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GUIDELINES FOR IMPLEMENTING PUBLIC-PRIVATE PARTNERSHIPS

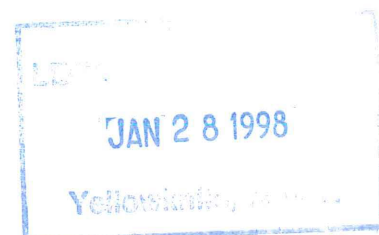
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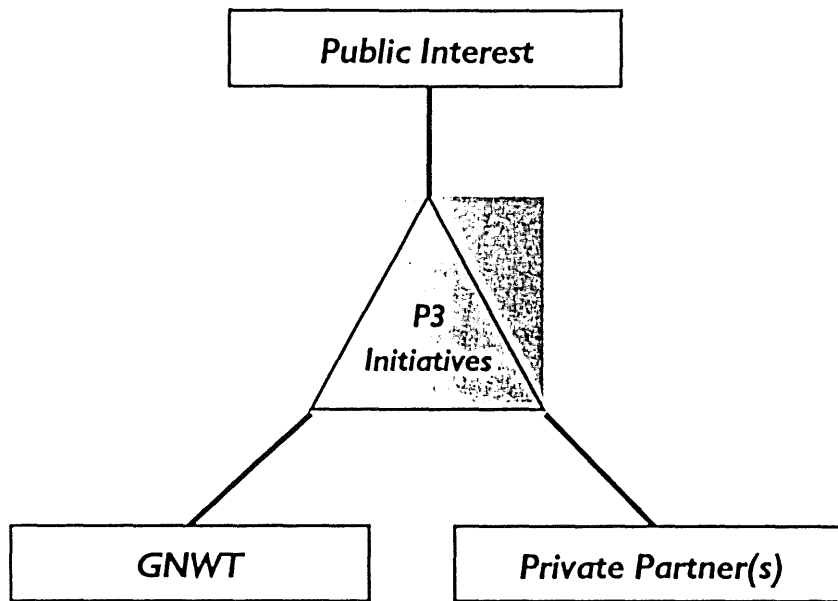
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INTRODUCTION



Public-private partnerships (P3s) are about risk and reward sharing, innovation, creativity, trust, and most importantly, shared responsibilities and accountabilities to a single public that both partners serve.

Regardless of the size, type, or complexity of a public-private partnership project certain fundamental principles apply to effect a fair and successful implementation. These principles are presented herein to serve as procedural guidelines for the implementation of public-private partnerships in the Northwest Territories.

Key Principles

Exercise Critical Judgement

- Evaluate each P3 opportunity on its own merits and only undertake projects that are feasible.
- Negotiate the best deal for the taxpayers of the NWT.
- Ensure that quality service is being provided to the residents of the NWT throughout the life of the P3.
- Be aware that P3s require a shift in organizational thinking from directing and operating to managing.

Commitment Must Be Demonstrated

- Ensure that there is a strong commitment on behalf of all GNWT participants. Don't waste the resources that both the NWT and the private partner are required to invest in the process.
- A strong commitment is essential - pulling out half way through a project sends messages that the NWT isn't committed to partnering.
- P3s are like marriages - both partners must be content that they can build a long-term commitment before entering into the arrangement.
- Recognize that conditions change over the long-term length of a P3, and be prepared to make changes when appropriate.

Communicate

- Communication is important throughout every stage of the P3 process. Communications are multifaceted and will include employees, the public, and the partners.
- All partners must be good listeners since communication is the life blood of the partnership.

