**PUBLIC-PRIVATE PARTNERSHIPS**

**STUDY GUIDE**

**Regulations, Manuals, ACT**

**South African PPP Regulations: A Study Guide**

**Short Answer Questions**

1. **What are the three strict tests that South African PPPs governed by Treasury Regulation 16 are subjected to?**
2. **Explain the difference between Treasury Approval I (TA: I), Treasury Approval IIA (TA: IIA), and Treasury Approval III (TA: III).**
3. **What is the purpose of the Code of Good Practice for BEE in PPPs (Module 2)?**
4. **What is a "Public Sector Comparator" (PSC), and why is it important in PPP feasibility studies?**
5. **What does the National Treasury use the preferred inflation index in PPP agreements? Explain the reasoning behind this preference.**
6. **Why is a comprehensive risk allocation matrix crucial in a PPP agreement?**
7. **Outline the key responsibilities of a Transaction Advisor in the PPP process.**
8. **What are some of the key considerations during the PPP procurement phase?**
9. **Explain the role of the Auditor-General in overseeing PPP projects.**
10. **What are some of the priority areas for municipal PPPs in South Africa?**

**Short Answer Question Key**

1. The three strict tests are affordability (can the institution afford the deal?), value-for-money, and substantial risk transfer to the private party.
2. TA: I signify approval of the feasibility study, enabling the institution to proceed to procurement. TA: IIA approves the procurement documents, including the draft PPP agreement, while TA: III approves the final PPP agreement, allowing contract signing.
3. Module 2 sets guidelines to ensure Broad-Based Black Economic Empowerment (BBBEE) within PPP projects, promoting equitable participation and socio-economic development.
4. The PSC is a financial model that compares the cost of the public sector delivering the service itself against the cost of the PPP. It's crucial for demonstrating the PPP's value-for-money proposition.
5. The National Treasury prefers CPIX (Consumer Price Index excluding mortgage interest rates) due to its alignment with government inflation targets and its ease of monitoring compared to other indices.
6. A risk matrix clearly defines which party (public or private) bears responsibility for specific risks, fostering transparency, accountability, and effective risk management within the PPP.
7. A Transaction Advisor provides expert advice and assistance to the public institution throughout the PPP process, including feasibility studies, procurement, and negotiation of the PPP agreement.
8. Key considerations include ensuring a fair, equitable, transparent, and competitive procurement process, complying with relevant legislation, and selecting a bidder offering the best value-for-money solution.
9. The Auditor-General audits PPP projects to ensure compliance with the PFMA and assess the financial and performance aspects, upholding accountability and transparency.
10. Municipal PPPs prioritise areas like water infrastructure (desalination, wastewater treatment) where private sector expertise and financing can significantly contribute to service delivery.

**Glossary of Key Terms**

* **BBBEE (Broad-Based Black Economic Empowerment):** A South African government policy aiming to increase black ownership and participation in the economy.
* **Bid Evaluation Panel:** A committee responsible for assessing and scoring bids submitted by potential private partners in a PPP procurement process.
* **CPIX (Consumer Price Index excluding mortgage interest rates):** The preferred inflation index used by the National Treasury in PPP agreements.
* **Feasibility Study:** A detailed analysis examining the viability and value-for-money of a proposed PPP project.
* **PFMA (Public Finance Management Act, 1999):** South African legislation governing the management of public finances, including regulations for PPPs.
* **PPP (Public-Private Partnership):** A long-term contractual agreement between a public institution and a private party for the delivery of public infrastructure or services.
* **PSC (Public Sector Comparator):** A financial model used in feasibility studies to compare the cost of a public sector providing a service itself versus a PPP model.
* **RfBAFO (Request for Best and Final Offer) is a** stage in the PPP procurement process where shortlisted bidders are invited to submit their final and most competitive offers.
* **RFP (Request for Proposals):** A document outlining the requirements and scope of a PPP project, inviting private parties to submit detailed proposals.
* **RFQ (Request for Qualifications):** This is a document used to pre-qualify potential bidders based on their experience, expertise, and financial capacity.
* **Risk Allocation Matrix:** A table outlining which party (public or private) bears responsibility for specific risks identified in a PPP project.
* **TA: I (Treasury Approval I):** The National Treasury approved a PPP feasibility study, allowing the project to proceed to the procurement phase.
* **TA: IIA (Treasury Approval IIA):** This is approval for the PPP procurement documentation, including the draft PPP agreement.
* **TA: IIB (Treasury Approval IIB):** Approval for the value-for-money report and selection of the preferred bidder.
* **TA: III (Treasury Approval III):** This is approval for the final PPP agreement, allowing the public institution and private party to sign the contract.
* **Transaction Advisor:** An expert appointed by the public institution to provide advice and support throughout the PPP process.
* **Value-for-Money:** A key principle in PPPs, ensuring that the project delivers the best possible outcome for the public sector at an optimal cost.

