DISCUSSION PAPER

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PROCUREMENT IN PRIVATELY PROVIDED INFRASTRUCTURE (PPI) PROJECTS FINANCED BY THE WORLD BANK

Armando Ribeiro Araujo

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PROCUREMENT IN PRIVATELY PROVIDED INFRASTRUCTURE PROJECTS FINANCED BY THE WORLD BANK[1]

Abbreviations and Acronyms

BOO	-	Build, Own & Operate
BOOT	-	Build, Own, Operate & Transfer
BOT	-	Build, Operate & Transfer
IEN	-	Industry & Energy Department (now integrated in EMT - Energy, Mining, and Telecommunications Department)
ICB	-	International Competitive Bidding
LIB	-	Limited International Bidding
MW	-	Megawatt
NCB	-	National Competitive Bidding
OCSPR	-	Procurement Policy and Services Group
PAD	-	Project Appraisal Document
PPI	-	Privately Provided Infrastructure
PSD	-	Private Sector Development Department
QCBS	-	Quality-and-Cost-Based Selection
RFP	-	Request For Proposals
ROT	-	Rehabilitate, Operate & Transfer
TOR	-	Terms of Reference
		TWUWS - Water and Sanitation Division, Transportation Water & Urban Development Department

[1] At the time this note was prepared by Armando Araujo, he was Principal Procurement Specialist for Private Sector projects, OCSPR; subsequently he became Regional Procurement Advisor, LCOPR. The note benefited from comments received from several staff members and especially from a Consultation Group composed of Messrs. Jean-Jacques Raoul, Sunil Bhattacharya (AFRSA); Robert Taylor (PSD); Guillermo Yepes (TWUWS); Jose Luis Irigoyen (LCSFP); Jamal Saghir (MNSID); and Robert Hunja (LEGLR). The note also benefited from the workshop originated by PSD on July 11-12, 1996 and held in Washington, D.C. involving Bank staff and external representatives of power and water companies, and U.K. and U.S. government officials. Ms. Rebecca Post made editorial review. Questions or comments on the note should be addressed to Kurt Constant, OCSPR, (extension 37237, room MC10-427).

A) PRIVATELY PROVIDED INFRASTRUCTURE (PPI) PROJECTS

Objective

1. This note aims at providing general guidance on procurement arrangements in Bank-funded *Privately Provided Infrastructure (PPI)*[2] projects. Paragraph 3.13 of the Bank's procurement guidelines[3] (see Annex One) defines that for Bank-funded projects either (a) the entrepreneur shall be selected under International Competitive Bidding (ICB) or Limited International Competitive Bidding (LIB) procedures **acceptable to the Bank**; or (b) if said entrepreneur is selected by other criteria, the goods, works, or services required for the facility shall be procured in accordance with ICB or LIB procedures. Therefore, although defining ICB (or LIB) as the competitive procedure to be used, the guidelines, recognizing its complexity, clearly distinguish the ICB or LIB for selection of the concessionaire from procedures for ICB for goods and works, which are set forth in Section II of the guidelines. This note provides the general guidance to Task Team Leaders on procedures acceptable to the Bank to comply with paragraph 3.13 of the guidelines of the Bank (Annex One) for the competitive selection of the concessionaire. Competitive procedures include ICB and LIB. ICB is open to all eligible bidders and should be used as the preferred procedure while LIB is by direct invitation without open advertisement and is used in cases when only a limited number of qualified bidders exist. In all respects other than advertisement, the same procedures shall apply either in ICB or LIB. These procedures should be discussed during project preparation and spelled out in the Project Appraisal Document (PAD) and in the Loan Agreement. This note addresses PPI projects in general terms and, therefore, it only discusses the issues that arise from a cross-sectoral perspective.

Background

2. For several decades, the provision of public infrastructure and services has been the domain of governments or governmental companies. This has applied to telecommunications, energy, transport, water, wastewater, trash collection, ports, and so on. However, in the past decade there has been a steady increase in the participation of the private sector in the delivery of these services. The most common cases are:

(a) operation and maintenance of state-owned facilities by private operators, either by a management contract or by a concession contract.

(b) construction of new (greenfield) projects by private investors by means of BOT arrangements, and the provision of services either by selling them to the government

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[2] For the purpose of this paper, *Privately Provided Infrastructure (PPI)* includes a full range of concession-type arrangements for the provision, upgrading, maintenance, and operation of infrastructure projects. It includes, but is not limited to, long-term service contracts, management contracts, lease contracts, BOTs (BOOs and BOOTs) and ROTs arrangements, concessions, and divestiture.

[3] Guidelines: Procurement under IBRD Loans and IDA Credits, January 1995, Revised January and August 1996, and September 1997.

(or to a governmental agency) or by selling them to the public under a concession contract.

(c) privatization of state-owned companies by means of sale of assets, by which the new owner becomes the concessionaire, operating under a concession (or license) contract.

3. The transition from the previous approach of government provision of services to the new approach of privately provided services is evolving with practice. Each country adopts its own strategy in accordance with the local conditions. The Bank's main objectives in this area have been to: (a) give advice to countries; (b) help establish satisfactory regulatory frameworks; and (c) help implement projects with private participation. In this respect, Bank procurement guidelines should be used when the Bank is financing investments either (a) under management or concession contracts, or (b) green-field project under BOT (or similar) arrangements. Although the Bank does not finance the divestiture of assets, the Bank may finance advisory services for supporting privatization. In some cases, the Bank may lend money to the government to on-lend to the private concessionaire for predefined investment programs. This advisory note will only address aspects related to procurement issues in Bank-funded projects. Publications listed in Annex Two provide additional information about other aspects of these projects (not related to procurement).

Role of the Bank[4]

4. The World Bank group is supporting private participation in the delivery of infrastructure services in a variety of ways through the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA), and the Bank (IBRD and IDA).

5. IFC's investments always involve private partners. As a rule, IFC does not participate in competitive bidding against other investors for award of concessions or franchises for infrastructure projects. As an investor, IFC gets involved only after the private company or sponsor has been awarded the concession or license. IFC has no procedural requirement on the selection of developers and operators for PPI projects. Procurement procedures in IFC supported PPI projects vary from case to case, but IFC must be satisfied that goods and services are procured in a cost-effective manner. This will frequently involve an agreement with client companies on appropriate procurement methods to ensure a sound selection of equipment at appropriate cost.

6. As an insurer, MIGA has no specific requirements regarding procurement under projects supported by a guarantee, nor does it have any special rules for private infrastructure projects. However, procurement for the projects that MIGA supports is expected to be on an arms-length basis. Concessionaires are expected to have the requisite technical, operational, and managerial capabilities and experience.

[4] Extracted from "Procurement for Private Infrastructure Projects," a Bank publication.

7. The Bank (IBRD and IDA) may play two very important roles in PPI projects: (a) giving advice on how to structure the sector and its institutional and regulatory framework; and (b) financing advisors, investments, or providing guarantees. Bank advice is provided through its dialogue with the borrower that normally takes place during preparation and discussions of economic sector work, preparation and supervision of projects, or through technical assistance projects. Borrowers should hire Bank-financed advisors in accordance with the consultants guidelines[5] (paragraphs 2.1 to 2.28 and 3.17). Under Bank guarantees, the developer or concessionaire can procure goods and services on the basis of normal private commercial practices. The same holds for Bank loans, provided the developer or concessionaire was selected based on an international competitive process acceptable to the Bank. Where this is not the case, the concessionaire must follow the Bank's procurement guidelines for all contracts financed by the Bank (guidelines: paragraph 3.13, for loans and paragraph 3.14, for guarantees). In other cases, the Bank may be involved in the project without being involved in the financing of the new investments. In that case, paragraph 1.5 of the guidelines apply and the Bank shall be satisfied that the procedures used fulfill the Borrower's obligations to cause the project to be carried out diligently and efficiently and that the goods and works are procured with satisfactory quality, delivery time, and price. This was the case in several Bank supported projects like the State Reform projects in Brazil[6] where the Bank did not finance directly the privatization of several utilities, but reviewed the procurement process to its satisfaction. Although this note intends to give guidance for Bank financed projects, it may be used as a good practice for other projects, especially when the Bank is involved, or when the Bank provides advice to governments.

Privately Provided Infrastructure (PPI)

8. The private sector has several options in providing infrastructure or other public services. These vary according to the degree of ownership of the assets and the responsibilities for management and financing expansions. Those options (service contracts, management contracts, leasing arrangements, BOTs, concessions, etc.) are discussed in Annex Three. The related procurement issues are discussed in Annex Four. However, regardless of the option selected, public or privately provided infrastructure projects share two basic characteristics: (a) they provide public service (transport, energy, water, sanitation, etc.); and (b) they are paid by the public, generally by the users (through taxes or direct charges). Therefore, as the total costs will always be borne by the final consumers, procurement arrangements should pursue economy and efficiency in both cases; and competition is the most effective way of achieving these goals.

9. At the same time PPI and public infrastructure projects differ in one critical manner: "risk sharing." When well-designed, a PPI project can bring about cost reductions to the service provided due to improved risk sharing obtained by allocating risks to the party best able to manage it. With this possibility, the private operator has greater incentive to reduce costs (by reducing undue risks). To facilitate it, the best practice has been to allow the operator to have

[5] Guidelines: Selection and Employment of Consultants by World Bank Borrowers, January 1997, revised September 1997.

