Overall Principles for Procurement

Public and Private Partners embarking on a PPP choose to develop a long relationship; they want it to last and to be as fruitful and peaceful as possible. For each party, the choice of the adequate partner is of paramount importance.

Why bid?

During the selection and award process, the public entity launching the PPP will make efforts to attract the best potential partners. On their side, private firms are eager to find the adequate project in the adequate environment, promoted by public parties with whom they will be willing to enter into partnership.

Except in very rare and specific cases, experience has shown the greater efficiency of competitive bidding over direct negotiation. Therefore current thinking supported by IFI conditions is that competitive bidding is the best way to initiate the close relationship required to develop successful PPPs.

Further, where subsidy is concerned, regulations in many countries including Korea, India, Pakistan, Indonesia, as examples, insist that if any subsidy is involved the project must be competitively bid. This is for two reasons; transparency and to ensure the subsidy is the minimum possible.

Competitive bidding will therefore almost certainly be chosen, and certain important principles should be kept in mind throughout the entire process.

What are the benefits?

One may be tempted to believe that the issues at stake are so complex and so sensitive that an adequate partner cannot be selected on the basis of a written proposal.

Many governments have had bitter experiences with firms selected through a bidding process. Some firms are just good at making proposals and manage to make up for their deficiencies or lack of experience in the bids. Others are so desperate to enter the market that they commit themselves with promises they will never be able to deliver. Could it be preferable to directly establish a partnership with reliable firms, well-established in the business, who have demonstrated their ability to deliver the required services efficiently and have sufficient experience to operate in the conditions existing in the country? Experience also shows this is rarely the case!

Competition: securing efficiency gains and avoiding corruption

Mechanisms for more efficiency shows that competition (either *in* the market or *for* the market) is the main tool for the public sector to stimulate the private sector and collect a fair share of the efficiency gains generated by the project.

Competition *in* the market is not easily introduced in PPPs. Such projects are regulated by long-term contracts and once the agreement is signed, the private party enjoys a quasi-monopolistic situation. When the private operator is being paid by the Government, prices are usually pre-determined by the contract and only fluctuate to a very limited extent. When the operator gets its revenue from road users (mainly toll roads), the competition it faces is limited to possible alternative free roads that the user could use if not satisfied by the service offered for the price he pays.

The selection process provides an opportunity to bring in fair competition *for* the market and optimize the quality of the services to be delivered over the cost of the project for the community.

Competition is also very important to avoid future debates about whether the fact that the concessionaire makes significant profits is unfair or wrong. It also protects politicians and awarding authorities from being attacked in respect of corruption.

Competition as a rule, direct negotiation as an exception

A comparison of both systems is shown in the table below.

COMPARISON OF COMPETITION AND DIRECT NEGOTIATION	
COMPETITION	**DIRECT NEGOTIATION**
Advantages of competitive bidding	**Perceived advantages of direct negotiation**
Stimulates private firms in the search for innovative solutions that would give them a competitive advantage	More space for technical innovation left to private party
Transparency assured if process conducted properly	Private entity feels it has a better chance of success and is ready to invest at preparation stage
Process controlled by the public party	Private sector driven
Favored by IFIs and often imposed by local regulations	Overall duration of the process is theoretically shorter (but increasing public pressure for more transparency reduces the scope for discretionary negotiations); Ultimately, it often takes longer.
More private firms involved through publication = more chances to get the best ones	First firm to make proposal is not necessarily the best one
Perceived drawbacks of competitive bidding **e.g. Cheapest should be the best, but in some circumstances may not be**	**Drawbacks of direct negotiations**
Evaluation of innovative proposals is difficult	Risk of capture of efficiency gains by the private firm
Longer process (when a prequalification stage is included)	When Government is inexperienced, risk of unequal negotiation and longer time overall due to uncertainty

Appears more expensive if the Government conducts no or little preliminary studies. The latter are however necessary if the government wants to be at that same "level" during negotiations.	Appears cheaper initially but consideration of making a mistake that will last for 30 years or more
Transparency should be assured	Risk of accusation of corruption by the community and the media
Can discourage private firms by excessive bid preparation cost	

A competitive selection through either competitive bidding should be the rule, leaving direct negotiations for very exceptional circumstances such as:

When the public sector cannot keep pace with the preliminary preparation work for urgent projects: unsolicited proposals by private parties can then be taken into account and may lead to competitive bidding with some kind of advantage for the initial candidates.

When the project needs very little public participation or when unsolicited proposals submitted by private companies are genuinely innovative: direct negotiations with the candidates will then tend to maximize the public's interest. In such cases, policy makers in charge of the selection process can use various mechanisms to mitigate the potentially negative impact of unsolicited proposals:

- Order a detailed review of the project and contractual documents by experienced advisers
- Introduce competition at a later stage, allowing new-comers to make proposals on the basis of the studies performed by the initial private firm. For the sake of fairness, some advantage should then be granted to this initial firm to compensate for the cost incurred during project identification. Alternatively, the initial firm would be compensated for the cost incurred during the initial studies.