Guidelines

for

Common Purpose Procurement (CPP)

Purchasing Services Branch
Services Division
Management Board Secretariat

October, 1998

These Guidelines supersede Guide 2-6, *"Common Purpose Procurement - A Manager's Guide*", and Guide 2-7, *"Common Purpose Procurement - A Deputy Minister's Guide"*, dated November 15, 1995.

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INTRODUCTION

These Guidelines are designed to assist those responsible for major procurement initiatives to decide whether to use traditional procurement methods or the **Common Purpose Procurement (CPP)**[1] approach to engaging private sector capabilities for public service delivery or the provision of public service infrastructure.[2]

Before considering the use of the CPP process, it is assumed that public-sector decision makers will already have assessed proposed initiatives in accordance with the criteria and review processes outlined in the **Alternative Service Delivery (ASD) Framework** (Management Board Secretariat, May 1996). It is important to note, however, that many of the steps set out within these Guidelines are applicable to ASD projects even if the CPP approach is not used. In particular, the steps on: Organizational Readiness (Step 2); and, Issuance of Discussion Paper and Vendor Consultation (Step 3), provide tips and best practices which could be used in a number of procurement scenarios.

These Guidelines are subject to the requirements of the Management Board Secretariat (MBS) Procurement Directive and supersede Guide 2-6, *"Common Purpose Procurement - A Manager's Guide*", and Guide 2-7, *"Common Purpose Procurement - A Deputy Minister's Guide"*, dated November 15, 1995. They are also designed to assist ministries in undertaking the analysis necessary to obtain Management Board of Cabinet (MBC) approval to designate a project as appropriate for the CPP approach.

WHAT IS "COMMON PURPOSE"?

Common Purpose Procurement is an open and competitive process for selecting a private sector vendor to work closely with a ministry, government agency or cross-ministerial initiative to:

- jointly identify, design, develop and implement new ways of delivering services or providing public infrastructure; and

- develop long-term public-private partnering relationships wherein there is a mutual

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[1] Common Purpose Procurement (CPP) is a name coined for a new procurement approach developed and tested by the Canadian federal government for complex, multi-stage information technology (IT) projects. Ontario's CPP process is a modification of the federal process and is not limited to IT projects.

[2] The characteristics of CPP *vis à vis* traditional procurement processes are described in Appendix A.

sharing of investment, risks and benefits.

The **common purpose** supported in the CPP process is:

- the identification of outcome-based service and program delivery requirements that can best be developed through public-private collaboration;

- the matching of these operational requirements with the appropriate capacities and capabilities within the private sector; and

- the development of long-term working relationships wherein there is mutual benefit.

In this context, the successful application of the CPP process requires a **common understanding** of the expected outcomes, and agreement, among the participants on broad strategies for how to achieve those outcomes.

The Guidelines:

- set out the decision-making criteria for establishing the appropriateness of using the CPP process;

- describe the organizational readiness requirements for ministries planning to undertake a CPP-based initiative;

- describe the Request for Proposal (RFP) implementation and evaluation elements of the CPP process; and

- identify the necessary components, including the primary elements of the contract negotiation, transition and service management phases, required for the successful implementation of a CPP-based initiative.

This is to ensure that decision-makers can understand and manage:

- the potential risks and benefits, from both public and private sector perspectives, arising from a CPP-based engagement;

- the processes necessary to undertake a CPP-based initiative; and

- the resources and skills required to support successful negotiation and implementation of a CPP initiative.

The following table identifies the various steps to be taken to ensure the successful application of the CPP process.

Table 1 - Steps in the Application of the CPP Process

Step 1 - Appropriate Application of CPP
Step 2 - Organizational Readiness
Step 3 - Issuance of Discussion Paper and Vendor Consultation
Step 4 - Request for Proposals
Step 5 - Evaluation of Vendor Responses and Selection of Preferred Vendor
Step 6 - Invitation to Negotiate and Contract Negotiations
Step 7 - Transition and Service Management

The Guidelines will set out the various considerations that decision-makers will need to address as well as the required administrative review and approval check points.

It is also important to ensure there is a **full documentation** of all the steps outlined in the CPP process.

STEP 1 - APPROPRIATE APPLICATION OF CPP

In contrast to traditional procurement processes, where vendors are selected primarily on the basis of price or lowest evaluated cost, a CPP-based process can facilitate the selection of private sector capability based on demonstrated experience and expertise, project approach and management, and financial stability and capacity. It can also facilitate partnering arrangements for sharing project or program investment, risks and benefits.

CPP is particularly applicable when a ministry has a multi-stage, design-build-finance-operate (DBFO) program or service delivery requirement, or public infrastructure project, and does not have the right mix of time, skills and money to identify, design and develop its own solution. In such circumstances, CPP, as a collaborative procurement process (not based on fixed specifications), can be used by decision-makers to effectively engage the resources, skills and experience of the private sector to define and share in solutions to these business problems.

Before considering a CPP-based approach to procurement initiatives, decision-makers should carefully assess the business conditions, operational circumstances and skills and resource requirements, that would preclude a traditional procurement approach.

When used appropriately, the CPP process will:

- provide equal access to government business opportunities by qualified vendors;
- meet government’s business needs in an efficient and cost-effective manner;
- lead to a collaborative government-vendor relationship;
- expand the creativity and range of potential business solutions;
- leverage both public and private sector skills and resources;
- result in program, service or project outcomes aligned with needs and evolving technologies; and
- establish an acceptable arrangement for the sharing of risk/reward between the public and private sectors.

Table 2 illustrates the high-level conditions and considerations which distinguish a traditional and CPP-based procurement.

Table 2 - Application of CPP or Traditional Procurement Approaches

Common Purpose Procurement	Traditional Procurement
The proposed initiative requires innovative approaches to solve specific business problems	Immediate functional requirements are known or solutions have been pre-determined and can be embodied in detailed specifications
Need to explore opportunities for partnering with the private sector through risk-reward relationships - particularly in rapidly changing fields of operation	Continuing in-house financial and technical resources are available internally to support the initiative All risks, other than contract and supply risks, can be sustained by the Crown
Need to redirect limited resources to more strategic activities	Resources have been identified and are sustainable for the intended procurement
Initiative requires risk transfer, innovative pricing mechanisms, technology renewal, knowledge transfer and evolutionary, phased development	Initiative can be achieved through price or lowest evaluated cost, based on detailed specifications
The procurement initiative must accommodate shifts and adjustment to meet changing needs, unusual circumstances or new opportunities	Immediate needs are known or solutions have been pre-determined and can be embodied in detailed specifications

Common Purpose Procurement	Traditional Procurement
Need to optimize increasingly limited management, technical and administrative resources	Secure resources, and full range of management and implementation competencies, are available internally
Need to optimize return on public assets through public-private partnering	Maintains arm's length relationship with private sector in use of public infrastructure
The procurement contemplates a long-term relationship for support and/or operations	The service can be delivered and accepted in a reasonably short period of time

It is important to note that the use of a CPP process will require significantly more interaction between the vendor community and government, outside of the parameters of the procurement transaction, to facilitate increased understanding of the objectives and scope of new initiatives.

All projects proposing to use CPP must be authorized by Management Board of Cabinet. The types of projects that are appropriate for the use of CPP are primarily those where:

- continuity of the same vendor/partner is required throughout the full-project cycle;
- a ministry has a well defined business vision (or opportunity), project scope and set of desired business results but is looking for creative solutions from the private sector; and
- opportunities for sharing the risks, investment, and benefits with the private sector are present and the rewards for all partners can flow from the same deliverables.

Decision-makers should also recognize the risks in the application of the CPP process. In addition to the many risks surrounding the implementation of any large complex project, CPP involves additional risks around project qualification, the assessment of best value, partner selection, risk and/or benefits sharing with the private sector, organizational cultural differences, and relationship management.

These risks can be mitigated by the following considerations:

Establishing the appropriate criteria to facilitate best value being achieved

Since there is no detailed price evaluation, and the full business requirement may not be known at the time of a contract award, best value will be achieved by:

- the viability and sustainability of the common purpose in the project;
- the benchmarking of current costs and performance levels, determining measurable continuous improvement targets, and making reference to comparable external indicators;
- the most advantageous proposals in terms of whole-life cost and service quality, including all costs, over time, such as capital, maintenance, technology refreshment, management and operating costs; and
- demonstrated and measurable risk and reward sharing.

Early information sharing with potential vendors

This will require:

- sharing project information, including existing policy environment, possible project constraints, current costs, expected performance levels, timeframes, with the vendor community before the start of the formal procurement process;
- ensuring vendors are appropriately innovative by framing RFPs in terms of output, continuous improvement and performance expectations rather than detailed specification requirements; and
- keeping the vendor community informed throughout the procurement process in a manner that provides them with a full understanding of the CPP process and allows them opportunity to prepare themselves to bid.

Continuous risk management assessment

Risk management is about capitalizing on opportunities as well as mitigating potential losses. This includes:

- identifying risks and a risk management approach at the beginning of the procurement planning cycle, including defining what exactly is the risk, what factors influence it, which party will bear the risk and how the risk-taking is being rewarded (to some extent the private sector may be able to assist in this process);
- monitoring risk on a continuous and systematic basis;
- allocating risk to the parties best placed to control and manage it; and
- maintaining the capability and terms and conditions to off-ramp.

The emphasis in the CPP process is on facilitating pre-award competition and post-award co-operation and the promotion of continuous improvement and benefits/risks sharing.

Based on the preceding description of the appropriate application of the CPP process, ministries will need to make a high-level assessment of whether their initiative fits within the CPP framework, or is better suited for a more traditional procurement approach.

Should a ministry determine the CPP process may be suitable for addressing its initiative then it should proceed to Step 2.

For further assistance in helping to determine the applicability of the CPP process, contact the Director of the Purchasing Services Branch, Management Board Secretariat.

STEP 2 - ORGANIZATIONAL READINESS

Should the high-level assessment completed in Step 1 determine that the CPP process may be applicable, it is important that decision-makers determine their overall readiness to proceed. The readiness assessment, described in this section, will save considerable time and enhance the quality of public-private sector interaction when introducing a proposed initiative to the private sector for consideration.

The following presents a description of primary elements that need to be identified and addressed in the preparation to pursue the CPP process. Decision-makers should be able to verify that these elements are in place in order to demonstrate ministry readiness to proceed to the next step.

1. Business Case Preparation

An internal business case needs to be developed which establishes a clear definition of the full range of financial and operational elements required to establish a performance-based business arrangement between public and private sector stakeholders. In particular, the business case should include a thorough assessment of the risks and benefits and the anticipated timelines for the achievement of anticipated results. The topics outlined below need to be addressed and incorporated accordingly into the business case.

2. Authority to Act

Agreement on authority to act, particularly in multi-ministry projects, will be a primary element in internal partnering arrangements and such agreement should be in place before soliciting private sector participation. In particular, ministries should be able to answer the following questions:

- Is there a designated contracting authority for government to negotiate and sign off on a public-private partnering-based deal?
- For multi-ministry projects, will authority be vested in one ministry or agency to "manage" the proposed public-private partnering initiative on behalf of the other ministries (e.g. decision-making authorities and processes, funding commitments, service levels, performance management review, etc.)?
- Have commitments been established, and approved, amongst the internal ministry partners, for the necessary capital and operating budgets to support contractual

arrangements that may extend out over several years?

3. Project Charter

A complete and well documented Project Charter should be developed in order to record a consensus and understanding, within the ministry, or among participating ministries, on authority to act, governance, management, and scope and scale of operational requirements for successfully advancing the proposed initiative.

The Project Charter should confirm all the elements of organizational readiness and be signed off by each stakeholder in the process. (The maintenance of a Project Charter may also be a dynamic process as an initiative could expand to include participation beyond the original sponsors.)

4. Governance and Accountability

Governance is the establishment of the organizational structure, procedures, systems and feedback mechanisms that provide stewardship and accountability, defines roles and responsibilities, communicates an organization's purpose and vision, assures operational efficiency and effectiveness, and manages risk. A governance framework should be established within the Project Charter to include the following:

- Authority to act must be based on a legal framework as embodied in statute or regulatory and administrative mechanisms for the delegation of authority. All contracting arrangements must be consistent with the legal and financial authorities that have been delegated and the conditions for such delegation.