[6] Rio Grande do Sul State Reform Loan and Rio de Janeiro State Reform and Privatization Loan.

more flexibility in its operational, managerial, and investment decisions aiming at more innovative solutions. The use of output results (performance indicators) is a very good means of giving the concessionaire the maximum scope to innovate or otherwise to use its skill and experience to design efficient solutions without being constrained by past practices. Consequently it is desirable to have the selection of the operator and monitoring of its performance based on agreed output results (performance indicators) instead of compliance with specific operating rules, detailed procedures, or investment plans (see Annex Four for examples of performance indicators). Contracting PPI under this format can afford the operator more flexibility in the planning, design, financing, and operation of the project, creating opportunities for maximizing efficiency and economy of operations. The tradeoff is broader and more complex responsibilities for the operator. This holds true even if the project is a BOT operation involving new construction or a concession arrangement with more emphasis on maintenance, operations, and future investments.

B) HIRING ADVISORS FOR PPI PROJECTS

10. Institutional Framework: Instead of buying equipment or constructing civil works, PPI projects involve granting concession rights that may or may not be associated with new investments or greenfield projects. In any of the cases described in paragraph two, the establishment of a satisfactory institutional, regulatory, and concessioning (or licensing) framework, is of paramount importance. Hence, before there is any awarding of contractual privileges (e.g. in concessions), the government should establish the desired *industry structure*[7] and subsequently the corresponding institutional and regulatory framework. It is also important to recognize the complexity of the issues involved in defining a good regulatory system and the importance of sustainability throughout the concession period, which raise specialized economic, financial, technical, and legal issues. Consultant services and advisors are thus normally recommended to assist on the design and implementation of such a regulatory system and of the PPI project itself. Engaging experienced advisors is especially effective for good management of the process of selecting the operator, and can also add more transparency to the process. These consultants are selected in accordance with the "Guidelines: Selection and Employment of Consultants by World Bank Borrowers, January 1997, revised September 1997."

11. Areas of Advice: The assignment for the consultants and advisors can be grouped in three phases: (a) developing the institutional framework: this should be the first phase carried out and involves the definition of the desired *industry structure,* followed by the development of the institutional, regulatory, and legislative framework; (b) developing the private participation strategy: this should be carried out subsequently and involves establishing the strategy for the process of private participation in the project, including the possible splitting of existing utilities, technical and economic evaluation of the existing assets, legal assessment of the existing utility,

[7] For the purpose of this note, *Industry Structure* means how the industry (or sector) of the infrastructure project (e.g., transport, electricity, telecommunication, etc.) is organized; i.e., its institutional framework--with established roles for the Government, the Regulator, the Service provider, and how the market will be served, i.e., if a single provider or multiple providers will compete for the market and under which rules.

financial audit, environmental audit, and, when divestiture is considered, market assessment for the sale of assets or shares; and (c) carrying out the award of concession (or the privatization): this is the final phase and involves preparation of the bidding documents, promoting the business by attracting investors interested in the concession or in the sales of shares or assets (when the project involves divestiture as an end), evaluation of bids, drafting the contract to be signed with the private partner, and supporting the government in closing the final deal. This third phase is substantially different in the cases of award of concessions and privatization, consequently the terms of reference (TOR) should consider this difference. In the case of concessions the focus should be on the award process and how to put together the contractual package required to have a successful concession. In the case of privatization, there is the additional concern on the best strategy for selling the shares. Usually, governments lack the full range of expertise to carry out these tasks. Consultants and advisors can better cover: (a) economic and regulatory advice (on market structure, rules for competition, tariffs, regulatory and monitoring mechanisms); (b) legal advice (on regulations, bidding documents, draft contract); (c) technical or engineering advice (on technical assessment of the project or installations, technical requirements of contract, regulations on technical indicators); (d) environmental advice (on environmental assessment, requirements for contract, regulations); and (e) at a final stage, investment bankers or financial advice (on financial projections, stakeholders participation, information memorandum and prospectus for interested bidders, and when required, sales promotion).

12. Single versus multiple contracts: As a range of advisory services is needed, particularly for the second and third phases, governments should choose between obtaining all these services under a single contract with an association of firms (which would have to be jointly and severally liable), with one firm which would hire others through subcontracting, or by hiring separate advisors. Governments with limited capacity and resources to supervise advisors often hire an association of firms (or one firm hiring others as subcontractors) with a lead firm to coordinate and synthesize the work. Such an arrangement may reduce the management demands on government and will likely result in advice that is more consistent. At the same time, though, it may not provide a sufficiently broad range of advice on complex issues, which could limit the bounds of discussion within government. However, hiring an association of firms may generate contractual difficulties particularly due to the different sizes of the participating firms and the different liability risks (see para. 13(e)). Alternatively, if separate advisors are hired, contracting is much more straightforward; however, the government will have to coordinate them or assign one of them to coordinate the others. Advice will be broader in this case, requiring a final decision from the government (which could be helped by advice from the consultant in charge of general coordination). Therefore, when governments have good experience, hiring consultants separately is more advantageous. However, no general rule can be defined and the choice between hiring an association of firms or separate advisors will depend on each specific case.

13. Hiring the services: Regardless of how the advisory services are packaged, the following elements should be taken care of:

(a) Preparation of a Request for Proposals (RFP): The RFP should include (i) a letter of invitation; (ii) information to advisors; (iii) the TOR; and (iv) a draft contract. For each type of advisory service, TOR should be prepared describing in detail the objectives, scope of work, and expected outputs. The RFP should be clear on how

to submit proposals, the criteria for their evaluation, how the advisory functions should be grouped, how their work should be structured and coordinated, and how those selected would be managed and remunerated. It is advisable to foresee the possibility of continuation of services by the same advisor from one phase to the other of the process, subject to good performance. In this case, the RFP should indicate so and take it into account from the beginning to avoid new selection process subsequently. The RFP must be submitted to the Bank for comments before being issued.

(b) Preparation of a Short List of Qualified Firms: To help the government to obtain expressions of interest by internationally known firms in the assignment, it should advertise the assignment in a local newspaper and in "*Development Business*" for expressions of interest. Based on the responses, the government should develop a short list of three to six experienced firms (or association of firms) with a wide geographic spread. Governments should verify directly with previous clients the depth and quality of experience of their potential candidates. Governments may also assist the leader firms in forming the associations of firms. Bank staff should abstain from recommending advisory firms to borrowers.

(c) Evaluation of Proposals: Proposals should be evaluated in accordance with the evaluation criteria defined in the RFP. The RFP spells out in detail how proposals will be evaluated. For large assignments, presentations of the proposals by the firms may be useful, in order to allow the government to assess the quality and experience of advisory personnel. However, the presentations should be carefully structured to ensure transparency and equal treatment for all firms; i.e., firms should be given the same time and the same support for their presentations and all members of the evaluation committee should attend all presentations. Considering that these presentations would occur during the technical evaluation process, it is of paramount importance that they follow very clear and predefined rules to prevent firms from modifying their proposals. One possibility to achieve this goal is for the evaluation committee to pre-approve the outline of the presentation in advance. Costs of the presentations are normally shared: the government pays for the facilities and support for the presentations and the firms pay for their own presentation costs. Firms shall be selected under Quality-and Cost-Based Selection[8] (QCBS) procedures. The RFP shall indicate how the cost evaluation will take into account the "success fee" (particularly for the financial advisor and usually when assets are sold), — either in combination with the conventional remuneration called a "retainer fee" or alone. If alone, a standard retainer fee shall be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores shall be based on the success fee as a percentage of a pre-disclosed notional value of the assets. For the combined evaluation, cost may be accorded a weight higher than the thirty points recommended in para. 2.22 of the

[8] See paragraph 3.17 of the Bank Guidelines: Selection and Employment of Consultants by World Bank Borrowers, January 1997, revised September 1997.

Consultant Guidelines, or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal.

(d) Conflict of Interest: An important aspect to consider in the selection of the financial advisor is the possibility of conflict of interest. Four possibilities of conflict of interest should be analyzed very carefully: (i) the advisory firm and their affiliates should not have any relationship or ties with operators (or their subsidiaries) applying to this project, or otherwise those operators should be considered ineligible to bid; (ii) when the firm is paid a success fee to enhance chances of closure, it should not be advising on concession aspects that would result in the commercial aspects of the concession (i.e. tariffs or issues that would affect the final price of services provided under the concession) — alternatively, if the firm is advising on these issues, then it should not be paid a success fee; (iii) the firm (and any of its affiliates) should not be allowed to participate in the bidding process; and, (iv) firms should not get involved in advising potential bidders either simultaneously or subsequently with advice to the government. The first constraint aims at avoiding that advice for the project could favor any possible interested party in the bidding process. The second aims at avoiding that advice for the concession contract could bring undue benefits to the future concessionaire (giving perhaps monopoly power) to attract higher proposals resulting in higher success fee to the advisor. Moreover, the third and fourth constraints aim at avoiding inside information.

(e) Contractual Arrangements: There are several issues to be sought in advance relating to the contractual arrangements of advisors for PPI projects, such as:

(i) One versus Several Contracts: When advisors are retained separately, several contracts are signed, each consultant becoming responsible for its own contract. However, when the government hires an association of firms under one contract it must require a joint venture contract by which all consultants are jointly and severally liable. This may create a problem since these consultants are very diverse (banks, accountants, lawyers, engineers) and therefore, usually unwilling to be liable for each other's work. One possible solution in this case could be to have "package proposals" from different associations of firms. After the selection of the highest ranking "package", each professional consultant included in the winning package would sign a separate contract, one of them responsible for general coordination, but with individual liabilities.

