

Tendering and Contracting

Set out appropriate partnership framework and engage an effective partner

Objectives of the Training Module

Set out appropriate partnership framework and engage an effective partner

Understanding the key features of PPP procurement

Key concepts	Pre-requisites for tendering; general principles of procurement; standard bidding process for PPPs (stages & relevant documents)
Pedagogical tools	<ul style="list-style-type: none">▪ Reading material: Handout on overview of procurement statutes in India.

Understand the standard documentation for pre-qualification of bidders for PPP projects in India (RFQ stage)

Key concepts	Process and standard documentation for pre-qualification of bidders for PPP projects: <ul style="list-style-type: none">▪ Instructions to applicants (who all can apply, conflict of interest, requirements for the consortium, eligibility of associates etc.)▪ Evaluation criteria & process (how to evaluate technical capacity & financial capacity, test of responsiveness etc.)
Pedagogical tools	<ul style="list-style-type: none">▪ Hands-on exercise to evaluate the technical capacity for pre-qualification.

Objectives of the Training Module

Set out appropriate partnership framework and engage an effective partner

👉 Understand the standard documentation for selecting the preferred bidder for PPP projects in India (RFP stage)

Key concepts	<p>Key elements of RFP:</p> <ul style="list-style-type: none">▪ Instructions to bidders (change in ownership or consortium, bid security etc.)▪ Bidder selection process: evaluation criteria and dealing with exceptional situations.▪ Procedure with respect to Letter of Award (the “LOA”)
Pedagogical tools	<ul style="list-style-type: none">▪ Class discussion: competitive bidding in Indian context (dealing with exceptions)

👉 Understanding the key elements of Concession Agreements used for PPPs

Key concepts	<ul style="list-style-type: none">▪ Concession period; conditions precedent; obligations of concessionaire & govt.; project site; indemnification; design, construction & maintenance; performance monitoring; payment; performance security & insurance; force majeure; government step in rights; default & termination; change in ownership
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Understanding the Standard Bid Process and Pre-qualification of Bidders

👉 Understanding the key features of PPP procurement

Key concepts	Pre-requisites for tendering; general principles of procurement; standard bidding process for PPPs (stages & relevant documents); key issues to consider for competitive bidding.
Pedagogical	<ul style="list-style-type: none">▪ Reading material: Handout on overview of procurement statutes in India.

👉 Understand the standard documentation for pre-qualification of bidders for PPP projects in India (RFQ stage)

Key concepts	Process and standard documentation for pre-qualification of bidders for PPP projects: <ul style="list-style-type: none">▪ Instructions to applicants (who all can apply, conflict of interest, requirements for the consortium, eligibility of associates etc.)▪ Evaluation criteria & process (how to evaluate technical capacity & financial capacity, test of responsiveness etc.)
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Key Features of PPP Procurement

- PPP is only one of the procurement options
- PPP should be pursued only when it delivers “Value-for-Money” i.e. efficient and cost-effective delivery of services (not goods....)
- Efficiency in procurement is important
- There are several variants of PPP - the authority should choose the implementation structure or PPP variant as per its requirement
- Stakeholders are important: need to co-opt their support

Key Features of PPP Procurement

Before tendering...

Ensure feasibility is completed and project is ready (for tendering)

- We understand what is being offered in the project (bidding for what?)
- We understand what the public sector has to do (it is a partnership: 3rd P)
- If required, transaction advisor has been appointed.
- Project development studies have been undertaken, i.e.
 - Assessment of technical and financial feasibility has been done
 - Project assumptions have been discussed and finalized
 - Risks & responsibilities have been identified and allocated
 - All the critical issues have been identified and addressed
- Project is bankable

Structuring deficiencies cannot be solved by contractual provisions

Key Features of PPP Procurement

Before tendering...

- **Ensure enabling environment**
 - Legal and regulatory frameworks should be in place
 - Project should be in line with government policies and priorities
 - Political leadership should be in favor of the project
- **Concessioneing authority has**
 - Been finalized and has powers to award the project
 - Encumbrance-free title of land/project assets
 - The needed funds, or has identified sources: VGF, budgetary support ...

Key Features of PPP Procurement

Before tendering...

- Decide the bid structure
- **Ensure the bid structure is open, competitive:**
 - Free, fair and effective competition
 - Transparent process
 - Simplicity and cost effectiveness of process
 - Serve public interest—meet efficiency goals
- **Market sounding:**
 - Identify the target bidders and assess their credentials
 - Advertise: selection of newspapers / magazines
 - Direct contact with target bidders: mailers / phone calls
 - Road shows
 - Hosting of documents on website

**Bid process management is more than a procedure,
it requires a targeted marketing effort**

Principles of Procurement

Key considerations governing the award of public contract

Fairness

Equality of opportunity

Transparency

Availability of information in public domain

Integrity

Unbiased bid evaluation

Accountability

Maintenance of documentation trail for audit

Efficiency

Cost effective and time efficient procurement

Compliance

Compliance with statutory rules

Procurement for PPP Projects

Solution: competitive bidding

- Preferred solution: competitive bidding
- Why?
 - Ensures transparency in the contract award
 - Provides a market mechanism for selecting the best proposal
 - Typically results in lower costs
 - Stimulates interest among a broader range of potential investors
- There is certainly a cost and time investment in a transparent tender process, but it ensures that the public service is procured in a manner that stands the test of public scrutiny

GOI support schemes such as Smart Cities, Amrut, VGF and IIPDF and require that the private sector company should be selected through ***a transparent and open competitive bidding process***

Standard Competitive Bidding Process

- **Stages**
 - Pre-qualification
 - Bidding
- **Relevant documents**
 - Model RFQ
 - Model RFP
 - Draft concession agreement

Class Discussion

A variant of the 2 bid process



- Potential investors are not known
- EOI is floated to test the market response towards a particular project
- Bidders who have not participated during EOI stage may be given an opportunity to participate at RFQ stage
- RFQ is issued containing detailed technical & financial qualification parameter
- Financial offers of the bidders are invited at RFP stage
- The bidders offering highest / lowest financial offer is declared as successful bidder.