- The necessary and appropriate roles and responsibilities need to be reflected in the organization and management arrangements created to carry out the program and service delivery.

- The Project Charter should identify the agreed on mechanisms for an orderly and timely flow, and the appropriate use of information, at all levels within the governance structure.

A framework for effective accountability in any program and service delivery arrangements resulting from a CPP-based engagement process should include the following:

- Service standards must be maintained in a consistent and coherent manner throughout program design and the selection of appropriate delivery channels as well as being embodied in formal contract arrangements.

- Decision-makers must ensure that government interests within the CPP process are represented in an objective manner that provides full disclosure of publicly accessible information. On issues of information and privacy, the power to acquire, use or disclose information must be consistent with statutory, regulatory or administrative rules governing confidentiality and the protection of personal privacy.

- The Project Charter should identify the appropriate performance standards and performance measurement and feedback mechanisms, as well as the associated delegation of authority within the governance structure for achieving these standards.

5. Project Scope and Scale

Decision-makers must bear in mind that clarity in the scope and nature of the proposed initiative is of paramount importance to the private sector. This requires a clear understanding of the following:

- What's in (functionally)?

- Who's in (organizationally)?

- What is the expected level (or scale) of financial requirements and the probable timing for return on investment for the private sector?

- How will the business case be sustained over time?

- What is the probable term of the engagement (taking into consideration different timeframes for design/develop vs. operate)?

- How can existing investments in people, plant, technology and processes provide leverage to both public and private participants in the deal?

- Will there be a requirement to capture benefits from technological innovations as the initiative matures?

6. Identification of Project Team

A CPP project will require a full-time Executive Lead and corresponding staff (supported by administrative and physical resources) from the beginning design stage through to selection, transition, and implementation of the project. As well, project, service and relationship management resources are needed throughout the term of engagement.

It is also particularly important to engage legal counsel early in the planning process to ensure the ability to translate public policy objectives, and risk/reward or risk transfer propositions in to enforceable contract language.

Project team skill sets should include expertise in risk management, contract negotiations, financing, change management, communications, performance measurement, and project, service and relationship management.

7. Proposed Business and Financial Models

Every project may be different in terms of establishing public-private partnering relationships. However, common principles and high-level procurement arrangements have emerged by which decision-makers can define proposed business and financial models. These apply to both financially free-standing projects and joint ventures for operational support, asset improvement or asset development.

The type of business and financial models to pursue is a strategic consideration that needs to be decided in advance by the public sector.

The common principles are:

- investment and remuneration are based on allocation of risks and attribution of benefits;

- profits and costs are disclosed to the respective parties and compared to agreed upon benchmarks; and

- financial arrangements are consistent with an understanding of the requirement of the private sector to recover their investment and make a profit.

The principal business models that have emerged include:

- Design - Build - Finance - Operate (DBFO)

    - Private sector partner designs (based on the public sector's outcome requirements), finances, constructs, owns and operates the asset or service delivery infrastructure under contract.

- Design - Build - Transfer - Operate (DBTO)

    - Private sector partner designs, finances, constructs asset or service delivery capability; transfers legal ownership to public sector; and operates the asset or service under contract.

- Build - Own - Operate - Transfer (BOOT)

    - Private partner finances, designs and constructs public sector asset, and holds long-term concession to operate and maintain. Ownership is transferred at a future date after the private sector has recovered financing, operation and maintenance costs within the specified transfer date.

- Operations and Service Delivery Outsourcing

    - These models can include private sector operation of public-owned assets, or combining public sector service delivery requirements with already existing private sector delivery capabilities.

Common characteristics of these models include:

- flexible design to enable innovative new approaches to the way services are provided;

- flexible arrangements for attributing benefits (performance-based business arrangements) and transaction fees;

- scope for the private sector "partner" to find additional uses for the assets or service capability/development provided; and

- the risks being undertaken by (or transferred to) the private sector partner being commercial in nature and hence allocated to the party best able to manage it.

Service (performance) expectations and their related financial arrangements must be clearly defined and understood by all participants. Clarity is essential as each of the parties to service delivery arrangements will be entering these arrangements from the perspective of their respective organizations.

Before introducing a proposed commercial opportunity to the private sector, the following issues should be considered in comparing the public sector business case with a commercially-based business case:

- The allocation of risk for capital asset procurements (i.e. public infrastructure projects) will need to address how the proposed business and financial models will achieve best value depending on whether the assets are retained on the public sector's balance sheet or packaged within pay-as-you-go service contract arrangements.

- Optimal funding structures may also require change through time, particularly for IT-based assets and services where technological change can have significant impact on the price-performance curve.

- For IT-based projects it also necessary to consider issues such as technical obsolescence and how to interface to the legacy infrastructure.

- Financial models for prescribed services contracts provide numerous options for different risk allocation and reward profiles. Depending on the nature of the proposed partnering arrangement, the risk profiles may change at different stages in the life of the arrangement (e.g. likely higher risk for the private sector partner during the front-end capital investment stage).

- Financial models also need to consider the cost amortization period versus the term of the proposed contract.

- Risk Management Plan

  Since CPP can be applied to a wide range of capital and service procurements, a risk management plan will reflect the relative complexity of the undertaking and the subsequent contract performance expectations.

The elements of a good risk management plan include risk identification, risk analysis and risk assessment. In particular, the types of risk management questions that need to be asked include:

- what is the possible outcome?
- what are the consequences and to whom?
- what factors impact the outcome?
- what is the degree of control over these factors?
- what are the options to mitigate negative outcomes?
- what are the costs of these options?
- who has the responsibility to implement the risk management plan?

A ministry should document its risk management plan by outlining the feasible options for managing risks, and how it will implement the plan. The risk management plan should embody requirements for sharing and communicating information, facilitating continual monitoring and review, defining auditability and mechanisms for accountability.

Risk management concepts, tools and techniques are a specialized area of management practice. Depending of the complexity of the procurement initiative, specialist expertise may be required in developing and applying a comprehensive risk management plan.

- Payment Mechanisms

Factors to be considered in building models that would assist the private sector in making reasonable judgements about the attractiveness of proposal calls might include consideration of pricing as a mechanism for the transfer of risks, e.g.:

- availability versus volume/usage payments for core services, i.e. would a private sector vendor be paid for availability of services on a usage basis or for the available service capacity;

- transactional-based payments;
- transaction fee caps or project caps imposed by government policy or contract;

- payments referenced to mutually agreed upon benchmarked (current or comparable) costs of services (e.g. a costs/benefits pool payment mechanism where actual savings, costs and possible exceptions determined through a mutually agreed benchmarking process are directly and appropriately attributed to the work performed under the CPP arrangement);

- statutory pricing provisions or social policy requirements (e.g. equity of service access, uniform service levels, geographic reach, etc.); or

- financial incentives for superior performance or disincentives for sub-standard performance.

In order to obtain the best value possible, when negotiating payment options it is important to recognize the need to establish equitable rates for similar work completed by ministry and private sector staff. At the same time, it should be noted that the private sector staff resources utilized in a CPP project will likely be bringing extensive experience and expertise that will not be found in the OPS, and will therefore require appropriate remuneration.

It is also important to ensure that appropriate steps are considered, including decision criteria, in order to accommodate possible changes in the scope or amount of work required to complete the project, and correspondingly any changes to the payment mechanisms (e.g. revision of a maximum payment cap).

8. Other Financial Considerations in Facilitating Private Finance/Public Benefit

The examination of factors relative to appropriate capital and operating cost requirements, return on investment (ROI), commercial risk and financing mechanisms will need to encompass:

- the requirements in innovative financing models to ensure the on-going solvency of the partner;

- the valuation and ownership of assets, including intellectual property and data;

- provisions to fairly protect the interests of all parties in the creation of the assets, particularly intellectual capital;

- how private capital used in the creation/renewal of public assets or services can be obtained in light of the financial rights and covenants that may be required by lenders; and

- other issues related to the co-mingling of public and private funds, e.g.:

  - obtaining credit for the private sector through public sector collateral;

  - securitization of cash flows (e.g. expected future revenues from tolls or usage fees);

  - appropriate and realistic discount periods based on the nature of the assets or infrastructure to be employed; and

  - accommodating tax sensitive concerns or tax constraints on private participation (i.e. private sector tax issues may have a significant impact on the financial structure).

Business models should also take into account:

- any non-revenue generating assets included in the proposed business arrangements; and

- any environmental liabilities associated with the take-over of government assets or the costs of bringing assets up to code-compliant status (e.g. an ageing asset may require significant refurbishing to meet emerging or new environmental standards).

9. Establishing High-level Evaluation Criteria

The early stage of project definition should establish service and business requirements at a fairly high level to give the maximum scope for consideration of innovative solutions.

This may include:

- mandatory requirements - "musts" versus "wants";
- a definition of core requirements in terms of desired outputs, not **how** services are to be provided (for example a waste treatment plant is not an output; effective environmental protection is); and
- any requirements for integration with other initiatives - particularly IT-based projects.

Development of high-level evaluation criteria will help to frame alternative proposals at the beginning of the project. More detailed or refined evaluation criteria will develop as the initiative is advanced through the CPP process. Nevertheless, high-level evaluation criteria should cascade throughout the steps in the CPP process. If any of these criteria change materially, or can not be met, it may lead to an option to off-ramp.

10. Program/Service Delivery Review

Decision-makers need to carefully review the operational implications of service delivery through a public-private partnering arrangement, i.e.:

- to what extent is the business opportunity dependent on statutory or regulatory changes and/or existing contract assignments (e.g. private sector authority to collect Consolidated Revenue Fund revenues or personal data);
- how will accountability and service levels be maintained when operationally, the service delivery channel may intervene between the ministry and the end consumer of the service or function;
- the delivery channel may itself be multi-layered (e.g. contractor/sub-contractor or wholesaler/retailer) which has implications (e.g. ensuring accountability and service levels) on control and management functions; and
- to what extent will the ministry/vendor have to coordinate the actions of several delivery partners or channels in a given environment, i.e. "channel management".

11. Draft Internal and External Communications Strategy

Public-private partnering will only be successful where there is clear communication to both internal and external stakeholders. This includes the project vision and goals, how public interests are defined and safeguarded, and providing clear and unambiguous information about the RFP and selection processes.

A communications strategy and an outline of a proposed communications plan should be prepared for the duration of the project. This plan will identify strategic audiences; serve as the basis for providing interested parties with a complete overview of the goals, objectives, structure and procedures of the project; and (where the initiative involves alternative service delivery arrangements) assist in facilitating a smooth transition to new delivery approaches for participating ministries or agencies.

The vendor consultation process outlined in Step 3 of this CPP process forms a critical part of the external communication strategy.

12. Management Board Secretariat Advice

Prior to initiating the formal procurement process (beginning with Step 4), ministries or agencies should obtain advice from MBS Purchasing Services Branch on the CPP-based proposal and, subsequently, MBS will monitor and advise on the follow-on procurement process.

In addition, ministries should contact their Human Resources Branch for advice on issues related to human resources (the advice provided will be based on input from MBS Corporate Labour Relations/Negotiations Secretariat).

STEP 3 - ISSUANCE OF DISCUSSION PAPER AND VENDOR CONSULTATION

The primary objective of the discussion paper and vendor consultation process is to test the sponsoring ministry's business case assumptions and the level of potential vendor interest and readiness. An effective vendor consultation process will also result in a better understanding of the supply market and how it can meet ministry requirements.

The process should preserve the highest standards of integrity and solicit feedback from the vendor community in an environment of openness, fairness, transparency and clarity of purpose.

Depending on the nature of the project and at the discretion of the Executive Lead, not all of the steps in the consultation process need to be completed. At a minimum, however, it is recommended that the ministry undertake a vendor consultation meeting. As well, the process provides for opting out at the end of each stage of consultation if expectations are not being realized or significant changes in direction are required.

This consultation process is designed to test and clarify both public and private sector perspectives surrounding issues such as:

- policy framework;
- business and financial models (including current and/or future service volumes and medium-term and end-state expectations);
- risk/reward trade-offs;
- service configuration options and scope for change;
- payment mechanisms;
- performance measurement and benchmarking; and
- potential vendor consortium formation.