(ii) Contract Form: The Bank's standard form of contract for "time-based" assignments is the most appropriate for consultant services for developing the *industry structure*, and for developing the regulatory framework. However, for additional advisory services aiming at privatization, the Bank's standard form of contract for "lump-sum" assignments is more appropriate. In the latter case appropriate "special conditions" of contract

should be included particularly to address some issues related to investment banks. The Bank is drafting these special conditions.

(iii) Indemnities: The firm should not be liable for claims arising out of actions of the client (e.g., the client provides incorrect information to the investment bank, which is included in the prospectus). This is particularly important for privatization advisors. Also, the Bank does not accept indemnification of the advisors by the client for claims by third parties. If the parties so desire, the limitation of liability clause of the time-based standard form of contract [para 13(e)(ii)] may also be used.

(iv) Fees: During contract negotiations, particular care should be taken in establishing the fee structures for advisors in PPI projects. Conventionally, the economic, technical, and environmental advisors are paid based on output/reports specified in the TOR under a lump-sum contract; if output cannot be specified, a time-based contract is used. Legal advisors and other consultants whose exact amount of work is difficult to forecast may require payment on time and rate basis. Investment bankers should preferably be hired after the legal and regulatory framework is defined, and, depending on the assignment, are hired on a lump-sum basis, often paid a retainer fee that can be financed by the Bank and a separate "success fee" to enhance closure (normally paid by the proceeds of the sale of assets or by the proceeds of downpayment resulting from award of a concession, i.e., not financed by the Bank).

C) SELECTING AND CONTRACTING THE CONCESSIONAIRE

Selecting the Concessionaire by Competitive Process

14. International Competitive Bidding: The bidding/award process for selecting the concessionaire is an important factor in determining the long-term success of private infrastructure concessions. A long process usually requires public support to avoid future questions on the fairness and transparency of the award process. The temptation for fast track solutions has shown to be non-productive, resulting in much longer processes when public or political complaints are made against awards lacking transparency. Competitive bidding procedures, with clear rules and provisions for all relevant information to bidders generally produce the best results. The process of competitive bidding has evolved to help ensure that contracts are economically priced, are awarded to competent performers, and are given out on a transparent and fair basis. It increases competition, minimizes costs to final consumers, introduces incentives to achieve operational efficiency gains, and is essential to gain public support and credibility. There are two methods of selection LIB and ICB. The latter should be used as the preferred procedure while LIB should be limited to cases when only a limited number of qualified bidders exist. Although an ICB process with open advertisement brings more transparency, it should be designed to assure that all bidders have the experience, capability, and

resources to handle the project. Thus, prequalification of participants in the bidding process should always take place. A well-managed selection process includes the following steps before contract signing: (a) wide advertisement and promotion; (b) prequalification of bidders; (c) clear and non-discriminatory bidding documents; (d) clear procedures for bid submission and public bid opening; (e) transparent bid evaluation criteria well defined in the bidding documents; and (f) selection of one firm for award of contract based on the evaluation criteria and negotiation of the final contract.

15. Single versus two-stage bidding[9]: The decision between having a single or a two-stage bidding procedure will depend very much on the nature of the contract, on how precisely the technical requirements can be defined, and if output results (or performance indicators) are used for selection of the concessionaire. When it is feasible to define performance indicators as the basis for technical qualification and monitoring or when the technical requirements can be well defined to allow all bidders to offer on the same basis, a single-stage bidding process is usually used, although in some cases the use of two-stage bidding may be appropriate. There are cases, however, where it is impractical to prepare complete technical requirements or specifications, and a two-stage (and in more complex cases even multiple-stage) bidding process should then be used. The underlying objective is to enable the final competition to be carried out on the basis of a single parameter (preferably, a monetary figure). The following examples are illustrated to explain different situations.

(a) Single-Stage Bidding Based on Performance Indicators: The case of awarding the concession for distribution of electricity in a specific area in a country that has already implemented a satisfactory regulatory framework including the regulatory agency. The bidding documents in this case could define minimum technical standards like: (i) specified voltage (and frequency) fluctuation at consumer level; (ii) outage duration (hours/year); (iii) outage frequency (number/year); (iv) losses; (v) number of days to connect a new customer; (vi) commercial standards for customer relationship (number of days to pay bills; to reconnect installations; to respond to customers' complaints, etc). All these standards would be defined in detailed regulations and referred to in the concession contract. Prequalified bidders would submit their bids, including a technical proposal complying with these minimum technical standards to qualify, otherwise their bids would be non-responsive. The concession would then be awarded to the responsive bidder offering the best commercial proposal, for example, the lowest tariff to customers (all in accordance with the pre-established evaluation criteria).

[9] A two-stage bidding procedure should not be misunderstood as a two-envelope system. In a two-stage bidding procedure, first unpriced technical proposals based on a conceptual design or performance indicators are invited, subject to technical and commercial clarifications and adjustments, to be followed by amended bidding documents and submission of a final technical proposal and priced bid in one envelope in the second stage. In opposition, **the Bank does not accept a two-envelope system** in which bidders are required to submit separate qualification, technical, and price proposals at the same time in different envelopes, which are opened sequentially in different sessions and evaluated.

(b) Single-Stage Bidding Based on Technical Specifications: The case of awarding the concession of a toll road project for which the government has technical (and economical) studies at the same level of detail it would have when asking for bids for construction works in a conventional bidding process when the government is the employer. Bidders would submit their bids including a technical proposal in accordance with the technical specifications resulting from these studies as well as for the minimum operation and maintenance technical requirements. The concession would be awarded to the responsive bidder offering the best commercial proposal (e.g. the lowest toll).

(c) Two-Stage Bidding: Two cases, one for power and one for roads. First suppose the awarding of a concession for power generation when the government does not have a predefined project. The invitation for bids would allow bidders to offer their own solutions for providing supply of, say, between 200-230 MW in accordance with defined standards of service. In this case, bidders may offer very different technical solutions (even of slightly different total MW capacity), which makes a two-stage bidding appropriate. The same would happen for a toll road if the government did not have sufficient technical studies to bring all possible proposals to the same level; i.e., the government would ask for proposals for construction and operation of a toll road between cities A and B complying with certain technical features. Here again, a two-stage bidding would be required.

16. Negotiation of Final Contract[10]: In a concession award process, after selection of the concessionaire (either through a single-stage or through a two-stage bidding process) negotiations on the final contract are required. These negotiations, however, should be limited to the points that are not possible to be pre-established in the bidding documents. This is particularly true for greenfield investment projects (like BOT schemes) where the financial and security package (see Annex Six) is negotiated only after selection of the concessionaire. These negotiations should be carried out with due transparency and they should not result in material changes to the basis on which the competition was carried out.

Advertisement and Promotion[11]

17. The advertisement and promotion of a PPI project is different from those used in a procurement process for goods or works. It is paramount for the success of the operation that potential bidders have information as detailed as possible on the project, as well as enough time to analyze the requirements and to prepare their proposals. Thus, in addition to the advertisement

[10] It is very important to emphasize a clear difference between the bidding process for award of concessions and bidding process for procurement of goods or works—contract negotiations. While in procurement of goods and works no negotiation of contract should take place, in the award of concessions, particularly on BOT type projects, negotiation of some details is inevitable.

[11] *Advertisement* should consist of the open and timely notification to the business community of the bidding process for the selection of the concessionaire to foster competition. *Promotion* should take place in advance to the bidding process and should consist in creating interest in the concession by giving information and calling the attention of qualified concessionaires around the world to the project in question.

in "*Development Business*", and local and international newspapers, it is very important to have a pre-bid conference (para. 24) with potential bidders to give them information on the project. Before issuing the prequalification documents, the government should hold "*road shows*"[12] to visit potential investors, it should also hold conferences open to interested bidders where basic information on the prequalification and bidding process and details of the project are available. In addition, the government may establish a data room where all relevant data, studies, and information on the project are made available to potential bidders for a specified period of time. These actions help stimulate interest in the project. In addition, they allow potential bidders to make suggestions for the bidding process that the government and its advisors may find useful when drafting the bidding documents. This advanced feedback from potential bidders is essential to adjust the bidding documents, especially the draft concession contract, to the real perception of business risks from the market forces.

Prequalification

18. In designing the bidding process for PPI projects, prequalification of potential concessionaires should always take place. This serves three purposes. First, it helps to ensure that only those firms with the requisite technical and financial capacity to operate the project/concession participate in the bidding. Second, a defined number of bidders (resulting from the prequalification) may stimulate greater effort on the part of prequalified firms to prepare better proposals and will make it easier to obtain feedback on some aspects of the bidding documents (especially the draft concession contract) from those prequalified bidders before issuing them in a final version (see para. 24). And third, the number of applicants for prequalification will give a good indication of the risk measured by the market, allowing, in the case of very few applicants, for modifications in the project design and for invitation for a new prequalification to attract other potential investors before calling for bids.

19. While prequalification should take place early in the bidding process, potential bidders should be given ample information about the project. Therefore, prequalification should happen after the promotion actions described in para. seventeen have taken place. Whenever possible, it is desirable that a draft of the first version of the bidding documents (or at least a first draft of the concession contract) be made available to all bidders before they submit their prequalification documents. Potential bidders should be informed that after prequalification, bidding documents would be revised and issued in a final version.

