to accommodate lessons and best practice.

National Treasury should take overall responsibility for updating the Toolkit but the institutions are to be encouraged to take ownership since it will be their day to day PPP guideline. It is proposed that institutions such as SANParks and DEAT champion the Toolkit as a “living” tool and assist in keeping the toolkit reflecting best practice. If these institutions champion the Tourism PPP Toolkit and appoint a responsible person the Toolkit should remain relevant to the institutional needs and the market appetite.