This step will be the first formal imposition of definitive time lines for engaging the private sector. From the date of the formal issuance of the discussion paper a commitment should be made to a firm time frame for each step in the process and should be as expeditious as possible.

1. Issuance of Discussion Paper

Testing the internal business case assumptions, or the relative commercial attractiveness of a proposed public-private partnering initiative, is the first level of introduction of the project to the vendor community.

In order to facilitate the process, ministries should consider developing a discussion paper, for circulation to the vendor community, which outlines the scope, scale and objectives of the proposed project; the perceived business development opportunity, including opportunities for sharing of rewards relative to risks; the potential for growth through additional applications, e.g. the broader public sector; proposed time frames for implementation; and the proposed organizational relationship with government. Public policy interests and/or statutory considerations should also be highlighted.

This discussion paper will provide vendors with an opportunity to begin the process of assessing the potential commercial opportunity in the context of their strategic business interests, and to begin to determine the resources required for on-going participation in a RFP process as the initiative unfolds. This may also initiate the formation of private sector consortia to respond to the proposed commercial opportunities.

The discussion paper may be posted on the designated electronic advertising service.

2. Vendor Information Session

Following publication of a discussion paper, the sponsoring or lead ministry should arrange for a public presentation to vendors about the project. This presentation will provide an overview of the proposed initiative and an open forum for questions from the vendor community.

Notice of the vendor information session will be posted on the designated electronic advertising service, as well as in other media as appropriate. While it is not the intent to exclude any interested party, interested vendors who wish to attend should be asked to register in advance so that appropriate facilities can be arranged for the session.

3. One-on-One Vendor Consultations

At the close of the plenary vendor information session, vendors may be given an opportunity to meet one-on-one with project sponsor officials to provide their views on the proposed approach, provide additional information on their corporate or technical capabilities, or seek clarification on any information presented to this point.

Vendors interested in a one-on-one interview should be required to formally express their interest within a pre-specified time frame, prior to the beginning of the designated consultation period. A list of all vendors requesting interviews should be posted on the designated electronic advertising service.

The vendor one-on-one information sessions should be held within a designated calendar period.

Each vendor should be granted an interview period (90-120 minutes depending on the complexity of the proposed initiative) and interview appointment slots will be assigned on a first-come-first-served basis. Vendors should be advised that the sessions may be taped for the purpose of preparing written transcripts, or correlation of notes taken during the interviews.

Vendors should be informed that if they choose to identify and present commercially sensitive or proprietary information during their interviews that all such information will be treated in the strictest confidence. Generic information from the project and the vendors should be made available to all interested parties. Protocols regarding this process must be established in advance and accepted by all interested parties.

The one-on-one vendor consultations sessions should be attended by at least two members of the sponsoring or lead ministry who will respond to vendor questions. It is suggested that at least one of these attendees be qualified to respond to technical issues and one will be qualified to respond to corporate considerations.

The sponsoring or lead ministry may wish to have these sessions chaired by an independent third party who would monitor the sessions for any potential conflict of interest in either the questions or the disclosure of information. The independent Chair would not respond to any vendor questions or provide vendors any commentary on any information provided during these sessions. The Chair would be bound by non-disclosure and conflict of interest requirements established by the Government of Ontario.

4. Summarizing Results for Review by Deputy Minister

Following the completion of the one-on-ones, the officials attending from the lead ministry or agency should summarize the results of the interview process and provide a report for review by the sponsoring Deputy Minister.

This summary would provide a vendor community view of the scope, scale and business approaches as outlined in the discussion paper and vendor information sessions and identify any requirements for a modification of the business case (in particular, the assessment and management of risk) in order to optimize the level of private sector interest in the opportunity. The summary would also highlight the vendor community's perception of risks associated with the project; the demonstration of design, build, finance and operate capabilities expressed during these presentations; and the overall commercial interest in participating in a public-private partnering arrangement.

This summary would also append a report from the Chair of the vendor information session verifying that the sessions were conducted in an objective, open, fair and transparent manner and complied with the process requirements set out in these Guidelines.

5. Management Board Approval - Recommendation of CPP as the Appropriate Process

If, based on the vendor consultations and ministry readiness assessment, the application of the CPP process is considered appropriate, the ministry will then need to seek approval from Management Board of Cabinet (MBC) to proceed with the project using the CPP process.

Ministries should also review with the Privatization Secretariat the risk/reward analysis in support of the initiative prior to seeking MBC approval to proceed. As well, it is recommended, prior to Management Board approval, that ministries also consult with the Ontario Financing Authority regarding the business and financial models.

STEP 4 - REQUEST FOR PROPOSALS

1. Development of Detailed Qualification and Evaluation Criteria

The development of a complete evaluation scheme will be required as a key component of the formal RFP. Clear evaluation criteria assist vendors in developing their solutions, ensure that they will address the key issues, and will help them understand clearly how their proposals will be judged.

Evaluation criteria may embody not only rankings of critical success factors but could also address complex elements of risk transfer, innovative pricing mechanisms, technology renewal, knowledge transfer and evolutionary/phased development.

The evaluation criteria must be published within the RFP and should clearly indicate to prospective vendors the relative weightings, points or other considerations to be applied in each element of the evaluation. Wherever possible, proposals should be rated on the extent to which they meet or exceed the stated requirements based as much as possible on objective and verifiable criteria. If extra value is given for exceeding core requirements it should be indicated to vendors how this will be taken into account in the evaluation.

Mandatory qualification requirements would include:

- requirements set out in the Corporate Procurement Directives (e.g. tax compliance, conflict of interest, etc.); and

- financial stability and capability.

Evaluation criteria would include (but are not limited to):

- demonstrated relevant corporate experience and expertise of the prime contractor and any consortium members[3];

[3] Private sector responses to CPP-based requests for proposals may be in the form of consortium arrangements that reflect a combination of skills and resources dependent on the nature and scale of proposed initiatives. Participants in a consortium may also create a "project company" that would share the risks and rewards of the venture as well as being the contracting agent with government.

- where the vendor is a consortium, an evaluation of the consortium management approach;
- demonstrated experience and capabilities of key project staff;
- overall project management approach;
- willingness to share investment, risks and benefits;
- risk management approach; and
- proposed business and financial arrangements.

For further information refer to Appendix B - Sample Format and Content of a CPP RFP Appendix B, in particular the information on Evaluation (Section 4).

Ultimately the RFP must allow for innovative approaches to be put forth by the vendor community but there must also be an ability for a comparison of the different proposals.

2. Development and Release of Formal RFP

The RFP will call for a short proposal from vendors as the basis for selecting a short list of vendors for further evaluation.

The RFP should clearly describe the procurement process and provide enough information for vendors to make an informed decision on whether or not to respond to the proposed business opportunity.

Typically, the RFP will include a description of:

- the ministry's business vision or opportunity;
- the existing costs, processes and performance levels;
- project scope and set of desired business results;
- potential common causes for mutual gain for the vendor/partner and the ministry;

- potential options for sharing risks, investment and benefits;
- suitability of the potential vendor/partner;
- the criteria on which vendors will be evaluated; and
- the evaluation process that will lead to the selection of the preferred vendor.

The RFP should ask vendors to describe their approach to potential business arrangements, including how the ministry and the vendor (or vendors) could share the risks, investment and rewards resulting from the project. This could be facilitated by the vendor submitting a comprehensive business plan for addressing the proposed project.

The RFP will also request information from the vendors about their relevant experience and expertise, project organization and control, project management, performance capabilities, client references, and financial capability to form and sustain a partnership for the duration of the project.

In many instances, due to the complex nature of CPP projects, the vendor community may choose to form consortia in order to respond to the opportunity. The RFP should state that the ministry wishes to deal only with the prime party of the vendor.

3. Sample Request for Proposal (RFP)

A sample RFP is attached as Appendix B.

4. Vendor Briefing and Q&A's

It is recommended that ministries hold a vendor briefing session within a pre-determined time frame, after release of the RFP, to provide a forum for an exchange of questions and answers (Q&As). Provision could also be made for Q&As to be submitted in writing. All Q&As would be published/made available to all interested parties via the designated electronic advertising service.

Since the concepts underlying the CPP process may not be well understood for first time private sector vendors, it may be appropriate to hold a vendor briefing session with two separate components - one component for consultation on the CPP process and a second component for discussion of the business opportunity itself.

Any vendor questions arising during preparation of responses to the RFP, outside of the vendor briefing meeting, should be submitted in writing. Both the supplementary questions and the ministry's responses should be distributed to all vendors.

The opportunity to submit questions should close off within an appropriate discretionary time period before close of requests for proposals, to ensure that all vendors receive copies of the supplementary Q&As.

STEP 5 - EVALUATION OF VENDOR RESPONSES AND SELECTION OF PREFERRED VENDOR

1. Evaluation of Written Submissions

The objective of this stage of evaluation is to create a short list of qualified vendors leading to an invitation to participate in the oral evaluation phase.

Written proposals will be evaluated by a "written-evaluation team" against the criteria stated in the RFP. The written evaluation team will also check and verify the references and the (performance) history given by each vendor.

In order to be chosen for the short list, vendors must pass the mandatory requirements, and for the evaluated criteria, it is recommended that a scoring methodology be adopted that would require vendors to achieve a minimum score on each of the evaluated criteria in addition to an aggregate score for the combined evaluated criteria.

Members of the written evaluation team should include individuals who have a clear understanding of the CPP process as well as the business elements of the proposed initiative.

It is recommended that the evaluation team be Chaired by an independent third party. The Chair should be someone knowledgeable about the CPP process, as well as being knowledgeable about the application of CPP to the project under evaluation. The Chair would not have a vote in the evaluation proceedings.

The written-evaluation team may be supported by additional resources, e.g. technical, legal, financial, if required.

After evaluations are complete, the results are passed to the Chair who will convene a final consensus meeting to rationalize any differences between individual evaluations. Clarifications may be required from vendors to enable consensus to be reached. Such request to vendors for clarification must be in writing.

All aspects of the written evaluation process should be thoroughly documented, including the questions and responses to reference checks.

2. Select Short List of Vendors

Following completion of the formal evaluation of the written submissions, the evaluation team will recommend a short list of qualified vendors, to the designated project authority, for advancement to the next phase of the selection process.

3. Review Sessions with Short-Listed Vendors

Vendors on the short list should be invited individually to a working session with the Project Team. The purpose of these meetings is to provide both vendors and the sponsoring ministry a forum to ask for supplementary information or clarification of expectations in preparation for the oral evaluation process. The vendors will also be informed of the formal presentation requirements in preparation for the orals.

These sessions (including one or more sessions with each vendor) should be chaired by an independent third party.

There is no evaluation of vendors during these exchanges.

4. Oral Evaluation Process

Following the selection of a short list of qualified vendors, based on the evaluation of their written proposals, each short-listed vendor will be required to complete a two-part oral evaluation process, consisting of an **executive interview** and an **oral presentation**. The purpose of the oral evaluation process is to further clarify the vendor's proposal and to facilitate the ministry's ability to determine its likely synergies and potential working relationship with the vendor.

It is recommended that the ministry provide an independent Chair for the "oral evaluation team". The Chair would not have a vote in choosing the successful vendor, but would have the responsibility of ensuring a fair process during all interactions. The Chair would also act as the time keeper for each session.

The oral evaluation team should be composed of cross-functional senior government staff, both interested and impartial, (e.g., procurement process experts, business area experts, and users), to ensure that there is no real or perceived bias in favour of, or against, a particular vendor. Team members should also be those who have a managerial rather than a technical perspective, responsibility for the project and business processes, and have the authority to make recommendations and decisions regarding partnership viability, project management and implementation team organization.

To avoid any real or perceived collusion or conflict on evaluation criteria or scoring, it is recommended that the oral evaluation team members be different from the written or technical evaluation team.

5. Executive Interviews

The first step in the oral evaluation is a formal interview with the key executive(s) and proposed project manager responsible for representing the vendor.

The purpose of this interview is to confirm the extent of the authority of the vendor’s executive representative to enter into contract negotiations, and represent the vendor's interests on any financial, technical or investment matter, should they be selected as the successful candidate. The executive interview will also test and confirm the importance of the proposed initiative to the vendor's strategic business plan.

The representations made at the executive interview will form part of the oral evaluation.

The executive interviews should be chaired by an independent Chairperson appointed by the sponsoring ministry.

