

Ministry of Economy of  
Poland and World Bank  
Seminar on Legal,  
Economic and  
Implementation Issues in  
PPP Projects

Warsaw, Poland, June 17 and 18, 2008

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Issues in PPP Projects

## Competitive Selection of the Private Partners. Use of Standard Bidding Documents

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# Procurement and Public-Private Partnerships (PPP)

- Procurement arrangements should be undertaken in a competitive manner
- PPP includes the full range of concession type arrangements for the provision, upgrading, maintenance, and operation of infrastructure projects
- PPP also includes long-term service contracts, management contracts, leases, and divestiture

# Definition of Public-Private Partnership

- A Public-Private Partnership (PPP) constitutes a sustained collaborative effort between the public sector (government agencies) and private enterprises to achieve a common objective (e.g., a motorway or railway project) while they pursue their own individual interests.

# Concessions

- Types of Concessions:
  - Build, Operate, Transfer (BOT)
  - Build, Own, Operate (BOO)
  - Build, Own, Operate, Transfer (BOOT)
- In BOO and BOOT schemes the private operator retains ownership of the facility
- Concessions usually include some regulatory provisions to set the prices to be charged and the quality of service to be provided
- The assets are returned to the state at the end of the concession term (except BOO)

# Evaluation Criteria for ICB Selection of Concessionaires May Include

- The amount of subsidies, if any, required from the public sector
- The performance specifications of the facilities offered
- The cost charged to the users
- Income generated for the Client by the facility
- The concession term (number of years)

# Selection of the Strategic Investor or Concessionaire

For relatively large projects, it is recommended to carry out:

1. Prequalification
2. A Two-Stage Bidding

# World Bank Standard Bidding Documents

- Prequalification Document for Procurement of Works & User's Guide, May 2007 - used in prequalifying applicants who express an interest in bidding
- Standard Bidding Document for Procurement of Works & User's Guide, April 2007 -
- <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT/0,,contentMDK:20062006~menuPK:84284~pagePK:84269~piPK:60001558~theSitePK:84266,00.html>
- <http://www.worldbank.org/procure>



# International Competitive Bidding (ICB)

- Ensures transparency
- Provides a market mechanism for selecting the best proposal
- Stimulates interest among a broad range of potential bidders

# Single versus Two Stage ICB

- The concession project is not complex and technical and performance requirements are clearly defined

➡ Single Stage ICB

- The concession project is complex and both technical and performance requirements are not clearly defined

➡ Two Stage ICB

# Single Stage Bidding

The Client  
prepares and  
issues the bid  
documents

Bidders  
submit their  
technical  
and  
financial  
proposals

The Client  
evaluates  
the  
technical  
& financial  
proposals

# Two-Stage Bidding

## The First Stage

Client prepares bidding documents, including performance specifications and draft contract; shares with pre-qualified bidders

Pre-qualified bidders submit technical proposals (no price); may

Client evaluates technical proposals, considers feedback received, holds (and documents) one-on-one clarifications, and recommends bidding to the client

## The Second Stage

Client sends pre-qualified bidders clarifications memo and any amendments and invites proposals

Bidders submit revised technical proposal and financial proposal

Client evaluates technical proposals, then the financial proposals of those technically compliant

# Prequalification Process

## Objectives

- Determine, among all interested applicants, those who are qualified for the main bidding process
- Spare bid preparation costs to those who have no chance to get award due to lack of qualifications

## Required conditions

- Prequalification is stringent but consistent with required services so that the government can make an adequate selection
- Applicants are provided with sufficient information on the concession
- In the case of joint ventures, qualified small operators are allowed to join large contractors or banks to compete with traditional concessionaires

# Prequalification Documents

## Information to Be Provided by the Client

- Demand forecasts with the estimated revenue and demand elasticity
- Progress on various critical actions relevant to the project
- Scope of the proposed concession
- An outline of bid selection and evaluation criteria

# Main Requirements to Prequalify Candidates

- Financial, technical, and managerial capacity
- Expertise to build, finance and operate the facility
- Experience of bidding successfully for similar concessions and mobilizing project finance
- *Demonstrated commitment and competitive enthusiasm to participate in the main bidding process (this should not be a PQ criterium)*
- Experience in the host country (if necessary)

# Prequalification

1. Advertising  
Notice requesting expressions of interest to pre-qualify to be published locally and internationally
2. Investor feedback  
Meeting with selected potential investors/concessionaires ("Road Show")
3. Public information  
Information dissemination on the financing and construction of the proposed project
4. Pre-qualification documents  
Should include financial and operational criteria to ensure bids are invited from only qualified candidates



# Examples of Prequalification Criteria

Country	Transaction	Prequalification Procedure	Technical Criteria	Financial Criteria
Mexico	Concession of rail freight lines	Registration through written statement of interest; authorization of registered parties by the Ministry of Communications and Transportation based on uniform criteria	Demonstrated legal, technical, and administrative capacity	Demonstrated financial capacity
Hungary	BOT for toll road	Invitations for prequalification based on approved preliminary design plans evaluated by expert assessment committee	Capacity of bidders to design, build, maintain, and operate toll road	Capacity of bidders to finance road without state aid