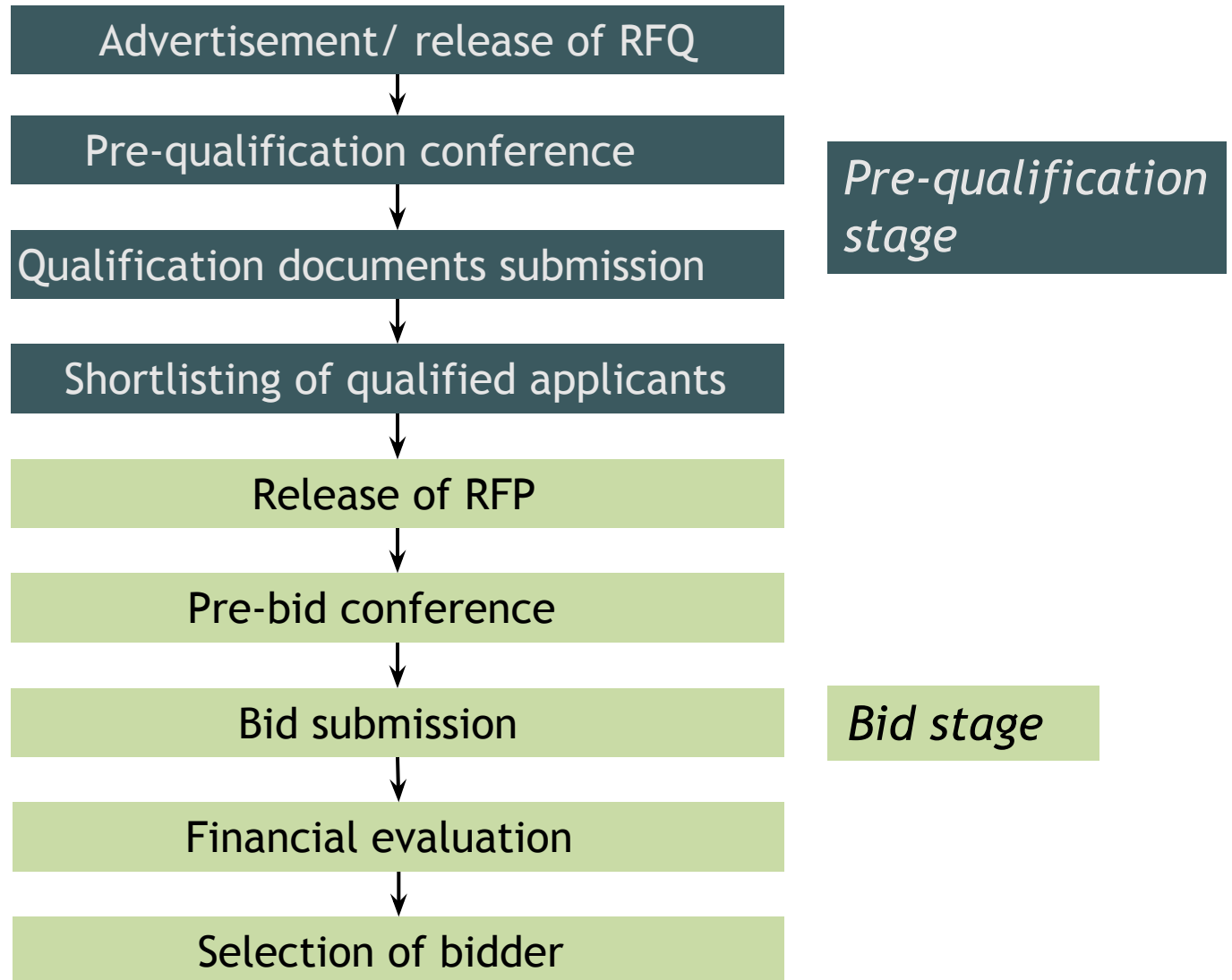
Standard Bidding Process for PPP

Two-stage competitive bidding process

- Government of India has standardized and adopted the two stage bidding process for selection of project sponsors for PPP projects
- **First stage:**
 - Request for Qualification (RFQ)
 - Eligible and prospective bidders are pre-qualified
- **Second stage:**
 - Request for Proposal (RFP) or the bidding stage
 - Pre-qualified bidders submit their financial bids

Standard Bidding Process for PPP

Two-stage competitive bidding process



Stage 1: Pre-Qualification

Purpose and process

- ***Purpose:***

To screen and identify applicants who will be required to submit their financial bids at the RFP stage

- ***How are the applicants pre-qualified?***

In order to be eligible for pre-qualification and short-listing, an applicant should fulfill the following conditions of eligibility:

- Sum total of the following (over the past 5 financial years) should be more than the **Threshold Technical Capacity**
 - a) payments made or received for construction of Eligible Projects;
 - b) amounts paid for development of Eligible PPP projects;
 - c) Revenues collected and appropriated for Eligible PPP projects
- Financial Capacity equal to the Threshold Financial Capacity

- ***Are all the pre-qualified firms invited to submit financial bids?***

Two approaches are possible:

- All pre-qualified firms may be asked to submit their financial bids

OR

- Some of the pre-qualified firms may be ***short-listed*** on the basis of their ranking determined through experience scores

Model Request for Qualification

Contents of the RFQ

Section 1: Introduction

Section 2: Instructions to applicants

Section 3: Criteria for evaluation

Section 4: Fraud & corrupt practices

Section 5: Pre-application conference

Section 6: Miscellaneous

Appendices

Content in this section is based on the Guidelines for Pre-qualification of Bidders published by Ministry of Finance, Department of Expenditure (May 2009)

Request for Qualification

Section 1: Introduction

Section 1: Introduction

Section 2: Instructions to applicants

Section 3: Criteria for evaluation

Section 4: Fraud & corrupt practices

Section 5: Pre-application conference

Section 6: Miscellaneous

Appendices



Background

Description of
bidding
process

Schedule of
bidding process

Request for Qualification

Section 1: Introduction - key elements

Background

Description of
bidding process

Schedule of
bidding process

Description of main points: Background

- Who is the authority?
- What is the proposed PPP model? (DBFOT; BOO; etc.)
- Who is the project advisor (if any)?
- Scope of work in brief
- Indicative project cost

Request for Qualification

Section 1: Introduction - key elements

Background

Description of
bidding process

Schedule of
bidding process

Description of main points: Bidding process

- Description of the bidding process adopted
 - One stage or two stage
 - Brief description of the ‘qualification stage’
 - Brief description of the ‘bid stage’
- Cost of RFQ document
- Expected number of pre-qualified applicants who will be short-listed
- Cost of the bidding documents (*actual amount specified at the RFP stage*)
- Details of the “**bid security**” required at RFP stage
 - generally 1% of the estimated project cost
 - bid shall be rejected if it is not accompanied by the

Request for Qualification

Section 1: Introduction - key elements

Background

Description of
bidding process

Schedule of
bidding process

Schedule of the bidding process: Sample

Event description	Date
1) Qualification stage	
Last date for receiving queries	25 days from date of RFQ
Pre-application conference	30 days from date of RFQ
Authority response to queries latest by	35 days from date of RFQ
Application due date	45 days from date of RFQ
Announcement of short-list	Within 15 days of application due date

Request for Qualification

Section 1: Introduction - key elements

Schedule of the bidding process: Sample

Background

Description of
bidding process

Schedule of
bidding process

Event Description	Date
2) Bid stage	
Sale of bid documents	To be specified
Last date for receiving queries	To be specified
Pre-bid meeting - 1	To be specified
Authority response to queries latest by	To be specified
Pre-bid meeting - 2	To be specified
Bid due date	To be specified
Opening of bids	On bid due date
Letter of Award (LOA)	Within 30 days of bid due date
Validity of bids	120 days of bid due date
Signing of Concession Agreement	Within 30 days of award of LOA

Request for Qualification

Section 2: Instructions to applicants

Section 1: Introduction

Section 2: Instructions to applicants

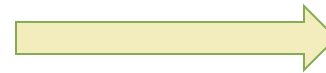
Section 3: Criteria for evaluation

Section 4: Fraud & corrupt practices

Section 5: Pre-application conference

Section 6: Miscellaneous

Appendices



General

Documents

Preparation
& submission

Evaluation
process

Qualification
& bidding

Request for Qualification

Section 2: Instructions to applicants - key elements

Conflict of Interest

When is the applicant considered to have a *Conflict of Interest*?