6. Commercial Due Diligence Phase

It may be necessary, depending on the nature of the initiative, to provide a further level of detail on the internal business case to ensure selected vendors have a clear understanding of the proposed business/financial model and also assist the vendor to get a better understanding of the costs of the project. This should also help to facilitate the subsequent contract negotiations.

This due diligence phase could take place at two different stages:

1) With the short-listed vendors, where practical, following the executive interviews and prior to the oral presentations. This would entail setting aside a pre-determined timeframe where each short-listed vendor would be permitted to review whatever additional information the ministry may have (e.g. site visits in order to examine operational considerations, etc.) that may be of use to the vendor in preparing its oral presentation. It is important that this process be conducted in a fair and open manner.

2) With the selected preferred vendor. Prior to entering into contract negotiations the vendor would be permitted to review whatever additional information the ministry may have (e.g. site visits in order to examine operational considerations, etc.).

7. Oral Presentations

As the next step, each short-listed vendor will be invited to make an oral presentation as the second and final part of the evaluation process.

Oral presentations start with the assumption that the vendors on the short list are equal. Therefore, it is critical that the factors and weights used to evaluate the proposals reflect the criteria and critical success factors established by the ministry/project during the business case development stage.

Whereas the evaluation of the written proposals focuses on each vendor's past performance, in terms of their technical and operational competence, the oral evaluation focuses on an examination of the overall capability, relevant experience and financial stability of the vendor to form a successful business relationship. This includes risk assessment, financial arrangements, investment timing, project approach and organization, and any demonstrated special capability to partner with the government and to deliver the project successfully.

The objective is to select the vendor most likely to produce a successful project that provides the best value and a win-win result.

The list below is an example of the topics and issues that, at a minimum, should be used to substantiate proposals and be evaluated in an oral presentation. Any additional commitments made by vendors during their oral presentation will be recorded as part of their proposal and will be included in any subsequent contract negotiations.

- **Business relationship**
  - Demonstrated understanding of the approach to be taken in the proposed project compared to the more traditional approach to vendor contracting.
  - Demonstrated understanding of the project's scope and scale, including expected financial requirements, how the business case can be sustained over time and the expected term of engagement.

- Demonstrated understanding of the critical factors essential to the success of the business relationship required for this project and the reliability of the proposed means of meeting them, and the identified risks associated with this approach and how these risks can be managed to minimize impact.

- Demonstrated understanding of the marketability of any resulting system(s). (For example, ensuring, where relevant, that the proper balance is struck to fulfil the business requirements of the ministry yet be adaptable to allow resale to other jurisdictions.)

- Demonstrated experience in similar public-private partnering/business relationships, i.e. size, scope, complexity, timing, etc.

- Where applicable, the strength of the consortium's internal partnering relationship.

- **Financial arrangement**

  - The vendor's proposed pricing strategies, costing approaches, financial arrangements, and risk, investment and benefit sharing proposals.

  - The vendor's knowledge of, where applicable, appropriate industry performance metrics/standards and possible related pricing mechanisms.

  - The vendor's expectation of payments from the government in the event that either the Vendor of the Ministry terminates the project/relationship before completion.

  - The vendor's plan in the event that actual benefits (cost savings and/or revenues) are less than anticipated, or are less than project costs.

- **Project approach and organization**

  - A proposed business plan which would include the following:

    - The proposed project director and project team.

- The proposed project management methodology, including:

    - project management tools and techniques;
    - a change management protocol, i.e. a clearly defined vision supported by the appropriate skills and resources and an implementation action plan;
    - quality assurance;
    - project team organization, dynamics and interactions, and relative roles and responsibilities including proposed relationships between the vendor's resources and the ministry's resources, i.e. the vision for an integrated project team; and
    - approaches to problem resolution.

- Approaches to address training needs, technology transfer between public and private sector personnel, and the development of technical support staff.

- Approach to address infrastructure renewal.

- Approach to ensure timely and effective marketing and communication.

- Any tools and techniques which might be used to identify, define, design and develop the business solution.

- Contingency plans to address unexpected issues/situations.

- **Special capability to deliver project**

    - Identify the unique qualities the vendor brings to the project.

Each oral presentation may take 1.5 to 3 hours, with both vendor presentation and evaluation team member questions to be completed within that time frame. The length of time the ministry chooses for the oral presentation session, and the topics to be addressed by the vendor, are to be specified in the RFP. The ministry should also state that it reserves the right to videotape the oral presentation. At a minimum, the oral presentation should be well documented. All oral presentations should be scheduled to take place within as short a time as possible of each other, and as soon as possible after the written evaluations are completed.

Before each oral presentation, it may be helpful for the vendor and ministry to determine what presentation facilities are available at the ministry, confirm how many copies of the presentation will be required by the ministry, and who will be providing equipment for the presentation.

It is also recommended that before initiating the oral evaluation sessions that team members and the Chair meet for a consensus building session on process and expectations.

8. Ranking and Selection of Preferred Vendor and Management Board Approval

On the basis of the executive interview and oral presentation, the evaluation team will select the highest-ranked and second highest-ranked vendors by consensus, based on a point-scoring methodology. The selection of the preferred vendor will be at the sole recommendation of the oral evaluation team.

Following completion of the oral evaluations the ministry must seek approval from MBC on the parameters of the contract negotiations with the preferred vendor. Prior to seeking MBC approval, ministries should again review with the Privatization Secretariat their updated risk/reward analysis and business/financial model, where applicable. As well, it is recommended, prior to Management Board approval, that ministries also consult with the Ontario Financing Authority regarding the business/financial model.

9. Notification and Briefing to Selected Vendor - Invitation to Negotiate

Following MBC approval of the parameters for contract negotiations, the ministry will invite the highest-ranked vendor to proceed with negotiations on the project.

10. Debriefings for Unsuccessful Vendors

Following notification to the selected vendor, a debriefing, on request, should be offered to all unsuccessful vendors. Debriefings will ensure everyone learns from the process and assist those who have submitted bids to offer better bids in future.

The second ranked vendor should be notified as to their status as the second ranked vendor and that they would be asked to enter into negotiations with the ministry if such negotiations failed with the preferred vendor.

The period within which a debriefing can be arranged should be limited, but nevertheless reflect an adequate time for requests, based on the expected number of vendors.

STEP 6 - INVITATION TO NEGOTIATE AND CONTRACT NEGOTIATION

1. Establish Negotiation Team

Team members need to be well-equiped in the skills necessary to negotiate contracts, be empowered to make decisions, and where possible be drawn from the appropriate operating and technical disciplines. In addition, engaging legal counsel early in the process is also important in order to transform agreed business decisions into appropriate contract language.

It is also suggested that the prime negotiating team be supported by sub-committees whose membership may be both public sector representatives as well as representatives from the selected vendor. These sub-committees could address particular operational and technical considerations such as:

- human resources;
- service levels;
- performance metrics/benchmarks;
- payment mechanisms;
- transition issues, including establishment of a transition management team;
- governance and reporting relationships; and
- communications.

Where sub-committees are used to support the negotiating team, clear rules of conduct need to be established, including operational protocols for chairing committees, consensus building, resolving outstanding issues, internal communiqués, etc. It is also necessary to ensure that all ministry negotiators are conveying consistent messages in all negotiating committees. Finally, it is also important to establish a process that will ensure the appropriate continuity between the negotiating team and the on-going implementation team.

2. Shaping Contract Negotiations

The governance structure for contract negotiations should have been set out in the Project Charter. This will identify roles and responsibilities of the chief negotiator as well as the internal reporting and communications relationships.

Prior to entering into contract negotiations ministries should re-confirm for themselves the key negotiating parameters and the inter-relationships that exist between them and other negotiable items and, in turn, develop strategies for making appropriate trade-offs.

As well, in advance of the contract negotiations there also needs to be a high-level agreement between the public and private sector parties on the desired elements of an eventual contract. This may include:

- revalidation of the business case and how to manage possible changes that may have arisen since first initiation of the procurement process without provoking criticism from unsuccessful vendors;

- consensus and agreement on core contract requirements and respective obligations enabling these to be fulfilled;

- consensus and agreement on variable contract elements and change management processes;

- consensus and agreement on required inputs and outputs from the partners, performance measurement requirements and encouragement of continuous improvements; and

- consensus and agreement on the scope for private sector innovation and any related provision for compensatory incentives for innovation.

These high-level elements may be embodied in a Memorandum of Understanding (MOU). This MOU may subsequently be used as a reference to ensure that the final negotiated contract is consistent with these governing elements.

Under no circumstances should any implementation commence until the contract is fully negotiated and signed by both parties.

The contract management environment and risks should be kept under review and documented throughout the contract negotiating period to ensure that the assumptions being used provide for an audit trail.

3. Develop Model Contract Clauses

It will be useful to establish and agree upon with the private sector partner some basic negotiating principles, such as addressing the non-contentious items first and then moving to the items where trade-offs may need to be made.

A framework for a Master Contract and Schedules (or form agreement), with suggested language, could be developed and tabled at the opening of negotiations. This will help to facilitate timely agreement on standard contract elements and focus attention on the more complex elements on which agreement is being sought (e.g. proposed business, technical, accountability and financial aspects of the arrangement).

4. Negotiate Overall Project Contract

The contract process should clearly reflect each stakeholder's interests, be simple to understand, promote good working relationships, and discourage adversarial behaviour. Key to this is the direct involvement in the contract negotiation team of those decision-makers who have major operating responsibilities for managing the contract after its completion.

It should, nevertheless, be borne in mind that failure to reach an agreement within a reasonable time may result in the ministry terminating negotiations with the selected vendor and entering into negotiations with the next highest-ranked vendor. However, it should be recognized that moving to the next highest-ranked vendor may not always be possible, particularly if the next highest-ranked vendor is no longer in a position to enter into negotiations (e.g. the vendor has moved on to other business opportunities or the vendor was a consortium that formed to bid on the project and has subsequently disbanded).

At the same time, failure to reach agreement may not automatically necessitate moving to the second-ranked vendor. If the vendor is a consortium there should be an examination of whether another member of the consortium can act as the prime (see *Changes in Vendor or Consortia Composition and Corporate Structure* for additional information).

5. Changes in Vendor or Consortia Composition and Corporate Structure

Negotiations will frequently be with a consortium who have formed a “project company” for the purposes of bidding. In which case, negotiations will be with a designated prime vendor. Where the successful vendor is a consortium, proposed changes in the composition, or method of organization, of the "project company" may arise during the negotiation period, dependent on how the members see their respective roles developing.

These changes may be acceptable if the risk/reward sharing arrangements within the consortium continue to be acceptable to the ministry and the project is not compromised in any way. This may be determined by considering the following issues:

- to what extent does the new prime understand and accept the basic tenets of the proposed partnership, i.e. a clear understanding of the scope of the project, the business and financial arrangements, and what issues are non-negotiable; and

- will the proposed relationship with the new prime be essentially the same as that envisioned with the previous prime -- if not, how will the ministry determine that it is an acceptable alternative.

6. Up-dated Risk Management Plan

The contract should define the extent of risk management requirements (and the mechanisms for managing risk) both in terms of acceptable and unacceptable risks for both public and private sector participants.

The various options for how to manage risk need be embodied in a risk management plan within the contract. The options may include:

- governance structures and management controls;

- quality assurance/quality control processes;

- personnel training and development;

- specified performance criteria and compliance audits;

- collaborative processes for developing specifications for service and user requirements; and

- communications and governance information requirements.

7. Records and Record Keeping

The manner in which records are created, maintained or disposed of within the public sector is governed by a number of statutes covering privacy, freedom of information, financial administration and public archives. In addition, ownership and control over records is a significant consideration from many procurement accountability perspectives, i.e. public audit; financial management; legal-evidential; compliance; privacy, security and authenticity; performance management or research. It is important to ensure the contract takes these issues into consideration and is crafted in such a way as to address them appropriately.

8. Performance Metrics and Provisions for Changing Business Conditions

Development of a performance evaluation and measurement model should parallel contract negotiations and be embodied in contract conditions. Well designed measurement systems will contribute to performance, accountability and performance security. In addition, for a performance-based contract, the expected results, and not the methods by which the service provider achieves those results, must be clearly specified.