**South African National Treasury's Public-Private Partnership (PPP) Manual.**

It details Treasury Regulation 16, the legal framework governing PPPs for national and provincial governments, providing an annotated version of the regulation and answering frequently asked questions. The module also outlines the PPP project cycle, including stages requiring treasury approvals, and explains the process for seeking exemptions from these approvals. It emphasises the three key tests for PPP viability: affordability, value for money, and substantial risk transfer to the private party. Finally, the document clarifies which governmental entities are subject to the regulation and explicitly defines what constitutes a PPP.

**Public-private partnerships (PPPs) offer several advantages over traditional public-sector procurement mechanisms for the South African Government. The sources highlight the following key benefits:**

**Leveraging Private Sector Expertise and Efficiency:**

PPPs allow the public sector to tap into the private sector's specialised skills, innovative technologies, and efficient management practices. This can lead to:

* **Improved service quality:** Private sector partners often bring a focus on customer satisfaction and service excellence, leading to enhanced outcomes for citizens.
* **Faster project delivery:** Private sector companies are often more agile and responsive, enabling faster project completion and reducing delays associated with traditional procurement processes.
* **Reduced lifecycle costs:** By transferring risks and responsibilities to the private sector, the public sector can achieve lower overall project costs, including construction, operation, and maintenance.

**Risk Transfer and Allocation:**

PPPs enable the public sector to transfer substantial financial, technical, and operational risks to the private partner, who is often better equipped to manage them. This can lead to:

* **Reduced financial burden on government:** By sharing risks with the private sector, the government can alleviate pressure on public budgets and allocate resources to other priority areas.
* **Improved risk management:** Private sector partners often possess greater expertise and experience in assessing and mitigating risks associated with complex infrastructure projects.

**Accessing Private Finance:**

PPPs allow the public sector to leverage private capital for infrastructure development, reducing reliance on public funding and freeing up government resources. This is particularly beneficial in contexts where:

* **Public funding is limited:** PPPs provide an alternative funding source for essential infrastructure projects, especially when government budgets are constrained.
* **Debt capacity is limited:** PPPs can help governments undertake large-scale infrastructure projects without incurring additional public debt, preserving fiscal sustainability.

**Alignment with Public Finance Management Principles:**

PPPs align with the principles of the Public Finance Management Act (PFMA) by promoting:

* **Targeted public spending:** PPPs focus on achieving specific outputs and outcomes, ensuring efficient use of public funds and accountability for results.
* **Value for money:** The rigorous evaluation and approval processes embedded in the PPP framework prioritise value for money, ensuring that projects deliver optimal benefits for the public sector.

**Promoting Black Economic Empowerment (BBBEE ):**

The South African PPP framework includes provisions to promote BBBEE through private-sector partnerships. This can lead to:

* **Increased black ownership and management participation:** PPPs provide opportunities for black-owned businesses and professionals to participate in large-scale infrastructure projects.
* **Job creation and skills development:** PPP projects often create employment opportunities and contribute to skills development within local communities.

In contrast, traditional public sector procurement methods often involve:

* **Full responsibility and risk borne by the public sector:** This can lead to budget overruns, project delays, and lower service quality due to limitations in public sector capacity and expertise.
* **Limited access to private sector innovation:** Traditional procurement processes may not effectively leverage the private sector's innovative solutions and efficient management practices.
* **Higher reliance on public funding:** This can strain government budgets and limit the scope of infrastructure development, particularly during economic constraints.

While PPPs offer several benefits over traditional procurement methods, it's important to note that they are not a one-size-fits-all solution. Careful consideration and robust feasibility studies are crucial to determine whether a PPP is the most appropriate procurement approach for a specific project.

