Photo Credit
Flower garden
Flower garden by unknown author is licensed under CC BY-NC-ND

Deciding the Procurement Strategy

Download Chatbot

Deciding the Procurement Strategy

The first step in managing a PPP transaction is defining the procurement strategy. This includes defining the following key aspects of the procurement process:

- **Pre-qualification**—whether to use a pre-qualification process to select the firms or consortia that will participate in the bidding process
- **Bid process**—whether to use a single-stage process to select the preferred bidder, or a multi-stage process in which proposals and the bidding documents may be reviewed and iterated
- **Negotiation with bidders**—to what extent discussions with bidders may lead to changes in the initial draft contract: either during the bidding process (with multiple bidders), or after final bids have been submitted
- **Basis for award**—whether to rank proposals and choose the preferred bidder based on a single financial or value-related criterion (after screening for technical merit), or some weighted evaluation of financial and technical criteria

This section briefly describes each of these aspects, with links to guidance, resources and examples in each case. An additional point for consideration, also described in this section, is dealing with bid costs—whether to charge a fee or require a bond to participate in the bid process; or conversely whether to provide support with bid costs.

The **main goals** of the procurement strategy, as described above, are both to find the best solution to the project's objectives (from a technical and value for money perspective), and to select a competent firm or consortium to implement that solution. This typically requires a fair, competitive, transparent, and efficient procurement process. However, the best procurement strategy to achieve these objectives may depend on the context. For example, allowing dialogue with bidders can lead to stronger proposals. However, it can also make the process less transparent—so may not be the right choice in a country where achieving transparency and minimizing the risk of corruption is the more important consideration. This means the best procurement process may depend on the country context, and the nature and capacity of the government institutions involved, as well as on the characteristics of the particular project.

There may also be some **constraints** in how the procurement strategy can be defined. Firstly, as described in PPP Legal Framework, the procurement strategy for a PPP may be constrained by any laws or regulations on overall government procurement. Moreover, many governments choose to set PPP-specific procurement rules, in PPP laws, regulations or guidance material—that is, defining the procurement strategy for the PPP program as a whole rather than on a project-by-project basis. Doing so can improve transparency of PPP procurements; although there are also advantages to retaining flexibility to adapt processes to the needs of particular projects. Examples of PPP Procurement Procedures provides examples of PPP procurement procedures as defined in national or international laws and regulations. Finally, where the project involves funding from a multilateral development bank or other agency, the procurement options may also be constrained by the procurement rules of the funding agency. For example, the World Bank publishes and regularly updates regulations and guidance on its **Procurement Framework** (WB 2017f), which any project with World Bank funding must follow—the framework includes specific recommendations for procurement of PPPs.

Examples of PPP Procurement Procedures

EXAMPLE	REFERENCE	PRE-QUALIFICATION	BID PROCESS	NEGOTIATIONS WITH BIDDERS	BASIS FOR AWARD
Brazil	Federal Concessions Law (BR 1995, Law 8987) and Federal PPP Law (BR 2004a, Law 11079)	No mandatory pre-qualification step	One-stage bid process	No language in law about negotiations with bidders during tender	Lowest tariff or largest payment to government or a combination of the two. If tied, implementing agency must hire Brazilian company.
Chile	Concessions Law (CL 2010b, Law 20410)	Pre-qualification based on any of five elements stated in the law: legal compliance, technical and financial experience, results of previous public works, and compliance with labor and social security laws	One-stage bid process	No language in law about negotiations with bidders during the bid process. There guiding language on negotiations during implementation	Financial, or combined financial/technical
Egypt	Executive Regulations under PPP Law (EG 2011)	Pre-qualification based on set compliance criteria	Can use one-stage process; or a two-stage process with technical and financial bids submitted at both stages. First-stage bids are non-binding	Competitive dialogue allowed in the two-stage procedure, before final bids are submitted	Financial, or combined financial/technical
EU open procedure	Described in **EPEC Guide to Guidance** (EPEC 2011b, 22)	No pre-qualification	One-stage bid process	No negotiation or dialogue allowed with bidders; clarifications are permitted	Lowest price or most economically advantageous tender

