

# Establishing Public-Private Partnerships: Three Tests of a Good Process

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## Abstract

*This paper examines the processes used to establish public-private partnerships. An evaluation is made of the way the public sector calls for proposals, evaluates prospective partners and selects winners of bidding processes. Frequently, the working relationship between the public and private partners is dysfunctional. It is the thesis of this paper that the process used to establish the relationship has a major role in creating a workable partnership. It will be argued that crucial to the relationship is that each party must clearly understand and accommodate the objectives of the other. With this in mind, there are three tests for evaluating the quality of any process used to establish a public-private partnership.*

## Introduction<sup>1</sup>

Following the massive global wave of privatizations throughout the 1980s, there has developed the broader phenomenon of *public-private partnerships*. Included are privatizations that continue to involve close working relationships with governments, joint-venturing between partners from each sector, and ongoing business relationships that arise from the contracting out by public sector entities to the private sector of services, construction contracts and management functions.

Frequently, the working relationship between the public and private sector partners can be difficult to establish, and dysfunctional once it has been. From the private sector's perspective, governments often have little concern for the time and cost involved in getting the business relationship started. Changes to process requirements, new selection criteria, delays in supplying important data and partisan political interference can be major irritants and can even be disincentives to joint-venturing or contracting with governments. Further, once the relationship has been established, the public sector partner is often charged with failing to grasp the centrality of the financial results of the partnership venture. However, from the public sector point of view, business partners are often highly insensitive to the political realities with which government must deal. Their expectations of time-lines are unrealistic. And, they think that the financial aspect of the partnership is the only thing that is important.

This paper is a practitioner's analysis. The thesis is that the *process* used to bring the parties together into a partnership has a major role in creating a workable partnership. It is argued that crucial to the relationship is that each party must clearly understand and accommodate the objectives and circumstances of the other. Against this backdrop, three broad tests can be used to measure the quality of a process.<sup>2</sup> The structure of the paper is this. First, the scope and nature of public-private partnerships is set out. Second, a generic four-phase public sector process is described. Third, an analysis is presented of the primary motivating drivers for public sector partners and for private sector partners. Fourth, the three tests of a good quality process are set out and discussed in the context of the analysis of differences between the parties and applied to the generic process.

## What is a Public-Private Partnership?

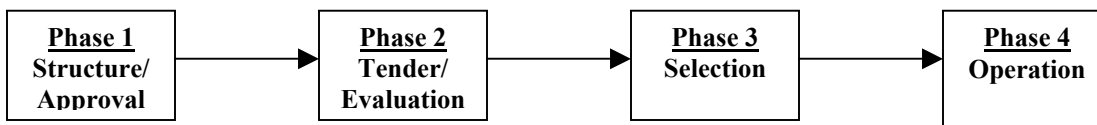
When corporations form a partnership, the nature of that relationship is typically defined by the legal agreements between them with respect to the contribution of assets, revenue sharing, tax obligations and legal liabilities. However, in common parlance today, use of the word *partnership* with respect to the establishment of public-private partnerships is much looser. A partnership can be taken to mean a wide range of business relationships between public and private entities. Typical of this would be a government contracting with a consortium of companies to design, build and operate a courthouse, hospital, penitentiary, toll road or airport. Even a government-owned business that has been privatized could still be counted as a partner. The measure of this would be the extent of the government's continuing involvement. As an example, if a toll highway has been privatized, but its former government owner continues to accept responsibility for certain functions such as police service, safety inspection, and environmental control, the relationship could still be seen as being a partnership. Since the task of this paper is primarily to evaluate the broad contours of the *relationship* between the parties, conforming to a legal or strict business definition of partnership will not be of concern. A *public-private partnership*, therefore, is taken to be any significant relationship between a public sector entity and private sector enterprise that has providing a service or product for profit as its primary objective.

For ease of discussion, public sector partners are deemed to be governments, or government owned or controlled agencies, at the federal, provincial/state or municipal level. But we should keep in mind that in practice, public sector partners can be state owned enterprises (e.g., airlines, financial institutions, postal services, national telecommunications and manufacturers), publicly funded hospitals, schools, universities, police forces, penitentiaries and public infrastructure corporations such as toll roads, bridges and ports. And private sector partners can come from virtually any industry and be represented in the partnership as corporations, subsidiaries of corporations or special purpose legal entities established for the purpose of entering into the partnership.

## A Generic Public Sector Process

When deciding to partner with a private sector entity, a government needs to establish a process to bring this about. Processes differ, of course, depending upon the nature of the business relationship that is being established. But there are certain generic phases. Since our objective is to make the case for certain quality indicators, it is helpful to set out the generic case (knowing that it would need to be modified in specific circumstances) so that our discussion of quality has a context. So, for our purposes, let us use as an example the process by which a provincial or state government might contract with a consortium of companies to design, build and operate a hospital. What steps would the government need to take in order to put the contracts in place and get the operation of the hospital in motion once construction was completed?