Maintain a Focus on Process and Outcomes

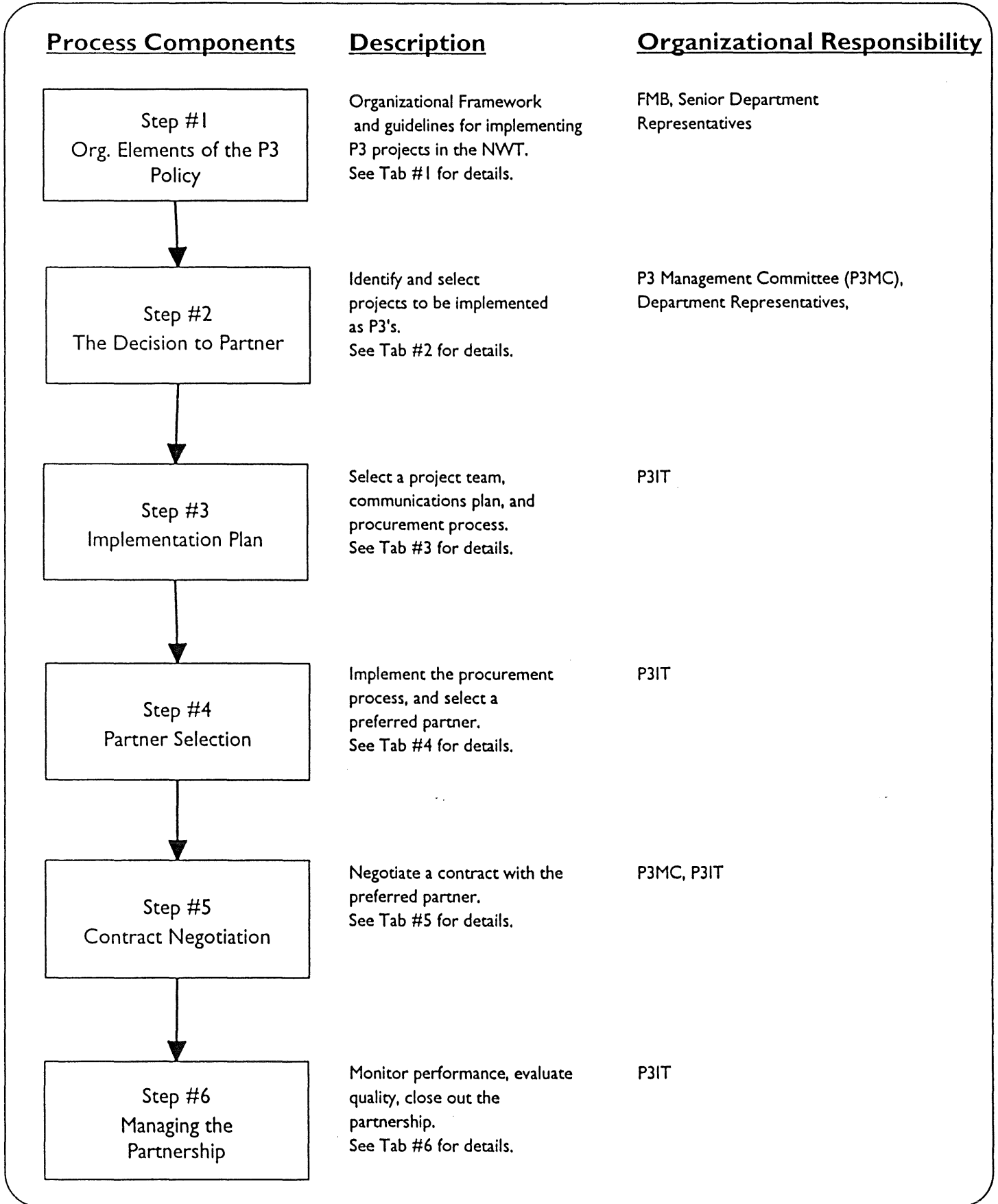
- The goal of a P3 is to achieve synergy between the NWT and the private partner. In a successful P3, the result of the action of the whole is more than that of the two partners acting independently.
- The structure of the procurement process will determine the P3's success or failure.
- Recognize that the request for proposal documents are the backbone of the contract.
- Managing P3 contracts effectively means that the GNWT must acquire new sets of skills. It's role now is to manage not to direct.
- Results are more important than inputs. Keep the public interest and the long term nature of the partnership upper most in mind.

