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Contracts for Public-Private Partnership (PPP) Options

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**Global Dialogue Workshop on
Enabling Private Sector Delivery of Public Services
Public Private Partnerships in e-Government Projects**

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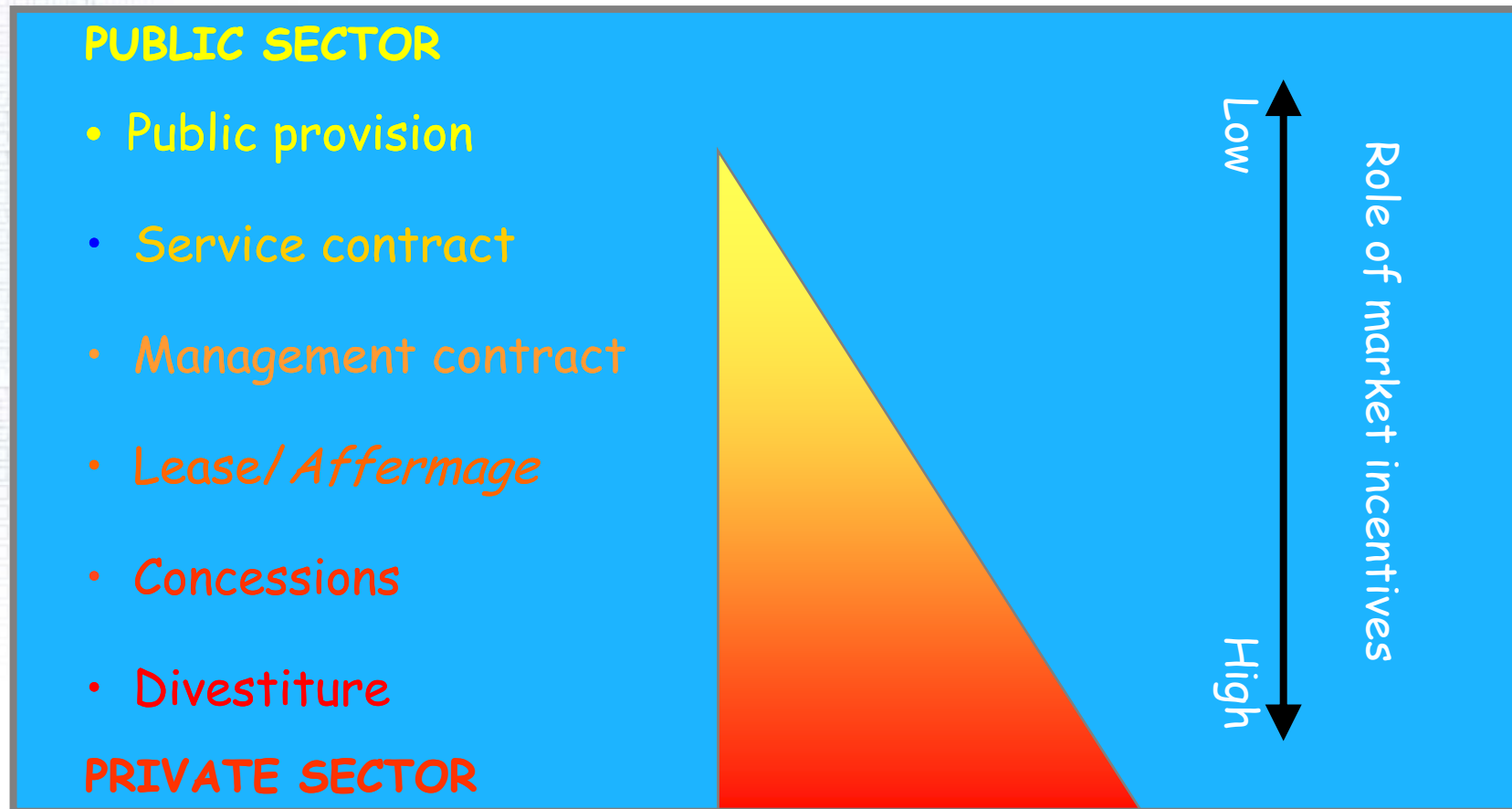
- PPP options - General review
- Basic principles for successful PPP procurement
- Characteristics of commonly used methods for award of PPP contracts
- World Bank procurement policies & procedures for different PPP options
- Use of consultants/transaction advisors





Public-Private Partnerships (PPP)