In a public-private partnering arrangement, the guidelines and expectations governing any performance measurement model also need to recognize that:

- A private sector service provider must have the ability to control its own resources in order to be held accountable for the service it performs. It can only be held accountable for those items that have specified measurable standards. Subjective standards that are difficult to measure will create problems for both the public and private parties to the arrangement.

- Adjustments to financial arrangements to account for changes in performance criteria/standards beyond that agreed to at the beginning of the contractual relationship must be accommodated. This may also include provisions for substantial unforeseen changes in technology, environmental standards, or pricing agreements to support innovation during the term of the contractual arrangement.

- Performance metrics will be more difficult to establish for services than the building and maintenance of infrastructure. Baseline data (e.g. customer service) may have to be built up over time and the manner of establishing baselines and on-going measurement should be incorporated into the contract.

- Where payment mechanisms are tied to performance, appropriate milestones will have to be established. In addition, incentive payments for superior performance and/or continuous improvement and penalties for poor performance should also be incorporated into the contract.

9. Privacy and Security

Achieving an acceptable balance between public expectations and legislation governing access to, and freedom of, information on public sector operations and commercial concerns for privacy will be a significant factor in any joint public-private undertaking.

Control over dissemination of information/communications and presentation protocols is of particular concern in efforts aimed at innovative developments (within a partnering relationship) for the benefit of both government and its private sector partners. Contract negotiations must recognize and accommodate private sector interests or concerns about compromising the results of ongoing innovative commercial developments that may be embodied in partnering arrangements, as those results often form the basis of a company's competitive position or future business plans.

10. Dispute Settlement

With service contracts that extend out several years, changes, and tensions in contract management approaches, are inevitable. The potential for unresolved disputes, and subsequent imposition of changes in control, penalties or termination should form part of the contract and link to the on-going partnership management.

The focus in contracting arrangements should be on dispute avoidance mechanisms, i.e. dispute resolution as a continuous process from contract initiation through to conclusion. Clear rules of engagement and dispute settlement procedures should be defined within a formal contract. Possible mechanisms include:

- escalation protocols (for both technical and business issues) within the partnering environment, e.g.:

  - linkage with a list of eligible contract change events, change provisions and payment adjustment formula; or

- iterative procedures where each party would be given full and fair opportunity to make innovative or alternative proposals for meeting performance criteria and service continuance conditions; and

- escalation protocols for reference to third party arbitration.

The definition of escalation protocols or delegated authorities for imposing settlement may vary depending on the nature of the project and the performance metrics requirements. Other types of dispute resolution may also emerge during contract negotiations, again depending on the nature of the project and the definition and allocation of operating roles and responsibilities.

In any event, dispute resolution processes should maintain the objectives of maintaining on-going service delivery and preserving the allocation of risk within the generality of the contract.

Dispute resolution procedures should also establish how costs will be allocated as well as place some restrictions on their application to frivolous or small changes or service adjustments.

11. Contract Termination

Contract termination may result from:

- breach of covenant;
- exercise of an "off-ramp" option (as identified in the contract);
- convenience to government; or
- end of a contract.

Each of these elements should be addressed within the contract negotiation framework and clearly indicate the conditions under which termination may be triggered (e.g. once a performance target has been met).

The consequences of invoking an off-ramp or termination clause should also be addressed in the project contract (e.g. outstanding payments, penalties, etc.).

In the event that a contract terminates for any reason, the public sector should not compromise asset or service infrastructure ownership in any manner that might preclude it from providing continuity and quality of service.

12. Handover and Transfer of Assets or Services on Contract Termination

Provisions for the orderly transfer on contract termination should focus both on assets and the services provided within and during the contract arrangement. This would include considerations such as:

- outstanding payments and possible penalties (if terminated prior to contract completion);
- the degree of continued interest in the operating or infrastructure assets or their practical or residual value;
- intellectual property;
- environmental obligations;
- records and operating systems (i.e. data, legacy requirements, migration strategies, etc.); or
- key personnel and training.

13. Other Characteristics

An illustrative check list of typical contract elements that may be included in formal contracting arrangements is provided in Appendix C.

14. Management Board Approval

Following the conclusion of contract negotiations, the sponsoring ministry should review with the Privatization Secretariat the revised risk/reward analysis, where applicable. As well, it is recommended that ministries also consult with the Ontario Financing Authority regarding the business/financial model. Ministries must then obtain Board approval for sign-off on the final contract and/or partnering terms and conditions.

STEP 7 - TRANSITION AND SERVICE MANAGEMENT

1. Transition Team

Following successful contract negotiations a transition team, representing all stakeholders, should undertake responsibility for facilitating the actual process of making the transition from contract negotiation to project implementation (and, where applicable, from public to private sector delivery of government services).

A smooth transition and minimal disruption in services requires:

- understanding the context and application of both program and service delivery, particularly in terms of their origins in public policy and the related political sensitivities;
- understanding the value system in which public servants have operated the services being transferred; and
- ensuring continuity in organizational memory and systematic knowledge transfer to the service manager.

These issues should be addressed in both project charters and formal public-private partnering agreements.

Partnering initiatives between the Government of Ontario and the private sector that have been put in place to date should be reviewed to identify transition issues for incorporation into any new initiatives.

2. On-Going Service Management

The contract emerging from Step 6 will set out the primary performance elements as well as pointers to related or inter-related issues. As a minimum, this should include:

- roles and responsibilities (including authority to act);
- project execution procedures;
- co-ordination and control;

- standards setting;
- timelines;
- communications;
- personnel training and development;
- performance monitoring and measurement;
- change and change mechanisms; and
- assignment and sub-contracting.

The range of responsibilities for service management will vary depending on the complexity of the contract and the contract management structure. Some may be concerned with the process as a whole, while others may be concerned with more particular aspects of performance.

3. Organizational Development and Team-Building

Organizational development and team-building among the management and operational personnel responsible for service delivery in a public-private partnering arrangement is essential for communicating effectively and managing an on-going relationship between team members from different organizational cultures. In particular, it is important to build trust among the parties.

Interdependence is a key characteristic in public-private partnering and the norms and structures that will govern working relationships, problem solving and decision-making should be established early in the implementation of the project. The use of cross-functional teams could be a useful approach for horizontally-integrated service contracts.

4. Establish Relationship Management Framework

Once a "partner" has been selected there is a high risk that the initiative could slide back into an adversarial relationship should both parties tend to focus on micro-level interpretation of contract language instead of concentrating on working together to meet the project objectives.

Relationship management deals with the on-going business development process as compared to project management which deals with functional or operational processes such as budgets, accounting, and on-going operational considerations. The focus in on outcomes or results rather than process and on a continuous search for improvement as systems evolve over the term of a partnering arrangement. The focus is also on dispute avoidance as opposed to dispute resolution.

Relationship management deals with overall organizational effectiveness, open and consistent communication and ongoing dialogue, building mutual repsect, trust and co-operation, advocacy between partners, reducing adversarial interactions, and identification of new resource requirements.

Professionals who establish alternative service delivery or partnering relationships will frequently have moved on by the time an initiative reaches full implementation or maturity and over time there will undoubtedly be significant changes in political commitment, management, key personnel, and technology.

Decision-makers may consider the addition of an independent, non-partisan Relationship Manager to the project who will be responsible for team building and ensuring the continuity of goals and purpose within the relationship.

The role of the Relationship Manager could include:

- ensuring that all members of the public-private partnering relationship have a shared commitment to a common vision rather than visions in common;

- facilitating the conduct of contract negotiations and major project decision meetings;

- providing on-going review of project implementation to ensure consistency and compliance with corporate objectives;

- monitoring performance measurement reporting;

- monitoring and guiding the internal communications practices of the project team;

- mitigating against tensions developing in the working relationship and ensuring that working relationships are harmonized; and

- setting identifiable markers for review or intervention.

5. Alternative Service Delivery (ASD) Contingency Planning

For any ASD arrangement, the ministry should have a documented contingency plan for reducing the impact of potential service interruptions that may be caused by transition problems, strikes, lockouts, the exercise of off-ramp options within an ASD contract, and/or termination of a public-private service delivery arrangement.

6. Other Sources of Information

For additional information on Service Management, please refer to the draft *"A Guide to Service Management"*, MBS.

ANNUAL REPORT TO MANAGEMENT BOARD OF CABINET (MBC)

Ministries must prepare an Annual Report to Management Board of Cabinet on their use of the CPP process. The purpose of the report is to assist MBC in the ongoing management and development of the CPP-based procurement process.

The report should cover the previous 12 month period to September 30, and should include both new projects initiated during the period, and previously approved projects that continue to be active during that time.

The report must be approved by the deputy head, and submitted in conjunction with the annual Estimates process.

The Annual Report should outline the following for each CPP project:

- name of the project and the selected "partner";
- the original business vision, project scope and business results (as stated in the original RFP), together with a description of any significant changes to the above and the reasons why they were made;
- the business and financial arrangements between the selected partner and the ministry, including estimated cost and duration;
- arrangements for managing the project and for sharing risks and rewards;
- measures taken to manage risks around project qualification, partner selection, allocation of risk with the private sector, culture change, project execution and assessment of value;
- other significant issues encountered during the project; and
- actual results of the engagement to date.

The Annual Report should also include:

- an outline of any local ministry practices and procedures for managing CPP;
- a summary of any issues identified with the CPP process, together with suggested

changes or additions to the policy or guidelines; and

- a statement of any additional support required by the ministry to effectively use CPP.

APPENDIX A - CPP vis à vis TRADITIONAL PROCUREMENT

Like traditional procurement, CPP is a competitive process that embodies government's fundamental procurement policies and principles of openness, clarity, fairness, transparency and competition. It also embodies a partnering and procurement selection process that is defensible to government, to the Legislature, and to citizens.

The defining characteristics of a common purpose procurement process vis à vis the traditional procurement process are highlighted in **Table A.1**.

Table A.1 - Defining Characteristics of CPP and Traditional Procurement Processes

Common Purpose Procurement	Traditional Procurement
• Extensive and iterative consultation with the vendor community on vision, objectives and expected operating outcomes	• May, or may not be, a formal consultation phase
• Vendors are invited to propose solutions to a defined business problem	• Solution requirements can be identified
• Information exchanges during one-on-one consultation sessions treated as proprietary and commercially confidential (may also have a formal Q&A process after issuance of RFP and sharing of Q&As)	• May have a Request for Information (RFI) or Request for Qualifications (RFQ) Phase • Formal Q&A after issuance of RFP; Q&As shared with all potential vendors
• Minimal up-front requirements for initial vendor response (generally limited to 20-30 pages)	• Requires detailed responses • Level of detail and supplemental material is at the vendor's option

APPENDIX A - CPP vis à vis TRADITIONAL PROCUREMENT

Common Purpose Procurement	Traditional Procurement
• Verification of business case criteria and assumptions through vendor information sessions	• Arm's length relationship with vendor community • No exchange of business case information
• Service specifications developed in consultation with vendor	• Detailed specification of service requirements set in advance of and included in Requests for Proposals (RFPs)
• Evaluation of proposals based on demonstrated corporate capability and proposed personnel	• Evaluation based primarily on product suitability, proposed service approach and price
• High-level mandatory requirements but evaluation focuses on value-based business and financial arrangements	• Evaluation based primarily on pre-stated mandatory and rated requirements
• Due diligence and discovery through oral evaluation / executive-level interviews with vendor representatives	• May be an oral evaluation phase • May require demonstration or presentation
• Risk is allocated according to the ability of either party to undertake the risk	• Risk is contracted to the full extent possible through performance guarantees and warranties
• Seeks longer-term partnering agreements	• Fixed delivery requirements

APPENDIX A - CPP vis à vis TRADITIONAL PROCUREMENT

Common Purpose Procurement	Traditional Procurement
• Requires development of relationship management framework	• Contract relationship based on project management methodologies
• Shorter time line to get to contract negotiations but contract negotiations may be more extended and complex	• Detailed contract conditions defined in RFP • Detailed draft contract extends RFP preparation time, but shortens time line for contract completion after selection of successful vendor
• Opportunity to negotiate risk/reward pricing arrangements	• Risk is contracted-out to the fullest extent possible • Primarily penalty based / no reward for superior performance
• Emphasis is on desired outcomes rather than technical specifications	• Emphasis is on detailed technical specifications
• Encourages proposals for innovative business solutions	• Business solution is determined internally before RFP is released
• Encourages proposals for innovative financing/pricing mechanisms	• Financing is arranged by the Crown and payment is against pre-determined delivery milestones
• Emphasis on collaborative design and operation • Accommodates and supports integrated public/private sector implementation teams	• Maintains arm's length relationship throughout the contract period

APPENDIX A - CPP vis à vis TRADITIONAL PROCUREMENT

Common Purpose Procurement	Traditional Procurement
• Reaching agreement and contract with vendors is a complex process requiring experienced negotiating skills	• Standardized contracts following traditional procurement practices
• Provides negotiated off-ramps, for either the purchaser or the vendor, both prior to and within longer-term contracting arrangements	• Significant default penalties for contract cancellation or vendor non-performance

TEMPLATE FOR
A CPP
Request for Proposal

The text in the attached template needs to be closely scrutinized and revised to reflect the requirements of each project. In particular, the shaded areas and shaded text are unique to each project.

