Municipal Public-Private Partnerships

Introduction

The Project Development Facility (PDF) is a single-function trading entity, created within National Treasury in accordance with the Public Finance Management Act (PFMA). Its purpose is for paying moneys for services rendered by consultants (transaction advisors) in accordance with the terms of the contract between a department or public entity to which the PFMA applies, and the transaction advisor. When appropriate, disbursed funds are then recovered from the successful private party bidder at the financial close of a Public Private Partnership (PPP) that has operated under the PFMA or section 120 of the Municipal Finance Management Act.

With effect from April 2006, the PDF has expanded to provide grant funding to municipalities for the purpose of paying moneys for services rendered by transaction advisors for the development of Municipal Service Partnerships to which the Municipal Finance Management Act (MFMA) and Municipal Systems Act (MSA) apply. This is to ensure continuity of support to municipalities that was previously provided by the Municipal Infrastructure Investment Unit whose term came to an end on 31 March 2006.

The PDF will perform this task in collaboration with the Department of Provincial and Local Government's Municipal Service Partnerships Unit. Its role is to facilitate partnership arrangements at municipal level, monitor implementation of the growth and development summit agreements and establish a framework for municipal investment. This is in accordance with the MFMA requirements for national government to provide support to municipalities in relation to improved service delivery.

The scope of assistance that the PDF can provide to municipalities is quite broad. It will consider applications for funding for the preparation of feasibility studies and procurement of service providers as prescribed in MSA Section 78 (Service Delivery Options and Municipal Service Partnerships), MFMA Section 120 (Public Private Partnerships), and MFMA Section 84 (Municipal Entities).

In certain cases where a municipality does not have the internal capacity to manage a PPP process and appoint a project officer with suitable qualifications, the PDF will consider funding the costs of procuring a project officer who is responsible for managing the PPP process.

Criteria for funding

Funding by the PDF will only be considered if the following requirements are met:

1. The project is registered with the National Treasury PPP Unit in terms of the MFMA. This requirement applies to municipalities who have completed an assessment of an internal mechanism (MSA S78 (1)) for a municipal service and are about to explore external options (MSA S78 (3) as well as for municipalities who are about to prepare a PPP feasibility study for a municipal function (MFMA S120).

2. Prior to notifying National Treasury's PPP Unit, the municipality must appoint a project officer with the appropriate skills and experience. The municipality making the application must be able to positively demonstrate its internal capacity and ability to manage the PPP process. If such capacity does not exist, the municipality must make available the required capacity. The PDF will consider providing assistance.

3. The funding is required for the payment of transaction advisors appointed by the municipality as prescribed in Section 120 of the MFMA. The first phase is the preparation of the feasibility study and its subsequent council approval, and the second phase is the procurement of the PPP in compliance with Municipal Public Private Partnership Regulations (MPPPR).

4. The PDF will recover its funds disbursed, either in part or in full, as a success fee payable by the successful bidder at the financial close of the PPP. The risk of the project not reaching financial close is taken by the PDF in all cases other than institutional default.

If any of the requirements are not met or are not acceptable to an institution seeking funding, then application should be made as a special case.

The PDF application and funding processes are designed to co-ordinate fully with the PPP project cycles for MFMA-regulated institutions. (See Annexure A.)

Applying for funding

The process described below allows for three opportunities for applying for funding of a project by the PDF. The two most common opportunities are applications for pre-TVR:1 approval to fund the preparation of the feasibility study and post-TVR:1 approval to fund the procurement of the private party.

1. Pre-TVR:1 application
2. Post-TVR:1 application
3. Grant funding applications

In all cases, application must be made for projects as standalone projects, regardless of whether projects have been grouped under single transaction advisors for cost-saving purposes.

1. Pre-TVR: 1 applications

Accounting officers are responsible for budgeting for both phases of transaction advisor costs within a PPP. In order to give accounting officers more certainty in relation to securing PDF funding, the first opportunity for funding applications comes immediately after the institution has selected the transaction advisor. At this stage, the costs of the transaction advisor are known. The benefits of a Pre-TVR:1 application include avoiding time delays in getting funding approval between TVR:1 and procurement (TVR:II(a) and (b)).