General

Documents

Preparation & submission

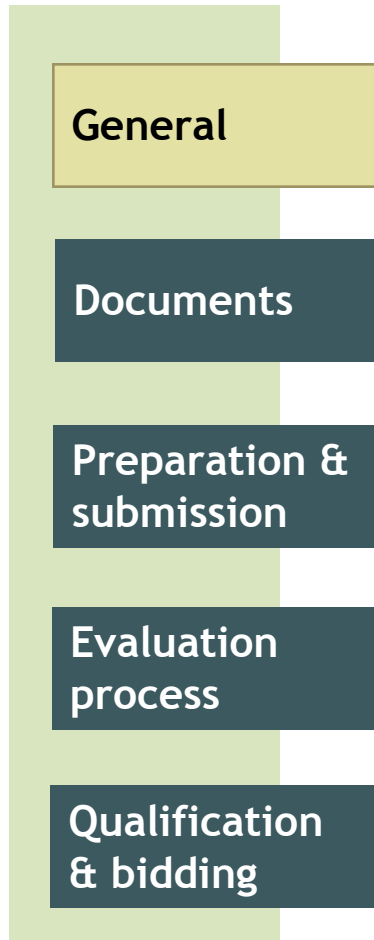
Evaluation process

Qualification & bidding

- Common controlling shareholding between applicants
 - Where 5% or more of the shareholding (whether direct or indirect)
 - Excludes public financial institutions
- Any constituent or legal representative of an applicant is common with another applicant
- The applicant is in receipt of financial benefits from another applicant
- The applicant has access to insider information of another applicant that can influence the latter or the application
- The applicant is party to assisting the government as a consultant advising on design, technical specs, or any other documentation for the proposed project. The applicant otherwise employs any such consultant who has assisted the government for this project

Request for Qualification

Section 2: Instructions to applicants - key elements



Technical and financial capacity requirements

- **Threshold Technical Capacity (TTC):** TTC should be equivalent to twice the Estimated Project Cost of the project, for which bids are being invited. The authority may increase/decrease this amount by one half of the Estimated Project Cost.
- Sum of the following (Technical Capacity) over the past 5 financial years should be more than the TTC:
 - Payments made or received for construction of Eligible Projects;
 - Amounts paid for development of Eligible Projects in category 1 and/or category 2
 - Revenues collected and appropriated for Eligible Projects in category 1 and/or category 2
- **Financial capacity:** measured through
 - Net worth, or
 - Annual turnover, or
 - Net cash accruals
- **O&M experience**

Request for Qualification

Section 2: Instructions to applicants - key elements

General

Documents

Preparation & submission

Evaluation process

Qualification & bidding

Additional requirements in case the applicant is a consortium

- No. of members in the consortium shall not exceed 6
- **Lead member:** members shall nominate a lead member, who shall hold at least 26% equity. Nomination should be supported by a power of attorney
- An individual applicant cannot at the same time be a member of a consortium
- Members shall enter into a Joint Bidding Agreement, which:
 - Commits the minimum equity stake to be held by each member
 - Outlines roles and responsibilities of each member
 - Commits that each of the members whose experience will be evaluated shall subscribe to 26% of paid up capital, and further commits, that each such member shall, for a period of 2 years from commercial operation:
 - continue to hold minimum 26% of paid up and subscribed equity, and
 - 5% of the Total Project Cost
 - Commits consortium members to hold 51% equity for the same period

Request for Qualification

Section 2: Instructions to applicants - key elements

General

Documents

Preparation & submission

Evaluation process

Qualification & bidding

Description of main points: Other matters

- Number of applications and costs thereof
- Site visit and verification of information
- Whether the technical capacity and net worth of the *Associates* would be eligible?
- **Certificate(s) from statutory auditors**
- **Power of Attorney**
- Requirement to form an appropriate **SPV**
- Right to accept or reject any or all applications / bids

Request for Qualification

Section 2: Instructions to applicants - key elements

General

Documents

Preparation & submission

Evaluation process

Qualification & bidding

Description of main points: Documents

- **Contents of the RFQ:** Disclaimer; invitation for qualification (six sections as discussed earlier); appendices; addenda (if any issued)
- **Clarifications**
 - The applicants should send in their queries before the date specified in the schedule of bidding process.
 - The authority to forward all the queries and its responses, to all purchasers of the RFQ without identifying the source of queries.
 - The authority reserves the right not to respond to any question or provide any clarification, in its sole discretion.
 - The authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all applicants.
- **Amendment of RFQ:** In case of **significant amendments at least 15 days**, and in case of **minor amendments at least 7 days**, shall be provided, between date of amendment and application due date.

Request for Qualification

Section 2: Instructions to applicants - key elements

General

Documents

Preparation & submission

Evaluation process

Qualification & bidding

Preparation and submission of application

- Language
- Format and signing of application
- Sealing and marking of application
- Application due date
- Late applications
- Modifications/substitution/withdrawal of applications

Request for Qualification

Section 2: Instructions to applicants - key elements

General

Documents

Preparation &
submission

Evaluation
process

Qualification
& bidding

Description of main points: Evaluation process

- Opening and evaluation of applications
- Confidentiality
- ***Test of responsiveness***
 - Prior to evaluation, the authority shall determine whether each application is responsive to the requirements of the RFQ
 - The authority reserves the right to reject any application which is non-responsive.
 - No request for alteration, modification, substitution or withdrawal shall be entertained in respect of such applications
- Clarifications

Request for Qualification

Section 2: Instructions to applicants - key elements

General

Documents

Preparation &
submission

Evaluation
process

Qualification
& bidding

Description of main points: Qualification and bidding

- Short-listing and notification
 - In case of complex projects, bidders may be required to submit technical proposal / plan.
 - The technical proposal shall be invited at the qualification stage or at an intermediate stage.
 - Bid stage shall only consist of invitation to submit financial offers.
- Submission of bids
- Proprietary data
- Correspondence with the applicant

Request for Qualification

Section 3: Criteria for evaluation

Section 1: Introduction

Section 2: Instructions to applicants

Section 3: Criteria for evaluation

Section 4: Fraud & corrupt practices

Section 5: Pre-application conference

Section 6: Miscellaneous

Appendices

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants



Request for Qualification

Section 3: Criteria for evaluation - key elements

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

Description of main points: Evaluation parameters

Only those applicants, who meet the eligibility criteria specified below, shall qualify for evaluation and short-listing:

- Threshold Technical Capacity
- Financial Capacity
- O&M experience as required

Request for Qualification

Section 3: Criteria for evaluation - key elements

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

Description of main points: Technical capacity

Technical capacity for purposes of evaluation:

- What kind of experience qualifies as **Eligible Experience**?
- Which projects qualify as the **Eligible Projects**?
- What is the **Threshold Technical Capacity**?