Source: Kerf and et al. (1998)

# Pre-qualification for the St. Petersburg Western High Speed Diameter Motorway

Country	Transaction	Prequalification Procedure	Technical Criteria	Financial Criteria
Russia	<ul style="list-style-type: none"> <li>■ Concession for the Design, Construction and Operation of the WHSD Motorway</li> <li>■ Estimated Cost: Euro 3 billion</li> </ul>	<ul style="list-style-type: none"> <li>■ Registration through submission of application and relevant documents, following a deposit of 500,000 Rubles</li> <li>■ Deadline for submission: 28 February 2007</li> </ul>	<p>Minimum experience:</p> <ul style="list-style-type: none"> <li>■ Two 10 billion-ruble road construction projects</li> <li>■ Operation of two toll motorway concessions, minimum 30 km, 20,000 pcu/day</li> </ul>	<ul style="list-style-type: none"> <li>■ Ruble 60 billion minimum annual turnover</li> <li>■ Experience in mobilizing finance for PPP</li> <li>■ No bankruptcy proceedings</li> </ul>

Source: <http://www.whsd.ru>

# Designing Performance Indicators While in the Prequalification Process

*Clients should design performance indicators that assist in the supervision of the concession*

## Indicators

- Expansion of the service to be provided under the concession
- The quality of the technical operation of the system
- The quality of maintenance of concession facilities
- The quality of attention to customers
- The consistent economic and financial soundness of the concessionaire

# The Bidding Process

- Bidders should be given enough time (e.g., three to six months) to prepare their bids, depending on the complexity of the project and the levels of detail required
- During this period the Client should promptly answer bidders' questions and comments on a consistent and open basis
- The Client should hold a pre-bid conference to provide bidders with information on the government's expectations, clarifications
- New information should be provided to all bidders
- Governments should address the inconsistencies and issues identified by the bidders in the bidding documents and amend the documents accordingly

# Bidding Document

## Contents

- A detailed definition and description of the project
- A draft concession schedule
  - A technical performance specification (both construction and operations)
  - Any other key agreements (e.g., details on the government's proposed support for the project)
- Details on any external support agreed for the project (e.g., IFIs)

# Bidding Document

*Bidders should be made aware that the information is provided in good faith and the government shall not be liable contractually for the information*

## The document should contain:

- Detailed, independently validated underlying demand forecasts and revenue projections, with assumptions and methodology used
- Survey reports including detailed soil or ground condition tests that may be relevant; detailed environmental assessment of the project
- Information on existing and proposed legislation that will affect the project (e.g., environmental regulations or guidelines)

# Proprietary Information

- Ownership of all data, materials, and documentation originated and prepared by a bidder shall belong exclusively to the Client and be subject to public inspection
- Trade secrets or proprietary information shall not be subject to public disclosure. However, the bidder must invoke the protection of the Law either before or at the time the data is submitted
- The specific words, figures, or paragraphs that constitute trade secret or proprietary information must be identified
- The classification of an entire proposal document, line item prices, and/or total proposal prices as proprietary or trade secrets is not acceptable

# Evaluation of Bids

- Bidders' proposals are more likely to match the government's critical objectives if the evaluation criteria are precise and transparent
  - This also enables the Client to evaluate tenders easily and rapidly
- The bids should be evaluated based solely on the criteria specified in the bidding documents



# Defining the Successful Bidder

- Objective: Selecting the bidder who offers the lowest evaluated proposal, according to the criteria in the bidding documents
- When the concessionaire might seek to impose charges in return for the services provided
  - Assess the cost to the government of the charges required by the concessionaire over the concession period
  - This can be done by calculating the present value of the charges imposed by each bidder
  - The lowest evaluated bidder in this case will be the bidder who offers the lowest present value of the charges

# Technical Evaluation

## Some Criteria

- Whether the bidder's technical and management proposals are likely to meet the requirements of the performance specification
- Technical and design risks of the proposals
- The proposed construction timing and the likelihood of its attainment
- The proposed operating and maintenance procedures and the likelihood of their attainment

# Technical Evaluation

Evaluation of technical aspects relating to the construction and operating period could be simplified by:

- Specifying stringent technical standards
- Providing for penalty points to be given for noncompliance
- Adopting prequalification

*Only proposals that meet the required technical standards should be put forward for a financial evaluation*

# Financial Evaluation

- The Client must assess the credibility of the commercial and financial aspects of the bidders' plans over the concession period
- The underlying assumptions in each bid should be strictly reviewed
- Track records of the bidders' sponsors, financial advisors, and supporting financiers should be assessed
- The credibility of a bidder's proposal will be assessed with respect to the bidder's own capital structure and the sources and availability of funding