Figure 1



### Phase 1: Structure/Approval

The generic process can be characterized by thinking of it in four phases. In *Phase 1*, the government makes certain key decisions: those that establish the relationship itself and the operating mechanisms for the ongoing-business entity. Once these decisions are taken, they can be very difficult to amend or reverse.

In the hospital example, the government at Phase 1 needs to make a fundamental decision, namely to contract for a design/build/operate, or to construct and operate the hospital itself. If the former, it must be determined whether the government intends to provide the funding or require this from the private sector.

Further, the government needs to decide in how much detail it will provide the specifications for the hospital structure and operation. It could be very specific, or set out the services required and allow the private sector company (consortium) to supply the solution and its own recommended specifications. Finally, the government has to make a decision as to whether it will identify a consortium leader and work solely with that firm to establish the consortium and negotiate the project deals and contracts, or provide the specifications to the marketplace and tender for a partner (i.e., allow consortia to form and bid against each other).

These are among the many complex issues that the government must face before the project gets underway. It is important to note that once these decisions have been made, they have significant consequences. For example, if the government is not certain about what it really wants from the private sector in terms of specifications, it might have great difficulty in assessing the proposals from different consortia. Lack of clarity can lead to disagreements, time delays and escalating costs. This Phase is, therefore, very important.

### Phase 2: Tender/Evaluation

In *Phase 2*, the process is established, and it must set out the mechanics for selecting a partner. In complex transactions there can be many stages. For example, the government might decide to make separate approaches to the marketplace. It could start with a *request for expressions of interest (RFEI)*. Based on this it might then take a further step and ask those who responded to the RFEI, or a selected group of them, to consider a *request for qualifications (RFQ)*. Respondents determined to be qualified under this stage might then be eligible to receive a *request for proposals (RFP)*. In some transactions, these stages are separate, in others they are combined.

Other things are addressed in Phase 2 as well. If there is to be a tender process, the legal documents may be drawn up before the bidding starts. Respondents to the RFP then bid on the basis of knowing what the requirements of the relationship will be. In other cases, the final arrangements are negotiated with the winner of a tender process. As well, this stage of the process involves providing information to those who have responded to the RFEI, RFQ or RFP on the basis of which they will make their decisions. In turn, there are various procedures involved in communicating with bidders: bidder information sessions, data rooms where information is available and question and answer sessions that enable prospective bidders to refine their understanding of the government's requirements.

### Phase 3: Selection

In *Phase 3* of the process, the selection criteria are applied to the tendering (or other) process to determine who will become the private sector entity's partner. In certain situations, this can be a reasonably simple matter. For example, if three parties were bidding to supply an identical service to a government the selection might be based only on price. However, if the product or service were differentiated, then the selection could be based on the qualitative elements of the service in addition to price.

It should not be difficult to see that this stage of a process could be subject to abuse. A government that has a political interest in who is selected has an incentive to influence the outcome. In practice this is not unknown to happen. A good process is structured to deal with this, as we shall see later.