Be Fair

- Selecting a partner must be fair, transparent, and open.
- Flexibility is the key to a successful contract negotiating process.
- Ensure that the P3 involves arrangements for fair treatment of employees. If required, ensure any transfer of employees is smooth and seamless from the NWT to the private partner.
- Solve problems using conflict resolution techniques - do everything possible to stay out of court.

In addition to the above principles, there is a well defined process for implementing and managing the P3 project. Figure 1 illustrates the process phases of a P3 project, as well as the organizational components that are required at each stage of the process. The details of each of the six steps are provided in the sections that follow.

Fig. 1: Public-Private Partnership Project Phases

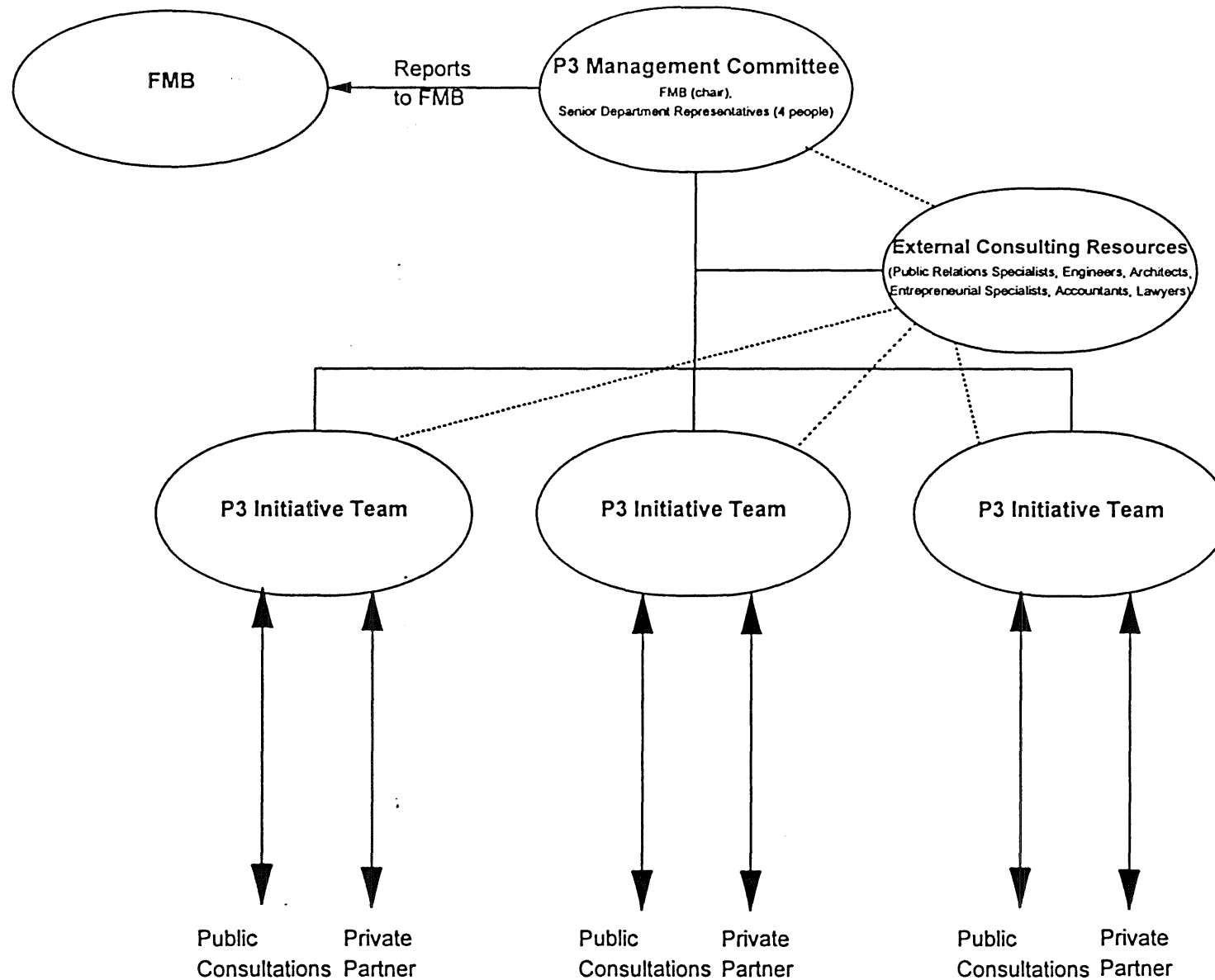


1.0 Organizational Elements of the P3 Policy

Prior to implementing any P3 projects, several organizational elements and philosophies must be in place. These form the organizational foundation required to successfully implement and manage P3 projects. It is important to establish a sound structure prior to initiating the P3 process, the management structure in Figure 2 illustrates such a structure.

- 1.1 The cabinet, MLAs, and senior staff must demonstrate their support for public-private partnerships. Visible commitment at these levels is essential and will enhance the support throughout the entire government organization. In addition to displaying support for P3, senior levels of the organization must take ownership of the P3 process and be actively involved in managing it.
- 1.2 Senior departmental staff need to be involved in preventing or resolving internal impediments to the P3 process. As stated above, support at the upper levels will tend to translate into support throughout the organization. Despite these efforts, opposition may be encountered, therefore, involving senior staff in the resolution process will demonstrate commitment.
- 1.3 The GNWT P3 Management Committee (P3MC) will be established and will comprise of representatives from the Financial Management Board (FMB), and senior representatives of the departments of Education, Health, Public Works and RWED.
 - 1.3.1 The P3MC will be responsible for developing and implementing the overall P3 strategy for the GNWT. It will be within the mandate of this committee to ensure that for all P3 initiatives there is a consistent approach that is transparent, accountable, and accessible. They will also be responsible for ensuring that appropriate measures are established to protect the interests of the citizens of the NWT.