20. The criteria for prequalification should preferably be quantitative. Quantitative criteria are more directly applicable and transparent, and should be applied whenever possible. Qualitative criteria require a merit point system that may lead to complaints by bidders, and therefore should be avoided or used minimally for aspects that cannot be quantitatively measured. In a PPI project, the concessionaire is responsible for the financing, design, construction, operation, and maintenance of the facilities required for providing the service. Prequalification will ensure that only those firms with the requisite technical and financial capacity to finance, construct, operate,

[12] "*Road shows*" are visits and presentations made by the government and its advisors to potential bidders. In these presentations, the project is explained in detail trying to attract the higher number of interested firms in the bidding process.

and maintain the project/concession participate in the bidding. Consequently, when the bidding documents allow bidders to subcontract the construction or the operation of the facilities, those subcontractors should be identified and prequalified at the same time as the concessionaire. The minimum requirements for prequalification will depend on the type of concession for which bids are required. The criteria should be quantifiable and objective. The following are examples of the type of essential criteria for prequalification:

(a) Financial: applicants should demonstrate economic and financial capacity to fund or to get financing for the investments required under the concession. They should also demonstrate to have a minimum cash, or line of credit, (as defined in the prequalification documents) available for the working capital requirements of the project.

(b) Design: applicants should demonstrate that they, or their partners (or subcontractors) have the minimum experience (as defined in the prequalification documents) in the design of a well-defined type of service of certain magnitude.

(c) Construction: applicants should demonstrate that they, or their partners (or nominated subcontractors) have the minimum experience (at the level defined in the prequalification documents) in the construction of a well-defined quantity of services of certain magnitude. The same criteria used for prequalification of bidders for procurement of works (included in the Standard Prequalification Document) could be used.

(d) Operation and Maintenance: applicants should demonstrate that they, or their partners (or nominated subcontractors) have the minimum experience (at the level defined in the prequalification documents) in the operation and maintenance of a well-defined variety of services of certain magnitude. If the operator is a subcontractor, the operational contract should be for a long period (minimum five years).

21. Prequalification criteria should be "sized" to fit the project, i.e., more rigorous for larger projects and relatively minimal for simple projects, however, carefully designed to avoid lowering the required standard of quality. Prequalification criteria should not hinder potential bidders from entering the competition. Well-designed schemes should facilitate joint ventures between experienced operators or contractors with financially strong agents to compete with traditional concessionaires already in the market. In other cases, the concessionaire may be allowed to subcontract the construction or the operation of the facilities for providing the service; in these cases, those subcontractors should be nominated and prequalified at the same time as the concessionaire. Typical information submitted in a prequalification process includes: (a) type and degree of experience in the business required from each firms/partners; (b) form of participation of the operator (e.g. minimum equity participation or technical assistance contract); (c) minimum financial capability of firms/partners/parent corporations; (d) references on efficiency/performance of other projects; (e) history of litigation or arbitration. In the case of joint-ventures, technical and financial capability of partners can be combined using the same criteria for prequalification of bidders for procurement of works as defined in the standard prequalification document (SPD). Applicants should be informed that they would be required to

update the information submitted for prequalification as part of their bids. In joint ventures, they should also be jointly and severally liable for the execution of the contract, or alternatively, submit a document signed by all partners with their commitment to create a new company in the borrower's country to sign the concession contract, if awarded. Annex Five gives additional details on technical aspects for prequalification.

Bidding Documents

22. The main purposes of bidding documents are to regulate the bidding process and to give bidders information about: (a) the project scope; (b) its objectives; (c) how bids should be prepared and submitted; (d) how bids will be evaluated; and (e) the draft contract. In PPI projects, as discussed in paragraph nine above, and depending upon the specific project, it is desirable to set requirements in terms of output results (performance indicators) rather than detailed plans and operational specifications (as normally used in procurement of works). This allows bidders desirable flexibility for maximizing efficiency and economy in project design and operation. Annex Five gives some examples of performance indicators.

23. The main components of bidding documents should include:

(a) **Instruction to Bidders**: including the scope of the project, description of the project including services to be provided; how, when, and where bids are to be submitted; and a detailed description of the bid evaluation criteria.

(b) **Technical Specifications:** including performance/output requirements, description and details of the technical requirements and performance indicators to be used in the bid evaluation for the selection of the operator, environmental and safety minimum requirements, and obligations of the operator.

(c) **Bid Forms:** including price or financial proposal, minimum guarantee requirements, i.e., the bid security and the contract performance security, if it is the case; and

(d) **Draft Concession Contract:** including performance/output requirements, pricing regime, applicable regulation, penalties for non-compliance or securities against failure of contractual obligations, as well as the contract review process during operation of the concession (see Annex Three for additional details on concession contracts).

24. As indicated in paragraph eighteen, a good practice is to have a first version of the bidding documents (or at least a draft concession contract) available in draft form for information to applicants before prequalification. However, sometimes this is not possible and they are distributed to bidders after prequalification. In any event, after the firms are prequalified, and after the first version of the bidding documents have been distributed, there should be a conference open to all prequalified firms, on a pre-specified date before bid submission. The outcome of this pre-bid conference should be summarized in minutes of the meeting. During this conference, the client should provide any needed clarification and receive comments and

suggestions on the bidding documents (especially the draft concession contract). Bidders should also be allowed to send written comments on the bidding documents and on the draft concession contract within a period of time after the conference (see paragraphs three to six of Annex Three for a basic outline of the content of the concession contract). This will assist the government and its advisors in deciding on the allocation of risks so that it can assign them to the best-qualified party to deal with them. After the final date for prequalified bidders to comment on the bidding documents they would be revised and issued in a final version to be distributed to prequalified bidders.

25. Because of the specificity of this type of project and the lack of Bank experience, it is not advisable at this stage to prepare Standard Bidding Documents or model contracts. Bidding documents should be tailor-made for each project situation. However, a library of documents with examples of good practice will be created in OCSPR to serve as source of reference for Task Team Leaders. The Bank's role is to review the bidding documents and any amendments and to issue a "no objection" before they are distributed to bidders.

Bid Contents, Submission and Opening

26. Bid Contents: For single-stage bidding processes, the technical and commercial proposals should be submitted in one sealed envelope. The technical proposal should be presented in accordance with the technical specifications and should propose performance indicators or, alternatively, technical indices above the minimum requirements defined in the technical specifications. For two-stage bidding processes, unpriced proposals are first submitted based on a conceptual design, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents. After that, final technical and commercial proposals are submitted in one sealed envelope in the same manner as a single stage bid.

27. Time to prepare bids: PPI projects are much more complex than conventional civil construction works, usually requiring association of firms in consortia (financing/construction/ operation); consequently bidders should be allowed sufficient time to prepare bids. In the case of well documented projects, a minimum of four months, following prequalification, is usually required to submit bids.

28. Technical proposals opening: In the case of two-stage bidding, the technical proposals are opened first. The time for the proposal opening should be the same as for the deadline for receipt of technical proposals. Technical proposals submitted after the time stipulated shall not be considered. This ceremony should be public at the stipulated time and place. Bidders should be invited to this ceremony. The name of the bidder shall be read aloud and recorded. Any special fact during bid opening should also be included in the records. A copy of the records should be sent to the Bank. Bidding documents should alert that only bidders that submit a technical proposal first would be allowed to submit a final bid.

29. Bid opening: This is the only bid opening for single-stage bidding processes and the final bid opening for two-stage bidding processes. The technical and commercial proposals must be submitted at the same time in one sealed envelope. No amendments to the technical or commercial proposal should be accepted after the deadline for submission of proposals. Bids

submitted after the time stipulated shall not be considered. The time for the bid opening should be the same as for the deadline for receipt of bids. The time and place for bid opening must be clearly specified in the invitation to bid. The government will open the envelope with the technical and commercial proposals in a ceremony open to the public at the time and place specified in the invitation to bid. Bidders should be invited to this ceremony. No bid evaluation should be carried out during the opening ceremony. The name of the bidder and the specific commercial proposal (either price, up-front payment, future tariff, or service fee) shall be read aloud and recorded. Any special fact during bid opening should be also included in the records. A copy of the records should be sent to the Bank.

30. Confidentiality: After public opening of bids, information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall not be disclosed to bidders or other persons not officially concerned with the process until the successful bidder is notified of the result of the bid evaluation.

Bid Evaluation

31. Evaluation: Bidding documents should specify very clearly the minimum contents of the technical and commercial proposals and how they will be evaluated. Technical specifications included in the final bidding documents should indicate the minimum technical requirements (or output targets) to which the technical proposal should comply. The contract is awarded to the bidder with a technically responsive bid that offers the best commercial proposal (as explained in para. 33).

32. Technical proposal: Bidders submit technical proposals in accordance with the minimum technical requirements defined in the bidding documents. Bids that do not comply with the minimum standards indicated in these technical requirements are declared non-responsive, i. e., a pass-fail criteria.

33. Best commercial proposal: The contract is awarded to the bidder with a technically responsive bid that offers the best commercial proposal. Evaluation of commercial proposals varies in form and complexity depending on the form of the desired private participation. In some cases the commercial proposal may include the cost of financing offered by bidders; in this case the requirement for financing and how it will be considered in bid evaluation should be defined in the bidding documents. Several approaches may be used for evaluation of the commercial proposal, including, among others, one of the following alternatives:

(a) Bids are based on an up-front payment in combination with future concession payments. Bids are evaluated on the basis of the (highest) total amount of up-front payment and present value of future fees; or

(b) Bids are based on the future tariff. Bids are evaluated on the basis of who offers the largest discount on existing tariffs or the lowest new tariff; or

(c) Bids are based on a service fee. Bids are evaluated to determine who offers to charge the lowest service fee; or

(d) Bids are based on a combination of financial and economical factors resulting in income to the government, given a fixed tariff. Bids are evaluated to determine who offers the highest income to the government.