The process has the following distinct stages:

1. The accounting officer of the municipality applies for funding from the PDF.

   The application must, as a minimum, set out the:

   1.1 Name and status of the applying municipality

1.2 A brief summary of PPPs or other projects undertaken by the municipality to date
1.3 Amount of funding sought
1.4 Strategic goals of the municipality to be achieved by the project
1.5 Full details of the project
1.6 Funding commitment by the municipality to the project procurement and transaction advisor costs
1.7 Availability of funds (on budget and from donor sources) to the municipality for use in project procurement and transaction advisor costs
1.8 Estimated value of the project in terms of capital expenditure and operational expenditure
1.9 Service delivery outcomes and improvements on the current outcomes expected from the project
1.10 Municipal capacity to manage the project in procurement and during operations
1.11 Envisaged ability of the project to leverage private sector investment
1.12 Other relevant information

If the Municipality has procured the services of a Transaction Advisor, the following information should also be provided:

1.13 Details of the transaction advisory consortium, including the municipality's assessment of its capacity to procure a successful PPP
1.14 Project timelines and projected cash flow for payment of transaction advisors for both phases.

2. The above information is used by the PDF in evaluating the application. The evaluation procedures are set out below.

3. Applications are received and acknowledged by the PDF.

   The first evaluation of the application is carried out by the PPP Unit or Municipal Service Partnership Unit member assigned to the project with input from the responsible programme officer and/or a provincial treasury representative and/or a member of National Treasury's intergovernmental relations branch. A recommendation is made to the PDF evaluation committee, which includes an assessment of the extent to which the PDF selection criteria has been met. The recommendation must be lodged with the PDF within two weeks of receipt of the application.

4. The PDF evaluation committee sits within one week of receiving the recommendation and takes a decision on the funding.

5. Possible decisions may include unconditional funding approval, approval subject to certain conditions or no funding.

6. Pre-TVR:1 application conditions will include getting TVR:1 and including the PDF funding as project expenses in the feasibility study. The conditions may also include joint funding of phase 2 costs by the municipality, confirmation of project details prior to commitment of funding and an assessment of the affordability and value for money implications of recovering procurement costs as a success fee from the project.

7. The PDF informs the accounting officer in writing of the decision.

8. A contract including all funding conditions will be prepared and signed by the head of the PPP Unit and the accounting officer

9. Once the municipality has got TVR:1, the accounting officer must confirm in writing that all conditions have been met.

10. The PDF takes over the funding of the transaction advisor, either in part or in full, depending on funding conditions.

11. If all the conditions have not been met, the accounting officer may, if applicable, apply for special case funding.

2. Post-TVR:1 applications

It is envisaged that in these cases, the project for which application for funding is to be made has followed the local government MPPPR and best practice, and meets the criteria for TVR1. In addition, the feasibility of recovering procurement costs as a success fee from the project will have been assessed in terms of affordability and value for money of the project.

The following steps apply:

1. The accounting officer of the institution applies for funding from the PDF.

   The application must set out the:

   1.1 Name and status of the applying municipality
   1.2 Details of the transaction advisory consortium, including the municipality's assessment of its capacity to procure a successful PPP
   1.3 A copy of the terms of appointment (including a service level agreement) of the transaction advisor
   1.4 A copy of the feasibility study and subsequent council approval
   1.5 Amount of funding sought
   1.6 Confirmation that the recovery of a success fee in the amount of funding sought from the PDF has been analysed in the feasibility study and does not make the project unaffordable or unduly reduce the value for money determined for the project
   1.7 Availability of funds (on budget and from donor sources) to the municipality for use in project procurement and transaction advisor costs
   1.8 Municipal capacity to manage the project in procurement and during operations
   1.9 Project timelines and projected cash flow for payment of transaction advisors for the procurement phase.

2. The above information is used by the PDF in evaluating the application. The evaluation procedures are set out below.

3. Applications are received and acknowledged by the PDF.

4. The first evaluation of the application is carried out by the PPP Unit or MSP Unit member assigned to the project with input from the responsible programme officer and/or a provincial treasury representative and/or a member of National Treasury's intergovernmental relations branch. A recommendation is made to the PDF evaluation committee, which includes an assessment of the extent to which the PDF selection criteria have been met. The recommendation must be lodged with the PDF within two weeks of receipt of the application.

5. The PDF evaluation committee sits within one week of receiving the recommendation and takes a decision on the funding.

6. The possible decisions may include unconditional funding approval, approval subject to certain conditions or no funding. The conditions may also include joint funding of phase 2 costs by the institution and requirements in relation to the municipality's capacity to procure the project.

7. The PDF informs the accounting officer in writing of the decision.

8. A contract including all funding conditions will be prepared and signed by the head of the PPP Unit and the accounting officer.

9. The municipality confirms the achievement of phase 2 milestones negotiated in funding agreement

10. The PDF releases the payment to the transaction advisor in accordance with the signed funding agreement.

3. Grant funding applications

This category of application is created to cater for Section 78(1) assessments in terms of the MSA, Section 33 and Section 84 assessments in terms of the MFMA, and also to allow for projects with special circumstances arising from:

- an inability of the project to recover procurement costs, and/or
- a need to cover Transaction Advisor costs prior to TVR:1, and/or
- a need to hire an external project officer for the project.

