

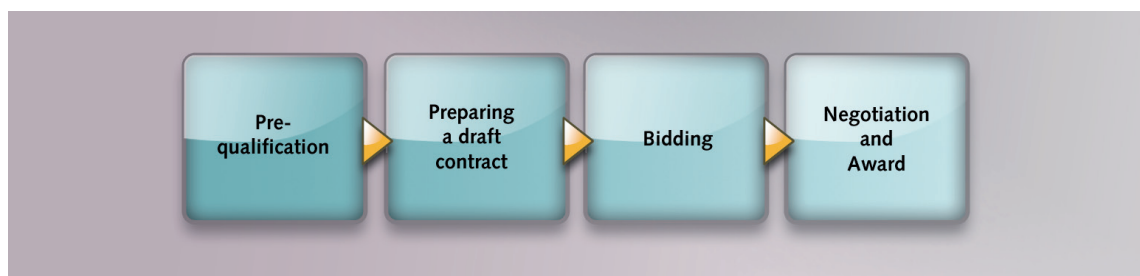
Performance-based contracts: Main steps in competitive bidding

This section summarizes the main procurement steps for PPPs comprising maintenance, management and performance-based contracts.

Maintenance, management and performance-based contracts require a detailed and prior definition of the scope of work and performance indicators (Module 2 -> Scope).

Competitive bidding for these types of PPPs should basically follow the steps and main principles usually in force for the procurement of civil works (maintenance contracts) or service contracts (management contracts). Notably, the usual length of PPP contracts and the focus on outputs (performances) instead of quantities (inputs) require particular care in the formulation of evaluation criteria at both prequalification and bidding stages, and in particular in the drafting of the contract.

The main steps to be followed in the competitive bidding process are usually:



In addition, maintenance, management and performance-based contracts require a detailed and prior definition of the scope of work and performance indicators.

Prequalification

Before embarking on the prequalification process, the Government should have evaluated the capacity of the private firms to provide the required services. If required, specific programs to enhance this capacity could be implemented (Module 3 -> PPP Policy Framework -> Capacity Building and Training). Further consideration should also be made of possible collusion.

Reasons for prequalification

First of all, prequalification aims to ensure that future invitations to bid are extended only to private companies with adequate capabilities and resources. This is particularly necessary for large or complex projects.

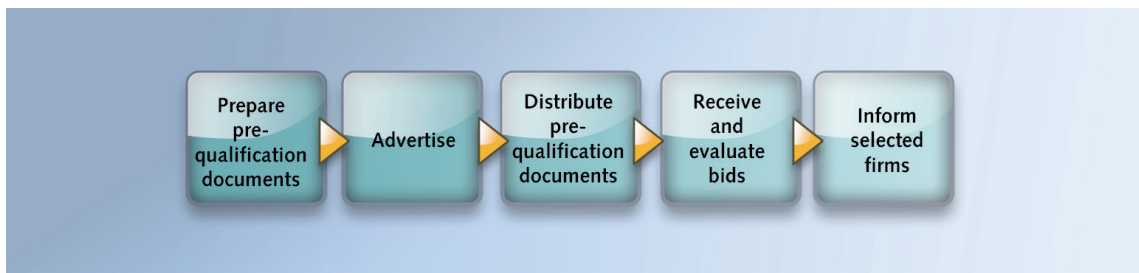
Prequalification also allows the candidates' level of interest in the project to be tested and thus to make sure that they will subsequently submit a bid. This is particularly

useful when the cost of preparing detailed bids is high in relation to the available resources of certain candidates.

Prequalification can be used to limit the number of tenderers in order to prevent the private sector (as a whole) from over-investing in the competition, and also to make bid analysis shorter and easier for the contracting authority. Prequalification can also be useful to determine eligibility for preference for domestic Contractors where this is allowed.

Main prequalification steps

The steps involved in the prequalification process for a PPP are usually the same as those for typical civil works projects:



Further information on prequalification documents, advertising and bid evaluation is detailed below.

Prequalification documents

Prequalification documents are prepared by the contracting authority or a competent consultant.

On one hand, they inform candidates of the key points of the project and future contract, in particular:

- Brief description of the project with its main features and objectives,
- Scope of responsibility to be entrusted to the private sector,
- Contractor's level of autonomy and mode of control of its services,
- Description of the institutional framework, the role of the contracting authority and various government agencies, directly or indirectly involved in the project,
- Contractor's mode of payment and estimation of the contracting authority's budget clearly identifying the share allocated for the remuneration of the firm. This information is crucial to attract firms with suitable capacity,
- Description of the whole bidding process before contract award and objective criteria used for the selection of candidates.
- On the other hand, prequalification documents must detail the information to be submitted by candidates. The information should be entirely based on the ability and resources of candidates, and should concern:
 - Legal, administrative and financial position, in particular compliance with national and local regulations,

- Experience and past performance on similar contracts. For each contract, candidates should briefly describe the project, their responsibilities, and the human and equipment resources involved, and should give details of the contract and subcontract amounts, as well as the performance levels achieved,
- Capabilities and potential means for being involved in the project as regards staff, equipment, material, construction and/or manufacturing facilities.