Complaints and Appeals

34. The best way to avoid or reduce complaints or appeals to the award proposal is to have clear bidding documents and a simple and transparent bidding process. Complaints and appeals cannot be eliminated. However, they should not be used by bidders to hinder the process, delaying its conclusion. Thus, governments should define a clear, effective mechanism for handling complaints. This may include:

(a) identifying who will be responsible for hearing and arbitrating complaints/appeals;

(b) defining the basis for formulating complaints/appeals;

(c) how complaints/appeals will be heard; and

(d) setting deadlines for submitting complaints and resolutions.

Selection and Contract Signing

35. Contract Award: The evaluation should conclude with a single recommendation for the award of the contract. The recommendation should be included in a report prepared by the evaluation committee. This report should be submitted to the Bank for comments before the firm recommended for the award of the contract is announced.

36. Negotiation of Final Contract: After receiving the Bank's "no objection," the government would invite the firm recommended for award of the contract for contract signature. In some cases this could be preceded by discussions to reach agreements on final details of contract terms where the draft contract was not totally defined in the bidding documents, particularly with respect to specific guarantee mechanisms. It may also include additional discussions on the financing plan, particularly when new investment (e.g. a BOT project) is part of the bidding process. These negotiations on financial closure of greenfield projects can only be finalized when the commercial Banks know the awarded firm, therefore, they generate a delay in the final signing of the concession contract. Annex Six gives additional details on the steps to be taken from award of a BOT concession and financial closure including details on security packages. After final negotiations on the concession contract are completed the contract should be sent to the Bank for "no objection", and subsequently signed by the parties.

Concession Contract

37. Concession Contract: In designing the concession arrangements it is of paramount importance to have clear, distinctive roles for the government, the regulatory agency (when one exists) and the concessionaire. Careful attention must be paid to designing a contract that: (a) allocates risks to the parties best able to manage those risks; (b) includes incentives for efficient

service provision; (c) allows adequate returns for efficient operators; and (d) provides safeguards to the public regarding provision of monopoly service. The concession contract should also include penalties to the concessionaire for failure to comply with contract obligations or be backed up by an appropriate security package provided by the concessionaire to ensure the government that the concessionaire's contractual obligations will be met.

38. The type of concession contract will depend on the type of concession. However, usually it should set out, inter alia: (a) the definition of the service to be provided; (b) the concession area; (c) the rights of the concessionaire; (d) the obligations of the concessionaire; (e) the performance indicators to control the quality of the service; (f) the regulations to be applied; (g) the power of the regulator to inspect installations and books; (h) the penalties for non-compliance, or alternatively, a security package provided by the concessionaire to ensure that its contractual obligations will be met; (i) the tariff regime, adjustment mechanism, and process for resetting the tariffs; (j) guarantees, warranties, and performance bonds; (k) the duration of the contract; (l) the process for termination, renewal, or re-bidding of the concession: and (m) dispute resolution and applicable law.

39. Two aspects are essential in any concession contract (or implementation agreement): (a) guarantees for completion of works for provision of the services: and (b) operational quality of the service provided after completion of works. Consequently the concession contract (or implementation agreement) should include provisions for:

(a) Performance Guarantees: if the concessionaire is in charge of the works, he should provide performance guarantees to the Government. If the concessionaire subcontracts those works, the subcontractor should provide the corresponding performance guarantees to the concessionaire. In the later case the concessionaire should give the necessary power to the Government to execute those guarantees in case the concessionaire fails to do so.

(b) Technical Operator: if the concessionaire is directly in charge of the operation and maintenance of the facilities, the concession contract should include the penalties for unsatisfactory performance. In the case the concessionaire subcontracts the operation, in addition to the penalties for unsatisfactory performance, the concession contract should include provisions for consultations with the Government before the concessionaire changes the technical operator.

Bank Review

40. The Loan Agreement should include provisions for Bank prior review of major steps in the contracting:

(a) Prequalification: before prequalification submissions are invited, the Borrower shall furnish to the Bank a complete set of all documentation to be used for the invitation to prequalify. An evaluation report with recommendation on the applicants qualified to bid should be submitted to the Bank.

(b) Bidding documents: before bids are invited, the Borrower shall furnish to the Bank for its comments a complete set of all documentation for the invitation to bid.

(c) Evaluation report: after evaluating the bidding process and before inviting the selected concessionaire for contract negotiations, the borrower should prepare an evaluation report recommending the firm to whom the contract should be awarded and submit it to the Bank.

(d) Contract signature: after contract negotiations are completed and before signature, the Borrower should submit the final draft contract to the Bank. This will allow the Bank to be satisfied that the negotiations have not introduced any material modification to the conditions of the bidding process. The Loan Agreement should include this conditionality.

Additional Selected Topics

41. Operator not Selected under ICB or LIB: Governments and bidders should be aware that when the operator is not selected competitively, the goods, works, and services financed by the Bank shall be procured in accordance with ICB procedures as set forth in Section II of the procurement guidelines. Therefore, they should plan the financing of the various components of the project accordingly, reserving other sources of financing for components not eligible for Bank financing. Additionally, special attention should be paid to the possibility of conflict of interest, when the chosen sponsor is also a contractor or a supplier who should not provide such goods or services but instead should employ competitive procedures by acting as an employer. If the government accepts goods and services provided by this supplier or contractor, they should be financed by the supplier or contractor or be provided as part of the equity share. They would not be eligible for Bank financing.

42. Government Investment without Equity Participation: In some cases the government participates in the investment without participating in the management or in the equity project company, or concessionaire. This may happen for example: (a) when the government wants to reduce tariffs by giving investment subsidies that will not be paid by consumers (like in some transport projects, or water treatment in poor areas); or (b) when the government has a Bank loan and wants to use it for the necessary investment for rehabilitation, expansion or construction of new facilities. In these cases, the government investment is treated separately since it constitutes a government asset related to facilities, which will be operated and maintained by the concessionaire. If Bank loans are used for financing these investments, we may have three alternatives for the procurement procedures: (a) the government (or a government agency) may keep the responsibility for carrying out the procurement — thus, ICB for contracts above a certain threshold, and NCB or other method below the threshold, should be used in accordance with the procedures described in the Bank's guidelines; or (b) the government may assign to an existing concessionaire or to a future concessionaire not selected by ICB, the responsibility for acting as a procurement agent for the government — again, ICB for contracts above a certain threshold, and NCB or other method below the threshold, should be used in accordance with the procedures described in the Bank's guidelines; or (c) the government may include in the ICB

bidding documents the selection of the future concessionaire (as described in this note) the responsibility for the concessionaire (directly or through a subcontractor) to rehabilitate, expand or construct the new facilities for the government — in this case, the concessionaire will be eligible to carry out the procurement of goods and works using its own procedures, in accordance with paragraph 3.13(a) of the guidelines. This should not be misunderstood and confused with another similar case, but a substantially different situation, resulting from new investments done by the concessionaire to become assets of the project company, financed by loans resulting from Bank loans to the government onlent to the concessionaire. In this latter case, only when the concessionaire has been selected under ICB/LIB, he will be eligible to carry out the procurement of goods and works using its own procedures, in accordance with paragraph 3.13(a) of the guidelines.

43. Auction: Some governments prefer a public auction system for the commercial part of the award of concessions (particularly for sale of shares of existing companies). The same procedures described above should be used with the final commercial offers to be made during the auction ceremony. This system is not recommended for BOT type projects and should be restricted to cases where privatization occurs through the sale of shares in stock exchange houses.

44. Transfer pricing: Transfer pricing is one special concern even when the concessionaire is selected through competitive bidding because the concessionaire may procure goods or services from affiliates, at above market prices, and then try to pass on these costs in the next tariff review or in the initial project cost. Two cases should be considered: (a) initial cost in greenfield projects; and (b) tariff review, later on (in any project). For the first case the bidding documents should be very clear and define all conditions and formulas for price adjustment to avoid transfer pricing. The second case (tariff review) should be addressed either in the concession contract or through good regulation. This reinforces the importance of having a well designed institutional framework and satisfactory regulatory system enforced by a capable and independent regulatory agency. The concessioning (or privatization) of services should always be accompanied (and preferably preceded) by the establishment of such a regulatory system.

ANNEX 1

Privately Provided Infrastructure (PPI) Projects

Procurement Under BOT and Similar Private Sector Arrangements

1. Guidelines: Paragraph 3.13 of the Bank's procurement guidelines contains provisions regarding procurement and selection of the concessionaire when Bank financing is used.

> "3.13 Where the Bank is participating in financing the cost of a project procured under BOO/BOT/BOOT or similar type of private sector arrangement, either of the following procurement procedures shall be used, as set forth in detail in the Staff Appraisal Report, the President's Report, and the Loan Agreement:
>
> (a) The entrepreneur under the BOO/BOT/BOOT or similar type of contract shall be selected under ICB or LIB procedures acceptable to the Bank, which may include additional stages in order to arrive at the optimal combination of evaluation criteria, such as the cost and magnitude of the financing offered, the performance specifications of the facilities offered, the cost charged to the user or purchaser, other income generated for the Borrower or purchaser by the facility, and the period of the facility's depreciation. The said entrepreneur selected in this manner shall then be free to procure the goods, works, and services, required for the facility from eligible sources, using its own procedures. In this case, the Staff Appraisal Report, the President's Report, and the Loan Agreement shall specify the type of expenditures incurred by said entrepreneur towards which Bank financing will apply.
>
> Or
>
> (b) If the said operator has not been selected in the manner set forth in subparagraph (a) above, the goods, works, or services required for the facility and to be financed by the Bank shall be procured in accordance with ICB or LIB procedures".