### Phase 4: Operation

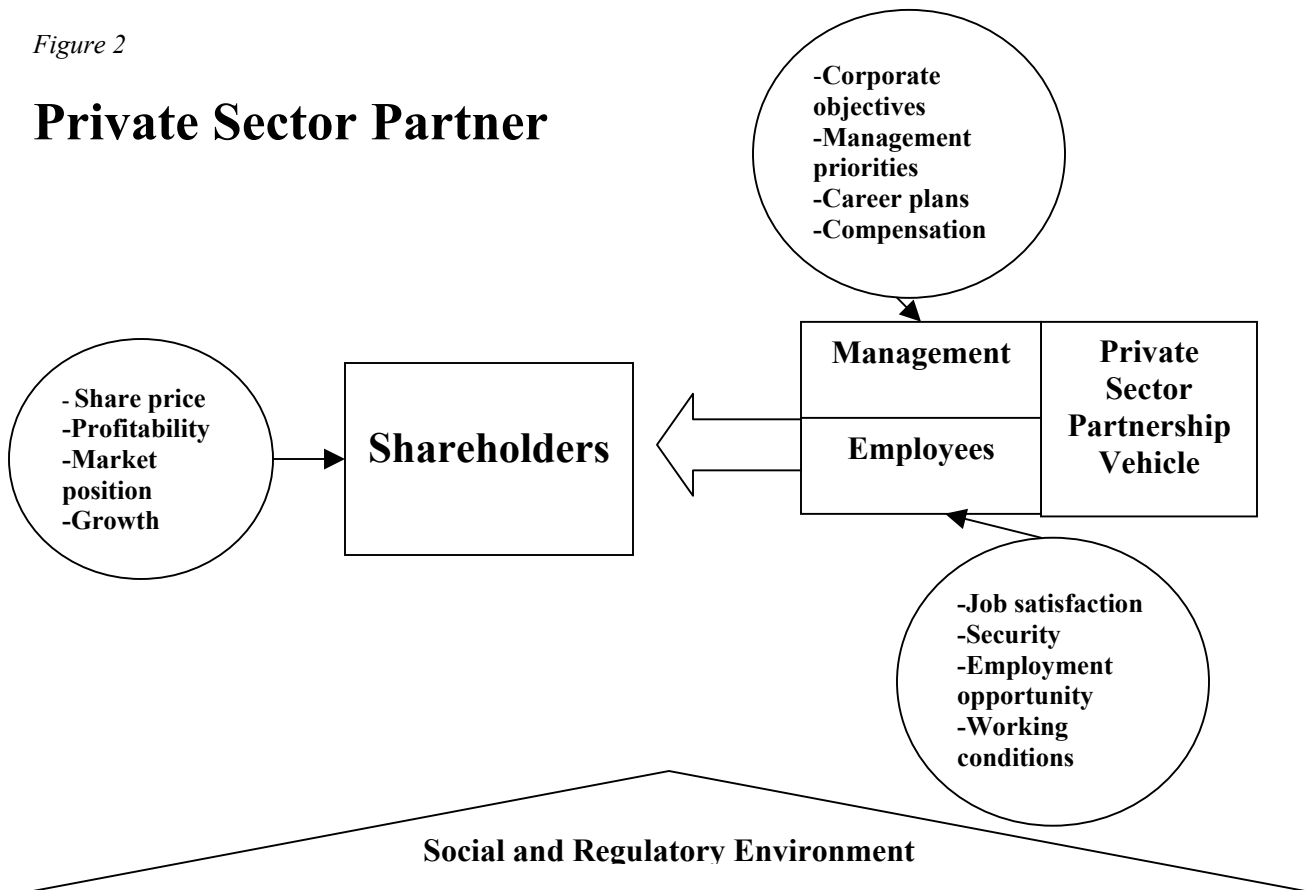
Many public-private partnership processes concentrate on the first three phases (often only Phases 2 and 3) without attending to what will guide and regulate the partnership that results. But, the partners need to be able to work together when the transactional aspect of creating the partnership is completed. So, there need to be operating procedures, dispute resolution mechanisms and ways of bringing the partnership to an end if things really are not working out. Clearly, a process that is forward-looking, one that anticipates these sorts of issues, is qualitatively superior to one that does not.

**Private and Public Sector Partners: ‘Coincident’ and ‘Divergent’ Interests**

In a somewhat schematic form, we have outlined a generic public sector process. Now we need to begin building the backdrop for our analysis of what makes a good quality process. To begin this, there is a very important point that needs to be made. A vital precondition of setting a good process in place is the need for each party to understand the goals and objectives of the other. This might seem obvious, but in practice it is not.<sup>3</sup> Any business partnership requires a mutual understanding of what others want from the relationship. But, public-private partnerships are special because fundamentally different things motivate the public sector than do the private sector. And, public sector entities are subject to external forces that are much less of concern to the private sector.

Figure 2

**Private Sector Partner**



*The Private Sector Partner and Coincident Interests.* What determines the goals and objectives of firms in the private sector? The answer to this question, clearly, is that it depends on the specific firm and on the circumstances in which the question is being asked. But, there are certain things that firms generally have in common. These commonalities, it will be shown, contrast significantly with the drivers of decision making in the public sector. And, these differences should be taken account of in designing the partnership processes.

To start with, imagine a firm contemplating entering a bid to design, build and operate the hospital we have been discussing. The company would probably bring together a consortium of companies to put forward a bid to the government. The consortium would include contractors, architects and companies that specialize in delivering the services required to operate the non-medical functions of the hospital. So, the private sector partner may itself be a partnership. Whatever the particular legal structure, the bidding company, *partnership vehicle* we will call it, would contribute certain assets and expertise to the ultimate partnership that is to be formed with government. That partnership vehicle exists within a *social and regulatory environment*, and it is subject to public expectations about social responsibility, ethical conduct, environmental preservations, workplace safety and so on. Further, the private sector entity, in the normal

course, would have *management* and *employees*, and they, in turn, would be answerable to the *shareholders* of the corporate entity.

Looking at management first, there are certain motivations that are commonly thought to drive or influence their decisions. Every case is different of course, but in generic terms, it is not too controversial to group typical motives into categories such as the alignment of decisions with overall corporate objectives, making decisions based on the priorities and the business judgments of managers themselves, taking into account the career aspirations of individual managers and giving consideration to personal compensation such as performance bonuses. The literature on management decision-making holds categories such as these to be fairly standard.<sup>4</sup>

Employees outside the management ranks can also be looked at in terms of some common motivations. With the ongoing caveat against over-generalization, considerations could include concerns about job satisfaction, employment security, opportunities for career advancement and development and quality of the working conditions. Shareholders, equally, could be said to concern themselves with such things as share price, profitability, market position, growth and aligning business risks with appropriate levels of reward.