Request for Qualification

Section 3: Criteria for evaluation - key elements

What kind of experience would qualify as “Eligible Experience”?

- The following categories of experience would qualify as Eligible Experience:

Development of Eligible Projects		AND/OR	Construction of Eligible Projects	
Project Specific Sector	Core Sector		Project Specific Sector	Core Sector
Category 1	Category 2		Category 3	Category 4

- Example of Eligible Experience for a highway project
 - **Project specific sector** would be **Highways sector** including highways, expressways, bridges, tunnels and airfields
 - **Core Sector** would include sectors (other than the project specific sector) such as power, telecom, ports, airports, railways, metro rail, industrial parks, logistics park, pipelines, irrigation, water supply, sewerage and real estate development

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

Eligible Experience for each category shall be measured only for Eligible Projects

Request for Qualification

Section 3: Criteria for evaluation - key elements

What kind of projects would qualify as “Eligible Projects”?

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

For a project to qualify as an Eligible Project under **Categories 1 and 2:**

- It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis
- The capital cost of the project should be more than 20% of Estimated Project Cost*
- Shall not include supply of goods or equipment except when part of turn-key construction contract/EPC
- Entity claiming experience should have:
 - held minimum 26% equity in the company owning the Eligible Project during the entire year for which Eligible Experience is being claimed.
 - during the last 5 financial years, paid for development of the project, and/or
 - collected and appropriated the revenues from users

* Where Estimated Project Cost is INR 1000 crore or above, this may be reduced, but not below 10%.

Request for Qualification

Section 3: Criteria for evaluation - key elements

What kind of projects would qualify as “Eligible Projects”?

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

For a project to qualify as an Eligible Project under **Categories 3 and 4:**

- The applicant should have paid for execution of its construction works or received payments from its clients for construction works executed
- Projects where payments / receipts are less than 20% of Estimated Project Cost shall not be considered eligible*
- Shall not include supply of goods or equipments except when such goods or equipments form part of turn-key construction contract / EPC contract for the project.
- Cost of land shall not be included

* Where Estimated Project Cost is INR 1000 crore or above, this may be reduced, but not below 10%.

Request for Qualification

Section 3: Criteria for evaluation - key elements

Evaluating Technical Capacity

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

- Sum total of the following (Technical Capacity) over the past 5 financial years should be more than the Threshold Technical Capacity:
 - Payments made or received for construction of Eligible Projects
 - Amounts paid for development of Eligible Projects in Category 1 and/or Category 2
 - Revenues collected and appropriated for Eligible Projects in Category 1 and/or Category 2
- Further, at least one fourth of the TTC shall be from the Eligible Projects in Category 1 and/or Category 3
- **Threshold Technical Capacity (TTC)** should be equivalent to *twice the Estimated Project Cost* of the project for which bids are being invited. The authority may increase/decrease this amount by one half of the Estimated Project Cost.

Request for Qualification

Section 3: Criteria for evaluation - key elements

How is the applicant's experience measured in terms of a score (*the "Experience Score"*)?

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

- The credentials of all those applicants who meet the specified eligibility criteria (TTC and Net Worth) shall be measured in terms of an Experience Score
- **Experience Score** for an Eligible Project in a given category is the sum of the eligible payments and/or receipts, divided by one crore and then multiplied by an applicable factor

Categories	Factor *
Category 1	1.25
Category 2	1.00
Category 3	0.75
Category 4	0.50

* These factors may be modified by the Authority by up to 15% thereof in each category

- The sum of the Experience Scores for all Eligible Projects is the **Aggregate Experience Score** of a particular applicant

Aggregate Experience Score:
Sum total of Experience Scores for all Eligible Projects

Request for Qualification

Section 3: Criteria for evaluation - integrated SWM

What kind of projects would qualify as “Eligible Projects”?

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

For a project to qualify as an Eligible Project under, the bidder must demonstrate that it has over the last 5 years

- developed and operated at least MSW project in India with a capacity of MSW of encompassing waste collection and transportation
- constructed and operated at least processing plant and engineered a landfill with a capacity of MSW of; and
- decommissioned and monitored at least MSW disposal site in India.
- For the purpose of these criteria, the projects that qualify should have been in operation by the Bidder for a period of at least year;

Request for Qualification

Section 3: Criteria for evaluation - key elements

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

Description of main points

Details of experience for purposes of evaluation:

- Eligible Experience for last five financial years
- Information related to technical capacity
- Required project specific information & evidence in support of its claim of technical capacity

Request for Qualification

Section 3: Criteria for evaluation - key elements

Financial information for purposes of evaluation:

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

- Net worth of the applicant should be equal to the 'Threshold Financial Capacity' - i.e. 25% of the Estimated Project Cost as per model RFQ
- Exceptional cases: Minimum annual turnover and/or net cash accruals may be used as an indication of applicant's cash flows and financial health
- **Net Worth = Subscribed and Paid-up equity**
 - Add: Reserves**
 - Less: Revaluation reserves**
 - Less: Miscellaneous expenditure not written off**
 - Less: Reserves not available for distribution to equity shareholders**
- Audited annual report of the applicant for the last five years
- Certificate from statutory auditors specifying the applicants Net worth and the methodology adopted for calculating Net worth.

Request for Qualification

Section 3: Criteria for evaluation - key elements

Shortlisting of applicants for purposes of evaluation

Evaluation parameters

Technical capacity

Details of experience

Financial information

Shortlisting of applicants

- **Shortlisting**

The applicants are ranked on the basis of their respective Aggregate Experience Scores and short-listed for submission of bids.

The authority may, in its discretion, maintain a reserve list of pre-qualified applicants who may be invited to substitute the short-listed applicants in the event of their withdrawal from the bid process or upon their failure to conform to the conditions specified herein; provided that a substituted applicant shall be given at least 30 (thirty) days to submit its bid.