2. Although defining ICB or LIB as the competitive procedure to be used for selecting the operator, the guidelines, recognizing its complexity, clearly distinguish this selection process from the procedures for ICB for goods and works which are set forth in Section II of the guidelines. For PPI projects, the procedures are to be agreed upon and spelled out in the PAD and in the Loan Agreement.

3. Direct or Competitive Negotiations: Governments frequently receive unsolicited proposals from developers and often award private infrastructure projects/concessions through negotiations (with only one developer, usually called direct negotiation, or with several developers, then called "competitive" negotiations), without competitive bidding. If the operator

is selected following these procedures, paragraph 3.13 (b) of the guidelines would apply if Bank financing is to be used. Therefore, the goods, works, and services to be financed by the Bank shall be procured in accordance with standard ICB or LIB procedures. Staff must therefore allocate Bank funds to relatively large contracts that need to be procured through ICB or LIB, leaving other contracts for financing by others. However, there may be cases where, exceptionally, the Bank may agree to finance items procured under other methods. These are cases where alternative financing would not be available and Bank financing would be essential to carry out the project. Examples may be those involving rehabilitation of existing installations and subsequent operation (ROTs) where proprietary items need to be purchased from original suppliers or where few suppliers exist, or where all contracts are of relatively small size, not justifying ICB (i.e., civil works repair and rehabilitation). In those cases, the PAD should indicate these reasons and they would be specified in the agreement between the Bank and the Borrower.

ANNEX 2

Privately Provided Infrastructure (PPI) Projects

Bank Publications on PPI Projects

1. The Award of Concession-Type Arrangements for Private Infrastructure (PSD Summary Note of Findings of Workshop Held on July 11-12, 1996)

2. The Award of Concession-Type Arrangements: Tool Kit (PSD, July 1996)

3. Competition, Regulation and Private Participation in Infrastructure (PSD, March 1996)

4. Private Participation in Infrastructure: Principles and Techniques (PSD, May 1996)

5. Toolkits for Private Sector Participation in Water and Sanitation (TWUWS, 1997)

6. Procurement Issues in Private Participation Arrangements in Infrastructure (International Development Business Consultants, August 1996)

7. Submission and Evaluation of Proposals for Private Power Generation Projects in Developing Countries. (IEN Occasional Paper No. 2, April 1994)

8. Procurement for Private Infrastructure Projects (World Bank Brochure dated 1996, prepared by PSD)

Where to find these Bank publications: Publications number one, two, three, and four are available at PSD; publication five is available at TWUWS; publication seven is available at the World Bank Information Shop (Bookstore); and publication eight is available at the Business Partnership Center.

ANNEX 3

Privately Provided Infrastructure (PPI) Projects

Methods of Privately Provided Infrastructure

1. There are several options for the private sector to provide infrastructure or public services. They vary in accordance with the degree of ownership of the assets, responsibility for management, operation, and responsibility for funding. These options are described in great detail in the publications indicated in Annex Two (especially publications numbers two, four, and five), where illustrations of typical cases for each option is presented. These options are summarized below. The most common options are:

(a) Service Contract: Calls for hiring private companies to deliver services for a public utility. It may include consulting services, construction, maintenance services, and managerial services (e.g., computational services, billing, bill delivery etc.). This is the option with lowest private sector participation since the assets continue to be publicly owned, funding continues under public responsibility, and the management is shared between the public and private sectors. The public company continues to be responsible for the provision of the service including operation and expansion.

(b) Management Contracts: Consists of hiring a private company to manage a public utility. The assets and funding responsibility continue to be public, but all management is private, including maintenance, operation, and provision of the service. The operator is paid a fee for its services and either assumes no risk or, in some cases, assumes risks related to improvement of operational efficiency. Funding for expansions continue under responsibility of the public sector, but its implementation is normally managed by the private operator.

(c) Leasing Arrangements: Consists of leasing public assets to a private company to manage the operation, maintenance, and provision of the service. The operator is responsible for keeping the assets in good condition and for their rehabilitation (where applicable). Expansions continue under public responsibility (directly or through the operator), including its funding. The operator is paid by the consumers, in accordance with a tariff regime defined in the license contract, and pays a fee to the government, keeping the profits and hence, assuming the operational risk.

(d) Concessions: Consists of leasing (or transferring) public assets to a private company to be in charge of the service for a defined period of time. The operator will be in charge of operation, maintenance, provision of the service, and expansion of installations. The existing assets are public, but expansions are generally private (at least up to the end of the contract), funding for expansions is

a private responsibility, and all management is private. The private operator is responsible for providing the service and is paid in accordance with a tariff regime defined in the concession contract.

(e) BOTs (BOOs or BOOTs): Consists of having the private investor responsible for financing, design, construction, operation, maintenance, and management of a new installation and for the provision of the services. The assets are owned by the private operator and transferred to the government at the end of the contract (in the BOT case). It is normally limited to one specific project without obligation for future investments for expansion of services. It is also normally backed by a sales contract which specifies the way (price, fee, or tariff) the private investor will be paid and guarantees the cash flow of the project.

(f) Private Ownership: Consists of total divestiture of the assets to a private concessionaire who will be responsible for maintenance, rehabilitation, operation, management, investments for expansion and their financing. The private operator is responsible for providing the service and is paid in accordance with a tariff regime defined in the license or concession contract.

Phases of the Privatization Process

1. In the selection of a private operator, the following phases are recommended:

(a) Definition of Institutional Framework (Legal Basis): This is normally the first phase of the privatization process, in which the basic design of the new institutional framework is defined. Usually, consultant services are required to help develop such a system that very frequently results in a new legal framework to be approved by the concerned authorities.

(b) Design of Regulatory Framework: The second phase consists of developing the detailed regulatory system. Usually when a regulatory regime is not created, regulations are established in the license contract.

(c) Implementation of Institutional/Regulatory Framework: The regulatory agency should be created and staffed before the privatization takes place. In some cases, consultants may be used to help in starting the operation of the agency or for on-the-job training.

(d) Implementation of the Privatization Process: This final phase will depend on the method or option used for private participation. “Invitations to Bid” and bidding documents are prepared (normally with the help of an advisor). Bidding documents should include all instructions on how to prepare and submit a bid, bid language, bid security, technical standards to be used, currency provisions, minimum conditions for qualification of bidders, bid opening procedures, bid evaluation criteria, contract award procedures, draft contract. If assets are divested, the advisor usually helps to draft the bidding documents for sale of the

company, attracting bidders, and help in the final sale including evaluation of bids.

Concession Contract

2. Careful attention must be paid to designing a contract that: (a) allocates risks to the parties best able to manage those risks; (b) includes incentives for efficient service provision; (c) allows adequate returns for efficient operators; and (d) provides safeguards to the public regarding provision of monopoly service. The concession contract should also include penalties to the concessionaire for failure to comply with contract obligations or be backed up by an appropriate security package provided by the concessionaire to ensure the government that the concessionaire's contractual obligations will be met.

3. The type of contract will depend on the option chosen (see para. 1 above). Generally, the contract will set out, inter alia: (a) the definition of the service to be provided; (b) the concession area; (c) the rights of the concessionaire; (d) the obligations of the concessionaire; (e) the performance indicators to control the quality of the service; (f) the regulations to be applied; (g) the power of the regulator to inspect installations and books; (h) the penalties for non-compliance, or alternatively, a security package provided by the concessionaire to ensure that its contractual obligations will be met; (i) the tariff regime, adjustment mechanism, and process for resetting the tariffs; (j) guarantees, warranties, and performance bonds; (k) the duration of the contract; (l) the process for termination, renewal, or re-bidding of the concession: and (m) dispute resolution and applicable law.

4. Two aspects are essential in any concession contract (or implementation agreement): (a) guarantees for completion of works for provision of the services: and (b) operational quality of the service provided after completion of works. Consequently, the concession contract (or implementation agreement) should include provisions for:

(a) Performance Guarantees: if the concessionaire is in charge of the works, he should provide performance guarantees to the Government. If the concessionaires sub-contracts those works, the subcontractor should provide the corresponding performance guarantees to the concessionaire. In the later case the concessionaire should give the necessary power to the Government to execute those guarantees in case the concessionaire fails to do so.

(b) Technical Operator: if the concessionaire is directly in charge of the operation and maintenance of the facilities, the concession contract should include the penalties for unsatisfactory performance. In the case the concessionaire subcontracts the operation, in addition to the penalties for unsatisfactory performance, the concession contract should include provisions for consultations with the Government before the concessionaire changes the technical operator.

5. Often, the duration of the contract reflects the number of years investors are expected to need to recoup their investment. Hence, "Service," "Management," "Leasing" contracts (where the private operator is not responsible for investments) tend to be shorter in duration (say four to

ten years), than concessions and greenfield projects requiring extensive upfront investments in long-life assets (say twenty to thirty years).

ANNEX 4

Privately Provided Infrastructure (PPI) Projects

Issues on Award of Concession-Type Arrangements

1. A PSD-sponsored workshop on the award of concession-type arrangements was held in Washington D.C. on July 11-12, 1996. Participants included selected Bank staff involved in PPI projects and procurement, external representatives of major power and water companies, U.K. and U.S. Government officials involved in procurement and private infrastructure, external lawyers with experience in PPI projects, and leading academics in the field. The purpose of the workshop was to: (a) review the conceptual and practical issues related to the design and implementation of the award process; (b) discuss different approaches to selected issues; and (c) identify areas where further substantive work is required for the Bank to prepare guidelines or directives on concessioning of PPI projects.