In the imaginary company that we are envisioning as a potential bidder for the hospital contract, the management, employees and shareholders all have differing interests. Sometimes these interests collide. And, they might in our example if, for instance, management is unconcerned about the job satisfaction and working conditions of the construction workers and hospital employees. However, the business objectives of the three groups generally fit together. As we have just stated, they are all ‘commercial’ goals. And, as in any business situation, the company would have difficulty gaining and operating the contract if the objectives of the three parties were not, on balance, met. In the long run, each party has an interest in making the relationship work. They all benefit from this. It might be said, then, in a private sector organization, the parties have *coincident interests*.

This is an important point because public sector partners, as we will now see, often do not have coincident interests. Different things influence their decision-making. If the private sector partner does not fully understand this, it is easy to see how differences of opinion and conflicts that are harmful to a relationship can arise.

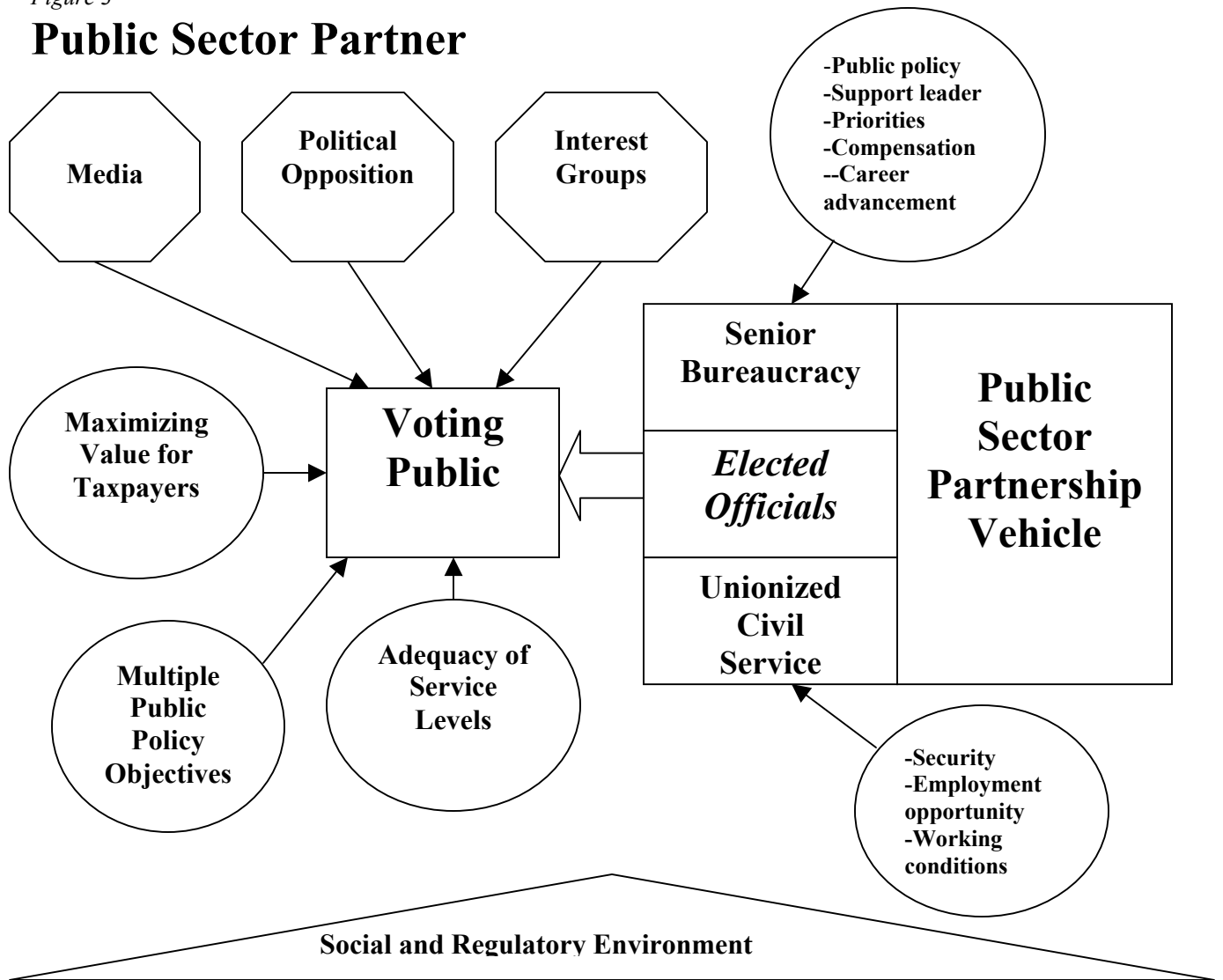
*The Public Sector Partner and Divergent Interests.* The public sector partner (in our discussion a government) operates in much the same *social and regulatory environment* as does the private sector partner. Obviously, its tax position is different, and, as government, it is able to create and change many of the regulations to which it is subject. But overall, as a business partner with the private sector, the government must meet social expectations on ethical and other issues. But the regulations concerning the environment, workplace and so on will be the same.