Request for Qualification

Section 4: Fraud & corrupt practices

Section 1: Introduction

Section 2: Instructions to applicants

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Appendices

Corrupt
practice

Fraudulent
practice

Coercive
practice

Undesirable
practice

Restrictive
practice

Request for Qualification

Section 4: Fraud & corrupt practices

- **Corrupt practice:**
 - The offering, giving, receiving, or soliciting, directly or indirectly, of anything of value, to influence the actions of any person connected with the bidding process
 - Engaging in any manner whatsoever, whether during the bidding process or after the issue of the LOA or after the execution of the Concession Agreement
- **Fraudulent practice:**
 - A misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the bidding process
- **Coercive practice:**
 - Impairing or harming or threatening to impair or harm, directly or indirectly, any person or property, to influence any person's participation or action in the bidding process
- **Undesirable practice:**
 - Establishing contact with any person connected with, or employed or engaged by, the authority, with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the bidding process
 - Having a conflict of interest
- **Restrictive practice:**
 - Forming a cartel or arriving at any understanding or arrangement among applicants with the objective of restricting or manipulating a full and fair competition in the bidding process

Request for Qualification

Section 5: Pre-application conference

Section 1: Introduction

Section 2: Instructions to applicants

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Section 4: Fraud & corrupt practices

Section 5: Pre-application conference

Section 6: Miscellaneous

Appendices



- Organized for persons who have purchased RFQ document
- Objective is to seek clarifications and make suggestions on RFQ document
- Authority responds by circulating minutes of the meeting

Request for Qualification

Section 6: Miscellaneous

Section 1: Introduction

Section 2: Instructions to applicants

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Appendices



- Bidding process shall be governed by the laws of India
- Authority reserves the right to:
 - Suspend and /or cancel the bidding process
 - Consult with any applicant for further clarification
 - Pre-qualify or not pre-qualify any applicant

Request for Qualification

Appendices

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Section 3: Criteria for evaluation

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Appendices



Appendix I: Letter comprising application for pre-qualification
Comprises of 5 Annexes:

- Annexure I: Details of the applicant
- Annexure II: Technical Capacity
- Annexure III: Financial Capacity
- Annexure IV: Details of Eligible Projects
- Annexure V: Statement of legal capacity

Appendix II: Power of Attorney for signing of application by Individual

Appendix III : Power of Attorney for lead member of consortium

Appendix IV : Joint bidding agreement

Appendix V : Guidelines of the Department of Disinvestment

Understanding the Request for Proposal Instructions to bidders and key elements of draft concession agreement

👉 Understand the standard documentation for selecting the preferred bidder for PPP projects in India (RFP stage)

Key concepts	<p>Key elements of RFP:</p> <ul style="list-style-type: none">▪ Instructions to bidders (change in ownership or consortium, bid security etc.)▪ Bidder selection process: evaluation criteria and dealing with exceptional situations.▪ Procedure with respect to Letter of Award (the “LOA”)
Pedagogical tools	<ul style="list-style-type: none">▪ Class discussion: Competitive bidding in Indian context (dealing with exceptions)

👉 Understanding the key elements of Concession Agreements used for PPPs

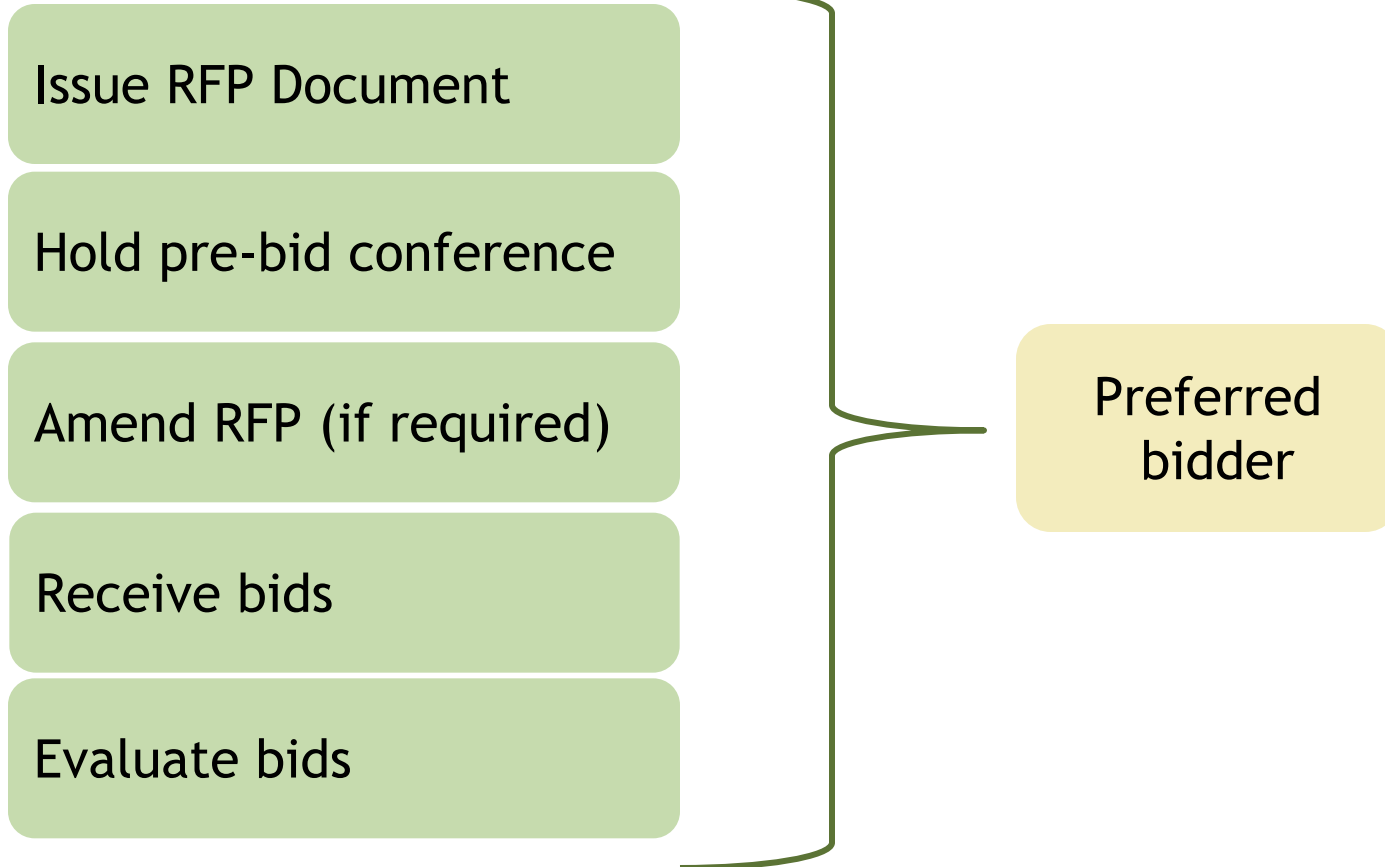
Key concepts	<ul style="list-style-type: none">▪ Concession period; conditions precedent; obligations of concessionaire & govt.; project site; indemnification; design, construction & maintenance; performance monitoring; payment; performance security & insurance; force majeure; government step in rights; default & termination; change in ownership
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Bid Stage: Request for Proposal