2. The workshop arrived at the following conclusions:

(a) "Private infrastructure concessions and franchises often involve complex policy, legal, regulatory, and financial issues. Improperly designed or poorly implemented concessions can have adverse long-term effects on consumers

(b) The bidding/award process is an important factor in the long-term success of private infrastructure concessions. Competitive bidding, with clear rules and maximum information available to bidders generally produces the best results. In some cases, a full-blown competitive process may not be feasible. Nevertheless, steps can be taken to introduce some degree of competition in the process, or otherwise replicate competitive forces (e.g. through benchmark comparisons).

(c) Some degree of contract modification is almost inevitable during implementation of long-term concessions, as a result of changing circumstances and market dynamics. These adjustments may be beneficial to consumers and to private concessionaire. The success and credibility of those contract adaptations will depend to a large degree on the regulatory institutions and dispute resolution procedures that are in place."

3. This advisory note benefited from the exchange of experience and discussions held at the workshop and aims at serving as recommended practice on a trial basis until sufficient experience is accumulated to issue mandatory guidelines. The workshop identified several issues for Bank consideration in developing policy directives on PPI projects or in interpreting its current procurement and consultant guidelines and policies. This advisory note addresses those issues and makes recommendations. In the following paragraph, the issues identified in the workshop are described. The recommendations on how to address them based on this note are also included.

4. The following issues were identified in the workshop:

Issue #1: **hiring advisors**: (a) should oral presentations be permitted and, if so, how should the presentations be structured to ensure transparency and fairness? (b) should the cost be covered by firms? (c) should Bank staff be present as observers at presentations when the contracts are to be financed by Bank loans?

Comments (see para. 13c of the text): (a) for large assignments presentations may be very useful and should be allowed. However, since they would be part of the technical evaluation process, it is essential that they follow very clear and predefined rules to prevent firms from modifying their proposals; (b) costs should be shared, the government paying for the facilities and support for the presentations, and the firms paying for their own presentation cost; (c) Bank staff may be present as observers, however they must avoid any perception of Bank participation in the evaluation process, therefore, it is recommended that only staff with ample knowledge of these processes participate.

Issue #2: **prequalification of potential concessionaire**: (a) should prequalification of concessionaires be required when Bank is financing related advisory services or procurement of equipment? (b) what prequalification process and types of criteria should be used? (c) how can the Bank promote new entrants and increase competition for concessions, while ensuring that bidders have the requisite technical and financial capacity and experience?

Comments (see para. 18-21 of text): (a) in designing the biding process for PPI projects, prequalification should always take place; (b) prequalification criteria should be sized to fit the project and should be based on applicants' type and degree of experience, qualifications of the operator, financial capability, references on performance, and history of litigation; (c) new entrants may be promoted by adequate design of the requirements and criteria of prequalification, i.e., by sizing the level of experience and financial capacity required from applicants to the size of the project and especially by allowing (or creating incentives for) joint ventures between applicants with good experience in operation and/or construction (and lower financial capacity) and financially strong sponsors.

Issue #3: **competitive negotiations**: (a) should the Bank's definition of ICB/LIB procedures for selection of an operator/concessionaire be expanded to include "competitive negotiations", (b) what should the minimum competitive elements be in "competitive negotiations?"

Comments (see para. 14-16 and 36 of text): (a) the Bank's definition of ICB/LIB in the procurement guidelines is very clear and does not include the concept of "competitive negotiations;" however, this does not preclude Bank financing when "competitive negotiations" take place — paragraph 3.13(b) of the procurement guidelines shall be applied; (b) we do not recommend "competitive negotiations" because it is extremely difficult (nearly impossible) to define the elements capable of transforming negotiations into competition — they are negotiations lacking the transparency of a satisfactory bidding process.

Issue #4: **concession implementation**: (a) does the Bank need to be more flexible on bidding/award procedures, but stricter on having sound regulatory agencies or mechanisms in

place to supervise the award process and implementation of concessions? (b) what should the Bank require in the setup and operation of regulatory agencies?

Comments (see para. 10-12): (a) it should not be considered as a trade-off — the Bank's guidelines for procurement are very flexible and this note provides advice on how to apply the guidelines; the existence of an adequate regulatory framework can be included in the project and the advisors can help in developing it; (b) the setup and operation of regulatory agencies should be negotiated with the government during project preparation in accordance with the situation of the specific sector in that country.

Issue #5: **cost-sharing for bidding**: (a) should the Bank allow cost-sharing arrangements to defray bidding costs? (b) under which circumstances? (c) on the basis of which principles?

Comments (see para 18 of text): Recognizing that preparing a bid for a PPI project may be a lengthy and costly process, prequalification is recommended for all PPI projects. This would create incentives for prequalified firms to bear the costs of preparing their bids.

Issue #6: **information dissemination**: should the Bank compile and distribute information to the public on: the experience/track record of advisors, concessionaires, and operators; performance or benchmark data for PPI projects; and regulatory regimes and decisions pertaining to private infrastructure concessions?

Comments: the text of this note did not make any recommendation on this issue because it is not solely a procurement issue. However, the idea is worth pursuing and should be addressed thoroughly since it should cover several aspects (procurement, finances, operation, etc..), and it would require the creation of procedures for an adequate data collection system as well as for data management and reporting. This issue should be discussed independently from the application of the Bank's procurement guidelines to PPI projects.

Issue #7: **contracts/bidding documents**: should the Bank prepare model contracts and bidding documents, or at a minimum, checklists of key issues/elements?

Comments (see para. 25 of text): standard bidding documents or model contracts should not be prepared, particularly since they should be tailor-made for each project situation. However, a central repository of bidding documents and contracts should be created in an OCSPR library to facilitate information dissemination. A checklist of issues to be considered in bidding documents and contracts should be prepared by OCSPR as a follow-up to this note. That checklist should be updated periodically and distributed to staff involved in PPI projects, it would also disseminate experience. In the medium term sample bidding documents representing the best practice may be developed.

Issue #8 **transfer pricing**: (a) is there a transfer pricing issue when concessionaires procure from affiliates/subsidiaries? (b) should concessionaires be permitted to procure equipment from affiliates/subsidiaries? (c) what safeguards can be built in to reduce transfer pricing?

Comments (see para 44 of text): For greenfield projects, and when the concessionaire is selected through competitive bidding, this does not happen because all subcontractor or supplier costs were included in the commercial proposals subject to comparison with others during bid evaluation. However, when the concessionaire is selected by other procedures, the risk of transfer pricing is real. For future tariff reviews, the only way to avoid transfer pricing is through good regulation. For greenfield projects, and when `the concessionaires are selected through ICB/LIB, they can include goods or works from affiliates or subsidiaries. However, when they are selected by other procedures and Bank financing is used in accordance with paragraph 3.13(b), a conflict of interest would bar its affiliates or subsidiaries of bidding for goods or works. For future investments, the regulation will have to address this issue. For greenfield projects, the safeguard already exists in the guidelines — conflict of interest. For future investments, the solution is to have good regulation.

ANNEX 5

Privately Provided Infrastructure (PPI) Projects

Prequalification Criteria and Performance Indicators

This Annex gives some indications on how to select quantitative prequalification criteria and performance indicators for quality of service. The use of quantitative or numeric indicators is recommended to reduce or eliminate subjectivity from these crucial phases of the selection process (prequalification and evaluation), as well as for satisfactory supervision of the quality of the service provided by the concessionaire.

Quantitative Pre-Qualification Criteria

1. Quantitative criteria are more directly applicable and transparent and should therefore be preferred whenever possible. The technical aspects of a concession refer to three phases: construction, operation, and maintenance of the facilities. Construction (when included in the concession, either for a greenfield project or for future expansions of the system) would include the appropriate design, funding, and the construction itself. Operation and maintenance, refers to the future daily responsibility of the concessionaire. Operation and maintenance are essential to the quality of service provided during the life of the concession. Consequently, the prequalification of the "operator" should be done with particular care and it is important to have consistency between the requirements for prequalification and those for technical evaluation of proposals and future supervision of the concession contract. Therefore, the latter will be addressed in the next section together with performance indicators for quality of service.

2. In a concession contract, the concessionaire is responsible for the design, financing and construction, operation and maintenance of the facilities required for providing the service. Therefore in the prequalification process, the qualification of potential bidders in these areas should be assessed. The minimum level of experience to be required from potential bidders will, of course, depend on the type of concession for which bids are requested. In general these examples may be useful:

(a) Design: bidders should demonstrate that they, or their partners (or subcontractors) have experience in the design of a well-defined quantity of services of certain magnitude of work. For example: (a) have been responsible, during the last five years, for the design of at least one (or more) hydro-plant with an earth dam higher than W meters and with volume of earth of X million cubic meters, volume of concrete of Y cubic meters, installed capacity of more than Z MW; (b) have been responsible, during the last five years, for the design of one (or more) paved road of more than XX km, including ZZ km of tunnels, and WW meters of bridges.

(b) Construction: applicants should demonstrate that they, or their partners (or subcontractor) have the minimum experience (at the level defined in the

prequalification documents) in the construction of the facilities required for providing the services of the concession. The same criteria used for qualification of bidders for procurement of works (included in the standard prequalification document) could be used.