However, there are certain very key differences with which the public sector party must deal. To begin with, is the composition of the decision-makers. There are three key service providers, not two. The *elected officials* of government are driven by the need to make public policy and to appease the voting public. But this does not always align with the preferences and priorities of the *senior bureaucracy*. There is an extensive literature in political economy dealing with the motivations of the bureaucracy. There are two theories that I want to mention briefly.<sup>5</sup> The ‘guardian theory’<sup>6</sup> advances the notion that the bureaucrats are typically committed to the creation and implementation of sound public policy in accordance with the wishes of the electorate. Further, they are committed to supporting and protecting their political masters from harm, whatever their decisions. The second approach is called the ‘public choice theory’<sup>7</sup>. Its general tenant is that public servants are no different than their private sector counterparts in one very important respect, namely that they are likely to act on the basis of self-interest. What differentiates the bureaucracy from private sector managers is that their self-interest is less connected with productivity gains and the enhancement of shareholder value, than it is with salary increases, power and prestige as measured by the size and authority of their bureaus, and the perquisites of the job (e.g., having a large office and many support staff). Whatever the truth of the two theories, it is clear that the potential

exists for the politicians and the bureaucrats to be at odds with one another. Practice has often borne this out.

Figure 3

## Public Sector Partner



The *civil service* is constituted by the broadly ranging groups of employees who are in the hierarchy-ranking below the senior bureaucracy. As with any large and complex organization, this group contains a wide variety of different occupations from civil engineers to department receptionists. And, as mentioned above, generalizations can go too far. However, it seems reasonable to suggest that some commonalities exist, namely the desire for employment security, a desire for career opportunities and advancement, and a concern for good working conditions.

The important question, though, is, do these interests coincide with those of the senior bureaucracy? To answer this we must ascertain what, if anything, both groups share by way of overarching interests. In the case of the private sector, it is supposed that the economic well being of the organization held mutual gain for both management and employees. A coincidence of interests is present. This is less the case between the bureaucracy and the public service because, typically, financial interests have been less present. The commonly given reason for this is that the private sector must contend with the pressures of the marketplace and the bankruptcy risks that it presents. Government, however, is sheltered from the market and the pressures for efficiency and financial performance. That is, the bankruptcy costs of

government are almost nil. So, it is to be hoped that interests between the senior bureaucrats and their employees align, but the commonality of interests is less strong than in the private sector. If the guardian theory is to be believed, the commonality of interest with the civil service could potentially exist provided that the sentiments of support for good public policy and concern for the political well being of the elected representatives were shared. This is possible, but not likely. The civil servants in most governments continue to be employed no matter which government is in power. It is not especially in the interest of, say, a government financial analyst, to be concerned one way or the other about the political party in power, other than with respect to his or her own political convictions. On the other hand, if the public choice theory is what we accept, then the potential alignment of interests is even more remote. This is because the theory posits that salary, power and perquisites motivate the bureaucrat; nothing in this is particularly in the interests of the civil servants. They benefit not at all from the personal aggrandizements of the bureaucrats above.

Consider now, the situation faced by the *elected officials* – the politicians. They are answerable to the *voting public*, much as the managers of a private sector firm must account to the shareholders. However, there is a considerable difference between the interests of the public and those of shareholders. In the formation of a public-private partnership, the public to some extent wants value for money. So, in the hospital partnership example, the public no doubt would want to see cost savings result. But they would also want service levels to be high, often to exceed what is commercially viable. The public can be expected to want ample availability of hospital beds, prompt and professional attention from doctors and nurses, quick response in the emergency department, high standards of cleanliness and hygiene throughout the hospital and good quality food. But, the public often demands these things, even if they are incompatible with the economic viability of the hospital. This is much the same as we find with publicly owned power distribution. When a power line goes down, or a transformer fails, the public is anxious for power to be restored immediately. If delays are too long, the elected officials feel political heat. Similarly, in government offices if lines are long and movement slow, the public complains, even though they do not want to pay additional tax dollars to increase the staff level. The public is ambivalent. It has multiple priorities, and often its priorities are at odds. The public demands fiscal responsibility from governments, yet it wants high service levels as well. In other words, the public often wants conflicting objectives to be achieved. So, the government partner may share with its corporate counterpart a desire for creating economic value. But the politicians may place less weight on this as a priority. Voters want service, notwithstanding its cost. And, votes, not profit, matter most to politicians.

For a politician, decision-making is complex. All the public's priorities must be dealt with simultaneously. Worse, voter sentiments change over time. What is important to voters one year, is not always so the following year. For example, health and education can occupy the top priority, yet give way to budget cuts and deficit reductions at a later date. Somehow, politicians must contend with dissimilar public wants, and changes over time.

