



Agreements and the Legal Modalities

Regional Public-Private Partnerships
Workshop

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Introduction

UNDP Policies & Guidelines

Types of Agreements

Backdoor Procurement

Lessons Learned & Challenges

Introduction

- UNDP Toolkit for collaboration with business guides all cooperation
- The specific terms and conditions of each relationship with the private involving an exchange of resources sector must be the subject of a formal agreement.
- Legal modalities for entering into collaborative relationships with the private sector are different and distinctive from procurement activities.
- UNDP can accept cash and in-kind contributions, pro-bono services, and secondment of staff.

UNDP Toolkit for Cooperation with Business:

- ✓ UNDP Policy Statement
- ✓ UNDP Guidelines
- ✓ UNDP Standard agreements:
 - MOU
 - Cost-sharing agreement
 - Model agreement for in-kind contributions
 - Loan of staff

Types of Agreements

Memorandum of Understanding (MOU)

- ✓ Provides a general framework for collaboration between the Parties.
- ✓ Useful to frame cooperation – but not required legally
- ✓ Specific activities developed under the MOU are supported by additional agreements that are relevant to the type of the contribution (if any) for that activity.
- ✓ Is an MOU legally binding?



Types of Agreements (cont'd.)

Cash Contributions

- Standard agreement to receive small contributions
 - ✓ To be used when the contribution from the private sector does not exceed US\$100,000
- Standard agreement to receive financial contributions from the private sector



Types of Agreements (cont'd)

In – kind and Pro-bono services

➤ In-kind Contributions

- ✓ Standard Agreement to accept In-kind Contributions
- ✓ To be used for contribution of equipment along with ancillary services
- ✓ Need to distinguish it from pro-bono services

➤ Pro-bono Services

- ✓ Currently, UNDP does not a framework to accept pro-bono service
- ✓ Historical precedent in light of the private sector support for the tsunami relief and recovery activities
- ✓ Model agreement is used, but clearance from HQ OLPS, BOM and BRSP is needed prior to signing.

Types of Agreements (cont'd.)

Secondment of Staff

➤ Reimbursable loan agreement

- ✓ To be used UNDP is committing some type of benefits toward the seconded personnel
- ✓ Coordination with OHR/OLPS is recommended.

➤ Non-reimbursable loan agreement

- ✓ To be used when UNDP does not contribute toward the salaries, emoluments, or benefits of the staff
- ✓ Coordination with OHR/OLPS is recommended

Agreements

Approval authority

Approval authority is decentralized to the CO / RR. Approval from HQ MUST only be sought when:

1. The agreement pertains to a trust fund arrangement;
2. The agreement does not conform to the model agreements;
3. The agreement has implications for two or more countries;
4. The agreement is to be entered into with the headquarters of a multinational entity;
5. The agreement concerns a partnership activity that the CO is having difficulty making a judgement call about; and,
6. The agreement includes marketing and public relations activities on the part of the private corporation.

“Back-door Procurement”

- UNDP should not have additional costs related to the specific partnership/agreement
- The contribution should not imply a need for future procurement from the donating company
 - ✓ Special attention should be directed toward IT-related partnerships, software donations
 - ✓ Combined offers from the private sector (part pro-bono; part paid services) are considered offers at reduced-rate and should follow applicable procurement processes.

Lessons Learned and Challenges



- Negotiations are more expedient when the agreements follow standard UNDP format.
- Final bottlenecks are resolved easier if direct lawyer-to-lawyer contact is facilitated.
- Demand for a “friendlier” legal language, that is accessible to parties who are new to the UN system.
- There is a general unfamiliarity among the private sector partners of the UN’s legal status and limitations
- Need for quicker, more streamlined review and approval procedures on UNDP’s side

Q & A