Content in this section is based on the Guidelines for Invitation of Financial Bids published by Ministry of Finance, Department of Expenditure (Nov 2007)

Bidding Process

An overview



Request for Proposal

Pre-requisites

- A reasonable number of pre-qualified bidders are available
- Agency has completed an assessment of its own costs viz. land acquisition, utility relocation, implementation of EIA, SIA, R&R plan
- A project information memorandum (to enable prospective bidders to prepare their respective financial bids) is ready, inter-alia including the following:
 - Market data
 - Technical features
 - Soil investigation/geo-tech reports (if applicable)
 - Revenue sources
 - Includes a feasibility report and Draft Concession Agreement
- A well-defined selection process including criteria for bid evaluation is in place
- Draft Concession Agreement/contract document has been prepared

Request for Proposal

Purpose

- The Request for Proposal (RFP) process is aimed at obtaining financial offers from the bidders pre-qualified at the RFQ stage
- **In case of complex projects, are the technical proposals / plans submitted at the RFP stage?**
 - At the bid stage (RFP) pre-qualified applicants submit only financial offers
 - In case of exceptionally complex projects where the project authority determines that the bidders must submit their technical proposals/ plans, the required proposals should be invited either:
 - At the qualification stage along with the initial applications, or
 - At an intermediate stage preceding the RFP stage

Technical evaluation at the RFP stage would lead to difficulties in evaluating diverse proposals on a common set of parameters

Request for Proposal

Bidding parameters: options

- Lowest bid in terms of the present value of user fees
- Highest revenue share to the government
- Highest up front fee
- Shortest concession period
- Lowest present value of the subsidy
- Lowest capital cost and Operation & Management cost for projects having a definite scope
- Highest equity premium
- Quantum of state support solicited in present value.

Model Request for Proposal

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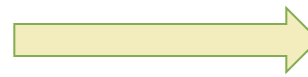
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General

Documents

Preparation &
submission of
bids

Bid security

Request for Proposal

Section 2 - Instruction to bidders: Change in composition of the consortium

- Change in composition may be permitted during bid stage, provided:
 - Lead member continues to be the Lead member of consortium
 - The substitute is equal (or better) in terms of Technical & Financial Capacity
 - Modified consortium continues to meet pre-qualification and short listing criteria for applicants
- Bidder must submit application for change in composition not later than 15 days prior to bid due date
- The modified consortium shall submit a revised Joint Bidding Agreement and a power of attorney, in the prescribed format prior to bid due date
- The new member(s) reconfirm the application already made on their behalf as if it were party to it originally

Change in composition of consortium at RFP stage is at the sole discretion of the authority and may or may not be permitted

Request for Proposal

Section 2 - Instruction to bidders: Change in ownership

- For at least 2 years after Commercial Operation Date, consortium members (whose capacity was assessed for short-listing) will hold equity share capital not less than:
 - 26% of the subscribed and paid-up equity of the concessionaire
 - 5% of the Total Project cost specified in the Concession AgreementAny breach of above shall be deemed to be breach of the Concession Agreement
- In the event of a change in control of a consortium member or an Associate, whose Technical and Financial Capacity was taken into consideration, bidder should inform the authority immediately. Authority may (at its own discretion) choose to disqualify the bidder or withdraw the LOA.
- If change occurs after signing of Concession Agreement & before financial closure then authority may:
 - terminate the Concession Agreement
 - forfeit or appropriate bid security / performance security

Request for Proposal

Section 2 - Instruction to bidders: Bid security

- Bid security is to be submitted in the form of bank guarantee or demand draft
- Validity 180 days from bid due date unless specified otherwise
- Any bid not comprising bid security shall be summarily rejected (as non-responsive)
- Bid security shall be forfeited in case:
 - if bidder submits a non-responsive bid
 - bidder engages in corrupt, fraudulent, coercive, undesirable or restrictive practices
 - if bidder withdraws during the bid validity
 - in case of selected bidder, if he fails to sign and return duplicate copy of LOA, or to sign CA or furnish performance security
 - in case bidder has signed CA and commits any breach

Bid security serves to minimize the probability of receipt of frivolous bids

Request for Proposal

Section 2 - Instruction to bidders: Bid documents

- **Feasibility report:**
 - Provided only as a preliminary reference by way of assistance to the bidders
 - Bidders expected to carry out their own surveys, investigations
 - Feasibility report shall not be binding on the authority nor confer any right on the bidders
- **Draft Concession Agreement:**
 - The detailed terms specified in the Draft Concession Agreement shall have overriding effect over anything to the contrary contained in the RFP
 - Any conditions or obligations imposed on the bidder in RFP shall continue to have effect in addition to its obligations under the Concession Agreement