October, 1998

Request for Proposals

for

A Partnership to Develop a
Project or system name
for the Ministry name

Ministry name
Government of Ontario
Date

APPENDIX B - SAMPLE FORMAT AND CONTENT OF A CPP RFP

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APPENDIX B - SAMPLE FORMAT AND CONTENT OF A CPP RFP

Section 1 Introduction

1.1 Purpose of the Request for Proposals

The Request for Proposals (RFP) is issued by the Ministry name, herein referred to as the Ministry.

The purpose of this RFP is to select a vendor or team of vendors (alliance, joint venture, or consortium), herein referred to as the Vendor, to work with the Ontario government in a partnering arrangement to:

- list of the key activities/deliverables that the Vendor and ministry will accomplish in the partnering arrangement. For example: redesign the business processes of ...; design, develop, implement and integrate the business processes, information technology systems and products; and manage the transformation from the current business processes and information technology infrastructure.

The Ministry wishes to deal only with the prime party of the Vendor. The prime party, herein referred to as the Prime, will bear responsibility for the actions and performance of all members of the Vendor, and have the authority to sign on behalf of the Vendor and bind the Vendor to all statements made on behalf of or by the Vendor.

This RFP will use the new Ontario Common Purpose Procurement (CPP) process. To this end, the Ministry is seeking a Vendor that has the relevant expertise, experience, resources and financial capability to share the project responsibilities, risks, investment and directly related benefits.

1.2 RFP Timetable

At its sole discretion, the Ministry reserves the right to modify any of the following dates and the right to cancel this RFP at any time for any reason. The Ministry is not responsible for any costs incurred by vendors for the preparation of proposals.

Activity	*Scheduled Date*
Notice of intent to issue the RFP	mmm dd, yyyy
RFP available to vendors	mmm dd, yyyy
Vendors' confirmation to attend briefing on the RFP	mmm dd, yyyy
Briefing on the RFP	mmm dd, yyyy
Vendors' letters of intent to submit proposal	mmm dd, yyyy
Deadline for Ministry to receive proposals	time, mmm dd, yyyy
Selection and notification of short-listed vendors	mmm dd, yyyy

APPENDIX B - SAMPLE FORMAT AND CONTENT OF A CPP RFP

Information meetings with short-listed vendors . . . . mmm dd, yyyy
Executive interviews . . . . mmm dd, yyyy
[Commercial due diligence, if necessary . . . . mmm dd, yyyy]
Oral presentations by short-listed vendors . . . . mmm dd, yyyy
Selection of highest and second highest ranked vendors . . . . mmm dd, yyyy
Notification to vendors . . . . mmm dd, yyyy
[Commercial due diligence, if necessary . . . . mmm dd, yyyy]
Establish memorandum of understanding . . . . mmm dd, yyyy
Establish overall contract . . . . mmm dd, yyyy

Section 2 Description of Opportunity

2.1 Vision

'The vision statement'

Description of: the strategic direction of the Ministry and the key anticipated results; the challenge in achieving the key anticipated results; major actions being taken by Ministry in response to the challenge; why the Ministry want to undertake the activities/deliverables itemized in the Introduction of this RFP.

For this reason, the Ministry is looking to the private sector to assist in the .... , and to design, develop, fund and implement... eg. the new business processes and IT systems, etc.

2.2 Scope

Description of: what will drive the business process redesign; who should be included in the consultation process and why; the key elements of the business process and IT systems; specific areas within the scope; use of standards/metrics and what criteria is to be used in making decisions where standards/metrics do not exist.

2.3 Linkages to Other Projects

Identification of: strategy reports and studies that provide useful information for the project; other directly related projects that are in process or planned; directly related existing systems.

2.4 Desired Business Results

Success in achieving the Vision for this project will result in ... a brief summary of key business measurement, eg. better services to the public and more effective operations at a lower cost than current services.

This will be manifest in the following results:

- itemized list of specific characteristics of the new system, eg. direct electronic access by the public; integrated business processes for customer service.

In addition, the Ontario government would like the partnering arrangement and the new systems to result in:

- itemized list of other desirable results that are not directly related to the vision, but could be achieved through the project, if applicable.

Section 3 Written Proposal Content

Proposals are limited to a maximum of 25-30 pages, excluding appendices. Supporting documentation should be attached as appendices and cross-referenced to the appropriate section of the proposal.

Vendors are cautioned that information beyond the first 25-30 pages of their proposal and any supporting documentation (except for appendices of financial statements, references and résumés) may not be considered by the evaluation team.

3.1 Title Page

One page introducing the Vendor, identifying the members comprising the Vendor and the Prime who will deal with the Ministry.

The Title page must state that the Prime bears responsibility for the actions and performance of all members of the Vendor, and must be signed by the person authorized to sign on behalf of, and bind the Vendor to the statements made in the proposal.

One person must be identified as the Vendor's contact for all questions and clarifications arising from responses to the RFP. Information is to include the person's name, their company and address, position title, telephone and facsimile numbers.

3.2 Table of Contents

Please use the Section titles and sequence that are listed below.

1. Title Page
2. Table of Contents
3. Executive Summary
4. Vendor Profile
5. Financial Capability
6. Business Arrangement Approach
7. Proven Credentials and Expertise in Key Areas of the Project (e.g. IT Planning and Implementation)
8. Performance Capabilities
9. High Level Approach to Achieving the Vision and Desired Results
10. Project Success Factors
11. Senior Management Experience
12. References

13. Training and Skills Enhancement
14. Appendices

3.3 Executive Summary

A short summary of the proposal.

3.4 Vendor Profile

As stated in the Section 1.1, the Ministry is seeking a Vendor, for a partnering arrangement for this project and wishes to deal only with the Prime who will bear responsibility for the actions and performance of all members of the Vendor.

Please provide a profile of the Vendor including the correct legal name (if applicable); correct legal name of each member of the Vendor and identification of the Prime; principal businesses and corporate directions of the members of the Vendor; role of the Prime and other members of the Vendor; management, ownership, financial and legal relationships between members of the Vendor; how the members of the Vendor are organized as a team responding to this RFP; and which members of the Vendor will be directly sharing the financial risks of this project.

The successful Vendor will be required to provide evidence that its Provincial taxes are in order before a contract is awarded.

3.5 Financial Capability

Evidence of the financial stability and capability of the Vendor to carry out a project of this size must be provided. For each member of the Vendor that will be directly sharing the financial risks of the project, such evidence should include the most current audited company financial statement(s) for the past three years, or the most recent interim financial statement(s) where audited statements are not available, and other financial information as may be required to provide sufficient evidence of financial stability and capability.

Financial statements are to be included in an appendix to the proposal.

3.6 Business Arrangement Approach

The Ministry wishes to minimize the Ontario government's initial investment in this project and is looking for a Vendor to undertake the costs of developing and implementing the project in exchange for a share of the benefits achieved once the project is implemented. The Ministry's contribution to the project will be primarily one of ministry's contribution, eg. one of providing a small team of senior managers and experts from the affected areas of the Ontario government.

Savings directly attributable to this project will be used to fund the required project investment. The project will have to result in savings over and beyond the fiscal reduction targets of the Government. Some funding may also become available through ... other potential means, eg. sale or licencing of assets.

The Vendor is to briefly describe its overall approach to business arrangements between the Vendor and the Ministry for the project. The description should include an overview of: the proposed financial arrangement between the Vendor and the Ministry; how the Vendor and the Ministry will share the risks, investment and rewards directly related to this project; and what specific areas of control are wanted by the Vendor.

It is essential that the Vendor provide information that substantiates its ability and willingness to assume real financial risk in exchange for potential quantifiable benefits.

3.7 Proven Credentials and Expertise in key areas of the Project

The Vendor must provide specific information to substantiate its expertise in: areas of expertise required by the ministry, eg. quickly developing and integrating new business processes and the IT systems to support the new business processes. Where possible, the Vendor is to demonstrate that it was effective doing such work in an environment with characteristics of the ministry environment that may affect the effectiveness of the vendor, eg. diverse vested interests that is experiencing significant downsizing, and massive change in technologies and ways of doing business. Ideally, the Vendor will have experience in the public sector and on the scale of Ontario.

Given the intent of this project to achieve major benefits from the new vision, structures and processes, it is critical that such expertise be demonstrated in terms of: what works and why; what does not work and why; and specific cases, projects and government jurisdictions where such work has been done by the Vendor.

This information should be provided in a form that will allow the evaluation committee to verify it and must be supported by references.

3.8 Performance Capabilities

The Vendor must provide information that demonstrates specific related experience in successfully completing projects of similar scope and complexity. Specifically, the

Vendor must demonstrate proven expertise in successfully implementing significant change initiatives for at least one diverse customer. The Vendor must also demonstrate proven expertise in: list of areas the ministry believes the Vendor must be expert in, eg. inter-personal communications and negotiation at an executive level; customer service delivery; benefits driven project management; significant business process redesign and integration; IT logical and physical architectures; systems development and implementation; data conversions; and working under public scrutiny related to major public sector projects.

Such claims must be supported with references sufficient to permit the Ministry to verify the Vendor's claimed capabilities. These references should include projects dealing with key characteristic of environment of project, eg. multiple internal and external stakeholders and service delivery spread across multiple organizations. The information must also include planned and actual project time frames, budget and final cost, team size, and the approach used to managing a multi-vendor team.

Please note that the focus of the response to the above requirements should be on the relevant experience of the Vendor, and not on the proposed approach to this project.

3.9 High Level Approach to Achieving the Vision and Desired Results

Describe at a high level, the Vendor's proposed approach to achieving the vision and desired results of this project, and the proposed project team and how they will be integrated with government staff. Given the importance, size and complexity of this project, the Vendor must provide information to substantiate its ability and willingness to provide the resources and continuity of work to complete this project.

The high level approach should also give an overview of how the Vendor will: organize itself for this project in terms of a management hierarchy and organizational responsibilities; manage the project; build and sustain commitment of the many stakeholders to the project; and ensure the presence of its qualified senior project staff throughout the project. This section should also identify any key tools and techniques that may be used to develop and implement the project.

Résumés of the proposed key team members are to be included in an appendix to the proposal.

3.10 Project Success Factors

The Vendor must demonstrate a good understanding of what is needed to successfully complete this project. As a minimum, this section must describe the Vendor's view of the critical success factors of this project, how they would be managed/attained, and other areas of risk/concern.

3.11 Senior Management Experience

The Vendor must describe the specific contribution that the proposed executives, senior managers and other key staff have made to projects given as references.

For each of the proposed executives, senior managers and key staff, the Vendor must describe where the person fits in the management hierarchy of that person's current employer and the person's current organizational responsibilities. The Vendor should provide evidence of sufficient senior management depth and experience to give executive direction and corporate support to this project. The Ministry expects the Vendor's proposal to include full-time senior and key staff for this project.

This section must include a summary of the: relevant experience of proposed executives and senior managers who will be providing direction and support to the project; relevant experience of the senior executive who will be responsible for managing the business arrangement between the Ministry and the Vendor; proposed project director's and assistant project director's résumés identifying relevant project experience, success in managing multi-vendor teams, success in meeting deadlines and budgets, and skills and knowledge; and expertise of key project staff in major change management.

Résumés of proposed executives, senior and key staff are to be included in an appendix to the proposal.