The PPP project cycle in South Africa, as defined by Treasury Regulation 16, is a structured process that guides the development and implementation of PPP projects. It consists of **six distinct phases**:



* **Inception**: This initial phase involves identifying a potential PPP project and registering it with the relevant treasury. A project officer and, if required, a transaction advisor are appointed to manage and provide expertise for the project.
* **Feasibility Study**: This crucial phase involves a comprehensive assessment of the project's viability. It includes evaluating strategic and operational benefits, defining the institutional function or state property involved, demonstrating affordability, outlining risk allocation, showcasing value for money, and confirming the institution's capacity to manage the PPP. The relevant treasury must approve the feasibility study before moving to the next phase (**Treasury Approval I**).
* **Procurement**: This phase focuses on selecting the private party partner. The procurement process must be fair, equitable, transparent, competitive, and cost-effective, with considerations for Black Economic Empowerment (BBBEE ). The procurement documentation, including the draft PPP agreement, needs approval from the relevant treasury (**Treasury Approval IIA**). After evaluating bids, the institution submits a report to the treasury demonstrating the application of affordability, value for money, and risk transfer criteria and receives approval for the preferred bidder (**Treasury Approval IIB**).
* **Development**: This phase involves finalising the PPP agreement and securing financing for the project. The relevant treasury must approve the final PPP agreement and management plan before the contract is signed (**Treasury Approval III**).
* **Delivery**: This phase encompasses the construction and operational phases of the project. The institution's accounting officer or accounting authority is responsible for ensuring the PPP agreement is implemented, managed, enforced, monitored, and reported on effectively.
* **Exit**: This final phase involves terminating or transferring the PPP agreement upon the completion of the project term.

This structured project cycle, with its emphasis on treasury approvals at critical junctures, ensures that PPP projects align with government policies, demonstrate value for money, and maintain fiscal responsibility. However, as highlighted in our previous discussions, challenges remain within this framework, particularly concerning lengthy approval processes and the need for enhanced institutional capacity.

***The core legal foundation for national and provincial government Public-Private Partnerships (PPPs) in South Africa is Treasury Regulation 16, issued under the Public Finance Management Act of 1999 (PFMA). This regulation:***

* **Defines PPPs:** It clearly outlines what constitutes a PPP, ensuring a common understanding among all parties involved.
* **Establishes the PPP project lifecycle:** This structured approach ensures a systematic and transparent process from project inception to completion.
* **The National Treasury mandates approval stages:** These checkpoints guarantee alignment with government policy and fiscal responsibility throughout the project.

However, it's important to note that **municipal PPPs are governed separately** under the Municipal Systems Act of 2000 and the Municipal Finance Management Act of 2003. Municipalities are not subject to the PFMA or Treasury Regulation 16, which can lead to inconsistencies and challenges in implementation across different spheres of government.

This framework, while comprehensive, has faced various challenges and shortcomings, as discussed in our previous conversation. These challenges highlight the need for continuous review and improvement of the regulatory framework to ensure it remains effective in facilitating successful and beneficial PPPs in South Africa.

**Challenges and shortcomings within the South African Public-Private Partnership (PPP) framework**

**Inadequate Institutional Arrangements**

* There is a **lack of a dedicated and capacitated PPP regulator** and unclear guidelines, leading to uncertainty and potentially deterring private sector involvement.
* The **private sector's capacity has dwindled due to affordability concerns** stemming from consistent cuts to baselines and policy uncertainty, particularly in sectors like transport and water, which rely heavily on user charges.
* There is a **lack of clarity on the treatment of unsolicited proposals**, creating ambiguity and discouraging private sector participation.

**Complex Approval Processes**

* The current PPP framework involves a **four-step approval process by the National Treasury**, which can be **time-consuming**.
* **Multiple and time-consuming approvals** required for projects hinder efficiency and deter private-sector engagement.
* The **feasibility study process is lengthy, rigid, and costly**, with some projects proving unfeasible after the process has BBBEE n completed, leading to wasted resources.

**Weak Contract Management**

* **Poor contract management practices**, including a lack of sector focus and a customised approach for key sectors, contribute to delays and inefficiencies.

**Limited Financing Support**

* There is a **lack of a robust financing support mechanism framework** for PPPs that depend on user charges. This is particularly problematic in sectors like transport and water, where pricing policies are uncertain.

**Municipal-Specific Challenges**

* **Deteriorating municipal finances, a loss of technical and management skills, and reduced infrastructure maintenance** present significant obstacles for municipal PPPs.

