



Office of the Auditor General

AUDIT OF PUBLIC/PRIVATE PARTNERSHIPS

(P3) PROCESSES

2006 Report

Chapter 5

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EXECUTIVE SUMMARY

Introduction

The audit of processes related to Public/Private Partnership (P3) initiatives was part of the 2006 Audit Plan brought forward by the City of Ottawa's Auditor General to City Council on December 15, 2004. The audit commenced in March 2006 with fieldwork completed in September 2006.

Background

A P3 is a partnership between the public sector and the private sector for the purpose of delivering and financing a project or a service traditionally provided by the public sector. P3s come in a variety of different forms, but at the heart of every successful project is the concept that better value for money may be achieved through the exploitation of private sector competencies and the allocation of risk to the party best able to manage it.

In June 2002, Ottawa City Council approved the concept of P3s and the formation of a "P3 Office" within the City Manager's Office. In this report, the "P3 Office" is used to describe what is now called the Economic Development and Strategic Projects Branch. This Branch falls within the Planning, Transit and the Environment Department (formerly known as the Planning and Growth Management Department). Since 2002, the City of Ottawa has undertaken a number of P3 initiatives which are at various stages of maturity.

There are complexities associated with P3s which require reliable processes and a resource infrastructure to ensure the City is positioned to both manage the risk and leverage the value associated with these arrangements from the initial conception/planning to procurement to implementation/management and, eventually, termination. P3 agreements can also reflect a broad range of terms and conditions that make each initiative unique. As such, individual P3 initiatives are often described as existing along a continuum of potential public sector-private sector relationships whereby the precise rights and responsibilities of each partner is based on the objectives of the public sector, the risks associated with the project and the most efficient allocation of those risks and negotiations between the public and private sector.

For each of the audit objectives described below, the City's Auditor General developed specific criteria that were used to gauge the reliability and sustainability of P3 processes and related infrastructure. The audit evaluated the end-to-end P3 process as a means to determine what processes or infrastructure can or should be improved as the City considers future P3 initiatives.

Scope

Based on input from Councillors, two completed P3 initiatives were selected for detailed review as follows:

1. The Ottawa Paramedic Service Headquarters, and
2. The Bell SensPlex.

The audit focused on both the adequacy of, and compliance with, prevailing process controls and the adequacy of City resources/infrastructure to support ongoing management of P3 arrangements. It also included an assessment of the information provided to Council on each of the above-noted initiatives. It should be noted that we did not audit the financial information provided to us by City staff.

Objectives

The objectives of this audit were to provide an independent and objective assessment of P3 processes as they relate to each of the following seven criteria:

1. The concept of P3 projects has been adequately and clearly defined for Council;
2. Business cases that were prepared to receive approval for P3 projects describe the allocation of risks between partners, address the City's operational and administrative requirements, and reflect Council's input;
3. Legal agreements generally reflect those principles agreed to and communicated during the preliminary phases and are monitored for compliance;
4. Actual financial impact to the City reflects approved budgets and the private partner's financial results are monitored by the City;
5. Current reporting mechanism for monitoring against the agreement are adequate;
6. City's current structure and resources are adequate to support ongoing management of P3 agreements; and
7. City's Request for Qualifications (RFQ) and Request for Proposals (RFP) process was followed.

Key Findings

Audit Objective 1: The concept of P3 projects has been adequately and clearly defined for Council.

We found that most Councillors felt comfortable with their understanding of P3s. There appears to be a range of technical insight/expertise with regard to key differentiators between P3s and traditional procurement. There was, however, a common view that the City needs to be particularly conscious of risk in that the profit motive of private partners, while an acceptable element of these partnerships, does imply differences in objectives for the project when compared to the City's goals. There is also an opportunity for greater clarity regarding the respective roles and responsibilities of various City staff/departments through the life cycle of a P3 initiative.

In addition, there are opportunities to improve information provided by City staff. A number of Councillors identified specific opportunities to improve the effectiveness and

efficiency of formal P3 reporting and thereby reduce reliance on anecdotal or other potentially unreliable information.

The overall strategic plan, or road map, for P3s was brought forward in 2002, and since that time there have been a number of developments, including an increase in the City's experience regarding P3s. Refreshing the road map was considered to be a key step in ensuring that the use of P3s was aligned with an overall strategy that was endorsed by Council.

As a matter of context, our research, discussions and observations indicated that, while the City has gained experience with P3s, the use of P3s is still evolving and may be described as in the early stages of development.

Audit Objective 2: Business cases that were prepared to receive approval for P3 projects describe the allocation of risks between partners, address the City's operational and administrative requirements, and reflect Council's input.

Early in the audit, we identified that business cases prepared in connection with the SensPlex or the Paramedics Headquarters were less formal/structured. The business case for the ice pad facility was comprised of a formal study commissioned by Parks and Recreation which indicated a justifiable need for 2,400 hours of 'prime ice time' in either the east or west sides of Ottawa. This need formed the basis of requirements set forth in the request for proposal. For the Paramedics facility, the business case was comprised of a broadly acknowledged need for upgraded facilities and a timeframe based on impending expiry of leases for the previous facilities.

An evaluation of the merits or adequacy of either business case would require that business case criteria, including reporting formats and timing, be defined up front and agreed to by the decision makers. Until these criteria and requirements are formalized, such an evaluation is not feasible. We did, however, note that both projects made use of Public Sector Comparators (PSCs) to evaluate costs, and both projects were supported by submissions to Council Committees outlining many key terms, conditions and other details.

There are opportunities to enhance and streamline business case-related information regarding potential projects such that decision makers can quickly grasp the key decision criteria and make informed decisions. The critical components of business cases should be defined for Council and subject to its agreement.

Audit Objective 3: Legal agreements generally reflect those principles agreed to and communicated during the preliminary phases and are monitored for compliance.

Through our procedures, we found that legal agreements were approved by authorized individuals and reflect those principles agreed to and communicated during the preliminary phases of the project and the approved/desired allocation of risks as

communicated in the business case and tender documentation. Our interviews also revealed a process, though more reactive than systematic, to monitor compliance with legal agreements. For example, legal terms and conditions were reviewed upon notification of a potential issue. Legal agreements did not specifically address training, procedural or operating standards that would prevail in the case of a traditional procurement (direct City ownership and operation).

The lack of a clear legal definition for 'prime ice time' has created unanticipated scheduling challenges since the SensPlex facility opened. The use of a cross-department steering committee or similar initiative may serve to optimize exposure to P3 arrangements among key City staff and afford a vehicle for communicating lessons learned.

Audit Objective 4: Actual financial impact to the City reflects approved budgets and the private partner's financial results are monitored by the City.

Financial reporting is provided by the private sector partner concerning the ongoing financial results achieved. However, monitoring of this reporting is not sufficient to ensure the City would be appropriately prepared for the eventuality that the private partner would not be in a position to fulfill its financial obligations.

During the course of our audit, the City Manager informed us that the private partner on the SensPlex initiative was facing financial difficulties. As the financial issues potentially involved a default situation, Parks and Recreation and Financial Services staff escalated the situation to the Deputy City Manager of Community and Protective Services, the Chief Corporate Services Officer and the City Manager. The City Manager assumed responsibility to take steps in response to the SensPlex situation.

There is need to enhance the process to identify and monitor deviations from the private sector partner's financial projections. This includes a clear delineation of roles and responsibilities as they relate to monitoring and oversight. This delineation should reflect the City's hierarchal structure whereby conditions warranting escalation are clearly established. There should be clearly defined and acknowledged processes and responsibilities applicable to those individuals with financial, operational and property oversight roles.

Audit Objective 5: Current reporting mechanisms for monitoring against the agreement are adequate.

We found that there is an informal process to monitor and report issues related to contract terms and conditions and that both contracts contained provisions for dispute resolution and remedies in the event of non-compliance. We noted that monitoring activities tended to be reactive in nature and did not appear to include a formal process to forecast various scenarios. As such, there is limited ongoing oversight in a formal sense. Also there is a need to further clarify responsibilities of various City staff under

default scenarios including the required internal reporting, escalation and hierarchy of authority.

Audit Objective 6: City's current structure and resources are adequate to support ongoing management of P3 agreements.

There is a need to improve clarity regarding overall accountability (i.e. hierarchy of authority, division of duties among departments and internal support services, etc.) for contract management through each of the unique phases of contract negotiation, construction and operating life cycle. The City currently is unable to clearly identify and actively manage costs related to managing and administering P3 initiatives. These costs are expected to become more and more significant as the City increases the number of P3 contracts.

Finally, we identified that P3 initiatives are not integrated into the City's reporting and monitoring systems in the same way as traditional projects. This would improve transparency and quality of information available on an increasing number of P3 projects.

Audit Objective 7: City's Request for Qualifications (RFQ) and Request for Proposals (RFP) processes were followed.

Through our observations, we found that the City's RFQ/RFP processes for these two initiatives were generally followed. In addition the City made use of a Fairness Commissioner for the SensPlex whose mandate was to provide an independent assessment of the fairness, openness and transparency of the process to evaluate bidder's competency at RFQ and then the bid at RFP stage. We also noted that results of the bidder evaluation generally reflect the principles described in the RFP framework, as presented to Council, and are consistent with subsequent communications with Council.

Recommendations

Recommendation 1

That Management develop materials for Council that will address the current gaps in information in order to more clearly define and differentiate P3s from traditional procurement.

Management Response

Management agrees with this recommendation. With the assistance of staff from the Canadian Council for Public-Private Partnerships, staff will prepare as part of a P3 Policy for Council's adoption in Q2 2007 an information package on the continuum of P3 procurement options, as compared to the traditional municipal procurement approach.