3.12 References

To support all claims of experience presented in the Vendor's proposal, the Vendor is to provide references from at least three projects that the key members of the Vendor have successfully completed for clients in the past five years. Three references must also be provided for each of the project director and assistant project director, and must show where they managed or made significant contributions to the projects.

To assist the Ministry in reviewing the proposals, please provide references in a summary table format using the following heading:

Proposal Section	Client Name & Description	Contact Name	'Phone #	Fax #	Brief description of project scope & complexity	Project time frame & budget

Details of references are to be included in an appendix to the proposal.

The Ministry reserves the right to contact references other than those provided by the Vendor.

3.13 Training and Skills Enhancement

This project will provide opportunities for OPS staff to participate in a hands-on expert, assistance and learning mode. Training opportunities are to be provided in the planning, development and implementation of the project through on the job training supplemented by formal training. The Vendor is to provide information that would substantiate its ability and willingness to provide OPS staff with developmental opportunities during the project.

3.14 Appendices

Appendices must include financial statements in support of the Vendor's financial stability and capability, details of references provided for the Vendor and staff, and résumés of proposed key project staff.

Section 4 Evaluation

The selection process has two evaluation stages.

First evaluation stage:

The written proposals are evaluated to create a short list of qualified vendors. At the end of the first stage of the evaluation, the short-listed vendors are all considered equally qualified potential 'partners' of the Ministry.

Second evaluation stage:

There will be a two part oral evaluation process consisting of an executive interview and an oral presentation with the Vendor's proposed key staff. On the basis of the executive interview and oral presentation, the highest and second highest ranked vendors are selected.

References are checked at both stages of the evaluation to substantiate vendors' claims.

4.1 Proposal Evaluation

Written proposals will be evaluated by a government evaluation team and rated according to the factors shown below. All decisions on the degree to which a proposal meets the requirements of this RFP are the sole judgement of the evaluation team.

Proposal Factor	Maximum Points
Financial stability & capability	Pass/Fail
(Vendors must pass to be considered further in the evaluation.)	
Demonstrated relevant experience and expertise of vendor	30
Demonstrated experience and capabilities of key staff	30
Overall approach including risk management	25
Business arrangement	15

In order to be chosen for the short list, vendors must pass the mandatory requirements, and for the evaluated criteria, it is recommended that a scoring methodology be adopted that would require vendors to score either 70% on each of the evaluated criteria or score an aggregate of 70% for the combined evaluated criteria.

4.2 Short List of Vendors

The highest evaluated written proposals will be selected for a short list. Each vendor on the short list will proceed to the second stage of the evaluation and will be asked to make an executive interview and prepare an oral presentation.

4.3 Information Meetings for Short-listed Vendors

In preparation for their oral presentation, each short-listed vendor will be invited to a private meeting with the appropriate government staff. These sessions are solely for the vendor to ask questions to improve its knowledge of the government's requirements, direction and processes, and play no role in the evaluation of the vendor. Each information session will be a maximum duration of 1.5 hours.

4.4 Executive Interviews

Prior to the oral presentation, the key executive(s) representing the short-listed vendors are invited to an interview with the evaluation team to determine the importance of the project to the vendor's strategic business plan and to confirm the vendor's financial, technical and investment commitment to the project.

The results of these interviews will be included in the evaluation factors in the final stage of the evaluation.

[If necessary, the Commercial Due Diligence process may be incorporated here.]

4.5 Oral Presentation by Short-listed Vendors

Each short-listed vendor will be invited to an oral presentation/question and answer session of 2.5 hours. The vendor will be given 1.5 hours to make an oral presentation that describes the vendor's approach to the requirements and demonstrates why the vendor should be selected and why the vendor wants to be selected. During the remaining hour of the session, the evaluation team will ask questions on any aspect of the vendor's presentation. The vendor's presentation and responses to questions will form the vendor's oral proposal.

The oral presentation is to be made by the vendor's staff who will have direct and primary responsibility for managing the project and delivering critical components.

At the start of the oral presentation/question and answer session, the vendor must provide the evaluation team with copies of the material that will be orally presented. The oral presentation material and oral responses will be used in the evaluation of the oral proposal. Extra supplementary material that the vendor may provide at this time will not be considered. The Ministry reserves the right to videotape and/or audio record these oral presentation/interview sessions.

On the basis of the executive interview and oral presentation, the evaluation team will select the highest and second highest ranked vendors. The highest ranked vendor will be invited to negotiate a working relationship with the Ministry.

4.6 Negotiation of Working Relationship

Within the first ten days, the Ministry expects to sign a memorandum of understanding with the Vendor that establishes the basic approach for reaching an overall project contract. The Vendor and the Ministry will each bear its own negotiation costs. No project work will be performed before reaching an overall project contract unless specifically agreed by both the Vendor and the Ministry. The Ministry expects to establish an overall project contract with the Vendor in about three months.

If the highest ranked Vendor and the Ministry cannot reach an overall project contract within a reasonable time period (about three months), then the second highest ranked Vendor may be invited to negotiate a working relationship with the Ministry.

4.7 Topics to be Covered in the Oral Presentation

The oral presentation by the short-listed vendors must address the topics shown below. The maximum points allocated to each evaluation factor is also shown.

Business Arrangement -- Maximum Points (30)

- Describe the roles of the Vendor and the Ministry, how the Vendor will integrate its efforts with current government projects, and how the participants will integrate as a project team.

- Describe the Vendor's understanding of major obstacles, risks, and other factors that affect the success of the business relationship required for this project.

- Describe the proposed risk management approach, the Vendor's capacity to carry risk, and the process envisioned by the Vendor to resolve issues between the Vendor and the Ministry during the project.

- Describe the Vendor's internal process for resolving business and technology conflicts and issues.

- Provide details of experience in this type of relationship.

- Describe the Vendor's structure and approach to ensure timely and effective communication to the many stakeholders of the project, to manage the change in the OPS from current state to the new environment, and to build and sustain commitment to the project.

- For an IT project, eg. The government needs the flexibility of selecting the most appropriate technology for its infrastructure and systems based on its business needs. Ideally, the Vendor will act as though it is independent of any particular hardware/software vendor in selecting the technology for the common IT infrastructure. Describe the Vendor's position with respect to the selection of appropriate technology infrastructure once the business requirements and logical technology architecture have been defined. Describe how the Vendor will ensure the most appropriate solutions are implemented for the government, and identify clients where the Vendor has chosen technology other than their own.

Financial Arrangement -- Maximum Points (30)

- Describe specific experience the Vendor has in financing projects with the public sector and the private sector. This description is to include the various funding models that were used and deemed relevant to this project, and the Vendor's perception of the advantages and disadvantages of these models.

- Describe how the Vendor ranks the importance of securing this project relative to the Vendor's strategic priorities, and how business opportunities are identified and shared between the members of the Vendor.

- Describe the costing approach, financial arrangements, risk and related control, investment and benefit sharing that the Vendor would find acceptable for this project.

- Describe, where applicable, appropriate industry performance metrics/standards and their relationship to possible pricing mechanisms.

- Describe the Vendor's expectation of payments from the government in the event that either the Vendor or the Ministry terminates the project/relationship before completion.

! Describe the Vendor's plan in the event that actual benefits (cost savings and/or revenues) are less than anticipated, or are less than project costs.

Project Approach and Organization -- Maximum Points (15)

! Describe the suitability and commitment to the project of the Vendor's senior executives, senior managers, project director and assistant project director.

! For an IT project, eg. describe key techniques or approaches the Vendor might use to identify, define, design, develop and implement the common IT infrastructure.

! For an IT project, eg. identify possible means to ensure the government can continue to:
S benefit from new and emerging technologies; and
S obtain cost effective services.

! Describe how the Vendor intends to provide training opportunities for government staff.

Special Capability to Deliver Project Successfully with the Government -- Maximum Points (25)

! Describe the Vendor's understanding of the concepts of 'public accountability' and 'protecting the public interest', and identify how these are addressed in the Vendor's proposal.

! Describe the Vendor's understanding of the autonomy of Ontario government ministries, how the Vendor will be effective in such an environment, and how the project would be managed in such an environment.

! Identify the economic development benefits for Canada which can be expected as a result of the implementation of the proposal. Examples of such benefits are: research and development activities; new Canadian-based technology, product and applications development with domestic and international market potential beyond the government; new partnerships and joint ventures; raising skill levels and training initiatives; improvements in the public infrastructure; jobs; investment; support of a competitive marketplace.

- Identify unique qualities the Vendor brings to the project and any special capabilities to deliver projects successfully with a public sector partner.

Section 5 Instructions and Conditions

5.1 Communications

All communications regarding this RFP are to be submitted in writing to:

Name and address

Facsimile:

The Ministry will not entertain oral questions except during the Briefing on the RFP and the Information Meetings for Short-listed Vendors. From the time this RFP is released up to and including establishment of the memorandum of understanding, all inquiries and communication regarding this RFP are to directed in writing (by post, courier or facsimile) to the person identified at the start of this Section 5.1. If vendors are found to have communicated with other government officials concerning this RFP and obtained an unfair advantage in responding to the RFP, the Ministry may disqualify the vendor's proposal.

Written inquiries received by the Ministry less than five working days before this RFP's closing date are not guaranteed a response.

5.2 Briefing on the RFP

The Briefing on the RFP will be an excellent opportunity for vendors who are interested in responding to this RFP to clarify their understanding of the Common Purpose Procurement methodology and the Ministry's requirements. Potential vendors are strongly advised to attend the Briefing.

Vendors are requested to confirm their attendance in writing by the date shown in Section 1.2; provide a written list of the names of the people who will be representing the vendor at the briefing; and the person's name and facsimile number to which the Ministry will send details on the date, time and location of the Briefing.

5.3 Letter of Intent to Submit Proposal

Vendors are requested to inform the Ministry in writing by the date specified in Section 1.2, as to whether they intend to respond to this RFP. This letter of intent is to be signed by the person authorized to sign on behalf of, and bind the vendor to statements made in the letter of intent.

Vendors who provide an affirmative letter of intent will be sent copies of all questions, answers and/or addenda to this RFP.

5.4 Submission of Proposals

Written proposals should not exceed 25-30 pages, excluding appendices. The Ministry expects proposals to be very similar to this RFP in terms of page size, margins and font size.

All proposals must be received by the Ministry on or before the deadline shown in Section 1.2. Proposals are to be submitted in a sealed package and marked 'project identification' with the full legal name and address of the Prime clearly marked on the front of the package. Proposals sent by facsimile or other telecommunication will not be accepted.

If a vendor wishes to alter its proposal, it must first withdraw its proposal in writing and submit a new proposal which must be received prior to the deadline shown in Section 1.2.

5.5 Number of Copies

Each vendor is to submit one original and six copies of its proposal. The original must be signed by the person authorized to sign on behalf of, and bind the vendor to statements made in the proposal. The vendor is to ensure that the original and copies are identical. One copy must be unbound.

5.6 Amendments to Proposals

After the RFP closing date, amendments to vendors' proposals will not be accepted. However, during the evaluation, representatives of the evaluation team may, at their discretion, submit questions in writing to the vendors. Written responses from vendors to such specific questions will be considered part of the proposal.

5.7 Previous Communication

Information and/or documents provided to vendors or obtained by vendors prior to the release of this RFP are superseded by this RFP.

5.8 Right to Amend

The Ministry reserves the right to amend and/or supplement the RFP giving the same information to all vendors by way of written addendum. Should an addendum be issued less than 72 hours before the closing date of the RFP, the closing date will be amended as part of the addendum to allow a full 72 hours for vendors to consider the addendum.

5.9 Acceptance of Proposals

This RFP neither expresses nor implies any obligation on the part of the Ministry to enter into an agreement with a vendor submitting a proposal. The Ministry reserves the right to accept or reject any or all proposals.

5.10 News Releases

Vendors are not to make any news releases concerning the RFP or the awarding of the same or any resulting agreement(s) without the consent of the Ministry and then only in co-ordination with the Ministry.

5.11 Proprietary Information in Proposals

If vendors wish to have any concepts, ideas or materials in their proposals treated as proprietary, it must be so specified in writing at the time of the submission otherwise the Ministry is not precluded from using these concepts and ideas or materials.