These challenges need to be addressed to revitalise the South African PPP framework and unlock its potential for infrastructure development and service delivery improvement.

Recommendations aimed at revitalising the South African PPP framework and addressing its identified shortcomings. These recommendations focus on several key areas:

**Establishing a Dedicated PPP Unit**

* It is crucial to establish a full-time, capacitated PPP regulatory unit. This unit should have a clear mandate, **operating guidelines**, and a **centralised approach to project identification and screening**.
* This dedicated unit can provide **consistent guidance and support to procuring institutions**, ensuring adherence to best practices and facilitating smoother project implementation.
* Having a **centralised body** responsible for PPPs can also streamline communication and coordination, reducing bureaucratic hurdles and **improving efficiency**.
* It is also recommended to **introduce a PPP champion at a senior institutional level** to drive PPP projects and address challenges proactively.

**Streamlining Approval Processes**

* **Clear timeframes** for each stage of the approval process should be established and communicated to all stakeholders. This will enhance predictability and encourage private-sector participation.
* **Guidance on unsolicited proposals**, clarifying the procedures for submission, evaluation, and approval, needs to be provided. This can unlock potential private sector innovation and address infrastructure needs more efficiently.
* **Exempting low-value projects** (R1 billion and below) from the lengthy four-stage approval process could significantly expedite implementation.
* The feasibility study process could be made **more flexible and adaptable** to specific project needs. This could involve a tiered approach, where the depth of the feasibility study is commensurate with the project's complexity and value.
* **Exploring alternative procurement methods** based on project complexity could improve efficiency. For instance, smaller, less complex projects may not require the same level of scrutiny as large-scale infrastructure projects.

**Developing a Financing Support Mechanism**

* A **framework to assist PPP projects reliant on user charges** is crucial, especially in sectors like transport and water. This could involve mechanisms to mitigate revenue risk and provide greater certainty to investors.
* This support mechanism could include **guarantees, subsidies, or other forms of risk-sharing arrangements** to enhance the bankability of PPP projects in sectors facing policy uncertainty regarding pricing.
* A **well-defined financing support mechanism** would attract more private sector investment, particularly in sectors with significant infrastructure needs but limited affordability.

**Enhancing Contract Management**

* Developing **standardised contract management templates and mandatory exit management plans** can ensure consistency and reduce the risk of disputes and costly delays.
* Engaging **transaction advisors throughout the project cycle** can provide valuable expertise and support, particularly during the critical phases of procurement, development, and delivery.
* **Building capacity within procuring institutions** through training and knowledge sharing can enhance their ability to manage PPP contracts effectively.
* **Focusing on sector-specific contract management practices** can address the unique challenges and risks inherent in different sectors, such as healthcare, transportation, and energy.
* It is also crucial to **clarify the roles of different entities in managing fiscal commitments and contingent liabilities** associated with PPPs.

**Empowering Municipalities**

* Simplifying and rationalising the **municipal PPP legal and regulatory framework** can reduce barriers to entry and encourage more projects at the local level.
* Strengthening **institutional arrangements and accountability** within municipalities is essential. This includes providing municipalities with the necessary resources, skills, and support to manage PPP projects effectively.
* **Streamlining processes outlined in the municipal PPP manual** and providing clearer guidance can improve efficiency and reduce uncertainty for potential investors.
* Rationalizing **public consultation processes**, potentially aligning them with the national framework, can ensure consistency and avoid unnecessary delays.
* Simplifying the **unsolicited proposal framework** for municipalities can incentivise private sector innovation and unlock potential solutions to local infrastructure needs.
* Addressing **municipal-specific challenges** such as deteriorating finances and skills shortages requires a multi-pronged approach. This may involve financial support from the national government, capacity-building initiatives, and knowledge-sharing platforms to promote best practices.

**Improving Risk Management and Monitoring**

* Enhancing the **National Treasury's capacity to regulate fiscal challenges related to PPPs**, including contingent liabilities, is vital.
* It is recommended that a systematic approach be implemented to manage and monitor contingent liabilities at a national level. This includes developing standardised reporting templates and guidelines to ensure consistency and transparency.
* Promoting **full disclosure of all contingent liabilities** that could impact public finances is essential for informed decision-making and accountability.
* **Proactive engagement with key stakeholders**, including procuring institutions, private sector partners, and lenders, is necessary to assess potential PPP risks and contingent liabilities. This collaborative approach can facilitate early risk identification and mitigation strategy development.

