

# Developer Selection Methodology

# Design of Presentation

1. Introduction
2. Various Procurement Methods
3. Bidding Procedures:
  - Design of Bidding Strategy
  - Critical aspects of each stage
4. Case Study – International Convention Centre Project in Trivandrum, Kerala

# I. Introduction

The success of a concession depends not only on getting the provisions of the contract right, but also on designing an appropriate method for awarding the Concession/ Authorisation/ License.

## Aspects to be Considered for Award

1. Whether to use competitive bidding (or some other method) to award the concession?
2. How to design a pre-qualification process for potential bidders?
3. How to structure and evaluate the bids?
4. Whether to have single or multiple bidding rounds?
5. Whether to have sealed or voice bids

## Advantages of Good Bidding Process

**The design of the bidding and award procedures have a significant impact on the economic efficiency and transparency of the concession.**

- It ensures transparency and better economics
- Provides equal opportunity to the developers
- Competition is introduced in the market and monopolies are reduced
- Government gets the best price for the services being offered on concession
- Public interests are safeguarded

# Methods of Procurement

# Choosing the Method of Award

The Method of Award can be broadly grouped into three categories:

1. Competitive bidding
2. Direct negotiations and unsolicited bids
3. Competitive negotiations

These methods constitute a continuum, and any award process is likely to incorporate elements of competition and negotiation at various stages.

- All the above strategies are being applied across the country to award the infrastructure projects for PSP

# . Competitive Bidding

1. Competitive Bidding
  - a) Public notification of the Government's intent to select and award a concession for project or service to be implemented on PPP
  - b) includes a request for Expressions of Interest

- c) A formal process for pre-qualifying potential bidders
- d) Bidding documents comprise project information memoranda, Request For Proposal (RFP) documents, and draft concession/ license agreements
- e) A formal public process for submission & evaluation of bids and selection of the 'preferred Bidder'.

# Pros of Competitive Bidding

Competitive bidding is favoured by the Government because it:

- **ensures transparency in the selection and award of project**
- **results in competitive costs/pricing**
- provides a market mechanism for selecting the best proposal;  
and
- stimulates interest among a broader range of potential investors;

Most preferred bidding route by Multilateral Agencies such as WB, ADB, etc

# When Competitive Bidding is Most Suitable?

- The project is fairly standard and has established precedents in the Market
- The technical parameters can be defined with reasonable certainty in the bidding documents
- There is limited scope for innovation and creativity on the part of an operator

## 2. Direct Negotiations and Unsolicited Proposals

- Usually applicable for ICON & Innovative Projects and having no precedents in the Market.
- Under direct negotiations, the project idea generally originates with a private sector sponsor, rather than with the Government.
- A developer or operator seeks to negotiate directly with the Government on terms and conditions for an infrastructure project.
- There may be circumstances in which a full-blown competitive bidding process may not yield the best result for consumers

## Sectors for Direct Negotiations...2

The sectors more amenable for Direct Negotiations are:

- a) Projects in smaller municipalities, where it may be too costly to arrange a competitive bidding process or where it may be difficult to attract developers and operators with private investments
- b) Emergencies and natural disasters, in which major projects or repairs must be completed rapidly
- c) Projects which involve proprietary rights (IT Solutions) or innovative technology

## One More Case for Direct Negotiation

In countries without a track record or a proven legal and regulatory framework for private concessions, Governments may choose to enter direct negotiations for some initial projects on a pilot basis in order to gain experience and build a record with investors.