5.12 Vendor Debriefing

If requested in writing by an unsuccesful vendor, the Ministry shall arrange for and meet with the unsuccessful vendor for a debriefing of the evaluation of its proposal.

5.13 Freedom of Information and Protection of Privacy

Subject to the provisions of the *Freedom of Information and Protection of Privacy Act*, the Ministry will consider all vendors' proposals to be confidential.

5.14 Conflict of Interest

Each vendor must include in its proposal confirmation of the following:

(i) that the vendor does not and will not have any conflict of interest (actual or potential) in submitting its proposal or, if selected, with the contractual obligations of the vendor as Vendor under the Agreement. Where applicable, a vendor must declare in its proposal any situation that may be a conflict of interest in submitting its proposal or, if selected, with the contractual obligations of the vendor as Vendor under the Agreement; and

(ii) that the vendor neither has nor has access to any Confidential Information as defined below;

"Confidential Information" refers to confidential information of the Crown (other than confidential information which is disclosed to vendors in the normal course of the Request for Proposal); the Confidential Information is relevant to the Services required by the Request for Proposals, their pricing or the Request for Proposal evaluation process; and the disclosure for which could result in prejudice to the Crown or an unfair advantage to the vendor.

In addition, each proposal shall include the following information:

(a) A list of the names, addresses and telephone numbers of the persons who participated in the development of the proposal; and

(b) A list of the names of any former employees of the Ontario Public Service, their job classifications and the particular ministries where these individuals were working immediately prior to their leaving the Crown that the proponent has either appointed to its Board of Directors or employed since April 23, 1997.

The proposal of any vendor may be disqualified where the vendor fails to provide confirmation of the foregoing or makes misrepresentations regarding any of the above. Further, the Minister shall have the right to rescind any contract with the selected vendor in the event that the Minister in his/her sole discretion determines that the selected vendor has made a misrepresentation regarding any of the above, in addition to or in lieu of any other remedies that the Minister has in law or in equity.

APPENDIX C - CHECKLIST OF CONTRACT CLAUSE HEADINGS

Note: This is an illustrative checklist. Consultation with legal counsel will be necessary to ensure the appropriate elements are included for each particular CPP project.

Introduction

1. Interpretation / Definitions
2. Scope of The Agreement
3 Parties
4. Principles
5. Contracting Authorities for Consortia Arrangement
6. Contract Period /Term of Agreement
7. Existing Agreements
8. Commencement

Provision of Services

1. The Programme
2. Ministry Responsibilities
3. Vendor / Contractor Responsibilities
4. Implementation Responsibilities
5. Provision of Infrastructure
6. Crown Assets Employed
7. Valuation of Crown Assets
8. Infrastructure Support Services
9. Provision of Equipment
10. Maintenance
11. Services and Service Levels
12. Compliance with Applicable Laws
13. Warranties and Indemnities
14. Standards
15. Contract Management Team / Roles and Responsibilities
16. Acceptance Procedures and Phase Sign-Offs
17. Service Quality
18. System Serviceability, Availability & Performance
19. Security
20. Replacement of Personnel
21. Sub-contractors
22. Programme and Contract Management Procedures

23. Contract Management Reports
24. Baseline for Performance Measurement
25. Progress and Performance Reports
26. Review and Control of Budget
27. Co-ordination
28. Training
29. Environmental Protection
30. Occupational Health & Safety and Equipment Standards
31. Use of Ministry’s Premises
32. Right of Access to Ministry’s Premises
33. Service Change Control Procedures / Change Mechanisms
34. Provision for Co-Termination
35. Return of Assets at End of Contract

Payment

1. Charging Mechanism / Payment Structures
2. Core Services
3. Costs of Development
4. Incentives / Payment Mechanisms for Performance
5. Payment Mechanisms for Usage/Volume or Demand
6. Invoicing Procedures
7. Price Adjustments
8. Inflation
9. Royalties or Licensing Revenues
10. Pricing on Extension of Contract
11. Compliance with Tax Regulations

IT Services

1. IT Functional Requirements
2. Service Delivery Requirements
3. Technical Standards
4. Installation
5. Definition of Baseline
6. Ownership of Baseline
7. Enhancements / Modifications / Additions
8. Ownership of Enhancements / Modifications / Additions

9. Dependencies
10. Documentation
11. Safeguarding Data
12. Disaster Recovery
13. Technology Refreshment
14. Service Management Processes
15. Intellectual Property, Copyright, Trademarks, Patents
16. Royalties and Infringement
17. Future Developments
18. Transfer of Title
19. Licence to use Software
20. Identification of Licensing Arrangements / Branding
21. Security
22. Data Ownership and Use
23. Confidentiality
24. Third Party Software Licence and Use
25. Warranties and Representations
26. Indemnities and Insurance
27. Limitation of Liability
28. Termination Arrangements
29. Orderly Transition
30. Consequences of Default Termination
31. Recovery of Sums Due

Records and Records Management

1. Right of Access and Audit
2. Regulatory Requirements (ATIP, Public Archives, Etc.)
3. Start-up Transition Requirements
4. Security of Information Holdings / Safeguarding Data
5. Protection of Personal Data
6. Accessibility across Technology Changes
7. Media Conversion Requirements
8. Legacy Requirements
9. Allowable Usage of Intellectual-Based Information Holdings
10. Multi-year Disposition Plan
11. Back-up and Redundancy Availability
12. Loss of Data

13. Contract Completion / Transition Requirements

Protection of Information

1. Intellectual Property Rights Assignment and Indemnity
2. Confidentiality Undertaking
3. Security Requirements
4. Publicity / Provision of Information

Personnel

1. Personal data
2. Employee Undertakings
3. Unlawful Discrimination
4. Transfer and Sub-Contracting
5. Transferred / Seconded Employees
6. Security

Contract Control

1. Assignment and Sub-Contracting
2. Variation
3. Termination for Convenience
4. Survival
5. Expert Determination
6. Amendments
7. Change of Vendor Ownership or Control
8. Dispute Resolution
9. Dispute Resolution Mechanisms
10. Arbitration
11. Legislative Risk / Changes of Law
12 Corrupt Gifts and Payments of Commission
13. Default
14. Severability
15. Step-In Rights
16. Indemnity and Insurance - Joint and Several
17. Guarantor’s Obligations
18. Guarantor’s Step-in Rights

APPENDIX C - CHECKLIST OF CONTRACT CLAUSE HEADINGS

19. Service of Notices and Communications
20. Exit Arrangements
21. Notice of Default
22. Transfer of Undertaking
23. Residual Value
24. Transfer of Assets on Termination
25. Termination on Insolvency
26. Force Majeure
27. Consequences of Termination
28. Recovery of Sums Due
29. Waiver
30. Amendments
31. Governing Law and Jurisdiction
32. Entire Agreement

SCHEDULES

APPENDIX D - GLOSSARY OF COMMON TERMS

Authority, Responsibility and Accountability

- **Authority** is the legitimate power to make decisions or take action.
- **Responsibility** is the obligation to assume a role or take specific action(s). Responsibility can be delegated, conferred or mutually agreed to depending on the relationship.
- **Accountability** is the obligation to answer for results and the manner in which responsibilities are discharged.

Asset Transfers

Asset transfers refer to transfers from the public to the private sector of asset based operations(generally infrastructure) such as waste or water treatment plants, roads, airports, parks, or other similar assets.

Benchmarking

Benchmarking is a frequently used term for performance evaluation based on competitive marketplace comparison. A service provider's performance is measured against the highest quality and most efficient systems within their particular industry or service sector.

Business Case

A business case is a clear definition of the full range of financial and operational elements required to establish a performance-based business arrangement between public and private sector stakeholders. The business case also includes an assessment of risks and benefits and the anticipated timelines for the achievement of anticipated results.

Commercialization

Commercialization is the application of private sector business methods to operations for the principal purpose of exploiting existing resources for financial gain (contributions to fixed costs), or pursuing new initiatives for profit (net new revenues) on a private-sector-styled basis.

Development Partnerships

Development partnerships refer to arrangements where the private sector creates a specific product or service for government that it can in turn market elsewhere.

The private sector vendor generally takes on some risk and is paid a fixed price. Variations on this approach may include royalty arrangements where government receives a royalty on each subsequent sale.

Development partnerships may also include risk-reward arrangements. In return for financing and development, the private sector partner will be paid through user fees or a portion of the cost savings the private operator has generated.

Ethics

Ethics is the sum of the principles, guidelines and standards that establishes a protocol of interaction between individuals and organizations.

Equity

Equity is the funds provided by the shareholders in an enterprise that creates ownership rights, including the right to returns based on the performance of that enterprise.

Full-Cycle Value for Money

Full-cycle value for money is an assessment of all aspects of costs over time, including capital, maintenance, technology refreshment, management and operating costs.

Governance

Governance is the establishment of the organizational structure, procedures, systems and feedback mechanisms that provide stewardship and accountability, defines roles and responsibilities, communicates an organization's purpose and vision, assures operational efficiency and effectiveness, and manages risk.

Intellectual Property

Intellectual property refers to business and technical information and processes (e.g. industrial designs, inventions, computer programs, or scientific research) created from intellectual activities, that may lead to copyrights, patents, trademarks or commercially protected designations.

Off-Ramp

An off-ramp is an option for termination of a procurement process, at any point from vendor consultation to formal contract arrangements, by parties to the procurement, either without discrimination, or under formal agreed-on rules that govern fiscal and physical arrangements for termination.

Outcome-based Performance Measurement

Outcome-based performance focuses on **what** is required from a service provider rather than **how** the service will be provided. The intent is to provide more scope for innovation and flexibility in soliciting proposals from the private sector for service provision.

Outcome-based performance measurement defines the service, not the operation of the facilities.

Outsourcing

Outsourcing occurs when government contracts with the private sector for services or goods that have traditionally been provided by government employees. Responsibility for service or product delivery is delegated to the private sector vendor / contractor against agreed deliverables. Responsibility and accountability for service management is retained by government.

Partnering in this context is referred to as functional partnering arrangements, but nevertheless can be linked to innovative arrangements for access to capital, technical skills, innovation and commercial experience.

Performance Measurement

Performance measurement is a step-by-step method for identifying and classifying operational results, measurement of these results against selected performance indicators and linking the outcomes to governance, accountability, corporate or resource alignment, and attribution of rewards or penalties.

Privatization

Privatization is the total transfer of ownership from the public to the private sector of an operation or function (as a going concern), which is producing a marketable good or service, but is deemed to be no longer required as an instrument for the implementation of public policy. The transfer may include people, intellectual property, facilities or other assets.

APPENDIX D - GLOSSARY OF COMMON TERMS

Procurement

Procurement encompasses the entire process by which all classes of resources - facilities, equipment, services, materials and human resource skills - are obtained for a specified project, program or service deliverable. It begins with the process for determining a need for the property or services and ends with the contract completion and close-out.

Public-Private Partnering

Use of the term “partnering” or “partnerships” has evolved, within both the public and private sector community, from the more formal legal meaning of shared risks and shared reward, to become a label applied to a wide range of collaborative or contracted-service agreements.

The evolution in the use of the term “partnering” also encompasses many of the populist collaborative management trends of recent years, e.g. strategic alliances, teaming agreements, and out-sourcing.

Operationally, in the case of public-private partnering, partnering is commonly defined as delegating to the private sector some or all of the financing, design, development or operation of public infrastructure and services.

In Canada, public-private partnering generally refers to a legal arrangement to work co-operatively toward shared or compatible objectives and in which there is shared authority and responsibility; joint investment of resources; shared liability or risk-taking; and mutual benefits.

Public-Public Partnering

Public-public partnering refers to two or more ministries, or two or more different levels of government entering into partnering arrangements for the purpose of harmonizing program delivery, co-locating services, or jointly delivering program or service delivery.

Relationship Management

Recognizing that organizational arrangements are social systems, relationship management is the establishment of a formal process for managing a long-term relationship between stakeholders in a public-private partnering arrangement. It is based primarily on respect, co-operative behaviour, open communications and trust.

APPENDIX D - GLOSSARY OF COMMON TERMS

Risk Management

In terms of CPP, risk means the probability of an event occurring that would affect the outcome of the procurement, and the positive or negative consequences of such an event. Risk management refers to the systematic application of policies, procedures and operational practices to the identification, evaluation, management and monitoring of risk.