**Additional Recommendations**

* **Adjusting BBBEE requirements for PPPs** to ensure they are appropriate and achievable within specific sectors.
* **Revising the exemption clause to enable monitoring of exempt PPP projects** to maintain oversight and accountability.
* Implementing **sector-specific recommendations**, such as those developed for the municipal PPP framework, which includes simplifying consultation requirements and addressing labour consultation challenges.

By implementing these recommendations, South Africa can strengthen its PPP framework, attract greater private sector investment, and accelerate infrastructure development to improve service delivery for its citizens. These changes will contribute to a more robust, efficient, and impactful PPP environment, supporting sustainable growth and development.

**The National Treasury in South Africa employs a rigorous framework to evaluate the "value-for-money" proposition in Public-Private Partnerships (PPPs), focusing on several key criteria: cost, price, quality, quantity, and risk transfer. This framework seeks to ensure that engaging in a PPP delivers a net benefit to the public institution compared to traditional public procurement methods.**

**Engaging a Transaction Advisor**

A **Transaction Advisor** plays a critical role in a PPP project, providing expert guidance throughout the project cycle and assisting the institution in navigating the complexities of PPP regulations and procedures. The process of engaging a Transaction Advisor generally unfolds as follows:

1. **Initial Assessment:** The public institution identifies a potential PPP project and conducts a preliminary needs analysis.
2. **Registration:** The project is registered with the relevant treasury (usually the National Treasury).
3. **Appointment:** A project officer and a Transaction Advisor are appointed. The selection of the Transaction Advisor is crucial to the project's success and is typically done through an open and competitive bidding process.
4. **Defining Terms of Reference:** The institution defines the transaction advisor's scope of work and responsibilities, outlining key deliverables and performance expectations.
5. **Evaluation and Selection:** Bids from potential Transaction Advisors are evaluated based on a combination of technical expertise, BEE (Black Economic Empowerment) compliance, and price. A two-envelope system is often used to ensure a balanced assessment.
6. **Contract Negotiation:** The institution negotiates the terms of the contract with the selected Transaction Advisor, focusing on key aspects such as deliverables, payment milestones, and success fees.

**Potential Consequences of Non-Compliance**

Failing to comply with the PPP regulations outlined in Treasury Regulation 16 carries significant potential consequences for public institutions, including:

* **Legal Repercussions:** The PPP agreement might be declared invalid and non-binding by the state.
* **Financial Penalties:** The institution may face financial penalties for non-compliance with procurement processes.
* **Reputational Damage:** The institution's reputation can be negatively impacted, affecting future project partnerships.
* **Project Delays and Cost Overruns:** Delays in obtaining necessary treasury approvals and resolving compliance issues can lead to project delays and cost overruns.
* **Audit Scrutiny:** The Auditor-General has the authority to scrutinise PPP projects, and any irregularities can lead to further investigations and potential sanctions.

**Importance of Adhering to PPP Regulations**

The stringent regulations and approval processes established by the National Treasury are designed to protect public finances, ensure transparency, promote competition, and achieve the best possible value-for-money outcomes in PPP projects. Strict adherence to these regulations is essential to mitigate risks, safeguard public resources, and foster a conducive environment for successful and sustainable PPPs.

***A Transaction Advisor plays a crucial role in the success of Public-Private Partnerships (PPPs) in South Africa***. They are typically a **consortium of professional consultants** from one or more firms, bringing expertise in various disciplines, including:

* Project Finance
* Contract and administrative law
* Insurance
* PPP procurement management
* Project management
* BBBBBEE
* Technical disciplines relevant to the project sector (e.g., facilities management, IT, security, transport, tourism)

**Key Responsibilities of a Transaction Advisor:**

* Assisting and advising institutions throughout the PPP project cycle, including the preparation and conclusion of a PPP agreement
* Completing a **comprehensive feasibility study** to determine project cycle costs, affordability limits, risks, and the optimal value-for-money delivery method
* Preparing and implementing the PPP procurement process, including drafting all necessary documentation for Treasury Approvals
* Providing **PPP agreement management support** after the agreement is signed, particularly during the development phase

**Skills and Experience:**

Transaction advisors must possess the necessary **skills and experience to meet the stringent requirements of each Treasury Approval**, ensuring a successful PPP procurement process. Their expertise is viewed as an **investment, not merely an expense**.