Recommendation 2

That Management refresh the overall strategic plan (or road map) for the continued use of P3s including an indication of where the City intends to operate in terms of the maturity models/continuums described above.

Management Response

Management agrees with this recommendation. New knowledge has been gained in developing the various P3 projects that have been completed to date. Practical lessons have been learned from the operational experiences of these projects, and the City now has a better insight into the value and consequences of risk sharing with the private sector. Staff will bring forward a report to Council refreshing the road map for the continued use of P3's, identifying procurement options and the preferred risk distribution with the private sector by the end of Q2 2007. This report will be in the form of a P3 Policy, which together with a procedural manual is currently under development.

Recommendation 3

That Management develop a monitoring and reporting mechanism that would enable it to provide Council with feedback on the status of previously approved P3 initiatives.

Management Response

Management agrees with this recommendation. A yearly report will be provided to Council explaining the financial and operating status of each P3 project. Operational and programming performance will be benchmarked against what was requested and what was received from the proponent through the City's procurement process.

Recommendation 4

That Management clarify with Council the required components for P3 business cases and develop a template to ensure business cases adequately address all desired elements.

Management Response

Management agrees with this recommendation. The components for P3 business cases and a corresponding template will be included as part of the P3 policy and procedural manual identified in the management response to Recommendation 2.

Recommendation 5

That Management include provisions in future P3 legal agreements to address potential gaps in operating practices between the City and the private partner in areas such as training, bilingualism, public safety and community access.

Management Response

Management agrees with this recommendation. However while staff will ensure that future P3 legal agreements consider these issues, it is not Management's intention to automatically include these provisions.

The City of Ottawa entered into the two P3s (Ottawa Paramedic Headquarters and Bell Sensplex) with the understanding that one of the advantages of P3s are the respondent's ability to extract "value-for-money" or "best value". The definition of best value is described in reports to Committee and City Council. Inclusive within the description of best value is consideration for a degree of flexibility in the process. Some of the benefits of P3s include the potential gaps in operating practices between the City and the private partner in areas such as training, bilingualism, public safety and community access. These gaps may be components of the business case advantage that makes a project best value. Requiring the private partner to "address potential gaps in operating practices between the City and the private partner" is likely to decrease the value for money, assessment. This recommendation may also be a disincentive to prospective respondents in an RFQ/RFP process wherein the level of prescription could become prohibitive to a business' ability to earn a reasonable profit. Our experience shows that through negotiations these issues become important in establishing the risk and cost profile of the project for the private partner. Management's recommendation is to address these issues on a project -by- project basis as required by actual needs and seek Council approval in each case.

Recommendation 6

That Management develop a formal process to capture lessons learned through the construction and ongoing operations of completed P3s and reflect these lessons in future legal agreements.

Management Response

Management agrees with this recommendation. In the future, a post-mortem assessment will be made within four months of construction completion of a P3 project and yearly reviews as per management response to Recommendation 3 will be used to build upon lessons learned.

Management has already begun to incorporate "lessons learned" into new P3 agreements. The Auditor General asserted that the Bell Sensplex agreement did not contain a clear legal definition of "Prime Time Ice". Therefore using lessons learned, the definition was improved upon, in the Kinburn Partnership to remove the vagueness from the length of season and to ensure that there was a fair balance between weekday ice and weekend ice.

Recommendation 7

That Management enhance processes and clarify accountabilities related to the proactive identification and monitoring of deviations from financial plans and inform Council of these deviations when appropriate.

Management Response

Management agrees with this recommendation.

The P3 policy and procedure manual will clearly identify accountabilities related to deviations from financial plans and other elements of the agreement and Council will be informed accordingly.

Staff will develop a greater reporting system in our legal agreements and in our escalation process, which will take into account the severity, the frequency and the impact on the City.

Such a reporting system and any necessary templates can then be incorporated into the actual agreement between the City and the private partner.

Recommendation 8

That Management develop a framework for equitably and consistently addressing adjustments to proposed construction costs (either due to budget constraints or other circumstances such as unforeseen building code issues) and inform Council of these adjustments when appropriate.

Management Response

Management agrees with this recommendation. As per the current practice, staff will continue to provide the best information possible to Council at the approval stage. Should unforeseen requirements be identified that potentially impact the Council approved project budget, staff will establish through negotiations a change order process in future P3 agreements that will attempt to mitigate these costs through a value engineering exercise, minor scope reductions or other actions. Failing this, all variances or necessary project scope adjustments beyond the City Manager's delegated spending authority will be brought to Council for approval.

Recommendation 9

That Management develop a process to periodically assess and monitor overall compliance with agreements including:

- **Defining possible indicators of future issues and action plans;**
- **Defining roles and responsibilities, in the event of defaults or breaches under one or more agreements; and**
- **Informing Council of these of defaults or breaches when appropriate.**

Management Response

Management agrees with this recommendation. The P3 policy and procedure manual will incorporate a process to periodically assess and monitor overall compliance with agreements.

Recommendation 10

That Management enhance the clarity of overall accountability for P3 initiatives through the various phases of the facility's life cycle, including the specific roles and authorities of the P3 Office, RPAM, and client departments.

Management Response

Management agrees with this recommendation. In the proposed P3 policy and procedural manual, all roles and accountabilities throughout the operational phase of the P3 initiatives will be clarified. Current P3 projects will be incorporated into RPAM's system for life cycle monitoring.

Recommendation 11

That Management develop a means to capture the financial and related costs associated with ensuring continued management of P3s and that these costs be considered in budget/resource decisions for those participants most impacted by an increasing number of P3 projects.

Management Response

Management agrees with this recommendation. During the pre and post construction phases of P3 initiatives, all staff time will be captured and considered through the budget process to ensure suitable resource decisions can be made for P3 projects. This is particularly important for some Centres of Expertise like RPAM and Supply Management who play a significant role in the P3 procurement and negotiations process.

Conclusion

Our audit of processes revealed a commitment on the part of the P3 Office and City staff in general to ensure P3 processes and infrastructure will support the continued use of P3s. There is an awareness of the need to continually improve processes and ensure that the resources and other infrastructure are sufficient to sustain these initiatives in the best interests of the City.

Although there is evidence of regular reporting to Council on P3 initiatives, there is a need to re-visit the nature of Council communications with a view to enhancing their practical value to decision makers and to foster a consistent understanding of P3 principles, strategies and key differentiators compared to traditional procurement. Similarly, there is a need to enhance the means to efficiently and consistently present information regarding proposed P3 initiatives to promote common understanding of these initiatives and their respective pros and cons. Finally, there is a need to enhance

the formality of various processes including those related to continuous improvement, monitoring of agreements and results, and capturing costs of P3 support services and accountabilities through the life cycle of a P3 initiative.

Acknowledgement

We wish to express our appreciation for the cooperation and assistance afforded the audit team by Management.

SOMMAIRE

Introduction

La vérification des processus liés aux initiatives de partenariat public-privé (PPP) s'inscrit dans le Plan de vérification 2006 présenté par le vérificateur général de la Ville d'Ottawa au Conseil municipal le 15 décembre 2004. La vérification a débuté en mars 2006 et les travaux sur place ont été achevés en septembre 2006.

Contexte

Un PPP est un partenariat entre le secteur public et le secteur privé ayant pour but l'exécution et le financement d'un projet ou d'un service habituellement assuré par le secteur public. Les PPP se présentent sous différentes formes, cependant, au cœur de tout projet réussi, il y a le concept voulant qu'une optimisation des ressources puisse être accomplie par l'exploitation des compétences du secteur privé et l'attribution des risques à la partie la plus apte à les gérer.

En juin 2002, le Conseil municipal de la Ville d'Ottawa a approuvé le concept de PPP et la création d'un « bureau des PPP » relevant du Bureau du directeur municipal. Dans le présent rapport, le nom « bureau des PPP » sert à désigner ce que l'on appelle maintenant la Direction du développement économique et des projets stratégiques. Cette Direction relève du Service de l'urbanisme, Transport en commun et Environnement. Depuis 2002, la Ville d'Ottawa a entrepris un certain nombre d'initiatives de PPP qui sont à divers degrés de maturité.

Il existe des éléments complexes liés aux PPP qui requièrent des processus fiables et une infrastructure de ressources afin d'assurer que la Ville sera positionnée pour gérer les risques et tirer parti de la valeur associée à ces ententes, de la conception ou planification initiale à l'acquisition, en passant par la mise en œuvre ou gestion et, finalement, l'achèvement. Les ententes de PPP peuvent également refléter un large éventail de conditions qui font en sorte que chaque initiative est unique. À ce titre, on décrit souvent les initiatives de PPP individuelles comme étant réparties sur un continuum de partenariats possibles entre les secteurs public et privé au moyen duquel les droits et responsabilités précis de chacun des partenaires sont fondés sur les objectifs du secteur public, sur les risques associés au projet, sur la répartition la plus efficace de ces risques, de même que sur les négociations entre les secteurs public et privé.

Pour chacun des objectifs de vérification décrits ci-dessous, le vérificateur général de la Ville a élaboré des critères spécifiques qui ont servi à mesurer la fiabilité et la durabilité des processus de PPP et de l'infrastructure connexe. La vérification a permis d'évaluer le processus de PPP de bout en bout et sert à déterminer quels processus ou infrastructures peuvent ou devraient être améliorés alors que la Ville prend en considération de futures initiatives de PPP.