 - 1.3.2 The P3MC will be responsible for establishing and implementing an overall P3 communications strategy to inform employees, unions, media, and the public about the P3 process.
 - 1.3.3 The P3MC will also coordinate the public consultation process to explain P3 arrangements and their effects on service, employment, and government finances.
 - 1.3.4 The P3MC shall avoid any conflicts of interest or situation that may lead to conflicts of interest. Real or perceived conflict of interest issues can hamper implementation and irreparably damage credibility.

Fig.2: P3 Management Structure



2.0 The Decision to Partner

Public-private partnership arrangements are not suitable for all capital projects. As only one of several fiscal management levers available to the GNWT, P3 should only be implemented when deemed appropriate. This section provides guidelines for the selection of initiatives for P3 implementation. The P3 initiatives would generally be those capital projects identified through the GNWT's normal capital budget planning process or alternately unsolicited proposals that hold significant promise of creative and more cost effective financing.

2.1 With that assistance of the Departments of the GNWT, the P3MC will identify potential P3 initiatives, those capital projects identified through the GNWT's normal capital budget planning process, and present them to Financial Management Board (F.M.B.) and request authority to proceed.

2.1.1 The P3MC will have initiatives that have been approved and will follow through on the established implementation schedule.

2.1.2 The P3MC will assign each initiative to a project team (P3IT) that includes representation from the GNWT Department for which the capital project will be implemented, as well as FMB representatives.

2.2 Unsolicited proposals, that hold significant promise of creative and more cost effective financing, will be accepted in confidence and reviewed by the P3MC.

2.2.1 The P3MC will have the proposal reviewed by technical specialists who will be requested to make recommendations regarding the concept.

2.2.2 If an unsolicited proposal concept is accepted in principle, the original proposal shall be returned to the private sector partner, to protect the interests of the proponent, and a formal public proposal call shall be initiated for the concept (or a modified form of the concept) deemed appropriate by the P3MC.