Something that influences voter preferences and causes them to change is the presence of external influence. This comes in the form of the *media* who constantly challenge government and individual politicians. Sometimes this challenge is based on a genuine desire to pursue the truth; other times it is merely the quest for an intriguing story that will sell publications. Whatever the motivation of journalists, they do impact public opinion and can cause it to shift over time. Similarly, the *political opposition* parties attack government positions. The more inept they can make the sitting government look, the greater is the advancement of their own agendas and potential for future election. Finally, there are *political interest* groups. Environmentalists and anti-globalization activists, for example, have agendas that are usually best advanced at the expense of government and which are heavily dependent upon raising public awareness and changing opinions.

Two points are clear. First, within the *public sector partnership vehicle*, the elected officials, senior bureaucrats and civil servants, do not always have the same set of interests, something that would bring them together under a common set of goals and objectives. Second, the voting public (the counterpart to the private sector shareholders) does not itself have a uniform set of preferences. In a partnership with the private sector, the public wants financial objectives to be met, but they also want public policy objectives achieved, even if they conflict with the financial objectives. Further, the public is acted upon by

external influences that press for changes in public priorities. So, for politicians, the principles on the basis of which decisions are to be made are somewhat fluid, that is, they are prone to change.

In sum, the public sector partner differs fundamentally from its private sector partner in that it has *divergent interests* rather than coincident interests. The significance of this point is that divergent interests can have a great impact on how well the partners are able to work together. The question is, can this somehow be taken account of in establishing a process? I think it can. Let us see how this would be accommodated in a good quality process.

### **Three Tests of a Good Process**

A very long list could be made of points that describe a good quality process for bringing two parties together into a partnership and ensuring that the grounds are laid to ensure a workable relationship. However, we will consider only three broad tests. No claim is being made that these are the only important tests. What is being proposed, though, is that the application of these three principles promotes and facilitates a smoothly operating partnership. Conversely, inattention to these principles increases the risk that a partnership will be dysfunctional. In this section, I want to spell out the three principles and show how they are applied to the four stages of process outlined previously.

#### Test 1: Value Added to the Partners

A good process is forward looking: it anticipates the operating relationship between the partners and sets out the procedures that will enable the business activities between them to run smoothly. Further, the process must enable the parties to understand and appreciate each other's goals, objectives and needs. In the end, to be successful a partnership must result in a relationship that adds value to each party. How, then, can we understand this in terms of the process phases discussed earlier?

At Phase 1, the public sector partner determines its objectives and establishes a set of parameters that give structure to the deal to be worked out with the private sector. In practice, the government usually takes advice from external consultants, lawyers and investment bankers. But, its determinations are made with an eye clearly directed at the multiple political constituencies it must please. The government then moves to the Phase 2 stage of the process, that is, it ushers the transaction forward into tendering process. As indicated previously, the decision-making at Phase 1 is probably the most dangerous part of the process from the perspective of establishing an enduring relationship. Recall from our analysis above, how very different the shareholder's objectives are from those of the public. The shareholders (and management and to some extent employees) want to achieve commercial objectives, but the public wants a mix of public policy and commercial objectives. Worse, there may not be strong consensus among the public about the priority of those objectives. And more problematic still, those objectives can change over time. It seems like a weak basis for a relationship from the start.

There is, however, something that can be done. Of course, the parties are not likely to change their overall orientations. The private sector will tend to have coincident interests that are grounded in commercial objectives. Governments, by contrast, cannot escape having divergent interests – something that results from the need to accommodate multiple constituencies and respond to external pressures. But, steps can be taken at least to improve the level of understanding that each party has of the other. What is difficult for the private sector partner is dealing with change; this adds a risk factor to its operations. It also frustrates a working relationship, especially if the changes are not anticipated. From the private sector perspective, then, if it understood the risk of change, by virtue of better grasping the political realities with which the government partner must contend, it could price the risk factor into its ultimate bid. Equally, the disruptive component of the relationship could be smoothed somewhat by simply knowing that such changes must be anticipated. From the public partner's vantage point, it would benefit from understanding why the private sector partner becomes frustrated by the encroachment of non-commercial influences and by changing priorities as the business operations of the partnership progress. To the extent that the private sector applies a risk adjustment factor to the financial aspect of the transaction, the government partner would at least understand why it was being done.

In terms of Phase 1 of the process, there are two recommendations. First, the process should be structured to include an opportunity for the parties to educate each other on their fundamental goals and interests. The onus falls mainly on the public sector since they establish the process and since their realm is the more complex. The mechanisms for doing this would vary with the circumstances, but the general principle is straightforward.

The second recommendation falls mainly to government as well; governments must appreciate the highly negative impact of mid-stream changes on the achievement of commercial objectives. Governments need to take the necessary steps to avoid this. It is incumbent upon them to assess the level of public and political support for the business to be entered into, and to build consensus where support is weak. This should occur before Phase 2 commences. As well, governments must be prepared to face opposition with resolve once the transaction is underway. Problems and negative attacks from certain constituencies can be anticipated, but staying focused on the task at hand and remaining committed to seeing things through are key to the satisfactory execution of the partnership transaction and to maintaining the ongoing business relationship.