Portée

Nous avons procédé à un examen approfondi des deux initiatives de PPP achevées suivantes, sélectionnées d'après les suggestions de conseillers municipaux :

1. Quartier général du Service paramédic d'Ottawa;
2. SensPlex Bell.

La vérification était axée à la fois sur le bien-fondé et le respect des contrôles de processus courants et sur le caractère adéquat des ressources et infrastructures de la Ville pour soutenir la gestion continue des ententes de PPP. Cela comprenait également une évaluation des renseignements fournis au Conseil pour chacune des initiatives précitées. Il est à noter que nous n'avons pas vérifié les renseignements financiers fournis par le personnel de la Ville.

Objectifs

Cette vérification a pour objectif de fournir une évaluation indépendante et objective des processus de PPP pour chacun des sept critères suivants :

1. Le concept de projets de PPP a été défini adéquatement et clairement pour le Conseil;
2. Les analyses de rentabilisation rédigées en vue de l'approbation de projets de PPP décrivent la répartition des risques entre les partenaires, abordent les besoins opérationnels et les exigences administratives de la Ville et tiennent compte des suggestions du Conseil;
3. Les accords juridiques tiennent compte généralement des principes qui ont été adoptés et communiqués au cours des phases préliminaires et font l'objet d'un suivi pour des raisons de conformité;
4. Les répercussions financières réelles pour la Ville concordent avec les budgets approuvés, et la Ville supervise les bilans financiers des partenaires privés;
5. Le mécanisme courant de communication des suivis en regard des ententes est adéquat;
6. Les structures et ressources courantes de la Ville sont suffisantes pour soutenir la gestion continue des ententes de PPP; et
7. Il y a eu respect des processus de demande de qualification (DQ) et de demande de proposition (DP) de la Ville.

Principales constatations

Objectif de vérification n° 1 : Le concept de projets de PPP a été défini adéquatement et clairement pour le Conseil.

Nous avons trouvé que la plupart des conseillers municipaux se sentaient à l'aise avec leur compréhension des PPP. Il semble y avoir une gamme de connaissances ou expertises techniques concernant les différenciateurs principaux entre les PPP et l'acquisition traditionnelle. Il y a, cependant, une vision commune voulant que la Ville doive être particulièrement consciente des risques, car le souci de rentabilité des

partenaires privés, bien qu'il soit un élément acceptable de ces partenariats, laisse entrevoir des objectifs différents pour le projet lorsqu'on les compare avec ceux de la Ville. Il y a également possibilité d'une plus grande transparence concernant les rôles et responsabilités respectifs des divers employés ou services de la Ville tout au long du cycle de vie d'une initiative de PPP.

De plus, il y a possibilité d'améliorer la qualité des informations fournies par le personnel de la Ville. Un certain nombre de conseillers municipaux ont ciblé des occasions précises pour améliorer l'efficacité et l'efficience de l'établissement de rapports officiels de PPP et, par conséquent, pour réduire le recours à de l'information anecdotique ou autres renseignements pouvant ne pas être fiables.

Le plan stratégique global, ou guide, des PPP a été présenté en 2002 et, depuis ce temps, on y a apporté un certain nombre de modifications incluant l'acquisition d'expérience de la part de la Ville concernant les PPP. On considère que la mise à jour du guide a été une étape clé afin d'assurer que l'utilisation des PPP corresponde à une stratégie globale appuyée par le Conseil.

Selon le contexte, nos recherches, discussions et observations ont indiqué que, bien que la Ville ait acquis de l'expérience avec les PPP, l'utilisation des PPP est toujours en évolution et peut être décrite comme étant à un stade initial de développement.

Objectif de vérification n° 2 : Les analyses de rentabilisation rédigées en vue de l'approbation de projets PPP décrivent la répartition des risques entre les partenaires, abordent les besoins opérationnels et les exigences administratives de la Ville et tiennent compte des suggestions du Conseil.

Au début de la vérification, nous avons déterminé que les analyses de rentabilisation préparées aux fins du SensPlex ou du Quartier général du Service paramédic étaient moins officielles ou structurées. L'analyse de rentabilisation pour la patinoire comprenait une étude officielle effectuée pour le compte de Parcs et Loisirs qui indiquait un besoin justifié de 2 400 heures de « temps de glace prioritaire » pour les secteurs de l'Est ou de l'Ouest d'Ottawa. Ce besoin est à la base des exigences invoquées dans la demande de proposition (DP). Pour les installations du Service paramédic, l'analyse de rentabilisation comprenait un besoin largement reconnu d'améliorer les installations et d'avoir un calendrier fondé sur les expirations imminentes de baux pour les installations précédentes.

Une évaluation des mérites ou bien-fondés de n'importe quelle analyse de rentabilisation nécessiterait que les critères des analyses de rentabilisation, incluant les modèles et calendriers de rapport, soient définis d'avance et convenus par les décideurs. Jusqu'à ce que ces critères et exigences soient officialisés, une telle évaluation est impossible. Nous avons, cependant, remarqué que les deux projets avaient fait appel à des comparateurs du secteur public (CSP) afin d'évaluer les coûts, et que les deux projets étaient appuyés par des soumissions déposées aux comités du Conseil présentant de nombreuses conditions générales (modalités d'accord) et autres détails.

Il est possible d'améliorer et de simplifier les renseignements se rapportant aux analyses de rentabilisation concernant des projets potentiels, de façon à ce que les décideurs puissent rapidement comprendre les principaux critères de décisions et prendre des décisions éclairées. Les éléments essentiels des analyses de rentabilisation devraient être définis pour le Conseil et assujettis à son approbation.

Objectif de vérification n° 3 : Les accords juridiques tiennent compte généralement des principes qui ont été adoptés et communiqués au cours des phases préliminaires et font l'objet d'un suivi pour des raisons de conformité.

Dans le cadre de nos procédures, nous avons constaté que des accords juridiques étaient approuvés par des personnes autorisées et reflétaient les principes convenus et communiqués au cours des phases préliminaires du projet et la répartition approuvée ou voulue des risques telle qu'indiquée dans l'analyse de rentabilisation et la documentation relative à l'appel d'offre. Nos entrevues ont également permis de révéler un processus, bien qu'il soit plus réactif que systémique, permettant de surveiller l'application des accords juridiques. Par exemple, les conditions légales ont été examinées à la suite d'un avis concernant un problème potentiel. Les accords juridiques ne traitaient pas expressément des normes de formation, de procédure ou d'exploitation qui auraient cours dans le cas d'une acquisition traditionnelle (propriété et exploitation directes de la Ville).

Le manque d'une définition légale claire pour le « temps de glace prioritaire » a créé des problèmes imprévus d'établissement d'horaires depuis l'ouverture des installations du Centre sportif SensPlex. Le fait de faire appel à un comité directeur interservices ou à une initiative semblable pourrait contribuer à optimiser la visibilité des ententes de PPP parmi le personnel clé de la Ville et à procurer un moyen de communiquer les leçons apprises.

Objectif de vérification n° 4 : Les répercussions financières réelles pour la Ville concordent avec les budgets approuvés, et la Ville supervise les bilans financiers des partenaires privés.

Le partenaire du secteur privé s'occupe de communiquer l'information financière concernant les résultats financiers courants atteints. Toutefois, la supervision de cette communication n'est pas suffisante pour garantir que la Ville serait bien préparée dans l'éventualité où le partenaire privé ne serait pas en mesure de remplir ses obligations financières.

Au cours de notre vérification, le directeur municipal nous a informés que le partenaire privé pour l'initiative SensPlex éprouvait des difficultés financières. Étant donné que les problèmes financiers étaient possiblement associés à une situation de manquement, le personnel de Parcs et Loisirs et des Services financiers a fait part de la situation au directeur municipal adjoint des Services communautaires et de protection de la Ville, au chef des Services généraux et au directeur municipal. Le directeur municipal a assumé

la responsabilité de prendre les mesures qui s'imposent par rapport à la situation SensPlex.

Il est nécessaire d'améliorer le processus servant à déterminer et superviser les écarts par rapport aux projections financières du partenaire du secteur privé. Cela comprend une délimitation claire des rôles et responsabilités par rapport à la surveillance et la supervision. Cette délimitation devrait tenir compte de la structure hiérarchique de la Ville pour laquelle les conditions motivant l'escalade ont clairement été établies. Il devrait y avoir des processus et responsabilités clairement définis et reconnus applicables aux personnes ayant des rôles de surveillance financière, opérationnelle et immobilière.

Objectif de vérification n° 5 : Le mécanisme courant de communication des suivis en regard des ententes est adéquat.

Nous avons constaté qu'il existe un processus non officiel pour superviser et faire état des problèmes se rapportant aux conditions du contrat, et que les deux contrats comprenaient des dispositions pour la résolution de conflits et les recours en cas de non-respect. Nous avons remarqué que les activités de surveillance tendaient à être réactives de nature et ne semblaient pas inclure un processus officiel pour prévoir divers scénarios. À ce titre, il y a peu de surveillance continue de manière officielle. De plus, il est nécessaire de clarifier davantage les responsabilités du personnel de la Ville dans le cadre de scénarios de manquement, incluant l'établissement requis de rapports internes, l'escalade et la hiérarchie de l'autorité.

Objectif de vérification n° 6 : Les structures et ressources courantes de la Ville sont suffisantes pour soutenir la gestion continue des ententes de PPP.