Include full range of arrangements for construction, upgrading, maintenance, and operation of infrastructure





Summary of responsibilities and risks under different PPP options

Responsibilities & risks	Service contracts	Management contracts	Lease / <i>Affermage</i>	Concessions (incl. BOT)	Divestiture
Ownership of assets	State or mixed	State or mixed	State or mixed	State or mixed	Private
Investment planning & regulation	Parent agency or separate public authority	Parent agency or separate public authority	Parent agency or separate public authority	State, negotiated with contractor	None or state agency
Capital financing	Public	Public	Public	Private	Private
Working capital	Public	Public	Private	Private	Private
Execution of works	Private as specified	Public	Public	Private	Private
Operation & maintenance	Private as specified	Private	Private	Private	Private
Management authority	Public	Private	Private	Private	Private
Commercial (demand) risk	Public	Mainly public	Private	Private	Private
Basis of compensation	Services rendered	Services rendered & results	Results	Results	Privately determined
Duration	Less than 5 yr.	3-5 years	5-10 years	10-30 years	Indefinite



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Basic principles for successful PPP procurement

- **Best value for public money**
 - **Economy** – lowest cost possible on a whole-of-life basis considering commensurate benefits
 - **Efficiency** – simple & swift process with positive results & without protracted delays
- **Fairness**
 - Adequate promotion of opportunities among potential service providers
 - Impartial, objective, consistent & reliable level playing field
- **Transparency**
 - Accessible, open & unambiguous procedures
- **Ethics**
 - Practitioners and service providers conduct business with integrity & mutual trust & respect
- **Accountability**
 - Practitioners enforce & obey rules & are accountable for actions involving public moneys





Commonly used methods for award of PPP contracts

- Competitive bidding*
 - International (ICB)
 - Limited International (LCB)
 - National (NCB)
- Direct contracting** (*includes renegotiation and unsolicited proposals*)
- Competitive negotiations***

* Acceptable to WB

** Acceptable to WB exceptionally under set conditions

*** Acceptable to WB ONLY for consultant services





Competitive bidding – Characteristics

- May involve prequalification of potential bidders
- Ample advertisement of opportunities at appropriate level
 - **ICB** – in media of world-wide coverage
 - **LCB** – restricted to limited number of identified qualified bidders
 - **NCB** – locally only when opportunity not likely to attract foreign competition or when ICB's administrative/financial burden outweighs its advantages
- Distribution of bidding documents including:
 - Clear procedures for offers submission
 - Clear procedures for bid evaluation & contractor selection
 - Draft contract
- Public opening of bids
- Award to qualified bidder submitting responsive, “lowest evaluated bid” (*offering lowest overall cost to the govt.*), determined upon application of objective criteria (*generally cost or cost-related*)





Competitive bidding - Single or multiple award stages?

- If due to PPP project simplicity, technical & performance requirements can be clearly defined
 - ➔ Single Stage Bidding
- If due to PPP project complexity, determining complete technical & performance requirements in advance may be undesirable or impractical
 - ➔ Two-Stage Bidding
- Single-stage Bidding
 - Tenders include offered (*or requested*) price and documents demonstrating technical proposal's responsiveness to bid requirements



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Competitive bidding – Two-Stage Bidding process

Invitation to 1st Stage Bidding

- Employer issues bidding docs. including objectives sought and performance specifications
- Bidders asked to submit technical-only proposals

Evaluation of Technical Proposals

- Employer evaluates technical proposals' responsiveness to objectives/performance specs.
- Employer verifies continued bidders qualification

Clarification/Feedback Meeting with Qualified Bidders

- Bidders may be invited to discuss content of tech. proposals and tech./commercial changes required
- Employer prepares minutes of required changes and may amend bidding documents based on discussions

Invitation to 2nd Stage Bidding

- Bidders invited to submit 2nd stage bids including final technical proposals and priced bids

Technical/Financial Evaluation and Award

- Employer evaluates 2nd stage bids per evaluation criteria
- Award to qualified bidder with responsive, lowest evaluated 2nd stage bid



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Direct contracting - Characteristics

- Contracting of single source without competition
- Efforts should be made to determine
 - Price fairness & reasonableness (*e.g., benchmarks, prior tendered prices for similar services, detailed cost analysis, etc.*)
 - Benefits of not carrying out a competitive process
- Parties' bilateral negotiations prior to contract signing involve price, requirements, and contract terms and conditions
- Renegotiation (*negotiation with incumbent contractor of issues outside scope of original contract*) & award without competition based on unsolicited proposal are forms of direct contracting