### Test 2: Process Efficiency – Cost Effective in the Use of Time and Resources

During Phase 2: Tender/Evaluation and Phase 4: Operation, the different worlds of business and government are evident again. To the private sector, efficiency matters profoundly. This is not to say that, by contrast, the public sector is not efficient or is unconcerned about it. The opposite is true. For the past two decades, governments have been seeking to improve their efficiency in the delivery of services.<sup>8</sup> But, it is true, as well, that governments do not face the same pressure to be successful as is the case in the private sector. For governments, efficiency is a *management imperative*. That is, efficient operation is a measure of management quality. But, for the private sector, it is a matter of *economic survival*. Inefficient firms have difficulty controlling costs. In a competitive market, more efficient market participants achieve cost advantages, hence competitive advantages. The ultimate penalty imposed by the marketplace on inefficient firms is bankruptcy. As we said earlier, the public sector is insulated from this. So, there is less urgency to achieve the efficiencies because the cost of failure is a management-imposed penalty, not bankruptcy.

This being so, it is incumbent upon government to recognize the importance of efficiency to the private sector. When the Phase 2 bidding process is underway, efficient use of the private sector firms' time and resources is very important. To the extent that incomplete data, reports and studies are provided to bidders, costs escalate because bidders have to work with insufficient information or generate the data themselves. If questions asked by bidders are responded to slowly, the delay adds cost. And, if the process is slowed or altered because government feels the need to respond to changing political conditions as a result of pressure by the media, interest groups or the opposition, then costs similarly escalate. Equally, in the operating phase (Phase 4), if decisions and operations are not timely, the financial objectives of the private sector partner are pressured. In turn, this leads to dissatisfaction and potentially a breakdown in the business relationship.

A good process is, therefore, one that promotes the efficient use of the partner's resources both during the period of establishing the partnership through the bidding process and in the operating phase. This requires something of both partners. The private sector entity needs to be *realistic*: it must recognize that political conditions may necessitate certain delays or changes that, while inefficient, are necessary to achieving other non financial objectives. The public sector partner, on the other hand, must understand and seek to *accommodate*, the financial considerations that are basic to a private sector firm's very existence.

### Test 3: Process Integrity – Fairness

A good process needs to be *fair* to all parties. From an ethical standpoint, treating people fairly is a moral good in its own right. It is inherently worthwhile and needs no justification beyond itself. Despite this, there are also strong political and economic arguments that support the value of fairness. Politically, a government can avoid public criticism (and sometimes scandal) by staying away from patronage or other forms of granting favor to politically friendly bidders. And, on the economic front, a process that all potential participants see as being fair will attract well-qualified companies to the bidding process.

There are three principles of fairness that are appropriate to the process phases under discussion. The first is *accessibility*, and it is most germane in Phases 1 and 2. What this means is that in Phase 1, when decisions are being taken about who will be allowed to participate in the tendering process, and in Phase 2 where the tendering takes place, it is advisable to be as *inclusive* as possible. Put another way, a decision to discriminate against, or otherwise exclude, potential partners on grounds other than their ability to perform the requirements of the partnership at a price that is competitive, is potentially unfair. From an ethical standpoint we should be promoting equality of opportunity. From the public's perspective, their economic advantage is diminished to the extent that competition is restricted by arbitrary exclusion. The broadest level of accessibility, compatible with the scope of the transaction, most closely serves the fairness principle.<sup>9</sup>

The second principle is *transparency*. At Phase 2 when the rules of the tender process (or other selection process as appropriate) are being applied, it is crucial that all parties understand what is being asked of them, and on what basis they will be evaluated. This promotes an equality of treatment that would be missing if some bidders were better informed about expectations than others. The ethical argument as well as political expediency and economic value-enhancement are served by transparency. The high level of scrutiny and public accountability to which government is subject is compatible with optimization of a visible process. From a bidder's point of view, having doubts about the openness of the rule book is a disincentive to participate. And to discover that important information or process details have not been communicated is not only a discriminatory act but potentially very costly.

In practice, governments can go a long way toward achieving a transparent process and insuring that it is followed, by taking care to outline and gain political agreement to it at Phase 1. Producing a process document for review by all prospective bidders, and providing them with an opportunity to obtain clarifications, is an important element of a good process. Further, when the process is underway, it is similarly important to ensure that the agreed upon process is actually being followed. Engaging an external firm to monitor the process and to provide an audit report at the end is often a good way of doing this. It also provides political protection to governments in the face of public criticism.

The final guideline to assist in achieving process fairness is *impartiality*. Phase 3 is the stage at which a selection is made. And, it is also the point at which there is the greatest risk of political interference in the final selection of a partner. Process integrity requires that all parties be judged on the basis of their qualifications under the guidelines set out in the process. To introduce new criteria, such as political acceptability, after the process has substantially run its course is unfair.