Il est nécessaire de clarifier la responsabilisation globale (à savoir, la hiérarchie de l'autorité, la répartition des tâches entre les services et les services de soutien internes, etc.) pour la gestion de contrats tout au long de chacune des phases uniques de négociation de contrat, de réalisation et de durée de service. La Ville est actuellement dans l'incapacité de déterminer clairement et de gérer activement les coûts se rapportant à la gestion et à l'administration des initiatives de PPP. On prévoit que ces coûts augmenteront de plus en plus à mesure que la Ville accroîtra le nombre de contrats de PPP.

Enfin, nous avons constaté que les initiatives de PPP ne sont pas intégrées aux systèmes d'établissement de rapports et de surveillance de la Ville de la même façon que les projets traditionnels. Cela accroîtrait la transparence et la qualité de l'information disponible pour un plus grand nombre de projets de PPP.

Objectif de vérification n° 7 : Il y a eu respect des processus de demande de qualification (DQ) et de demande de proposition (DP) de la Ville.

À l'aide de nos observations, nous avons constaté que les processus de demande de qualification (DQ) et de demande de proposition (DP) de la Ville pour les deux initiatives mentionnées ont généralement été respectés. De plus, la Ville a fait appel à un commissaire à l'équité pour le SensPlex dont le mandat était de fournir une évaluation indépendante de l'impartialité, l'ouverture et la transparence du processus servant à évaluer les compétences du soumissionnaire lors de la DQ et, ensuite, la soumission de la DP. Nous avons également remarqué que les résultats de l'évaluation du soumissionnaire reflètent habituellement les principes décrits dans le cadre de la DP, tel qu'il a été présenté au Conseil, et correspondent aux communications subséquentes avec le Conseil.

Recommandations**Recommandation 1**

Que la direction prépare de la documentation pour le Conseil qui traitera des lacunes actuelles en matière d'information dans le but de définir et différencier plus clairement les PPP des acquisitions traditionnelles.

Réponse de la direction

La direction est d'accord avec cette recommandation. Avec l'aide du personnel du Conseil canadien pour les partenariats public-privé (CCPPP), le personnel préparera, dans le cadre d'une politique de PPP qui sera présentée pour adoption par le Conseil au cours du deuxième trimestre de 2007, une trousse de renseignements sur le continuum des options d'acquisition de PPP par rapport à l'approche municipale d'acquisition traditionnelle.

Recommandation 2

Que la direction mette à jour le plan stratégique global (ou guide) pour l'utilisation continue des PPP incluant une indication de l'endroit où la Ville compte opérer en fonction des modèles ou continuums de maturité décrits plus haut.

Réponse de la direction

La direction est d'accord avec cette recommandation. Nous avons acquis de nouvelles connaissances lors de l'élaboration des divers projets de PPP qui ont été achevés à ce jour. Des leçons pratiques ont été tirées des expériences opérationnelles de ces projets, et la Ville a maintenant une meilleure connaissance de la valeur et des conséquences du partage des risques avec le secteur privé. Le personnel présentera un rapport au Conseil qui permettra de mettre à jour le guide pour l'utilisation continue des PPP, de déterminer des options d'acquisition et la répartition privilégiée des risques avec le secteur privé d'ici la fin du deuxième trimestre de

2007. Ce rapport prendra la forme d'une politique de PPP qui, comme le manuel de procédures, est actuellement en cours d'élaboration.

Recommandation 3

Que la direction élabore un mécanisme de supervision et d'établissement de rapports qui permettrait de fournir au Conseil une rétroaction sur l'état des initiatives de PPP approuvées antérieurement.

Réponse de la direction

La direction est d'accord avec cette recommandation. On fournira un rapport annuel au Conseil, exposant la situation financière et opérationnelle de chacun des projets de PPP. On évaluera la performance d'exploitation et de programmation en fonction de ce qui avait été demandé et de ce qui a été reçu du promoteur au moyen du processus d'acquisition de la Ville.

Recommandation 4

Que la direction clarifie auprès du Conseil quels sont les composants nécessaires pour les analyses de rentabilisation de PPP et élabore un modèle afin de s'assurer que les analyses de rentabilisation traitent de tous les éléments visés.

Réponse de la direction

La direction est d'accord avec cette recommandation. Les composants pour les analyses de rentabilisation de PPP et un modèle correspondant seront inclus dans le cadre de la politique et du manuel de procédures de PPP dont il est fait mention dans la réponse de la direction à la Recommandation 2.

Recommandation 5

Que la direction intègre des dispositions aux futures ententes de PPP afin de traiter des lacunes possibles dans les pratiques d'exploitation entre la Ville et le partenaire privé dans des domaines tels que la formation, le bilinguisme, la sécurité publique et l'accès communautaire.

Réponse de la direction

La direction est d'accord avec cette recommandation. Cependant, même si le personnel s'assure que les futurs accords juridiques de PPP prendront en considération ces enjeux, la direction n'a pas l'intention d'inclure automatiquement ces dispositions.

La Ville d'Ottawa s'est engagée dans les deux PPP (Quartier général du Service paramédic et SensPlex Bell) en tenant compte du fait qu'un des avantages des PPP est la capacité du répondant d'obtenir une « optimisation des ressources » ou un « meilleur rapport qualité-prix ». La définition de « meilleur rapport qualité-prix » apparaît dans des rapports présentés au Comité et au Conseil municipal. Dans cette description de « meilleur rapport qualité-prix », on y inclut un certain degré de

flexibilité dans le processus. Parmi les avantages des PPP, on compte des écarts possibles dans les pratiques d'exploitation entre la Ville et le partenaire privé dans des domaines tels que la formation, le bilinguisme, la sécurité publique et l'accès communautaire. Ces écarts peuvent constituer un des avantages des analyses de rentabilisation qui fait en sorte qu'un projet a un meilleur rapport qualité-prix. Le fait de demander au partenaire privé de « traiter des écarts possibles dans les pratiques d'exploitation entre la Ville et le partenaire privé » est susceptible de ralentir l'évaluation de l'optimisation des ressources. Cette recommandation peut également constituer un obstacle pour les répondants éventuels dans un processus de DQ ou DP dans lequel le niveau de prescription pourrait devenir prohibitif, ne permettant pas à une entreprise de réaliser un profit raisonnable. Notre expérience démontre que, lors de négociations, ces enjeux deviennent importants au cours de l'élaboration des profils de risques et de coûts du projet pour le partenaire privé. La direction recommande d'aborder ces enjeux en fonction de chaque projet selon les besoins réels et de demander l'approbation du Conseil dans chacun des cas.

Recommandation 6

Que la direction élabore un processus officiel pour retenir les leçons apprises tout au long de la construction et des opérations continues des PPP achevés et tienne compte de ces leçons dans les futurs accords juridiques.

Réponse de la direction

La direction est d'accord avec cette recommandation. À l'avenir, on effectuera une évaluation du bilan dans les quatre mois suivant la fin de la réalisation d'un projet de PPP, et on se servira des examens annuels dont il est fait mention à la réponse de la direction de la Recommandation 3 pour faire fond sur les leçons apprises.

La direction a déjà commencé à introduire les leçons apprises dans les nouvelles ententes de PPP. Le vérificateur général a fait valoir que l'entente avec SensPlex Bell ne comprenait aucune définition juridique claire de « temps de glace prioritaire ». Par conséquent, la leçon apprise nous a permis d'améliorer la définition pour le partenariat avec Kinburn, d'enlever l'imprécision dans la durée de la saison et de nous assurer qu'il y avait un juste équilibre entre les temps de glace durant la semaine et la fin de semaine.

Recommandation 7

Que la direction améliore les processus et clarifie les responsabilités se rapportant à l'identification et à la surveillance proactives des dérogations relevées dans les plans financiers et informe le Conseil de ces dérogations au besoin.

Réponse de la direction

La direction est d'accord avec cette recommandation.

La politique de PPP et le manuel de procédures définiront clairement les responsabilités se rapportant aux écarts relevés dans les plans financiers et autres éléments de l'entente, et le Conseil en sera informé en conséquence.

Le personnel développera un meilleur système d'établissement de rapports pour nos accords juridiques et nos recours à la hiérarchie, qui prendra en compte la gravité, la fréquence et la répercussion sur la Ville.

Un tel système d'établissement de rapports et tout modèle nécessaire pourront alors être intégrés dans l'entente réelle entre la Ville et le partenaire privé.

Recommandation 8

Que la direction élabore un cadre de travail afin d'aborder de façon équitable et uniforme les rajustements aux coûts de construction proposés (causés soit par des contraintes budgétaires ou autres circonstances telles que des problèmes imprévus touchant le Code du bâtiment), et informe le Conseil de ces rajustements au besoin.

Réponse de la direction

La direction est d'accord avec cette recommandation. Selon la pratique actuelle, le personnel continuera de fournir les meilleures informations possibles au Conseil lors de l'étape d'approbation. Si des exigences imprévues ayant une incidence possible sur le budget du projet approuvé par le Conseil sont définies, le personnel établira par le biais de négociations un processus d'autorisation de modification dans les futures ententes de PPP qui tentera d'atténuer ces coûts au moyen d'un exercice d'analyse des coûts, d'une réduction de portée mineure et autres mesures. À défaut de ceci, tous les écarts ou rajustements nécessaires de portée de projets allant au-delà du pouvoir délégué de dépenses du directeur municipal seront présentés au Conseil pour approbation.

Recommandation 9

Que la direction élabore un processus pour évaluer et surveiller périodiquement le respect global des ententes incluant :

- Définir les indicateurs possibles d'enjeux et de plans d'action futurs;
- Définir les rôles et responsabilités, en cas de manquements ou de violations en vertu d'une ou de plusieurs ententes;
- Informer le Conseil de ces manquements ou violations au besoin.