2.3 External specialists may be required to assist the project teams throughout the implementation process to maintain the technical integrity of the process.

2.3.1 Many elements of the P3 process require specialist expertise. It is not realistic or feasible for the GNWT to maintain these resources full time "in-house". The services of experts such as public relations specialists, engineers, architects, entrepreneurial specialists, accountants, lawyers and risk managers shall be retained as required to assist the GNWT in ensuring that it receives fair value from the private sector partner.

- 2.4 The P3MC will conduct a cost/benefit analysis and risk assessment of each proposed initiative.
- 2.4.1 When comparing public and private alternatives, either as a feasibility analysis or a detailed evaluation of actual proposals, the P3MC shall evaluate the proposed costs of future private operations against the fully costed estimates of future public operations.
- 2.4.2 Impacts on existing employees must be fully considered when comparing the costs of public and private operating alternatives.
- 2.4.3 The P3MC shall assess the proposed contract's impact on existing union contracts or labour agreements and union negotiations in the future.
- 2.4.4 The P3MC will ensure that any fees proposed to be charged by the private operator will not unduly burden residents or preclude them from using the facility or service.
- 2.5 The P3MC shall ensure that each project requires the private partner to make an equity investment in the project, generally greater than 10%.
- 2.5.1 Risks must be shared between the public and private parties. Private sector equity investment is needed if a project is to be classified as an operating lease and to attract credible entrepreneurs.
- 2.6 Responsibility for compliance within the full range of Federal/Territorial regulations must be clear in the P3 arrangement.
- 2.7 The P3MC shall ensure that the public interest is fully protected and that procurement rules and regulations are in the public's interest, and not susceptible to manipulation.
- 2.7.1 The P3MC will develop and publish its P3 procurement policy so residents understand that the GNWT is using this means of procurement because:
- creative solutions are expected to be a key element of the procurement process;
 - the capital need is identified but the means to build a partnership to share the risk are unknown;
 - other factors in addition to prices will be important to satisfy the partnership requirements of the GNWT - complexity of the project, experience and credentials of the private partner, and the financing arrangements, and
 - the private sector is expected to provide some investment capital (equity) in the project.

- 2.8 Government staff members will be able to submit bids in any out sourcing program, in recognition of the fact that the underlying reasons for P3s are competition and cost-effectiveness.
- 2.9 Based on the assessments carried out as part of the review and evaluation process, the P3MC will promptly reach a decision on the merit of implementing a P3 and will forward their recommendation to F.M.B.

3.0 Implementation Plan

- 3.1 The P3MC will require the P3IT to develop a full understanding of all the current costs of service provision including direct and indirect costs, so that they may successfully compare public and private costing options.
- 3.2 The P3MC will ensure that P3IT's have adequate resources, time, experience, and authority to successfully complete their tasks regarding P3 initiatives.
- 3.3 The P3IT will prepare a conceptual budget to determine:
 - what the GNWT can afford;
 - whether a P3 can result in real savings and create the intended results sought by the GNWT from both a cost and management point of view.
- 3.4 The P3IT will evaluate each potential partners proposal against the fully burdened in-house GNWT costs with which they are competing.
- 3.5 The P3IT will employ a selection process that best suits the type of initiative being considered.
- 3.6 The P3IT will use a two-step selection process to select financially sound and technically qualified firms.
 - 3.6.1 The RFI/RFQ process will help to narrow down the number of qualified firms and test the feasibility of the P3 initiative.
 - 3.6.2 The RFP process will then give the P3IT a manageable number of proposals to evaluate.
- 3.7 The P3IT will use a Request for Information (RFI) when objectives are known by the GNWT but the solution is not.
- 3.8 The P3IT will make a detailed schedule to map out all phases of the P3 initiative from beginning to end.
- 3.9 The P3MC will be responsible for implementing a communications strategy that is specific to a particular initiative, but is in accordance with the overall communications strategy defined by the P3MC in consultation with the P3IT and the P.R. Specialist.
 - 3.9.1 Implementing an effective communications strategy helps reduce the fear and uncertainty that comes with change. An external Public Relations Agency may be used to help establish the strategy.