**Appointment Process:**

Transaction advisors are appointed by an institution's accounting officer or accounting authority through an open and competitive bidding process after the project is registered with the relevant treasury. Selection criteria include technical expertise, BBBEE compliance, and price considerations.

**BBBEE Requirements:**

The BBBBBEE component of a transaction advisor bid holds significant weight in the evaluation process. :

* It constitutes **10% of the bid evaluation weighting**.
* Bidders must achieve a **minimum threshold of 60% of the total BBBEE points**.
* Failure to pass this threshold disqualifies the bid from further evaluation.

**Key Benefits of Using a Transaction Advisor:**

* Experience in similar transactions
* Protection against costly mistakes
* Access to national and international best practices
* Technical strength to the institution’s team
* Enhanced investor confidence
* Skills development opportunities for government officials
* Growth of black consultants in the South African PPP market

**Managing the Transaction Advisor:**

Institutions must effectively manage and oversee their transaction advisor throughout the engagement to maximise benefits. This includes:

* Defining clear tasks and deliverables
* Choosing the right transaction advisor
* Ensuring daily management by the project officer
* Regular project team meetings for progress updates, direction, and issue resolution

**Securing Value for Money:**

To ensure optimal value for money from the transaction advisor, institutions should:

* Mandate the project officer for direct management and decision-making
* Hire the advisor at the project's start and retain them until key milestones are achieved
* Establish precise terms of reference with clear deliverables
* Employ a fair, equitable, transparent, competitive, and cost-effective procurement process
* Design a contract that incentivises timely and high-quality delivery
* Avoid hiring additional consultants outside the transaction advisor to prevent conflicts and inefficiencies

**Funding for Transaction Advisors:**

The **Project Development Facility (PDF)** can fund a significant portion of transaction advisor costs after Treasury Approval: I. This funding is recovered from the successful private party bidder after financial closure.

**Overall, the transaction advisor acts as a vital partner to institutions undertaking PPP projects, providing the necessary expertise and support to navigate the process's complexities and ensure successful project outcomes.**

**Bid evaluation in Public-Private Partnerships (PPPs) is a multi-stage process that ensures fairness, transparency, and value for money in selecting the best private sector partner.** This process involves various levels of evaluation, each with its checks and balances, as mandated by Treasury Regulation 16 of the Public Finance Management Act (PFMA).

**Before issuing any procurement documentation**, the institution must secure **Treasury Approval: IIA** from the relevant treasury. This approval covers the procurement documentation, including the draft PPP agreement, and ensures alignment with PFMA requirements.

**Key Considerations for Managing the Bid Process**

Several critical considerations must be addressed to manage the bid process effectively and ensure a successful outcome:

* **Experienced Bid Managers:** Both the institution and the bidders should appoint experienced bid managers to oversee the process and ensure effective communication and coordination.
* **Anti-Corruption Measures:** Implement robust anti-corruption measures to maintain the integrity and fairness of the bidding process.
* **Prohibited Suppliers:** Screen bidders against a list of prohibited suppliers to prevent unethical practices.
* **Security Environment:** To safeguard confidential information and ensure a secure environment for bid submission, handling, and evaluation.
* **Clarification Meetings:** Schedule clarification meetings for bidders to seek clarification on aspects of the RFP. These meetings should be well-structured and documented to maintain transparency.
* **Bidders’ Notes:** Issue comprehensive bidders’ notes to address common queries and ensure a level playing field.
* **Changes to Consortia:** Establish clear procedures for handling changes to bidding consortia during the process.
* **Bidder Due Diligence:** Conduct thorough due diligence on bidders to verify their capabilities and financial standing.
* **Bid Validity Period:** Determine an appropriate bid validity period and ensure that bidders' commitments remain valid throughout the process.