Advertising

The aim of advertising is to invite firms to submit pre-qualification documents to the contracting authority. It should target firms either locally or internationally with sufficient ability and experience.

Advertising regulations must be observed. For example, in Europe, advertising for major projects (for amounts above a certain level) must be advertised in all European countries.

Projects may be advertised in local newspapers, professional and specialized magazines. The advertisement may comprise the entire prequalification documents described above or only the key points on a single sheet of paper with an indication of a date and place for withdrawing the prequalification documents.

Evaluation of applications

The evaluation of candidates shall be based entirely upon their ability and resources to perform the contract satisfactorily, taking into account their experience and past performance on similar contracts, capabilities with respect to personnel, equipment, construction or manufacturing facilities, administrative and financial position.

It is stressed that this evaluation should be performed by competent staff and a formal report should be written. An independent consultant may help the contracting authority if necessary. The reasons why certain candidates are not qualified must be thoroughly explained, as candidates are allowed to complain and ask for explanations as to why they have not been selected.

Preparing a draft contract

The advantages of including a draft contract in the bidding documents are mainly:

- **Transparency and fairness.** Negotiating all the terms of the contract with the selected bidder would result in substantial changes. Such an arrangement would not be fair and would surely be challenged by unlucky competitors;
- It provides the bidders with a clear picture of the conditions that will govern the partnership between the contracting authority and the private company. It allows them to identify the risks allocated to them and further evaluate their potential impact on expected benefits.

Because of the importance of the draft contract, it is recommended to embark on its preparation at an early stage in the bidding process, it has become general practice that the advisors preparing the FS study be contracted within a 2 part FS study to prepare

draft contract documents in the second part. This is because the advisors will understand the key issues and the second part can be contracted only if the government consents to the project going to tender, so the documents are only prepared on an as required basis.

The draft contract should include different kinds of information:

Technical information

- Description of the site location and access to the site,
- Detailed scope of work with responsibilities entrusted to the private contractor and those kept by the contracting authority,

Available documents, investigations and studies assessing the initial road network and site condition. The following themes may be addressed: geology and geotechnics, water resources, weather conditions, traffic volumes, accident data, pavement structures, equipment and structures condition, past and recent maintenance or work programs etc.

The documents should be as detailed and up-to-date as possible. The contracting authority may have a consultant carry out assessment surveys and studies before the bidding process if necessary, and include;

- Design documents and plans for any rehabilitation or development works included in the contract,
- Description of the site location and access to the site
- Feasibility study,
- International and national standards governing the expected services (works, maintenance, operation),
- Performance indicators for operation and maintenance with a clear definition of control and measurement methods, as well as performance requirements,
- Environmental impact assessment study (if any) and a detailed description of the environmental constraints during all project phases,
- Quality assurance requirements,
- Documents to be provided by each party during the contract,
- Assistance and facilities to be provided by the government and contracting authority,

Financial and Economic Information

- A schedule allowing the bidder to present its financial offer in a clear, standard form, which will be included in the future contract,
- Contractor's mode of payment and participation in project financing,
- Penalties in case of contractor's default and guarantees,
- Performance bonds,
- Risk allocation,
- Formulae and price indices to be used for the adjustment and review of contractor's payments,

- The currency of bids and contract,
- Contractual requirements as regards subcontracting,
- Information about rules and regulations governing foreign exchange remittance (if international firms are to be involved),
- Nature, amount, period of validity and other principal terms and conditions of security and warranties.

Information on project planning

- Timetable for completion of the construction works,
- Time-related requirements for project operation and maintenance services.

Certain documents, such as price schedules or quality assurance documents may only be provided as model documents to be completed by tenderers in their proposals. Little or no flexibility can be allowed in filling in these forms, depending on the project specificities.

To sum up, if the answers to the following questions are respectively yes and no, then the draft contract should be correct: Are the responsibilities of each party clearly defined? Is there any clause in the contract, which might be misunderstood or misinterpreted?

Bidding

Once a sufficient number of competent firms have been selected and informed, the Government shall proceed with the bidding phase.

Bidding documents will be compiled and sent out to the qualified bidders who will prepare their bids on this basis.