4.0 Partner Selection

- 4.1 The P3MC will widely distribute and advertise notices of RFI/RFP's.
- 4.2 The P3IT will ensure that the evaluation criteria is described in the RFP documentation.
 - 4.2.1 The P3IT will prepare evaluation criteria to determine the means by which the proposal presenting the best value or the best solution will be selected. The factors chosen to determine this shall be objective, quantified and weighted.
 - 4.2.2 A pass/fail system works best when combined with weighting.
 - 4.2.3 The P3IT is responsible for ensuring that the evaluation process is free of conflict of interest.
 - 4.2.4 The P3IT will devise methods to discourage potential partners from lobbying elected officials and government staff.
 - 4.2.5 The P3IT, with the assistance of technical resources, will complete their initial screening of initiatives and forward their ranking and comments to the P3MC.
- 4.3 To avoid conflict of interest, advisors acting for the GNWT shall not have any role whatsoever in the planning, execution and/or delivery of any P3 initiative.
- 4.4 The P3IT will keep a record of procurement proceedings to ensure fairness and transparency of the process.
- 4.5 The P3IT may retain the services of an external consultant in more complex P3s.
- 4.6 In situations in which employee-sponsored proposals are sought, to avoid conflict of interest, no employee of such an employee-sponsored proposal nor any one acting for them shall have any previous role whatsoever in the planning, execution and/or delivery of the P3 initiative during which time it was delivered by the GNWT.

4.7 The P3IT will ensure that the RFP specifies service requirements in terms of results not inputs.

4.7.1 The RFP will specify what the service requirements is, not how it is to be performed. Operational flexibility is essential for the contractor to be innovative in performing the activity. Results shall be specified as fully as possible, and should include appropriate service quality measures.

4.8 The P3MC will review the P3IT's initial screening and make a recommendation to F.M.B. regarding the selection of a preferred partner.

5.0 Contract Negotiation

To achieve the cost/benefits associated with the traditional tender process while preserving the flexibility required to produce the most appropriate mix of facilities and administrative arrangements to solve problems, is the key to the successful negotiation of a P3.

5.1 The P3MC will negotiate with the private partner. They will be responsible for achieving the following:

5.1.1 To avoid contract and payment disputes once service has begun, the contract shall establish a comprehensive range of performance measures including reporting requirements and acceptable levels of performance (targets and benefits).

5.1.2 The contract shall include buy-back options in the contract to permit the GNWT to resume operation of the facility itself under specified conditions.

5.1.3 Incorporate provisions in the contract covering contractor non-performance, dispute resolution mechanisms, and provisions for the smooth hand-over of the activity to another contractor.

5.1.4 Give consideration to the applicability of incentive payments in the contract, either by structuring payments in such a way that they are contingent on the achievement of certain levels of service or by offering bonus payments for achievement of service levels above a pre-determined baseline.

6.0 Managing the Partnership

A P3 should enhance the GNWT's ability to provide services, facilities, or infrastructure and should not compromise the GNWT's overall responsibility to the public. Both the P3MC and P3IT are to ensure that the level of service provided by the GNWT is maintained or increased, throughout the life of a P3 initiative.

- 6.1 The P3IT will largely be responsible for managing the partnership once the contract with the private partner is signed and will regularly report to the P3MC. All components of this sector will have been previously incorporated into a signed contract.
- 6.2 In conjunction with the P3IT, the private partner will establish and agree on a comprehensive range of performance measures, reporting requirements and acceptable levels of performance to avoid contract and payment disputes.
- 6.3 The P3IT shall assess the implications of non-performance or financial default, and ensure that remedies are provided in the contract.
 - 6.3.1 The P3IT will take steps to minimize these risks, and have contingency plans in place.
- 6.4 The P3IT will maintain consistent and comprehensive communication with the general public, GNWT staff and the private partner.