Réponse de la direction

La direction est d'accord avec cette recommandation. On incorporera à la politique de PPP et au manuel de procédures un processus pour évaluer et surveiller périodiquement le respect global des ententes.

Recommandation 10

Que la direction clarifie la responsabilité globale pour les initiatives de PPP pour les diverses phases du cycle de vie de l'installation, incluant les rôles et pouvoirs

spécifiques du bureau des PPP, de la Direction de la gestion des actifs et des biens immobiliers et des services clients.

Réponse de la direction

La direction est d'accord avec cette recommandation. Dans la politique de PPP et le manuel de procédures proposés, on précisera tous les rôles et toutes les responsabilités pour l'ensemble de la phase opérationnelle des initiatives de PPP. Les projets actuels de PPP seront incorporés au système de la Direction de la gestion des actifs et des biens immobiliers afin d'effectuer un suivi du cycle de vie.

Recommandation 11

Que la direction élabore un moyen d'enregistrer les coûts financiers et connexes associés au fait d'assurer une gestion continue des PPP et que ces coûts soient pris en considération dans les décisions relatives aux budgets ou aux ressources pour les participants qui sont le plus touchés par le nombre grandissant de projets de PPP.

Réponse de la direction

La direction est d'accord avec cette recommandation. Durant les phases précédant et suivant la réalisation des initiatives de PPP, toutes les heures de travail des employés seront comptabilisées et prises en considération au moyen du processus budgétaire afin de s'assurer que des décisions convenables en matière de ressources seront prises pour les projets de PPP. Ceci est particulièrement important pour certains centres d'expertise tels que la Direction de la gestion des actifs et des biens immobiliers et Gestion de l'approvisionnement qui jouent un rôle important dans les processus d'acquisition et de négociations des PPP.

Conclusion

Notre vérification des processus a révélé un engagement de la part du bureau des PPP et du personnel de la Ville en général pour s'assurer que les processus et infrastructures des PPP appuieront l'utilisation continue des PPP. Il y a une reconnaissance du besoin d'améliorer continuellement les processus et de s'assurer que les ressources et autres infrastructures suffisent pour soutenir ces initiatives dans l'intérêt fondamental de la Ville.

Bien qu'il y ait des éléments probants de la communication régulière de rapports au Conseil relativement aux initiatives de PPP, il faudrait revoir la nature des communications au Conseil en vue d'améliorer leur valeur pratique pour les décideurs et d'encourager une compréhension uniforme des principes, des stratégies et des principaux différenciateurs des PPP par rapport à l'acquisition traditionnelle. Dans le même ordre d'idées, il est nécessaire d'améliorer les moyens de présenter de manière efficace et uniforme l'information concernant les initiatives de PPP proposées afin de favoriser une interprétation commune de ces initiatives avec les avantages et les désavantages de chacune. Enfin, il est nécessaire de formaliser davantage les divers processus incluant ceux se rapportant à l'amélioration continue, au suivi des ententes et

des résultats et à l'enregistrement des coûts associés aux services de soutien et à la responsabilisation des PPP tout au long du cycle de vie d'une initiative de PPP.

Remerciement

Nous désirons remercier la direction pour la collaboration et l'aide apportées à l'équipe de vérification.

1 BACKGROUND

The audit of processes related to Public/Private Partnership (P3) initiatives was part of the 2006 Audit Plan brought forward by the City of Ottawa's Auditor General to City Council on December 15, 2004.

A P3 is a partnership between the public sector and the private sector for the purpose of delivering and financing a project or a service traditionally provided by the public sector. P3s come in a variety of different forms, but at the heart of every successful project is the concept that better value for money may be achieved through the exploitation of private sector competencies and the allocation of risk to the party best able to manage it. P3's are essentially a tool for delivering public infrastructure and services through long-term contractual arrangements between the public and private sector.

Within several Canadian municipalities, P3s continue to gain acceptance as an alternate approach to traditional models of delivering public infrastructure and services. In June 2002, Ottawa City Council approved the concept of P3s and the formation of a "P3 Office" within the City Manager's Office. In this report, the "P3 Office" is used to describe what is now called the Economic Development and Strategic Projects Branch. This Branch falls within the Planning, Transit and Environment Department (formerly the Planning and Growth Management Department). The P3 Office was established as a centre of expertise for P3 initiatives. Its main responsibilities include:

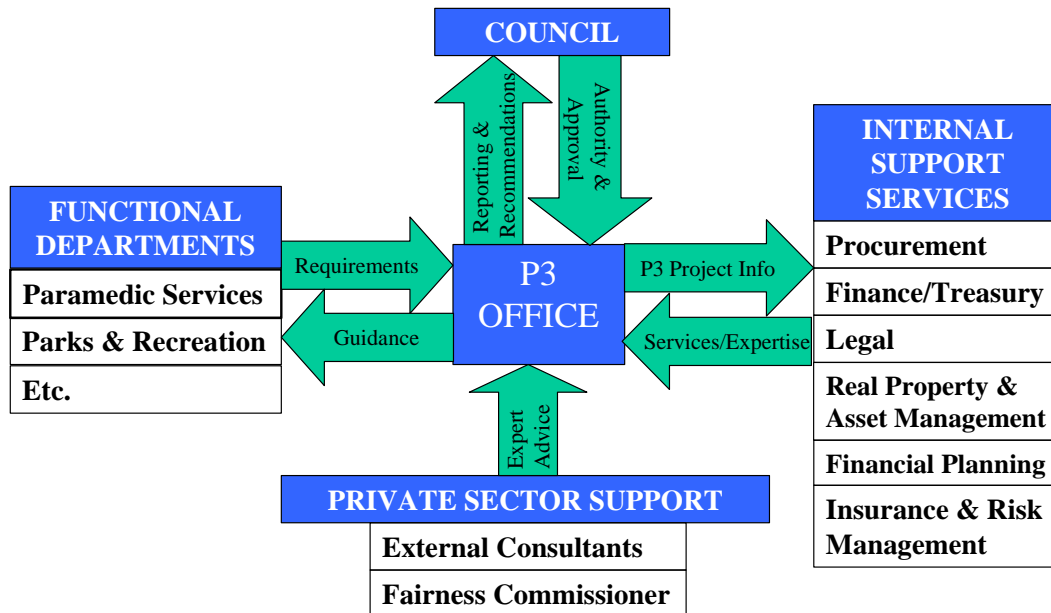
- Identifying possible P3 projects;
- Coordinating with City Manager, Senior Management Team, complementary centres of excellence and external consultants;
- Communicating with committees and City Council on P3 projects; and
- Development of best practices, procedures, guidance materials and related process frameworks, including:
 - Best practices and case studies from the Canadian Council on Public-Private Partnerships;
 - Case studies and other tools provided by 4Ps, a London UK P3 firm;
 - Information from the US National Council for Public-Private Partnerships.

The P3 Office's responsibilities differ from those of functional departments, such as Paramedic Service and Parks and Recreation, who are clients of the P3 Office. The responsibility of functional departments is related to:

- Providing project expertise;
- Overseeing P3 agreements; and
- Implementation and contract monitoring.

The following exhibit (Exhibit 1.0) provides an overview of the key participants involved during the pre-construction period of P3 initiatives. It also provides broad descriptions of the types of information flows between and among the participants.

Exhibit 1: Key Participants in the Pre-Construction Phase



While the underlying concept of P3s may be straightforward, there are complexities associated with P3s which require reliable processes and a resource infrastructure to ensure the City is positioned to both manage the risk and leverage the value associated with these arrangements from the initial conception/planning to procurement to implementation/management and, eventually, termination. Not only does the delivery of P3 initiatives require the involvement of a wide range of stakeholders as referenced above, P3 agreements can reflect a broad range of terms and conditions that make each initiative unique. As such, individual P3 initiatives are often described as existing along a continuum of potential public sector-private sector relationships whereby the precise rights and responsibilities of each partner is based on the objectives of the public sector, the risks associated with the project and the most efficient allocation of those risks and negotiations between the public and private sector.

As the citizens of Ottawa and key participants within municipal government become increasingly familiar with P3 initiatives, the audit was an opportunity to complete an independent review of P3 related processes and infrastructure to ensure a solid foundation for the continued use of P3s. For each of the audit objectives described below, the City's Auditor General developed specific criteria that were used to gauge the reliability and sustainability of P3 processes and related infrastructure. As described further in the *scope* paragraph below, this audit was not designed to critique either individual P3 initiatives or related decisions. Rather, the audit evaluated the end-to-end P3 process as a means to determine what processes or infrastructure can or should be improved as the City considers future P3 initiatives.

2 AUDIT OBJECTIVES AND APPROACH

2.1 Objectives, Criteria and Scope

The objectives of this audit were to provide an independent and objective assessment of P3 processes as they relate to each of the following seven criteria:

1. The concept of P3 projects has been adequately and clearly defined for Council;
2. Business cases that were prepared to receive approval for P3 projects describe the allocation of risks between partners, address the City's operational and administrative requirements, and reflect Council's input;
3. Legal agreements generally reflect those principles agreed to and communicated during the preliminary phases and are monitored for compliance;
4. Actual financial impact to the City reflects approved budgets and the private partner's financial results are monitored by the City;
5. Current reporting mechanism for monitoring against the agreement are adequate;
6. City's current structure and resources are adequate to support ongoing management of P3 agreements; and
7. City's Request for Qualifications (RFQ) and Request for Proposals (RFP) processes were followed.