EU restricted procedure	Pre-qualification—number of bidders may be restricted to no less than five	One-stage bid process	No negotiation or dialogue allowed with bidders; clarifications are permitted	Lowest price or most economically advantageous tender	
EU negotiated procedure	Pre-qualification—number of bidders may be restricted to no less than three	On-going multi-stage process of negotiation	Allowed throughout the process	Lowest price or most economically advantageous tender	
EU competitive dialogue	Pre-qualification—number of bidders may be restricted to no less than three	Multi-stage bid process (a variant of the negotiated procedure)	Dialogue permitted on all aspects prior to submitting final bids. No further changes after final bids submitted (clarifications are permitted)	Most economically advantageous tender	
Mexico	Law on Purchases, Leases, and Services to the Public Sector (MX 2014)	No mandatory pre-qualification step	One-stage bid process	No language in law about negotiations with bidders during tender	Combination of technical and financial criteria
Philippines	BOT Law Implementing Rules and Regulations (PH 2006)	Pre-qualification set out as norm; agency may choose simultaneous qualification as an alternative	One-stage bid process	Direct negotiation with a single bidder is allowed if only one firm qualifies and submits a complying proposal	Financial (following pass/fail qualification and technical criteria)

South Africa	South Africa PPP Manual Module 5: Procurement (ZA 2004a)	Pre-qualification—the number of bidders "must be kept to a minimum of three and a maximum of four" where possible	Single stage process, unless there is no clear preferred bidder, in which case a *Best and Final Offer (BAFO)* stage may be added, to invite final bids	Feedback from pre-qualified bidders strongly advised **before** issuing an RFP; clarifications only during proposal preparation and evaluation; dialogue allowed with bidders prior to issuing request for BAFO	Combined financial, technical, and Black Economic Empowerment

Qualifying bidders

Most bidding processes set out qualification criteria that all participating firms must meet. Requiring bidders to set out their qualifications helps ensure a competent firm is selected with the capacity to implement the project. Clear qualification requirements can also encourage experienced firms to participate, and to invest in preparing quality proposals, as it reduces the risk that the bid process will be undermined by low-quality firms submitting very low bids.

Most governments require bidders to pre-qualify—that is, check bidders' qualifications before the start of the tender process, with a view to capping the number of bidders. Typically, pre-qualification involves ranking potential bidders according to specified qualification criteria. The top-ranking bidders—usually between three and six—are then invited to submit proposals.

The alternative is to set pass/fail qualification criteria, and qualify and invite proposals from all firms that pass. While this approach can be used in a pre-qualification process, it is more typically done simultaneously with the bidding process—sometimes called *post-qualification*. Under this approach, bidders can self-screen against the published qualification criteria before investing resources in preparing a proposal. For a few, large and very complex process the self-selection process (aided by the due-diligence that financing parties will exert upon prospective bidders) may be sufficiently stringent that no qualification is needed.

Prequalification has both advantages and disadvantages:

- The main **advantage** is in limiting the number of bidders. By reducing the number of bidders, the probability of success increases, and bidders may be incentivized to invest more effort in developing an efficient project and presenting a competitive bid. At the same time, the effort and resources required from government to evaluate bids can be reduced.
- The main **disadvantage** is that making public the list of pre-qualified bidders may enable collusive behavior. Moreover, pre-qualifying a set number of bidders can mean the same top-ranking firms tend to be invited to bid in a given sector, providing further temptation for collusion in the bidding process.

In some developing countries (particularly with new PPP programs) the problem can be too few rather than too many bidders—in this case, there may be no advantage to pre-qualification, and it may unnecessarily extend the procurement process.