Unsolicited proposals – Characteristics

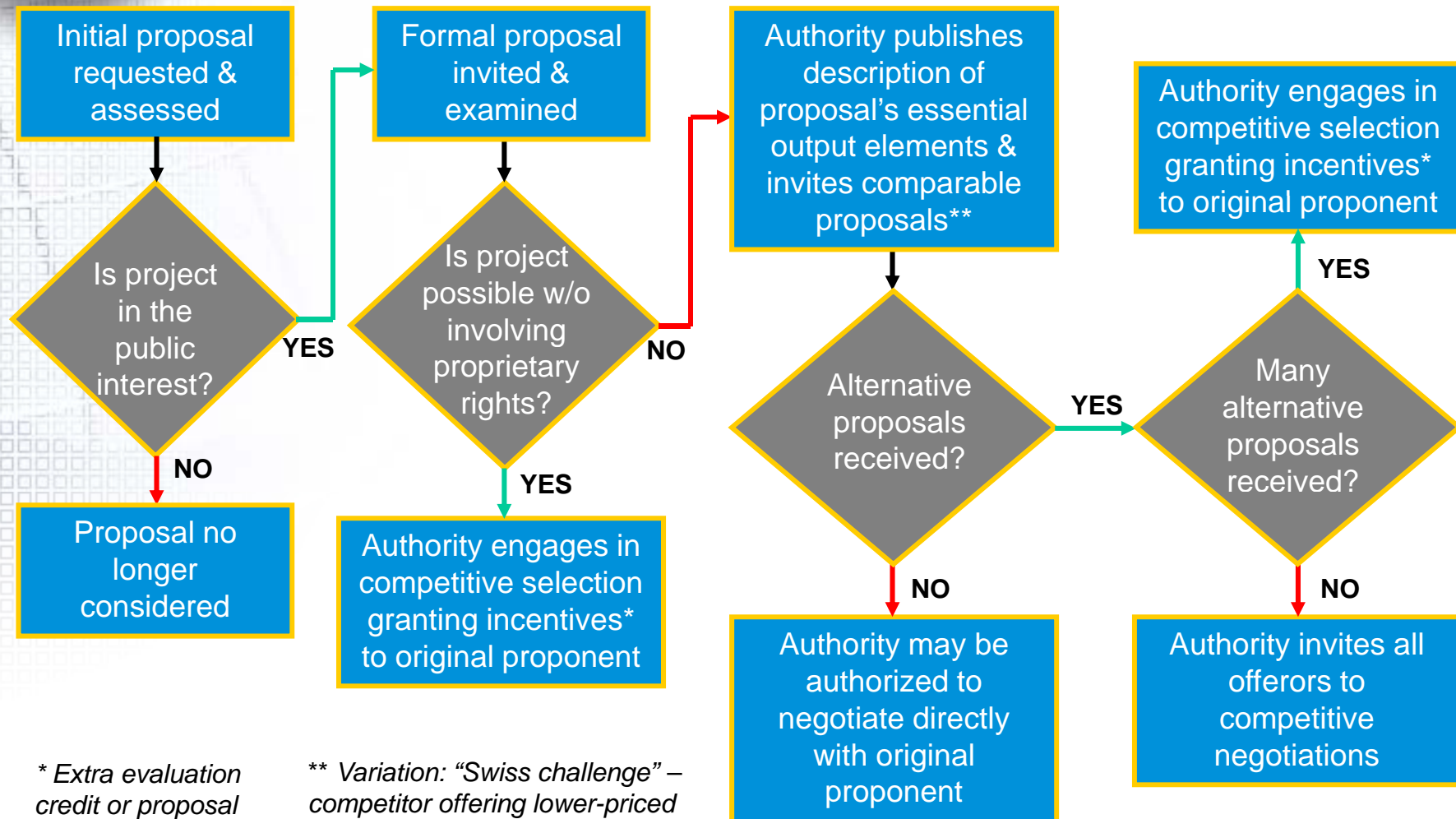
- Presented by private entities/JVs for development of infrastructure projects in any sector for which no selection procedures have been publicly opened
- Most common unsolicited proposals
 - Claiming to involve the use of new concepts or technologies to address public authority's infrastructure needs (*though two-stage bidding could be used instead if project has already been identified by authorities*)
 - Claiming to address an infrastructure need not already identified by public authority (*insufficient justification for direct contracting*)
- Not allowed under many national and MDB rules, especially if projects require significant public financial commitments (*e.g., guarantees, subsidies, or equity participation*)