The scope of this audit was determined during the planning phase, whereby the City's Auditor General sought input from City Councillors as to which completed P3 initiatives would be most appropriate for conducting the detailed review of the processes associated with the initiatives. Based on this input, two completed P3 initiatives were selected for detailed review as follows:

1. The Ottawa Paramedic Service Headquarters, and
2. The Bell SensPlex.

The scope involved an independent and objective assessment of various processes associated with each of the objectives described in the next section. The audit focused on both the adequacy of, and compliance with, prevailing process controls and the adequacy of City resources/infrastructure to support ongoing management of P3 arrangements. It also included an assessment of the information provided to Council on each of the above-noted initiatives. It should be noted that we did not audit the P3-related financial information provided to us by City staff.

2.2 Approach

We have relied upon interviews with City of Ottawa staff and Council members, and information, data, and other documentary evidence provided to us. The observations and conclusions reached in our report have been based on information made available at the time of the audit. Specific steps undertaken during the audit included:

- Reviewed documentation such as: business cases, request for qualifications/proposals (RFQ/RFP), public sector comparators, legal and operating agreements, Council submissions, and accountability frameworks;
- Completed stakeholder interviews which included nine (9) City Councillors, the Mayor, the City Manager and the P3 Office, Corporate Services (including Legal, Finance and Real Property Asset Management), functional departments (Parks and Recreation and Paramedic Services), and the Fairness Commissioner for the SensPlex project;
- Analyzed P3 processes for compliance with prevailing policies and procedures; and
- Assessed P3 processes against best practices, including those used in other jurisdictions.

ORGANIZATIONAL STRENGTHS

During our review of documentation and discussions related to the Sensplex and Paramedics Headquarters, we found evidence of overall commitment to respect the letter and spirit of rules/guidance established by the City in connection with P3 initiatives. Furthermore, there was a general awareness of the need for organizational learning and a desire to continuously improve practices as parties become more familiar with P3s.

As described later in this report, the City's use of P3s is still evolving and may be described as in the early stages of development. Similarly, we understand that best practices are evolving as municipalities and other levels of government work to improve their respective management and administrative practices. Our review of practices used by other jurisdictions revealed a number of themes that were either consistent with our observations and discussions with the City's P3 participants, or are otherwise referenced as recommendations in this report. Best practice themes in other jurisdictions included initiatives to standardize processes and documentation, develop reporting milestones and formats, and establish formal contract monitoring units.

3 OBSERVATIONS AND RECOMMENDATIONS

3.1 Audit Objective 1: The concept of P3 projects has been adequately and clearly defined for Council.

Based on our interviews with nine (9) Councillors and the Mayor, we found that most Councillors felt comfortable with their understanding of P3s. There appears to be a range of technical insight and expertise with regard to key differentiators between P3s and traditional procurement. There was, however, a common view that the City needs to be particularly conscious of risk in that the profit motive of private partners, while an acceptable element of these partnerships, does imply differences in objectives for the project when compared to the City's goals.

There is an opportunity for greater clarity regarding the respective roles and responsibilities of various City staff/departments through the life cycle of a P3

arrangement. In addition to building clarity regarding key principles of P3s and roles of various City staff and departments, there appears to be future opportunities in connection with improving information provided by City staff, noting that Councillors indicated that this does not necessarily mean *more* information. A number of Councillors identified specific opportunities to improve the effectiveness and efficiency of formal P3 reporting and thereby reduce reliance on anecdotal or other potentially unreliable information.

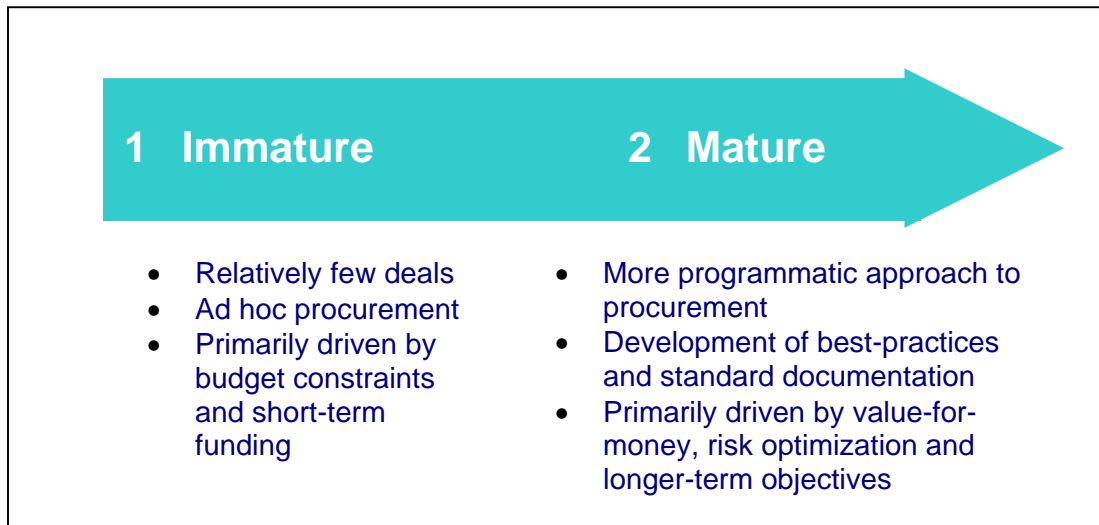
These opportunities include reporting related to:

- Performance of P3s relative to original expectations;
- Follow-up reporting (post completion/construction and periodically thereafter);
- Costs to be incurred by the City, including any premiums over traditional procurement;
- Contingency scenarios and plans, including fall-back positions and precisely what the City will be left with at the termination of a P3 contract;
- How, and what, risks have been shared between the City and the partner;
- How P3s impact the City's credit rating, borrowing capacity and related metrics;
- How the agreement differs in terms of cost of capital from traditional procurement approaches;
- How each P3 will affect or alter the socially-oriented objectives of more traditional City projects (e.g. use of facilities by community groups for fund raising initiatives);
- Descriptions of Public Sector Comparators used to evaluate private sector proposals;
- Risk assessments and quantifications; and
- Staff responsibilities at various stages of a P3 initiative's life cycle.

There was also a common view that it would be appropriate to periodically review plans regarding the City's continued use of P3s. The overall strategic plan, or road map for P3s was brought forward in 2002 identifying specific projects that would take first priority (including ice surfaces in the east and west, indoor/domed playing facilities, the Garry J. Armstrong Long-Term Care Centre and the Paramedics Headquarters). Since that time, it was noted, there have been a number of developments including an increase in the City's use of P3s and a more ad hoc approach to pursuing these agreements.

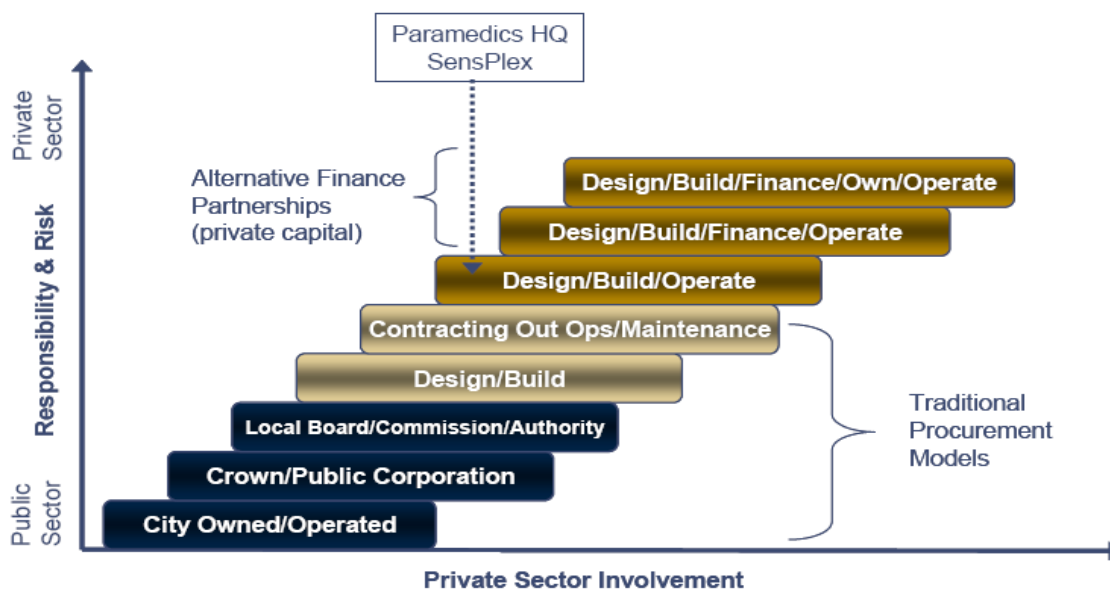
Refreshing the road map was considered to be a key step in ensuring that the use of P3s was aligned with an overall strategy that was endorsed by Council. As a matter of context, our research, discussions and observations indicated that, while the City has gained experience with P3s, the use of P3s is still evolving and may be described as in the early stages of development. In terms of maturity, it is not practical to precisely identify where the City lies on the continuum (See Exhibit 2.0), as each project is different. However, we did identify that, while the City appears to be moving to the right, it is currently closer to the left side of the continuum.

Exhibit 2.0 – P3 Maturity Continuum



Another view of P3s is related to the distribution of responsibilities and risk between the public sector and the private partner. This distribution of risk/responsibility can also be represented by a continuum. Consistent with the City’s position on the maturity continuum, the City appears to operate nearer the left of this continuum. For example, Exhibit 3 below, represents our view that that the Paramedics HQ and the SensPlex fall near the left edge of P3 projects in terms of transferring risks and responsibilities to the private partner.