(c) Financing: applicants should demonstrate economic and financial capacity to fund or to get financing for the investments required to provide the service under concession. Financial information should be required in the form of, for example: (a) balance sheets; (b) income statements; (c) source and application of funds statements; (d) short-term and long-term debt schedule. Minimum requirements should be specified such as: (a) capital; (b) current ratio; (c) debt ratio; and (d) minimum available cash (or line of credit) for working capital requirements of the project.

Operation and Maintenance: applicants should demonstrate that they, or their partners (or subcontractor) have the minimum experience (at the level defined in the prequalification documents) in the operation and maintenance of facilities of a well-defined variety of services of certain magnitude (number of consumers and amount of product serviced). If the "operator" is a subcontractor, the operational contract should be for a long period (say five to ten years) to allow the other partners to get the necessary operational experience before the operational contract expires. Some examples of minimum experience required: (a) to be a utility distributing power (or water) for more than five years, covering an area for X square miles, serving at least 500,000 customers and selling more than XX MWh per year (or cubic meters of water per year) with standards of quality in accordance with the performance indicators defined in the bidding documents (see next section); (b) to be responsible for the operation and maintenance of a power plant (or a water treatment plant, or wastewater treatment plant) of a well defined capacity for more than X years with standards of quality in accordance with the performance indicators defined in the bidding documents (see next section); and (c) to be responsible for the operation and maintenance of a toll-road (or bridge) with an extension of X miles, for vehicles of up to ZZ tons of capacity, with annual traffic of XX vehicles per year, and with standards of quality in accordance with the performance indicators defined in the bidding documents.

3. It is important to select the minimum requirements taking into account the size of the market (or project) under consideration for concessioning. It is also important to admit joint ventures, to allow small good operators to join large contractors or banks to compete with traditional concessionaires, fostering the competition. In this case, the concessionaire is the firm to be liable for the contract obligations and each member of the joint venture should be liable corresponding to its participation in the concessionaire or Project Company. It also important to consider in the prequalification: (a) the experience of the bidder in design, construction, operation (including commercial aspects), and maintenance; (b) the agreement and organization among partners in the case of joint venture, requiring that the operator be kept in service for at least a number of years (usually ten years); (c) economic and financial history of the applicants; and (d) history of litigation or arbitration.

Performance Indicators

4. The quality of the service provided to users can be assured by requiring the concessionaire to submit an expansion plan and an operational and maintenance plan to be approved by the regulator. The supervision then would monitor the compliance to such plans. Many concession contracts have been done following this model. However, it reduces the flexibility of the concessionaire, reducing its management capacity, resulting in less efficiency. It also requires extensive supervision from the regulator. The use of well-designed Performance Indicators can achieve the same goal of controlling the quality of service, without reducing the concessionaire's flexibility and with less input from the regulator.

5 Performance indicators should be designed to monitor (a) expansion of service; (b) quality of technical operation of the system; (c) quality of maintenance of facilities; (d) attention to customers; and (e) economic and financial soundness of the concessionaire. The design of these indicators depends on the service under concession. To illustrate, here are will give some examples for power and water.

6. Expansion of service: instead of requiring the concessionaire to submit an expansion plan for approval, the use of indices measuring the time for connection of new users to the system and measuring the quality of supply to all users gives a very good indication if the system expansion is satisfactory. Consequently, the most used indices are:

For water:

(a) Time of Connection: number of days between the date the new customer asks for connection and the date the service begins.

(b) Percentage of houses connected: indicating the percentage of the total number of houses in the concession area that are connected to the system.

(c) Water quality: maximum quantity of physical-chemical and biological components per liter of water.

(d) Water pressure: the barometric pressure of water at consumer entrance of supply.

For power:

(a) Time of Connection: number of days between the date the new customer asks for connection and the date the service begins.

(b) Percentage of houses connected: indicating the percentage of the total number of houses in the concession area that are connected to the system.

(c) Voltage regulation: a measure of the variation of the voltage level at consumer entrance of supply.

(d) Frequency fluctuation: a measure of the variation of the electricity frequency at consumer installations.

7. Technical operation and maintenance of the system: instead of requiring the concessionaire to submit an operational and maintenance plan for approval, the use of indices measuring the number of outages, duration of outages, and losses in the system can be used to measure the quality of operation and maintenance of the system. Consequently, the most used indices are:

For water:

(a) service continuity: a measure of the number of days per year without water supply.

(b) duration of outage: a measure of the number of hours per year without water supply.

(c) losses: a measure of water not accounted for in the system

For power:

(a) outage frequency: a measure of number of outages of power supply per year (number/year).

(b) duration of outage: a measure of the duration (in hours) of the average outage of power supply (hours)

(c) losses: difference between electricity generated (or bought) and total of sales (in percentage)

8. Attention to customers: the quality of attention to consumers may also be measured by some indices, for example:

(a) Connection time: number of days between the date the new customers asks for connection and the date the service begins.

(b) Reconnection time: number of hours (or days) for a customer to be reconnected after being disconnected for any reason.

(c) Telephone service: indication if the concessionaire has an exclusive telephone service for facilitating commercial operations with customers and for complaints about the service.

(d) Time to pay bill: number of days between bill delivery and due date.

9. Economic and financial situation of concessionaire: the concessionaire should submit financial statements to the regulator, that in turn may define some indices for compliance, such as: (a) debt service coverage ratio; (b) self-financing ratio; (c) average collection period; (d) operating profit margin; and (e) rate of return.

ANNEX 6

Privately Provided Infrastructure (PPI) Projects

BOT Type Projects - From Award to Financial Closure

1. Financial Closure: After the concession contract has been awarded, there are a number of steps involved in finalizing the contracting negotiations. The concessionaire (or developer) must negotiate and sign a series of contracts with the other project participants. The concessionaire objective in this final but critical stage of the BOT process is **financial closure**. Financial closure means that the project's entire equity has been unconditionally committed, all loan documents have been signed, and disbursement of the loans can start without further problems.

2. Risk Structure: In greenfield BOT projects, the concessionaire must enter into a series of contracts with suppliers, contractors, insurers, etc. As an example, in a power-generating project the following contracts may be needed:

(a) Power purchase agreement: with an offtaking utility valid for the period of the concession. Ideally, this contract should be discussed, negotiated, and finalized during the concession award process.

(b) Fuel supply agreement: with a fuel supplier defining the terms and conditions of fuel supply during the period of concession.

(c) Sponsor's agreement (or shareholder agreement): between the sponsors or shareholders forming the special purpose company for the project.

(d) Engineering, procurement, and construction agreement: with the contractor in charge of the construction of the facilities and supply of equipment. Usually a lump-sum turnkey contract.

(e) Insurance agreements: in which the terms and conditions of all required insurance policies (e.g. third party liability, business interruption, etc.) are specified.

The combination of the concession contract and all these contracts will define the **risk structure** of the project. This risk structure together with the cash flow of the project form the threshold whether this project can be financed by lenders.

3. Financial Closure: Financial closure includes the commitment of equity and debt funds. From the sponsor's view, these are the different kinds of financing sources:

(a) Equity: funding from the sponsors' participation and other participants having active interest in the project as risk investment;

(b) Subordinate Debts and Preference Shares: funding from investors who invest in like near-equity return papers without taking full risk of equity capital;

(c) Debt: funding from commercial bank loans

4. BOT projects are usually funded under **Project Financing**, which involves the funding of a project, based on its internal merits and revenue stream (also called limited or non-recourse financing). As the assets of an infrastructure company are of limited use to lenders (it is not practical to dismantle the facilities and sell the parts), the focus is mainly on the project's cash flow and the contractual arrangements making up the project's **security package**. Once the security package satisfies the lender's requirements then the Loan Agreement can be signed committing the debt funding of the project from commercial banks.

5. Security Package: It is common in Project Financing for the lenders to take security over the project assets so far as this is possible under the laws of the country where the assets are situated. However, lenders may find that the local legal system gives them rights and powers that fall short of their expectations and require a "security"[13] package. As one example, the following documents may need to be entered into to create or record the required security interest:

- mortgages or fixed charges over land, buildings and other fixed assets;
- fixed and/or floating charges over movable assets, book debts and production/work in progress;
- assignments of rights under underlying project documents, such as construction contracts, contractors' performance bonds, licenses and joint venture agreements;
- assignments of sales contracts, "take-or-pay" or "tolling"[14] agreements;
- escrow accounts to control and, when necessary, retain cash flows relating to the project;
- assignments of long-term supply contracts, including "put-or-pay"[15] contracts and agreements for supplies of energy and raw materials;
- assignment of project management, technical assistance and consultancy agreements;
- pledge of shares of project company including charge over dividend rights; and
- notices, acknowledgments, endorsements, filings and "perfecting" the security created under the various charges and assignments.

[13] Security here connotes the creation of rights that attach to the assets themselves, not merely claims enforceable against the owner of those assets. These rights give the security holder certain powers, most importantly: (i) the ability to prevent disposal of the assets by the borrower or guarantor (owner) or the granting of interests to third parties; and (ii) the power to take possession of, to operate and/or to sell and realize assets ahead of other creditors and any liquidator.

[14] Take-or-pay and tolling agreements are types or sales contracts with guaranteed revenues. In the first the buyer guarantees the payment taking the sale product or not. In the second the same guarantee exists for tolling services independent of traffic.

[15] Put-or-pay is a guaranteed supply contract where the supplier will pay a pre-defined amount in case the supply does not take place.

6. Concession Contract Adjustment: These considerations demonstrate the complexity of the situation after the award of concession. This complexity in an ever-changing environment might imply that the Government might need to make certain adjustments in the concession contract even after award of the concession in order to reach financial closure.