# Making Direct Negotiations More Effective

Replicate competitive forces can be helpful to ensure both transparency and economically efficient outcomes:

- Using external advisers and consultants to assist the Government in assessing proposals – Government's due diligence would be strong
- Benchmarking against the cost of similar projects – Government's confidence for direct negotiations will be strengthened
- Announcing the proposed project terms and conditions – Direct negotiation will lead to performance oriented services

- Allowing other developers an opportunity to better the terms within a specified period – it is an indirect competition
- Establishing an independent advisory panel to review the proposed transaction – Experts Review

In case initial concession is directly negotiated, Periodic re-bidding of the concession should be adopted in future of the same concession to ensure longer-term economic efficiency. in cases where the initial concession was directly negotiated

### 3. Competitive Negotiations

It may also be possible to combine elements of competitive bidding with direct negotiation to promote transparency, while preserving the innovative or proprietary aspects of developers' proposals.

# Characteristics of Competitive Negotiations

- A competitive process solicits proposals in response to broad output specifications
- Their negotiations are undertaken directly with one or more developers.
- Competition is used to narrow the number of potential developers, and negotiations are used to work out detailed terms and conditions of the contract.

The Government have fallback bidders if negotiations with the preferred bidder failed.

## How Competitive Negotiations Work?

The Government specifies its objectives and solicits proposals from private operators (shortlist) through Request for Proposal (RFP).

The Government then reviews the proposals, selects those that are deemed technically responsive to the RFP, and negotiates the contract terms with the selected bidders.

The process may involve simultaneous negotiations with several bidders with the objective of awarding the contract.

## When Competitive Negotiations Most Suited ?

This competitive negotiation approach is well suited to projects in which:

- a) There is scope for innovation and different approaches by developers, and authorities hope to elicit imaginative proposals for projects
- b) It would be difficult to secure financing on the basis of standardized contract documents.

Government's due diligence for such projects/concessions is must.

# Bidding Strategy – Stages and Evaluation

## III. Bidding Process Stages – A Summary

Stage I : Pre-qualification

Stage II : Technical Proposals

Stage III : Price Proposals

Evaluation of details given in three stages is integrated with discussions/ clarifications with the bidders

## Stage I - Prequalification (PQ) & Shortlisting

When awarding concessions for the infrastructure services, Government always wants to ensure that the winning consortium has the required technical and financial capacity to operate & manage the infrastructure facility and to fulfill the conditions of the concession successfully

The government does not want to award it to an operator that offers the best deal on paper but later fails to deliver what was promised

One way to reduce this problem is to design the concession in such a manner that it is attractive only to operators who are confident that they can operate the business successfully.

- restrict the non – serious bidders, still
- have the flexibility to generate enough interest in the market

Government may design the Contract to include:

- stiff penalties for poor performance; and
- Firms to provide a guarantee/bond sufficient to pay the penalties

# What influences Prequalification Process Design ?

1. Consortium's financial strength & experience criteria needed for the Project/Concession
2. The form and extent of involvement by the lead operator in the bidding consortium (minimum equity position, technical assistance contract, etc)
3. Requirement (form and extent) of other partners
4. The quantitative or qualitative method for evaluating potential bidders against the above criteria

When to carry out prequalification:

- Depends on type of Concession
- Level of Preparedness of the Government while bidding.

# How to fix Criteria for Operator's Experience...?

The degree and type of experience/capacity required of bidders depends on:

- a) the sector and type of project being offered for concession
- b) Services to be provided within the project during the concession period such as financing, construction, operation, management, marketing, etc..
- c) number of established firms currently operating in the global market in this sector.
- d) Whether Government wants to promote the local market??

# What should be the Prequalification Criteria?

In a formal PQ process, quantitative criteria related to technical (experience) and financial capacity of the bidder is generally used:

- a) Construction / Operations experience in similar projects to judge the execution and management capability of the consortium
- b) Financial strength of the Consortium (expressed as Annual Turn Over and Net worth) to judge the financing capability

Thresholds for the following are required to be fixed upfront by the Government:

- a) Minimum required equity of companies in the consortium
- b) Criteria for financially significant partners e.g. having equity more than 10% for min. five years of operation
- c) What are similar and comparable projects??