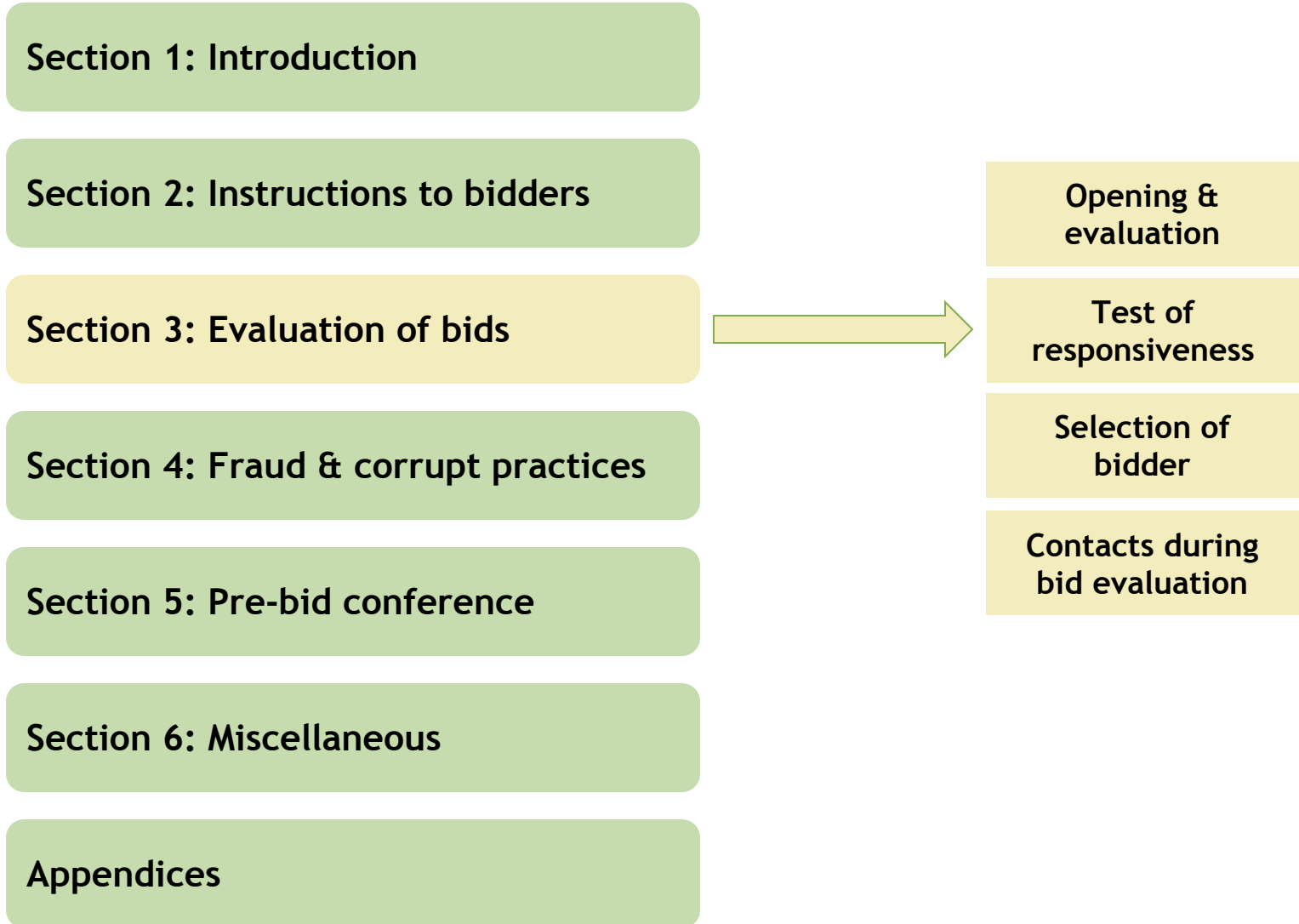
Request for Proposal

Section 2 - Instruction to bidders: other matters

- **Cost of bidding:** All costs involved in preparation or submission of bid to be borne by the bidder
- **Site visit:** Strongly encouraged, so that applicant can ascertain the conditions prior to bid submission
- **Verifications:** Authority reserves the right to verify all information & documents provided by applicant.
- **Disqualifications:** Authority can reject a bid & appropriate bid security if material misrepresentation is made or bidder does not provide supplementary information in specified time.
 - If such disqualification occurs after bids are opened and preferred bidder is rejected, the authority can invite remaining bidders or annul the bidding
- **Clarifications:** Authority shall respond to queries not later than 15 days prior to the bid due date
- **Power of Attorney:** to be enclosed with RFP

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Request for Proposal

Section 3: Evaluation of bids - test of responsiveness

- Bids are first checked for responsiveness before being evaluated
- A bid shall be considered responsive only if it is:
 - Received by the due date and as per prescribed formats
 - Signed, sealed, bound and marked as specified
 - Accompanied by bid security and Power of Attorney
 - Contains information and documents complete in all respects as per RFP
 - Does not contain any condition or qualification

Government reserves the right to reject any bid which is non responsive

Request for Proposal

Section 3: Evaluation of bids - evaluation criteria and dealing with exceptional situations

- **Selected bidder:**

Provided that the bid has passed the test of responsiveness, the bidder who *offers the highest premium* or (where no premium is offered by any bidder) *quotes the lowest grant requirement*, will be declared as the selected bidder

- **In case of tie bids:** Selected bidder identified by draw of lots conducted with notice

- **What if the highest bidder withdraws or is not selected for any reason?**

Second round of bidding: All remaining bidders invited to match the bid of highest bidder.

- If two or more bidders match: bidder whose bid was higher in 1st round of bidding shall be the selected bidder

Third round of bidding: what if no bidder offers to match the highest bidder?

- Invite fresh bids from all bidders except the highest bidder
or
- Annul the bidding process

Request for Proposal

Section 3: Evaluation of bids - Procedure with respect to Letter of Award (the “LOA”)

- **Letter of Award (the “LOA”):**
 - After selection, a Letter of Award (the “LOA”) shall be issued by the authority to the selected bidder
 - The selected bidder shall, within 7 (seven) days of receipt of the LOA, sign and return a duplicate copy of the LOA
 - In the event the duplicate copy of the LOA duly signed by the selected bidder is not received by the stipulated date, the authority may:
 - a) appropriate the bid security of such bidder as damages on account of failure of the selected bidder to acknowledge the LOA,
 - b) the next eligible bidder may be considered
- **Executing the Concession Agreement:**

After acknowledgement of the LOA as aforesaid by the selected bidder, it shall cause the concessionaire to execute the Concession Agreement (generally within 30 days of award of LOA)
- The selected bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement

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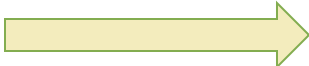
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Corrupt practice

Fraudulent practice

Coercive practice

Undesirable practice

Restrictive practice

Similar to RFQ section

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Pre bid conference

- Pre-bid conference / meeting to be conducted on designated date, time and place
- Participants who purchased the RFP to be allowed to participate in meeting
- Maximum 5 representatives are allowed from each bidder
- Bidders are free to seek clarifications and make suggestions for consideration of the authority
- In the case of complex projects, more than 1 pre-bid meetings may be called for

Discussion point:

Should only those persons who purchase the RFP be allowed to participate in the meeting?

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- Jurisdiction coverage
- Discretionary rights to authority to control and manage the bid process while not compromising efficiency and transparency of the process
- Over riding protection to authority against liability / claims
- Bidding documents to be given priority over RFQ in case of any perceived conflicts in interpretation

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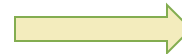
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Letter comprising the bid

Bank Guarantee of bid security

Power of Attorney for signing of bid

Power of Attorney for lead member of consortium

Class Discussion: Exceptions to Competitive Bidding

Government of India does not prefer non-competitive approaches.

Best practice, too, discourages their use as a norm.

Class Discussion: Non Competitive Modes

Direct negotiation

Discuss this section with reference to a select part of Compendium of State PPP Initiatives provided as reading material

For example:

- Gujarat Infrastructure Development Act , 1999
- AP Infrastructure Development Enabling Act, 2001

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Competition as a rule, direct negotiation as an exception

Class Discussion: Non Competitive Modes

Direct negotiation

Government of India does not prefer non-competitive approaches.

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What is it?