The following resources provide more discussion and detail on the pros and cons of pre-qualification:

- **PPIAF's toolkit for PPPs in roads and highways** (WB 2009a) includes a section: *Concessions: Main Steps in competitive bidding.*

- **Farquharson et al** (Farquharson et al. 2011, 118–120) describes the pre-qualification process, some of its advantages and disadvantages, and the possible pitfalls. The authors also describe the option of a pre-revision phase, in countries where pre-qualification is not allowed by procurement law.

In practice, country approaches vary. For example, **Infrastructure Australia Practitioner's Guide** (AU 2015, 16) recommends using pre-qualification to select a particular number of bidders—at least three, sometimes more. On the other hand, **Singapore PPP Handbook** (SG 2012, 60) precludes pre-determining the number of qualified bidders, because this would limit competition. Examples of PPP Procurement Procedures provides more examples of PPP procurement processes, including whether and what type of pre-qualification process is included.

Bid process

The bid process is the process from issuing Requests for Proposal to select a preferred bidder. The quickest and simplest is a **single-stage bid process**, in which bidders present both technical and financial proposals, which are evaluated to select the preferred bidder.

The alternative is a **two or multi-stage bid process**. Under this approach, bidders present an initial proposal, which may include comments on the RFP and draft contract, and may or may not include a financial bid. Based on these proposals, the government reviews and possibly revises the RFP and draft contract, and requests revised proposals accordingly. The government may engage in discussion with bidders to varying extent, as described under *Negotiation with bidders: during bidding process.* The government may also eliminate some bidders at this stage, and the revision process may be repeated more than once. Bidders then submit final proposals, including a final financial bid.

A multi-stage process can have advantages over a single-stage process for complex projects, particularly where there is room for innovation. It can help ensure solutions are aligned to needs, and improve final quality of proposals. On the other hand, the multi-stage process is longer, more complex to manage and more expensive for all parties involved. Care needs to be taken to retain competitive pressure, protect intellectual property, and maintain transparency.

The following resources provide more information on the bid process options:

- **Farquharson et al** (Farquharson et al. 2011, 113–114) summarizes the advantage of sequential screening over multiple stages—improving the quality of bids.
- **PPIAF's Toolkit for PPPs in Roads and Highways** (WB 2009a) section: “Concessions: Main Steps in competitive bidding” describes one- and two-stage bid processes.

Many countries’ PPP frameworks leave open the decision of whether to use a single or multi-stage bidding process, depending on the nature of the project. Some also leave the option of asking for second bids open to resolve the problem of no clear bidder emerging from a single-stage process. For example, the **South Africa PPP Manual procurement module** (ZA 2004a, Module 5, 51–52) states that a single-stage process with a clear winner is preferred, but that a best and final offer may be requested from two or more bidders. Examples of PPP Procurement Procedures provides further examples.

Negotiation with bidders: during bidding process

A major difference between procurement approaches in different countries is in the extent to which the government enters into negotiations with bidders. Negotiating at any stage can be challenging, and risks reducing the transparency of the bid process. For this reason, some governments do not allow negotiation on the contract at any stage of the process (although room for negotiation on bidders' proposals may remain).

In a multi-stage bidding process (see Managing the Bid Process), government may choose to dialogue or negotiate with multiple bidders in between bidding stages. This can help clarify aspects of the RFP, draft contract, and bidders' initial proposals, and result in proposals that more closely meet the government's requirements. In other cases, governments may negotiate with a single bidder after a preferred bidder has been selected.

For example, in 2004 the European Commission introduced the competitive dialogue procedure for procuring PPPs in the European Union. Under this process, having received initial bids, the government can enter into a dialogue with bidders on all aspects of the RFP, contract, or proposals, before re-issuing a final version of the RFP documents and inviting final bids. The **United Kingdom Treasury's guidance on the competitive dialogue procedure** (UK 2008) provides more details. In Australia, a similar process may be used, called an *interactive tender*. The **Australian National PPP Practitioners' Guide** (AU 2015, 70–71) describes the interactive tender process; protocols for the process are also provided in an appendix.