**Bid Evaluation Levels and Processes**

The bid evaluation process comprises three distinct levels:

1. **Technical Evaluation Teams (TETs)**
2. **Evaluation Co-ordination Committee (ECC)**
3. **Project Evaluation Committee (PEC)**

**Technical Evaluation Teams (TETs):**

TETs are responsible for the initial assessment of bids, focusing on specific aspects like technical, legal, financial, and BEE compliance. Their key tasks include:

* **Preliminary Work:** TETs initially check for bid completeness (all required documents submitted) and compliance (meeting essential minimum requirements set out in the RFP).
* **Detailed Analysis:**
	+ **Technical Solution:** Evaluate the feasibility, deliverability, and innovation of the proposed technical solution.
	+ **Legal Solution:** Conduct legal due diligence on the bidding consortium and evaluate the marked-up draft PPP agreement.
	+ **Financial Solution:** Assess the affordability, funding arrangements, and financial viability of the project.
	+ **BEE:** Evaluate the bidder's BEE compliance and the extent to which the project promotes BEE objectives.
	+ **Price:** Analyse the price proposal in relation to the qualitative elements of the bid.
* **Reporting to the ECC:** Each TET prepares a comprehensive report summarising their evaluation findings and submits it to the ECC.

**Evaluation Co-ordination Committee (ECC):**

The ECC consolidates the reports from the TETs, reviews the findings, and makes recommendations for further action, including the potential need for a Best and Final Offer (BAFO) process. They play a crucial role in:

* Receiving and interrogating reports from the TETs.
* Ensuring the substantiation of each report.
* Identifying areas requiring further clarification.
* Evaluating the overall integrated solution offered by each bid.

**Project Evaluation Committee (PEC):**

The PEC has the final decision-making authority in the bid evaluation process. They receive the recommendations from the ECC and make the ultimate decision on selecting the preferred bidder. Their primary responsibilities include:

* Confirming the completeness and compliance of bids.
* Evaluating the ECC’s report and recommendations.
* Scoring the bids based on the established criteria.
* Deciding on a BAFO process if necessary.
* Selecting the preferred and reserved bidders.

**Additional Steps in Bid Evaluation**

* **Clarification:** The process allows bidders to seek clarification during the evaluation to ensure a comprehensive understanding of their proposals. However, to maintain fairness and transparency, any modifications or negotiations that alter the bids are strictly prohibited.
* **Evaluating Variant Bids:** Variant bids that offer alternative solutions are evaluated separately after assessing the compliant bids. Their evaluation considers the value-for-money impact and risk implications compared to the compliant bids and the PSC.

**Choosing the Preferred and Reserve Bidders**

Based on the comprehensive evaluation, the PEC selects a preferred bidder and one or more reserve bidders. The announcement of the preferred and reserve bidders is contingent upon obtaining **Treasury Approval: IIB** for the value-for-money report.

**Best and Final Offer (BAFO) Process**

In cases where the evaluation doesn't result in a clear preferred bidder or no bids fully meet the institution’s objectives, a BAFO process may be initiated. This process involves:

* **Informing Bidders:** The short-listed bidders are informed about the BAFO process, and those not participating are debriefed.
* **Preparing a Revised RFP (RfBAFO):** A revised RFP is prepared, incorporating specific requirements and areas where bidders need to improve their offers. Roadmaps outlining the institution's expectations are provided to each bidder.
* **Obtaining TA:IIA:** The RfBAFO documentation needs approval from the relevant treasury.
* **Distributing the RfBAFO:** The revised RFP and roadmaps are distributed to participating bidders.
* **Further Clarification:** Bidders can seek further clarification on the RfBAFO.
* **Bidders Respond:** Bidders submit their revised proposals in response to the RfBAFO.
* **Evaluation and Selection:** The BAFO proposals are evaluated using the same process as the initial RFP evaluation, which leads to the selection of the preferred and reserve bidders.

**Value-for-Money Report**

Before appointing the preferred bidder, the institution must submit a value-for-money report to the relevant treasury for **Treasury Approval IIB**. This report demonstrates how the selection process adhered to affordability, value for money, and risk transfer criteria. It includes:

* Introduction: Project background, bid process details, and evaluation criteria.
* Evaluations: Summary of bid completeness, compliance, and detailed analysis findings.
* Affordability Assessment: Cost analysis of proposals and justification for the chosen solution's cost.
* Value-for-Money Assessment: Comparison of proposals with the PSC, considering risk adjustments.
* Risk Transfer Assessment: Analysis of bidders' risk matrices, particularly the preferred bidder's.
* Notes and Deficiencies: Outline of bid deficiencies and anticipated challenges in resolving them.
* BAFO Consideration: Details of the BAFO process and its impact on bid evaluation.
* Negotiation Plan: Outline the negotiation strategy and team structure.
* Conclusion: Summarizes the report's findings and recommendations.