Bidding documents to be provided to tenderers shall consist of the draft contract mentioned previously (including standard schedules to be filled in) and instructions to the tenderers.

The instructions should guide tenderers through the bidding documents and process. They should include information outlining the required bid content, the procedures for clarifying the bidding documents and submitting bids, standard forms for bid bonds, how the bids will be opened and evaluated, as well as the procedure for negotiation and contract award.

Instructions to the tenderers should include:

- the names and contact references of officials in charge of the tender process,
- bidding timetable and requirements: date and location for submitting bids, bid format,
- information on the mode of communication and assistance between tenderers and the contracting authority during the bidding phase,
- information regarding the site inspection visit,
- requirements as regards joint ventures and responsibilities between members,

- the conditions in which alternative tenders are allowed. Alternatives should be encouraged as far as possible, since they generally allow for fruitful competition and innovations,
- possible flexibility allowed in adjusting standard schedules and documents,
- the source of the available information, such as ground investigations or traffic surveys,
- currency(ies) to be used and foreign exchange rates for conversion to a common base for comparison,
- requirements concerning bid bonds,
- legislation and regulations in force governing the tender process,
- clear technical, financial and legal criteria for bid evaluation. They entirely depend on the particular project features

and the

- contracting authority's objectives,
- procedure for negotiation and contract award,
- description and standard forms for documents to be submitted by tenderers (see below).

Each bid document should have a clear, specific purpose. Tenderers should not be loaded with unnecessary requirements since they have passed the pre-qualification stage successfully and should therefore be capable of implementing the project. Moreover, a bid bond and/or a minimum committed equity are assurances that a tenderer is truly committed to the project.

Documents to be submitted by bidders

Documents to be submitted by the bidders depend on the project considered, but should mainly consist of:

- a formal acceptance of the terms of the future contract. Bidders may also be required to submit a copy of the draft contract with each page initialed, in order to affirm their compliance with the terms of the contract and limit post selection negotiation to a reasonable minimum,
- a letter of conveyance signed by the authorized representatives of the company or consortium submitting the bid, the organization to be implemented for the project,
- a detailed description of the projected human resources to be mobilized (with the names and references of key management staff),
- technical information, such as location of the future site offices, equipment and materials that will be used, availability and references of the main equipment,
- if required, a conceptual design of works with drawings and design documents,
- pricing documents with a detailed mode of calculation of unit prices or lump sums,
- a detailed outline of the future quality assurance plan proposed,

- a health and safety plan when required in the bidding documents,
- terms of insurance policies and warranties,
- information as regard documents and drawings to be submitted if a conceptual design of works or services is involved,
- completed standard schedules and documents,
- administrative and financial information if any change has occurred since the prequalification stage.

Bid evaluation

Bid evaluation: shall be conducted using the criteria and methodology stated in the instructions to tenderers in order to select the best bid.

The aim of evaluation is to objectively determine the lowest evaluated bid. All parameters should be taken into account and not only the prices or lump sums indicated in tenderers' proposals. Comparison should be made as far as possible on the basis of quantifiable parameters.

It is highly recommended that competent staff carry out the evaluation and formalizes it in a final report. An independent consultant may assist the contracting authority if necessary. A detailed explanation should be found in the report to justify the ranking, since unselected bidders might decide to formulate complaints on the process.

Bid evaluation shall mainly be based on the:

- **prices proposed.** The method and parameters used for their calculations should be carefully checked (lowest wins)
- **relevance and adequacy** of the human and technical resources planned for the project (pass / fail basis)
- **coherency** between human and technical means on one hand, and their pricing on the other hand (pass / fail basis)
- **planning** of services and works
- **relevance** of the proposed scheme for the quality assurance plan, as well as health and safety plans (pass / fail)

The bid evaluation process shall be concluded by drawing up a report summarizing the outcome of the evaluation and the identification of the selected bidder. Upon approval of the evaluation report by the required authorities sign the contract.

Typical timetable of a bidding process

The timetable of a bidding process entirely depends on the nature of the maintenance and management project. It is thus difficult to indicate a typical timetable. The following indications could be taken as rough estimates.

Prequalification:

1 to 4 months between issuing the advertisement and the candidates' prequalification.

Bidding process:

A minimum of 2 to 6 months between issuing the bidding documents and contract award. The period may often be much greater (more than a year) for large and/or complex projects.

A sufficiently long period of time should be allowed to bidders to collect information on the project and prepare their bids.



Performance Based Contracting and PPP Recent Experience and Lessons Learned with the Use of Performance Based Contracts (PBC) and PPP, César Queiroz, 2007



Resource Guide: Performance-based contracting for preservation and improvement of road assets. World Bank, 2008