Kerf et al (Kerf et al. 1998, 110–112) provide further examples of competitive negotiations, and when it may be useful. The **World Bank's water sector toolkit** (PPIAF 2006, 169–170) also describes the advantages and disadvantages of this approach. In general, competitive negotiation has been used less in less developed countries.

Negotiation with bidders: post-bid

Once a preferred bidder has been identified, governments may then enter into **post-bid negotiation**—that is, further dialogue with that bidder to finalize the PPP contract. If negotiating with a preferred bidder—even if a reserve bidder is maintained as a fallback option—the implementing agency can no longer rely on competitive tension to ensure value for money. This may result in clauses that create additional benefits to the private party or reduce performance requirements. Expectations of post-bid negotiation may attract opportunistic bidders, and consequently discourage more serious bidders, reducing competition during the bid process itself. For this reason, most governments limit the extent of post-bid interaction to clarification and fine-tuning of proposals; some do not allow it at all, particularly where transparency of the process is a primary concern. Examples of PPP Procurement Procedures provides some examples.

The need for post-bid negotiation typically arises for two reasons: because the RFP requirements or draft contract were not clear, or because they were not acceptable to bidders and their lenders (in particular, with respect to the proposed risk allocation). For either reason, bidders may incorporate changes in their proposals, meaning the proposals no longer fully meet the government's requirements. Some legal frameworks mitigate this issue by mandating that conditional proposals will be excluded.

The following resources provide more guidance on the problems with post-bid negotiations, and whether and to what extent to allow for negotiation or dialogue with a preferred bidder:

- **EPEC's Guide to Guidance** (EPEC 2011b, 31) briefly describes what matters should and should not be subject to negotiation post-bid, and the typical elements of a negotiation framework.
- **Yescombe** (Yescombe 2007) also describes on the risks of post-bid negotiations, and why they typically arise.
- **Kerf et al's *Guide for Concessions*** (Kerf et al. 1998, 123) focuses on the importance of limiting the extent of negotiation in the post-bid phase, and how this can be achieved.

The best way to avoid the need for post-bid negotiation is to prepare a clear and comprehensive RFP and draft contract. Market sounding and pre-RFP consultation with bidders, as well as hiring experienced advisors, can help ensure the contract structure is acceptable to investors. For particularly complex contracts, the competitive negotiation procedure described above could be the best alternative.

Basis for Award

The government needs to evaluate the proposals received, to rank the proposals and select the preferred bidder. The criteria for doing so typically include the technical merit of the proposal, and some measure of their cost—given the overall aim of achieving value for money, or the optimum combination of costs and benefits. There are two, broad options for how proposals will be evaluated and the preferred bidder selected:

- **Selection based on financial criteria**—one approach is to undertake the evaluation in two stages, with the final selection based on the financial bid variable(s). Under this approach, technical proposals are evaluated first, on a pass-fail basis—only bidders that pass the technical evaluation proceed to the financial evaluation. The winning bidder is selected on the basis of the best financial proposal from those that passed the technical evaluation. In certain countries, concerns over corruption lead governments to focus on objective criteria, such as the user fee or annual availability payment. Therefore, they only require a financial proposal—quality is screened through the qualification of bidders.
- **Selection based on financial and technical criteria**—in some cases, proposals are evaluated based on a weighted combination of financial and technical criteria. This more closely encapsulates the idea of maximizing value for money. On the other hand, defining appropriate, quantitative criteria and how they will be weighted can be difficult and rely on subjective judgment by the evaluation team, which can undermine transparency of the tender process. These technical criteria also function as incentives for bidders to focus on particular technical issues when preparing proposals.

The following resources further describe these options, with examples:

- **PPIAF's Toolkit for PPPs in Roads and Highways**, in the section: *Concessions: Main Steps in competitive bidding*, describes evaluation rules, financial evaluation criteria, and the multiple-parameter approach. This section also presents the evaluation criteria for 13 Latin American road concessions.
- The **Caribbean PPP Toolkit** (Caribbean 2017, Module 5,6) presents and discusses several examples of award criteria for PPP projects.
- **Kerf et al *Guide to Concessions*** (Kerf et al. 1998, 118–123) has sections on technical and financial proposal evaluation. These describe choices regarding technical and financial criteria, and the pros and cons of a combined score approach, with examples in each case.