Exhibit 3.0 – Procurement Options - Distribution of Responsibilities and Risk



Recommendation 1

That Management develop materials for Council that will address the current gaps in information in order to more clearly define and differentiate P3s from traditional procurement.

Management Response

Management agrees with this recommendation.

With the assistance of staff from the Canadian Council for Public-Private Partnerships, staff will prepare as part of a P3 Policy for Council's adoption in Q2 2007 an information package on the continuum of P3 procurement options, as compared to the traditional municipal procurement approach.

Recommendation 2

That Management refresh the overall strategic plan (or road map) for the continued use of P3s including an indication of where the City intends to operate in terms of the maturity models/continuums described above.

Management Response

Management agrees with this recommendation.

New knowledge has been gained in developing the various P3 projects that have been completed to date. Practical lessons have been learned from the operational experiences of these projects, and the City now has a better insight into the value and consequences of risk-sharing with the private sector. Staff will bring forward a report to Council refreshing the road map for the continued use of P3's, identifying procurement options and the preferred risk distribution with the private sector by the end of Q2 2007. This report will be in the form of a P3 Policy, which together with a procedural manual is currently under development.

Recommendation 3

That Management develop a monitoring and reporting mechanism that would enable it to provide Council with feedback on the status of previously approved P3 initiatives.

Management Response

Management agrees with this recommendation.

A yearly report will be provided to Council explaining the financial and operating status of each P3 project. Operational and programming performance will be benchmarked against what was requested and what was received from the proponent through the City's procurement process.

3.2 Audit Objective 2: Business cases that were prepared to receive approval for P3 projects describe the allocation of risks between partners, address the City's operational and administrative requirements, and reflect Council's input.

The United States General Accounting Office defines a business case as:

“A structured proposal for business improvement that functions as a decision package for organizational decision makers. A business case includes an analysis of business process performance and associated needs or problems, proposed alternative solutions, assumptions, constraints, and a risk-adjusted cost-benefit analysis.”

Early in the audit we identified that business cases prepared in connection with the SensPlex and the Paramedics Headquarters were less formal or structured than the preceding definition. The business case for the ice pad facility was comprised of a formal study commissioned by Parks and Recreation Branch which indicated a justifiable need for 2,400 hours of ‘prime ice time’ in either the east or west sides of Ottawa. This need formed the basis of requirements set forth in the request for proposal (RFP).

For the Paramedic Services facility, the business case was comprised of a broadly acknowledged need for upgraded facilities and a timeframe based on impending expiry of leases for the previous Paramedic facilities. Detailed specifications for the required facility were developed by City staff and outlined in the RFP. In fact, because the requirements for the facility were so specific, the cost differential with more traditional approaches for the project was minimal.

An evaluation of the merits or adequacy of either business case would require that business case criteria, including reporting formats and timing, be defined up front and agreed to by the decision makers. Until these criteria and requirements are formalized, such an evaluation is not feasible. We did, however, note that both projects made use of Public Sector Comparators (PSCs) to evaluate costs and both projects were supported by submissions to Council Committees outlining many key terms, conditions and other details.

The PSC's contained detailed information to assist in the evaluation of the proposals received by the City for each P3 initiative. For example, the independently prepared PSC for the ice pad initiative includes comparative information concerning the City's operating costs, revenues, and facility utilization based on data related to two City-run ice pad facilities (the Jim Durrell Community Centre and the Kanata Recreation Centre). In this instance, the PSC report provided costs per hour of ice time that the City could expect to pay if it were to undertake the project itself, therefore, these costs per hour represent the maximum the City should be willing to pay a private partner.

There are opportunities to enhance and streamline business case-related information regarding potential projects such that decision makers can quickly grasp the key decision criteria and make informed decisions. Interviews with Councillors and review

of communications indicated weakness in the business case submissions for SensPlex and Paramedics HQ regarding various details such as:

- Division of responsibilities and risk between the parties;
- Full view of costs (including potential impacts on socially-oriented objectives);
- Results of the Public Sector Comparators;
- Financing implications and options (including capital cost comparisons);
- Contingencies or fallback position; and
- End-of-term conditions.

The critical components of business cases should be defined for Council and subject to their agreement. Business case reporting should reflect a consistency that allows Council to quickly identify the linkages between the proposed project and the City's objectives, risks and P3 strategy or road map. An identification of best practices used by other jurisdictions would help ensure the City is well positioned to support decisions on future P3s.

We identified a need to improve the capture of cost/budget implications associated with developing and sustaining P3 relationships (i.e. investments in project management, ongoing monitoring, etc.). Our interviews and document review indicated that the City is not currently capturing all costs related to project management and ongoing monitoring in a manner that allows Council to fully appreciate the costs of specific P3s.

Recommendation 4

That Management clarify with Council the required components for P3 business cases and develop a template to ensure business cases adequately address all desired elements.

Management Response

Management agrees with this recommendation.

The components for P3 business cases and a corresponding template will be included as part of the P3 policy and procedural manual identified in the management response to Recommendation 2.

3.3 Audit Objective 3: Legal agreements generally reflect those principles agreed to and communicated during the preliminary phases and are monitored for compliance.

Through our procedures, we found that legal agreements were approved by authorized individuals and reflect those principles agreed to and communicated during the preliminary phases of the project, and the approved and desired allocation of risks as communicated in the business case and tender documentation. Our interviews also revealed a process, though more reactive than systematic, to monitor compliance with legal agreements.

Legal agreements did not specifically address training, procedural or operating standards that would prevail in the case of a traditional procurement (direct City ownership and operation). Examples would include City practices regarding CPR/AED/First Aid training, compliance with Official Languages legislation and deployment of safety equipment (such as defibrillators) which may differ from the private partner's operating standards. While there was evidence of commitment to ongoing process improvement, there is also an opportunity to formally capture, retain and engage lessons learned through successive P3 initiatives such that legal agreements can be systematically improved year over year. An example of the importance of clear expectations regarding definitions within the legal agreements comes from the Bell SensPlex agreement. The lack of a clear legal definition for 'prime ice time' has created unanticipated scheduling challenges since the facility opened. The use of a cross-department steering committee or similar initiative may serve to optimize exposure to P3 arrangements among key City staff and afford a vehicle for communicating lessons learned.

Recommendation 5

That Management include provisions in future P3 legal agreements to address potential gaps in operating practices between the City and the private partner in areas such as training, bilingualism, public safety and community access.

Management Response

Management agrees with this recommendation. However while staff will ensure that future P3 legal agreements consider these issues, it is not Management's intention to automatically include these provisions.

The City of Ottawa entered into the two P3s (Ottawa Paramedic Headquarters and Bell Sensplex) with the understanding that one of the advantages of P3s are the respondent's ability to extract "value-for-money" or "best value". The definition of best value is described in reports to Committee and City Council. Inclusive within the description of best value is consideration for a degree of flexibility in the process. Some of the benefits of P3s include the potential gaps in operating practices between the City and the private partner in areas such as training, bilingualism, public safety and community access. These gaps may be components of the business case advantage that makes a project best value. Requiring the private partner to "address potential gaps in operating practices between the City and the private partner" is likely to decrease the value for money, assessment. This recommendation may also be a disincentive to prospective respondents in an RFQ/RFP process wherein the level of prescription could become prohibitive to a business' ability to earn a reasonable profit. Our experience shows that through negotiations these issues become important in establishing the risk and cost profile of the project for the private partner. Management's recommendation is to address these issues on a

project-by-project basis as required by actual needs and seek Council approval in each case.

Recommendation 6

That Management develop a formal process to capture lessons learned through the construction and ongoing operations of completed P3s and reflect these lessons in future legal agreements.

Management Response

Management agrees with this recommendation.

In the future, a post-mortem assessment will be made within four months of construction completion of a P3 project and yearly reviews as per management response to Recommendation 3 will be used to build upon lessons learned.

Management has already begun to incorporate “lessons learned” into new P3 agreements. The Auditor General asserted that the Bell Sensplex agreement did not contain a clear legal definition of “Prime Time Ice”. Therefore using lessons learned, the definition was improved upon, in the Kinburn Partnership to remove the vagueness from the length of season and to ensure that there was a fair balance between weekday ice and weekend ice.

3.4 Audit Objective 4: Actual financial impact to the City reflects approved budgets and the private partner’s financial results are monitored by the City.

We reviewed the process of monitoring financial costs to the City both in terms of construction costs and ongoing financial results achieved by the private sector partner. In terms of construction costs, there is evidence that all construction-related costs were monitored by the City throughout this phase. Both the SensPlex and the Paramedics Headquarters appeared to achieve their respective construction budgets as provided to us by City staff. We note that the financial information provided during the course of this project was not audited by us.

In terms of monitoring the ongoing financial results achieved by the private sector partner, we did note that financial reporting was provided by the SensPlex partner. However, monitoring of this reporting was not sufficient to ensure the City was appropriately prepared for the eventuality that the private partner would not be in a position to fulfill its financial obligations by the early summer of 2006. During the course of our audit, the City Manager informed us that the private partner on the SensPlex initiative was facing financial difficulties. In a letter to the City in early summer 2006, the private partner explained the high likelihood of default and made a request to draw down a reserve fund in order to remain solvent. This situation was escalated to the Deputy City Manager of Community and Protective Services as well as the City Manager.