To be sure that participants are in fact being treated impartially, it is advisable for the government to agree to the process details at Phase 1, then to permit the Phase 3 selection to be audited by a third party commissioner or auditor. The objective is not only to prevent political incursions into the selection of a winning bidder, but also to weed out interferences emanating from the interests or preferences of bureaucrats (or their advisers) who are managing the transaction process. Conflicts of interest on the part of staff members need to be identified and eliminated.<sup>10</sup> And, information beyond the team directly involved should be on a need-to-know basis.

### **Summary and Conclusion**

Good business relationships are based on having common goals, shared understandings and carefully worked out roles and responsibilities. Given our analysis of private sector coincident interests and public sector divergent interests, it appears that both the goals and understandings between the parties are likely to be misaligned from the start making a workable partnership difficult to achieve. However, there is a way to improve the likelihood of establishing a strong partnership. The commonalities of goals and understandings can be crafted if the process of partnering is designed to encourage and support each party coming to understand the needs and interests of the other. As well, the process can, and should, establish the guidelines and procedures that will constitute the ultimate working relationship.

It is against this backdrop, that a good quality process can be established. What we have said is that the process must be forward looking and be designed to promote a value-added business relationship once the partnership is operating. Further, because the establishment of the partnership can be time-consuming and very costly for the private sector entities (whether the process is one of tender or sole-sourced negotiation), efficiency is a key indicator of process quality. Finally, a good process has integrity. In this, fairness should be the guiding principle. The process should strive for accessibility by allowing as many interested parties as is feasible in the circumstances to have an opportunity to present their credentials for selection as the government's partner. Next, the process must be transparent in the sense that all parties understand the rules of play. That is, there must be no unknown procedures. Lastly, the selection of the private sector partner should be made in an impartial manner. There should be no favoritism through political or bureaucratic intervention. Candidates should be judged strictly on their merits as defined by the initial offering documents (i.e., RFEI, RFQ and RFP).

It is likely that public-private partnerships will continue to increase as a means of developing new civil infrastructure and public facilities. It is a way of sharing the costs and of bringing private sector experience and expertise into the provision of public goods. Although, in some sense, the deck almost seems to be stacked against creating functional business relationships, structuring a good process can go a long way toward getting the relationship off on the right foot and making it sustainable.

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## Endnotes

<sup>1</sup> Some of the ideas in this paper were presented from speaking notes by the author under the title "Getting the Process Right for Public-Private Partnerships", at the 9<sup>th</sup> Annual Conference of the Canadian Council for Public-Private Partnerships. Featured speaker. Toronto, Ontario, Canada, November 18, 2001.

<sup>2</sup> The author was formerly Chief Executive Officer, Privatization Secretariat, Government of Ontario, Canada. The Secretariat was involved in the establishment of many partnership processes.

<sup>3</sup> The difficulties business and government have in dealing with each other were explored in my paper "Action and Process: Why Business and Government have Difficulty Understanding Each Other", *Proceedings of the International Association of Management, 14<sup>th</sup> Annual Conference*, Vol. 14, no.1, pp.1-6, Toronto, Ont., August 2-4, 1996.

<sup>4</sup> See for example, J. N. Fry and J. P. Killing, *Strategic Analysis and Action 4<sup>th</sup> Ed.* Englewood-Cliffs, NJ: Prentice-Hall, 2000. Chapter 2.

<sup>5</sup> An extensive analysis is provided in A. Breton, *Competitive Governments: An Economic Theory of Politics and Public Finance*. New York: Cambridge University Press, 1995.

<sup>6</sup> A very accessible account of this in the form of a novel appears in J. Jacobs, *Systems of Survival: A Dialogue on the Moral Foundations on Commerce and Politics*. New York: Random House, 1992.

<sup>7</sup> The seminal work advancing this widely accepted theory was J. M. Buchanan and G. Tullock, *The Calculus of Consent. Logical Foundations of Constitutional Democracy*. Ann Arbor: University of Michigan Press, 1962.

<sup>8</sup> For a good discussion see, F. L. Seidle, *Rethinking the Delivery of Public Services to Citizens*. Montreal, Que: Institute for Research on Public Policy, 1995.

<sup>9</sup> The matter is not quite so simple as this in practice. There are circumstances in which a potential bidder should be prevented from participating, such as when such a firm has had preferential access to information that would give an unfair advantage in bidding. As well, the scope of access might have to take into account fairness issues related to the political constituencies of potential bidders. For instance, in a US state or Canadian province, is the principle of fairness best promoted by giving preferential access to the companies within that province or state? Applications of the fairness test are not always easy. The task of this paper is not to resolve all of these issues, rather it is to argue for the importance of applying a fairness test.

<sup>10</sup> Conflict of interest determinations can be made in different ways depending upon the level of concern about it. The simplest means is by written declaration of non-conflict. This can be extended to questioning by a process-auditor to sworn statements in front of a conflict commissioner to full background checks.