**Negotiations**

Once **Treasury Approval: IIB** is obtained, negotiations commence with the preferred bidder. The negotiation plan, developed during the bid evaluation stage, guides this process. The goal is to finalise the PPP agreement and ensure alignment with the project's objectives and the value-for-money considerations outlined in the approval.

**Overall, bid evaluation in PPPs is a meticulous process that emphasises transparency, fairness, and value for money. The involvement of multiple evaluation teams with defined roles and responsibilities ensures a robust assessment of bidders' capabilities and proposals.** This rigorous approach ensures that the chosen private partner is best suited to deliver the project's objectives and provide optimal value for the public sector.

**A PPP Agreement is a written contract that outlines the terms of a Public-Private Partnership (PPP) between a public sector institution and a private party. It formalises the roles, responsibilities, and commitments of both parties involved in the project.**

**Key Features of a PPP Agreement:**

* **Performance of Institutional Function and/or Use of State Property:** A PPP involves a private party either performing a function typically carried out by the public sector or utilising state-owned property for commercial purposes.
* **Risk Transfer:** The private party assumes substantial financial, technical, and operational risks associated with the project.
* **Benefit to the Private Party:** In return for assuming risks and delivering the project, the private party receives a benefit. This can take the form of payments from the institution, user fees, or a combination of both.
* **Management and Enforcement:** The accounting officer or accounting authority of the institution is responsible for ensuring the proper implementation, management, enforcement, monitoring, and reporting of the PPP agreement. They must establish mechanisms and procedures approved by the relevant treasury for various aspects, including:
	+ measuring project outputs.
	+ monitoring implementation and performance.
	+ liaising with the private party.
	+ resolving disputes.
	+ overseeing day-to-day management.
	+ reporting on the agreement in the institution's annual report.

**Standardised PPP Provisions:**

To ensure consistency and mitigate risks, South Africa utilises **Standardized PPP Provisions**. These provisions serve as a template for drafting PPP agreements and aim to create a balanced risk profile, typically for limited recourse projects with unitary payments from the institution to the private party.

**Deviations from Standardized Provisions:**

Deviations from the standardised provisions are permissible only if the institution can demonstrate to the relevant treasury that alternative provisions offer better value for money.

**Drafting the PPP Agreement:**

Drafting the PPP agreement is an iterative process involving various stakeholders, including the institution, the transaction advisor, and the relevant treasury.

* **Initial Draft:** The transaction advisor typically prepares the initial draft PPP agreement based on the Standardized PPP Provisions.
* **Consultation and Refinement:** This draft undergoes several rounds of consultation and refinement involving the institution and the relevant treasury, ensuring alignment with project objectives and regulatory requirements.
* **Finalization during Negotiations:** The PPP agreement is finalised during the negotiation stage with the preferred bidder. This stage focuses on fine-tuning the terms and conditions to reflect the negotiated outcomes.

**Treasury Approvals:**

The relevant treasury plays a critical role in reviewing and approving the PPP agreement at various stages:

* **Treasury Approval: IIA (TA: IIA):** This approval covers the procurement documentation, including the draft PPP agreement, before initiating the procurement process.
* **Treasury Approval: III (TA: III):** Before signing the final agreement, the institution must obtain TA: III, which covers:
	+ confirmation that the agreement meets affordability, value-for-money, and risk transfer criteria.
	+ approval of the PPP agreement management plan, demonstrating the institution's capacity to manage the agreement effectively.
	+ verification of satisfactory legal and due diligence, ensuring the competence of both parties to agree.

**Managing the PPP Agreement:**

**Effective management of the PPP agreement is crucial for the project's success.** It involves various activities, including:

* **Partnership Management:** Building a strong working relationship between the institution and the private party is essential. This includes establishing clear communication channels, developing trust, and implementing effective dispute resolution mechanisms.
* **Service Delivery Management:** It is paramount to ensure the delivery of quality services according to the agreed-upon output specifications. This involves risk management, performance monitoring, and corrective actions when necessary.
* **Contract Administration:** It is crucial to manage administrative aspects such as agreement variations, maintain up-to-date documentation, and ensure adherence to financial procedures for smooth project execution.

The PPP agreement, together with the PPP agreement management plan, forms the foundation for the long-term partnership between the public and private sectors. It is a legally binding document that ensures accountability, transparency, and a well-defined framework for achieving project objectives and delivering public value.