# The Timing of Prequalification

- Prequalification can be carried out as a separate bidding stage by issuing a Request for Qualification (RFQ) document

Early PQ formalizes discussions with potential bidders, since only pre-qualified bidders receive the draft bidding documents for comment, undertake due diligence, and participate in the bidding.

Early prequalification forces potential investors to form consortia early in the process and reduces their flexibility to change consortium partners during the preparatory phase. This may generate low key & non serious response from the bidders

Instead of Early PQ, Expression of Interests route can also be adopted

It can also be clubbed in a single bidding process wherein bidders are required to submit their proposals in separate packets – PQ, Technical and Price

Due to above, Government may prefer, for PPP Projects, Single Bidding Stage – three envelope system wherein Prequalification is clubbed with proposal submission.

## Is PQ sufficient for Contract Performance ??

Though, prequalification is a necessary stage ensuring that bidders have the required technical and financial capacity to undertake a project, it does not ensure satisfactory future performance on its own

The concession contract should include for efficient management and sanctions/penalties for poor performance

## IV. Technical & Price Proposals

In Infrastructure Sector, it is often difficult to evaluate and compare Technical proposals from different bidders. Hence, it is essential to design an efficient bidding strategy considering following:

- How proposals should be compared and evaluated ?
- How to assess whether a technical proposal is fully responsive to the specified requirements ?
- Whether technical proposal should be marked & ranked ?
- What should be the criteria for finally selecting a Consortium – price bid parameter ?

# Technical Proposals.....Contents

Usually, Technical and Price Proposals are submitted in a single stage  
– two packet bid

Technical proposals contain following:

- project designs, specifications, operation & maintenance strategies, Business & Marketing plans.
- Future Expansion Plans
- Performance related Specifications
- Environment Management Plan, Quality Control Plan

Level of detailing required in Technical Proposals depends to the extent, design risk is being passed to the Operator

# Evaluation of Technical Proposals

- Sequentially, Technical proposals are evaluated after PQ and before proceeding to the financial/price proposals.
- Often the evaluation of Technical proposal is conducted on a pass/fail basis—that is, only those bidders that pass the technical evaluation proceed to the financial evaluation.
- Marks & Ranks can also be adopted for the evaluation of technical proposals .
- In case of tie-up between the two bidders in 'Price Proposal stage', Ranking or Marking system helps in selecting the Preferred Bidder.
- Governments should adopt the route of seeking clarifications/justifications from the bidders to enhance the quality of Technical proposals

# Technical Clarifications and its effect on Price Bids

- There can be cases when technical bids get significantly modified during stage of discussions and evaluations
- These modifications may influence the price proposals considerably
- In such projects, Government may adopt following:
  - Ask the technically qualifying bidders only to submit the Price Proposals again
  - Submission of Price Proposal and technical proposals can be segregated in the beginning itself.

# Financial Proposals

There are many different options for structuring financial proposals. Some of the more common options include bidding on:

- a) The highest price or highest concession fee (one-time or annual) paid to the government
- b) The lowest cost to the government for constructing or operating facilities or services
- c) The largest amount of new investment to be undertaken by the operator

- d) The lowest tariff to be charged to consumers
- e) The lowest net present value of the future revenue stream to the developer from the service or project
- f) The lowest subsidy that the government must provide to the winning bidder to operate a loss-making service
- g) maximum extent of new service coverage promised
- h) minimum length of the concession period
- i) Revenue Sharing

## V. Few Other Elements Of Bid Design

Apart from the structure of the bid, bidding rules and procedures should also be designed to ensure transparency and economically efficient outcomes

These include:

1. Whether to use a reserve price and whether to announce it
2. Whether and when to use sealed bids rather than open bids

3. Whether to have a single round or multiple rounds of bidding
4. Whether to have simultaneous or sequential bidding (in cases where several concessions with interdependent values are being awarded)
5. Whether to require bid bonds and activity rules
6. Whether bidders should be remunerated for a portion of their bid costs

**Thank You**