Grant funding applications can be made in the same way as pre or post TVR:1 applications.

Evaluation criteria

The funding decision, including conditions precedent to funding, will be made based on the outcomes of an assessment of the municipality, the sector, the project, and PDF funding (in the context of priority, risk and available cash flow). Some of the key evaluation criteria are as follows:

a) Institution / Municipality

- Are the strategic goals of the Institution / Municipality achieved by the project?
- Has the Institution / Municipality made a funding commitment to the project procurement and Transaction Advisor costs?
- Has the Institution / Municipality appointed a suitably experienced and qualified project officer?
- Has council committed itself to alternative service options and possible recommendations of the feasibility study?

b) Sector

- Is it in a defined priority sector for the PDF as may be prioritised from time to time or a priority sector for donor support (if donor funded)?
- Is it a PPP in a new sector?
- What is the history of PPP procurement of similar projects in the sector?

c) Project

- Is it a registered project under the MPPPR?

- Has the Transaction Advisor been selected in accordance with Treasury Guidelines / municipal supply chain regulations?
- Are the milestones for Transaction Advisor payment such that the Transaction Advisor is at risk for not reaching financial closure?
- Are the Transaction Advisor costs proportional to project value? (Sector specific)
- What is the ability for the project to :
- Generate private sector capital investment?
- Generate system improvements in non capital investment projects?
- What capacity and appetite exists in the private sector to participate in the project?

Further Information and Submission of Applications

For further information on Municipal Public Private Partnerships please contact: Mr. Tumi Moleke, Coordinator, Municipal Desk, Public Private Partnership Tel: 012 315 5981 Fax: 012 315 5132, Email: Tumi.Moleke@treasury.gov.za

Address all applications to: Mr. William Dachs, Head Public Private Partnership, Private Bag x115, Pretoria 0001, Fax: 012 315 5132

Contact

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Annexure A

PPP PROJECT LIFE CYCLE

Reflecting Municipal Public Private Partnership Regulations of the Municipal Finance Management Act, Act 56 0f 2003 and the Municipal Systems Amendment Act, Act No 44, 2003

NATIONAL TREASURY

PPP unit

PPP UNIT TECHNICAL ASSISTANCE

PROJECT PREPARATION PERIOD

PRELIMINARY FEASIBILITY STUDY

* Review and decide on mechanism to provide a municipal service
* Assess service provision through internal mechanism
* Decide to explore external mechanism
* Appoint a Project Officer
* *Notify National Treasury and relevant Provincial Treasury*
* Appointment of a Transaction Advisor
* Notify local community

Milestone 1

FEASIBILITY STUDY

* Assess the different options
* Conduct a feasibility study
* Set meeting date where Council to take "in principle" decision
* 60 days prior to meeting, make public particulars of feasibility study and invite comment
* *Solicit views and recommendations of National Treasury, DPLG, Sectoral Department*
* Decide "in principle"

Milestone 2 — Treasury Views and Recommendations 1: **Demonstrating affordability**

PROCUREMENT

* Prepare fair, equitable, transparent, competitive procurement per Chapter 11 of the MFMA
* *Solicit views and recommendations of National Treasury and relevant Provincial Treasury on bid documents, including draft PPP agreement, 30 days prior to issue of bids*
* Issue requests for proposals with draft PPP agreement
* Receive bids
* Compare bids with feasibility study and each other
* *30 days prior to award, solicit views of National Treasury and the relevant Provincial Treasury on the bid evaluation and preferred bidder*
* Negotiate with the preferred bidder
* Finalise PPP arrangement
* 60 days prior to signing, make PPP agreement public, and invite public comment
* Prior to signing,
  - *solicit views and recommendations on proposed terms and conditions, contract management plan and preferred bidder's competency and capacity*
  - solicit views and recommendations of relevant Provincial Treasury, DPLG and any prescribed Sectoral Departments
* Municipal Council passes resolution authorising execution of PPP Agreement
* Accounting Officer of Municipality signs PPP Agreement

Milestone 3 — Treasury Views and Recommendations 2(a): **Demonstrating value-for-money and views on bid documentation**

Milestone 4 — Treasury Views and Recommendations 2(b): **Views on evaluation of preferred bidder**

Milestone 5 — Treasury Views and Recommendations 3: **Views on proposed terms and conditions**

Milestone 6

PROJECT TERM

PPP AGREEMENT MANAGEMENT

* Accounting Officer responsible for PPP Agreement management