The best option, and the specific financial and technical criteria, may depend on project characteristics. It may also depend on the capacity of the public sector to undertake more complex evaluations, or on the risk of corruption, or perceived corruption, which could make transparency the most important objective.

Many governments allow either approach to be used. In **Brazil**, both the Federal Concessions Law (for user-pays PPPs) (BR 1995, Article 15) and the Federal PPP Law (for government-pays PPPs) (BR 2004a, Article 12) allow both approaches. In all cases, the approach and criteria should be set in advance, and clearly communicated to potential bidders. Managing the Bid Process provides more guidance and resources on selecting the specific evaluation criteria.

Bid Bonds

Many governments require bidders to submit a bid bond, to ensure commitment to the process, and prevent the winning bidder from withdrawing without good cause. For example, the **Spanish procurement law** (ES 2011) prescribes that bidders should provide a temporary guarantee to back their proposal and increase it to meet the definitive guarantee once the contract is awarded. The **Philippines BOT Law** (PH 2006, Section 7.1 Clause b (vi)) implementing regulations require a bid bond of between one and two percent of the estimated project cost. **Kerf et al's guide to concessions** (Kerf et al. 1998, 126) provides further examples,

and briefly describes the pros and cons of requiring a bid bond. The authors note, for example, that the United Kingdom government discourages the use of bid bonds for PPP projects on the basis that they are expensive, and should only be sought in exceptional circumstances.

Approach to Bid Costs and Payments

Preparing a proposal for a PPP project is an expensive exercise. Equally, running a high-quality procurement process for a PPP is costly to government. Governments have different approaches to dealing with bid costs and commitments.

Governments have found different ways to deal with bid preparation costs. In some jurisdictions, the government may share bid costs, to encourage more bidders to participate. For example, **Australia's *PPP Practitioners' Guide*** (AU 2015, 29) states that bid costs may be reimbursed, but only in very limited and clearly defined circumstances. Conversely, **Chile** has a mechanism for asking pre-qualified bidders to jointly finance the engineering and other studies needed for the government to prepare for the transaction (CL 2010b). This was an element of the reform to the PPP law that took place in 2010.

A **KPMG review of PPP procurement in Australia** (KPMG 2010) describes typical bid costs for the private party to a PPP in different countries. The report also draws on a survey of PPP practitioners to provide recommendations for how bid costs can be reduced. These recommendations focus on improving the efficiency of the PPP procurement process, as well as touching on the pros and cons of governments contributing to bid costs.

Related Content

- INTRODUCTION
- PPP BASICS: WHAT AND WHY
- ESTABLISHING THE PPP FRAMEWORK
- PPP CYCLE
- Identifying PPP Projects
- Appraising Potential PPP Projects
- Structuring PPP Projects

- **Designing PPP Contracts**
- **Managing PPP Transactions**
- **Managing PPP Contracts**
- **Dealing with Unsolicited Proposals**
- **Key References - PPP Cycle**

Additional Resources

- Unsolicited Proposals
- Concessions Build-Operate-Transfer (BOT) and Design-Build-Operate (DBO) Projects

Find in pdf at PPP Reference Guide - PPP Cycle or visit the PPP Online Reference Guide section to find out more.

Disclaimer: *The resources on this site is usually managed by third party websites. The World Bank does not take responsibility for the accuracy, completeness, or quality of the information provided, or for any broken links or moved resources. Any changes in the underlying website or link may result in changes to the analysis and recommendations set forth on the* Public-Private Partnership Resource Center. *The inclusion of documents on this website should not be construed as either a commitment to provide financing or an endorsement by the World Bank of the quality of the document or project. If you have any comments on any of the links provided on the* Public-Private Partnership Resource Center, *please get in touch here*