- A contract award process, where the contracting authority directly establishes a partnership with the reliable firms, who have demonstrated their ability to deliver the required services efficiently

Perceived advantages

- More space for technical innovation left to private party
- Overall duration of the process is theoretically shorter
- Private party feels it has a better chance of success and is ready to invest at preparation stage

Competition as a rule, direct negotiation as an exception

Class Discussion: Non Competitive Modes

Direct negotiation

Drawbacks

- Requires a well structured negotiating team with clear lines of authority
- Lack of transparency and objectivity compared to competitive bidding process
- Higher risk of accusation of corruption by the community and the media

Suitability under exceptional cases

- Projects involving proprietary or innovative technology.
- Projects where competitive bid process has earlier failed
- Projects in prescribed social infrastructure sectors where a non-profit organization seeks to develop a project

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Competition as a rule, direct negotiation as an exception

Case Example: Non Competitive Modes

Bulgaria Trakia Motorway Project

Government of India does not prefer non-competitive approaches.

Best practice, too, discourages their use as a norm.

- The Bulgarian Government awarded a concession without competitive bidding for financing, rehabilitating, constructing, tolling and operating a section of the A1 motorway in 2004
- Opposition parties attacked the project on the basis of **lack of transparency**, high government contribution and high construction cost
- The concessionaire asked for an increase in construction costs due to legal obstacles causing substantial delays and did not want to assume the risk of lower-than-expected traffic
- The talks with the concessionaire collapsed in November 2006

Class Discussion: Non Competitive Modes

Options for bidding approach

Government of India does not prefer non-competitive approaches.

Best practice, too, discourages their use as a norm.

	Competitive bidding	Direct negotiation
Economy in overall project cost		
Transaction cost		
Efficiency		
Discretion of award		
Innovation		
Transparency and objectivity		
Professional skill required in task team		

Class Discussion: Non-Competitive Modes

Unsolicited or suo-motu proposal

Government of India does not prefer non-competitive approaches.

Best practice, too, discourages their use as a norm.

“Unsolicited or suo-motu proposal” means:

- a proposal in respect of a project not already initiated by the government
- for which proposal is submitted by any private sector participant to the government agency
- in respect of any infrastructure, supported by project specifications, technical, commercial and financial viability
- and prima facie evidence of the financial and technical ability of such private sector participant to undertake such project, with full details of composition of the private sector participant and his financial and business background

Class Discussion: Non Competitive Modes

Unsolicited Proposals - common problems & challenges

- Administrative
- Legal
- Technical
- Challenges faced in responding to the proposal:
 - Recognizing the initiative of the proponent
 - Protecting transparency of the procurement process

Government of India does not prefer non-competitive approaches.

Best practice, too, discourages their use as a norm.

Class Discussion: Non Competitive Modes

Dealing with unsolicited proposals - some policy options

- Prohibit unsolicited projects
- Purchase the project concept and then award the project through a competitive bidding process in which no bidder has a predefined advantage
- Offer the original proponent a predefined advantage in the bidding process

Bidding systems to deal with unsolicited proposals: *International Practices*

- Bonus System
- Swiss Challenge
- Best and Final Offer Systems (BAFO)

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Best practice, too, discourages their use as a norm.

Class Discussion: Non Competitive Modes

Swiss Challenge Concept

Government of India does not prefer non-competitive approaches.

Best practice, too, discourages their use as a norm.

- The project is initiated by a private sector participant, which is the original project proponent, by a *suo-motu* or unsolicited proposal
- The proposal and contract principles of the Original Project Proponent would be made available to any interested applicants; however, proprietary information contained in the original proposal shall remain confidential and will not be disclosed
- If the government finds one of the competing counter proposals more attractive, then the Original Project Proponent will be given the opportunity to match the competing counter proposal and win the project
- In case the Original Project Proponent is not able to match the more attractive and competing counter proposal, the project is awarded to the private sector participant submitting the more attractive competing counter proposal

Class Discussion: Competitive Bidding in Indian Context

What if?

- *No applications / bids are received...*
- *4 bids are received but only 1 bidder complies with all the requirements prescribed by the tender documents...*
- *Preferred bidder walks out...*
- *Preferred bidder is disqualified due to any reason...*
- *Financial bids are too high / low compared to authority's estimates...*
- *Priorities of the authority appear to have changed...*
- *Vocal opposition to the project is increasing after bids have been invited...*

Case Example

RFP

No takers for INS Vikrant's museum plan

Chittaranjan Tembhekar | TNN

Mumbai: The much-awaited bidding on Tuesday for the proposed Rs 450-crore conversion of the decommissioned aircraft carrier INS Vikrant into a maritime museum failed, as none of the five industrial players turned up. The government had announced a proposal to convert the carrier into a museum on the very day she was decommissioned — on January 31, 1997.

The project has been delayed by more than 10 years.

Manukumar Srivastava, secretary, urban development and special projects said, "Five bidders — HCC Infrastructure, Srei Infrastructure, Kalpataru Power, Dhoot Developers and Zoom Developers — were asked to submit financial bids after they qualified in the technical bids round, but no one turned up. We will have to go for re-bidding again."

The project is proposed to be executed on the build-own-transfer basis required, with the govern-

Details Of The Proposed Maritime Museum



- Provision for a helipad and helicopters to fly in visitors
- Sale of high-end goods will be allowed in the commercial area
- An auditorium and an art gallery on board, for entertainment
- Luxury clubs and cafes, health spa and lounge bars
- A multi-purpose hall for conventions, weddings and other parties

ment's share of funds. Maharashtra Urban Infrastructure Development Company (MUIFRA) will implement the project.

Vikrant was India's only aircraft carrier for more than 20 years.

The 20,000-tonne aircraft carrier played a glorious role during the liberation of Goa in 1962, Kutch operations in 1965 and the Indo-Pak war in 1971 that led to the liberation of Bangladesh.

Ajay Saxena, public-private-partnership expert and officer on special

duty, MUIFRA, said, "Interested parties did not turn up due to financial and incomplete design aspects of the project while a few asked for extension. But we decided to go for re-bidding as it will give us an opportunity to get some new potential firms, which have expertise in shipping works."

According to Saxena, fresh bidding is possible in two to three months as the project outline is ready. The ship is proposed to be grouted off Oyster Rock alongside the Gateway of India and a 1.5-kilometre road,

including the jetty, is proposed to be constructed to provide access to visitors to the museum.

The IMS Vikrant has 2.60 lakh square feet of space, of which 50,000 square feet has been earmarked exclusively for the museum. The remaining space can be commercially exploited by the bidder. Artefacts for the museum are proposed to be provided by the Indian Navy.

A Crisil study estimates that the museum would attract approximately 2,500 visitors daily. The entry fees is to be controlled by the government.

The bidders were asked to submit two separate bids, for 35 years and 50 years. But no one turned up.

If the bidding had gone according to plan, then the bids for the 35-year-period would have opened first. If these were not satisfactory, then those for the 50-year-period would have been opened. A bidder quoting a premium or seeking the least sum of money as government share would have had an edge in the qualification process.

Class Exercise: RFQ Evaluation