# Final Selection of the Successful Bidder

## Recommended Approach:

- Apply the formula or formulae provided in the bidding documents and obtain the numerical assessment for each bid that passed the technical and financial evaluations
- The bidder with the best score, according to the terms of the bidding documents, should be declared the successful bidder
- Prepare a Bid Evaluation Report
- Invite the successful bidder for negotiation of final contract details

# Final Concession Contract

## Points to Include:

- The definition of the services to be provided by the concessionaire under the contract
- The concession area
- The rights and obligations of the Client and concessionaire
- The performance indicators of the quality of the service
- The regulations to be applied
- The power of the regulator to inspect installations and books

# Renegotiation

## Why Renegotiation?

- The concession designs and regulations are incomplete
- The conditions in the original contract are largely changed
- Governments interfere with contract clauses

## Cost of Renegotiation

- Undermines the competitive bidding process, consumer welfare, and sector performance
- Increases public opposition to PPP
- Compromises the credibility of the reform program

Source: Guasch (2004)

# Unsolicited Proposals to Governments

- Origin of most controversial private infrastructure projects
- In theory, generate beneficial ideas
- In practice, some unfavorable experiences; attempt to avoid competition; exclusive negotiations behind closed doors
- Usually sole-source negotiations take much longer than expected



## In summary...

- Avoid, to the extent possible, unsolicited proposals
- Renegotiations may undermine the competitive bidding process
- Competitive bidding leads to efficiency and economy. ICB better for larger projects
- Consider a two-stage bidding procedure for complex projects

Thank you!

# Suggested steps to select the concessionaire

- Carry out prequalification
- The Grantor provides the prequalified bidders information on the concession as complete as possible (e.g., traffic studies, geometric and structural preliminary design, preliminary design of toll collection facility) to avoid the bidders incurring unnecessary time or expense seeking for clarification, and to enable them to meet the government's requirements
- The bid documents should include a statement that all such information is provided in good faith and the Grantor shall not be liable contractually for such information
- The bidding documents should include the requirements for horizontal and vertical alignments (including, for example, minimum height in tunnels, minimum clearance under bridges), number of traffic lanes, the level of riding quality to be provided by the Concessionaire during the life of the concession (e.g., maximum acceptable roughness of IRI not greater than 2 m/km), and any other parameters considered essential

# Suggested steps to select the concessionaire

- The bidders offer comments on the bid documents
- The Grantor reviews and may prepare addenda to the bidding documents, including revisions to the technical requirements made in the light of feedback from the bidders
- The Grantor invites the bidders to submit their technical and financial proposals
- The bidders offer bids containing their final technical proposal and a financial proposal
- The Grantor evaluates the technical proposals on a pass-fail basis, and selects those technically satisfactory bidders for evaluation of their financial proposals
- The Grantor evaluates the financial proposals, according to the method specified in the bidding documents (for example, net present cost to the Grantor, or specific evaluation formulae), and selects the successful bidder

# Some Basic References

Guasch, J. Luis (2004). *"Granting and Renegotiating Infrastructure Concessions Doing It Right."* Washington, D.C.: World Bank.  
[http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/05/06/000090341\\_20040506150118/Rendered/PDF/288160PAPER0Granting010renegotiating.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/05/06/000090341_20040506150118/Rendered/PDF/288160PAPER0Granting010renegotiating.pdf)

World Bank (2004). "Guidelines: Procurement Under IBRD Loans and IDA Credits." (May). Washington, D.C.  
<http://siteresources.worldbank.org/INTPROCUREMENT/Resources/Procurement-May-2004.pdf>

Queiroz, Cesar (2005). "Launching Public Private Partnerships for Highways in Transition Economies." Transport Paper TP-9. (September). Washington, D.C.: World Bank.

Kerf and et al. (1998). "Concessions for Infrastructure: A Guide to Their Design and Award." Technical Paper no. 389.

World Bank (1998). "Bidding for Private Concessions. The Use of World Bank Guarantees." RMC Discussion Paper Series, no 120. Washington, D.C.

# More Basic References

World Bank Infrastructure and Law Website

<http://go.worldbank.org/NT9MT0XLS0>

E18 Muurla-Lohja Motorway Project, Finland

<http://alk.tiehallinto.fi/e18/english/index.html>

Bar-Boljare Motorway Project, Montenegro

<http://www.vlada.cg.yu/eng/minsaob/index.php?akcija=vijesti&id=160129>

St. Petersburg Western High Speed Diameter Motorway, Russia

<http://www.whsd.ru/index.php?lng=en&page=3>

Queiroz, Cesar and Ada Karina Izaguirre. 2008. "Worldwide trends in private participation in roads: Growing activity, growing government support." Private Participation in Infrastructure Advisory Facility (PPIAF) Gridline Note No. 37. Washington, D.C.

[http://www.ppiaf.org/documents/gridlines/37trends\\_private\\_participation\\_in\\_roads.pdf](http://www.ppiaf.org/documents/gridlines/37trends_private_participation_in_roads.pdf)

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