This situation resulted from the private partner's inability to generate expected financial results. The City's P3 process had not anticipated a mechanism to address situations of this nature and as such the City Manager assumed responsibility to take steps in response to the SensPlex situation. This included an independent evaluation of the following components:

- The evaluation of measures proposed to be taken by the private partner to remedy the situation and the timeline for the remedy; and
- Costs and benefits relating to the City's options in the event the City pursued its rights under conditions of a contractual default.

There is a need to enhance the process to identify and monitor deviations from the private sector partner's financial projections. This includes a clear delineation of roles and responsibilities as they relate to monitoring and oversight. This delineation should reflect the City's hierarchal structure whereby conditions warranting escalation are clearly established. There should be clearly defined and acknowledged processes and responsibilities applicable to those individuals with financial, operational and property oversight roles, including:

- Clearly defined metrics/indicators applicable to their area of monitoring responsibility;
- Reporting frameworks which address matters of priority/urgency and provide senior officials with a transparent view of key trends and the private partner's responses to negative trends;
- Escalation processes, including the provision of sufficient senior resources, and increases to the frequency of private partner reporting to ensure a level of monitoring and City response that is commensurate with the risk; and
- Clearly defined, and pragmatic, options for the City in the event of default or possible default.

While we did note that the City's actual costs for ice time at the SensPlex were in accordance with agreed pricing, the situation described above increases the risk that these costs may not be sustainable. As noted above, such shifts in risk profile need to be proactively addressed. In terms of ongoing financial costs related to the Paramedics Headquarters, we noted that maintenance costs charged by the private partner (while very early in the term of the maintenance agreement) appeared to be in line with budget. These maintenance costs were being monitored by the Deputy Chief of the Ottawa Paramedic Service.

We also identified that the private partner's proposed construction costs for the Paramedics Headquarters had to be reduced due to budget constraints and unforeseen costs related to building code requirements. This reduction was addressed through ad hoc negotiation with the private partner. A framework for such negotiations, including how these negotiations may impact the facility's specifications, should be developed and applied to other initiatives.

Recommendation 7

That Management enhance processes and clarify accountabilities related to the proactive identification and monitoring of deviations from financial plans and inform Council of these deviations when appropriate.

Management Response

Management agrees with this recommendation.

The P3 policy and procedure manual will clearly identify accountabilities related to deviations from financial plans and other elements of the agreement and Council will be informed accordingly.

Staff will develop a greater reporting system in our legal agreements and in our escalation process, which will take into account the severity, the frequency and the impact on the City.

Such a reporting system and any necessary templates can then be incorporated into the actual agreement between the City and the private partner.

Recommendation 8

That Management develop a framework for equitably and consistently addressing adjustments to proposed construction costs (either due to budget constraints or other circumstances such as unforeseen building code issues) and inform Council of these adjustments when appropriate.

Management Response

Management agrees with this recommendation.

As per the current practice, staff will continue to provide the best information possible to Council at the approval stage. Should unforeseen requirements be identified that potentially impact the Council approved project budget, staff will establish through negotiations a change order process in future P3 agreements that will attempt to mitigate these costs through a value engineering exercise, minor scope reductions or other actions. Failing this, all variances or necessary project scope adjustments beyond the City Manager's delegated spending authority will be brought to Council for approval.

3.5 Audit Objective 5: Current reporting mechanism for monitoring against the agreement are adequate.

We found that there is an informal process to monitor and report issues related to contract terms and conditions and that both contracts contained provisions for dispute resolution and remedies in the event of non-compliance. We noted that monitoring activities tended to be reactive in nature and did not appear to include a formal process to forecast various scenarios. As such, while there is a process, there is limited ongoing oversight in a formal sense. Also as described in section 3.4 above, there is a need to

further clarify responsibilities of various City staff under default scenarios including the required internal reporting, escalation and hierarchy of authority.

Recommendation 9

That Management develop a process to periodically assess and monitor overall compliance with agreements including:

- Defining possible indicators of future issues and action plans;
- Defining roles and responsibilities, in the event of defaults or breaches under one or more agreements; and
- Informing Council of these of defaults or breaches when appropriate.

Management Response

Management agrees with this recommendation.

The P3 policy and procedure manual will incorporate a process to periodically assess and monitor overall compliance with agreements.

3.6 Audit Objective 6: City's current structure and resources are adequate to support ongoing management of P3 agreements

We found that individual City departments and support functions understood that they have accountabilities in support of managing contractual requirements, however, there was limited formalization/details around these responsibilities. For example, we were provided with a high level list of responsibilities related to the SensPlex (see exhibit 4.0 below).

Exhibit 4.0 Accountability Matrix for SensPlex Agreement:

<p><u>City of Ottawa responsibilities</u></p> <p>Parks and Recreation:</p> <ul style="list-style-type: none"> - Post-construction project management of the Master Agreement - Purchase 2400 hours of peak season, prime time ice annually at set hourly rate allocate to local minor groups <p>Financial Services Unit (FSU)</p> <ul style="list-style-type: none"> - Manage operating reserve fund - Manage payment to Manager for 2400 hours of ice purchased annually - Oversee the Operating and Cash Flow Agreement - Monitor audited statements from the Manager to ensure compliance to the operating agreement <p>Real Property Asset Management (RPAM)</p> <ul style="list-style-type: none"> - Review and approve annual operation and maintenance plan and lifecycle maintenance plan and any subsequent alterations to these plans - Negotiate and manage transfer of facility and facility lands at the end of the agreement <p>Legal Services</p> <ul style="list-style-type: none"> - Centre of Expertise for the City on any legal matters concerning the Master Agreement <p>Economic Development and Strategic Initiatives / Communications</p> <ul style="list-style-type: none"> - Consulted on an “as required” basis for major events and any significant adjustments to the agreement

In addition to the issues regarding ongoing monitoring noted earlier in this report, we identified a need to improve clarity regarding overall accountability (i.e. hierarchy of authority, division of duties among departments and internal support services, etc.) for contract management through each of the unique phases of contract negotiation, construction and operating life cycle. The City is currently unable to clearly identify and actively manage costs related to managing and administering P3 initiatives. Such costs include the investment of time and other resources by the P3 Office, internal support services and functional departments during both the pre and post construction phases. These costs are expected to become more and more significant as the City increases the number of P3 contracts.

Finally, we identified that P3 initiatives are not integrated into the City’s reporting and monitoring systems in the same way as traditional projects. For example, all P3 facilities should be integrated into the RPAM system which is used to monitor assets from a life cycle management perspective. This would improve transparency and quality of information available on an increasing number of P3 projects.

Recommendation 10

That Management enhance the clarity of overall accountability for P3 initiatives through the various phases of the facility's life cycle, including the specific roles and authorities of the P3 Office, RPAM, and client departments.

Management Response

Management agrees with this recommendation.

In the proposed P3 policy and procedural manual, all roles and accountabilities throughout the operational phase of the P3 initiatives will be clarified. Current P3 projects will be incorporated into RPAM's system for life cycle monitoring.

Recommendation 11

That Management develop a means to capture the financial and related costs associated with ensuring continued management of P3s and that these costs be considered in budget/resource decisions for those participants most impacted by an increasing number of P3 projects.

Management Response

Management agrees with this recommendation.

During the pre and post construction phases of P3 initiatives, all staff time will be captured and considered through the budget process to ensure suitable resource decisions can be made for P3 projects. This is particularly important for some Centres of Expertise like RPAM and Supply Management who play a significant role in the P3 procurement and negotiations proc

3.7 Audit Objective 7: City's Request for Qualifications (RFQ) and Request for Proposals (RFP) processes were followed

Through our observations, we found that the City's RFQ/RFP process for these two initiatives were generally followed. Specifically, the RFQ/RFP format and components generally reflect prevailing procurement by-laws and practices and the evaluation criteria generally reflect the specific requirements of the respective client branch, including consideration of a Public Sector Comparator which was developed for each project. In general, documentation of the RFQ/RFP process is consistent with the stages of the RFQ/RFP framework and was approved by authorized individuals prior to circulation. In addition, the City made use of a Fairness Commissioner for the SensPlex whose mandate was to provide an independent assessment of the fairness, openness and transparency of the process to evaluate bidder competency at RFQ and then the bid at RFP stage. We also noted that results of the bidder evaluation generally reflect the principles described in the RFP framework, as presented to Council, and are consistent with subsequent communications with Council. Rationale for selecting the successful bidder is also evident from the files.

Our interviews with various City staff and review of correspondence did not reveal any evidence of negative feedback from unsuccessful proponents concerning the RFQ/RFP process, either in terms of compliance or fairness. Based on the results of our audit procedures, we have no recommendations in connection with this objective.

4 CONCLUSION

Our audit of processes revealed a commitment on the part of the P3 Office and City staff in general to ensure P3 processes and infrastructure will support the continued use of P3s. There is an awareness of the need to continually improve processes and ensure that the resources and other infrastructure are sufficient to sustain these initiatives in the best interests of the City.

Although there is evidence of regular reporting to Council on P3 initiatives, there is a need to re-visit the nature of Council communications with a view to enhancing their practical value to decision makers and to foster a consistent understanding of P3 principles, strategies and key differentiators compared to traditional procurement. Similarly, there is a need to enhance the means to efficiently and consistently present information regarding proposed P3 initiatives to promote common understanding of these initiatives and their respective pros and cons. Finally, there is a need to enhance the formality of various processes, including those related to continuous improvement, monitoring of agreements and results, and capturing costs of P3 support services and accountabilities through the life cycle of a P3 initiative.

5 ACKNOWLEDGEMENT

We wish to express our appreciation for the cooperation and assistance afforded the audit team by Management.