Handling of unsolicited proposals

Usual procedures when national rules allow for unsolicited proposals



* *Extra evaluation credit or proposal preparation cost reimbursement*

** *Variation: "Swiss challenge" – competitor offering lower-priced proposal gets award if not matched by original proponent*



Competitive negotiations – Characteristics

- Authorities may combine elements of competitive bidding with direct negotiation to promote transparency while preserving proposals' innovative or proprietary aspects
- Most common procedures:
 - **Step 1:** Authority uses competitive process to solicit proposals (RFP) in response to broad output specifications to narrow number of potential proponents
 - **Step 2:** Authority negotiates directly **with preferred proponent** (*& with fallback proponents if negotiations with preferred one fail*) to work out detailed terms & conditions
 - **Alternative Step 2:** Authority negotiates **simultaneously** with technically responsive proponents to enhance competitive aspects of negotiated transactions
- Competitive negotiations suitable for projects in which:
 - There is scope for innovation and/or different approaches
 - Financing on basis of standardized contract documents difficult to secure



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WB procurement policies & procedures for service contracts

- WB finances fees and incentives (*when applicable*)
- Selection procedures per Procurement Guidelines (*similar to those applicable to goods and works*)
- WB's Sample Bidding Document for Non-Consultant Services
 - Encourages expressing technical requirements in terms of results
 - Requires submission of performance security
 - Contemplates lump-sum payments according to payment schedule & linked to outputs delivery
 - Provides for optional performance incentive compensation, liquidated damages & lack of performance penalty
 - Prescribes award to qualified bidder with lowest evaluated, responsive bid





WB procurement policies & procedures for concessions

- WB finances public owner-committed contributions (*e.g., equity, assets*) & subsidies (*OBA*)
- Policies apply to BOO/BOT/BOOT, concessions & similar arrangements
- Concessionaire's selection method linked to way it will have to procure Bank-financed goods, works, & services:
 - If selected through Bank-acceptable ICB procedures
 - Concessionaire free to procure G, W & S required for facility or for producing promised outputs, using own procedures
 - Loan Agreement to specify type of expenditures to which Bank financing will apply
 - If not selected through Bank-acceptable ICB procedures
 - G, W, & S required for facility or for producing promised outputs & to be financed by WB to be procured through Bank-prescribed ICB procedures (unless OPCS Nov. 7, 2005 OM applies)
- ICB procedures acceptable to the Bank
 - Not necessarily Bank-prescribed ICB procedures but assessment required to ensure they meet procurement principles
 - NCB appropriate in special cases when conditions for NCB are present
- No WB standard/sample bidding documents available for lease or concession contracts



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Key aspects of contract design for concession-type contracts

- Risks (*e.g., commercial, political, exchange rate, etc.*) to be allocated to party which can best manage each
- Potential bidders to be consulted in areas of uncertainty on private sector's appetite for assuming different risk levels
- Technical specifications
 - **Input-based** specification may reduce costs to bidders but transfers more risk to the government
 - **Performance- or output-based** specification gives bidders a scope for innovation in design and risk taking but require definition of performance indicators & experienced team to supervise concessionaire's performance
- Important points to include in final concession contract
 - Definition of services to be provided, concession area & contract duration
 - Rights and obligations of the parties
 - Meaningful & uncontestable performance indicators
 - Regulations to be applied & definition of regulator's powers
 - Penalty for noncompliance with concession agreement
 - Tariff regime, adjustment mechanisms, & process for resetting tariffs
 - Process for concession termination/renewal/rebidding
 - Dispute resolution mechanisms & applicable law





Use of consultants/transaction advisors

- WB finances employment of consultants/transaction advisors
- Role of Consultants
 - Provide government with technical assistance & advice on procurement and economic, regulatory, legal, financial & technical issues
 - Can support several government activities
 - Road Shows
 - Conferences
 - Data Rooms
 - Review of potential bidders' suggestions to improve selection process
- Types of Consultant Contracts
 - A firm or consortium of firms under a single contract to deal with all issues
 - Separate specialized advisors under individual contracts





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Thank you!

Any questions?

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