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Managing the Bid Process

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The central step of procuring PPP projects is generally managing the bid process. This may follow pre-qualification to select the participating bidders (although not always, as described in Deciding the Procurement Strategy). The bid process ends with the selection of a preferred bidder, with whom the implementing then works to execute the contract and reach financial close.

The steps in managing the bid process will vary depending on the chosen bid process and basis for award, as described in Deciding the Procurement Strategy under *Bid process.* This section describes and provides guidance on the following elements of managing the bid process:

- Preparing and issuing Request for Proposal documents
- Interacting with bidders during the bidding period
- Receiving bids
- Evaluating bids to select the preferred bidder
- Dealing with problems such as receiving only one bid, or no fully compliant bids
- Finalizing the contract with the preferred bidder

Farquharson et al (Farquharson et al. 2011, 121–124) provides an overview of the bid process and highlights some of the important points for implementing agencies to consider at this stage.

Preparing and issuing Request for Proposal documents

The bid process formally begins when the government issues Request for Proposal (RFP) documents to participating bidders. These documents set out the project structure, requirements, and the details of the bid process. High-quality, detailed, and clear RFP documents are important to ensuring a competitive process and a PPP that achieves value for money. RFP documents typically include the following:

- **Information on the PPP project opportunity**. This could include:
  - An Information Memorandum describing the key features of the project and the commercial terms of the PPP
  - Draft project agreements—that is, the output of the detailed PPP contract design process described in Designing PPP Contracts
  - Copies of any permits or approvals obtained for the project
  - A description of the detailed technical information amassed during the project preparation stage that will be provided to bidders in a data room
- **Information on the bid process**. This could include:
  - Detailed bid rules and instructions to bidders, setting out the process and requirements
  - A timetable, which should build in enough time to allow bidders to prepare quality proposals
  - Evaluation Criteria
  - Bid bond requirements (if any), as described in the section on *Approach to bid costs and payments* under Deciding the Procurement Strategy

Examples and Guidance on Preparing RFP Documents. For further examples, the **World Bank PPPIRC website** (PPPLRC) page *Procurement Processes and Standardized Bidding Documents* includes a link to a draft RFP for Power Purchase Agreements and a BTO PPP for roads, and links to actual bidding documents from PPP projects. The World Bank has also issued sample bidding documents for output and performance-based road contracts (WB 2006c), along with some guidance in the foreword to the documents.

Examples and Guidance on Preparing RFP Documents

JURISDICTION	REFERENCE	DESCRIPTION
Australia	National PPP Practitioners' Guide (AU 2015, 17–22)	Details the content of the RFP.
Brazil	Federal PPP Law (BR 2004a, Law 11079, Article 11)	Describes the minimum information that the tender documents must include. These are a draft PPP contract, the proposal guarantee required from the bidder (up to one percent of total contract amount), the conflict resolution procedures, and the guarantees that that government will make available to ensure its payments.
Chile	Concessions Law (CL 2010b)	The Chilean PPP Unit housed within the Ministry of Public Works provides access to the complete RFP of all their PPP projects.
Colombia	Law 80/1993, General Statute for Procurement by the Public Administration (CO 1993, Articles 14 and 30)	**Article 24** describes the information that PPP tender documents must include. This includes: requirements to be eligible to participate as a bidder, rules for preparing bids, cost and quality of goods, works and services needed to carry out the project, term of the contract, and bidder selection rules. **Article 30** sets out the tender process—including the rights and responsibilities of the actors involved, and deadlines and timeframes for each step.
Colombia	Law 1150 (2007) Law to Introduce Efficiency and Transparency Measures in Law 80 of 1993 (CO 2007, article 8)	Establishes that the contracting agency must publish a preliminary version of the tender documents. This is a non-binding activity—that is, the contracting agency is not forced to carry out the tender after publishing these preliminary documents.
India	Ministry of Finance Model RFP Document (IN 2014a)	Provides a full generic model RFP, intended for use by contracting authorities at the national level.
South Africa	PPP Manual module on procurement (ZA 2004a, 27–41)	Describes first how bidders can participate in finalizing the RFP; then describes in detail the content of the RFP.

Interacting with bidders during proposal preparation

After the RFP has been issued, bidders will prepare detailed proposals responding to its requirements. During this process, government needs to define how and to what extent it will interact with bidders as they prepare their proposals. Rules on the channels and permissible topics for interaction with bidders are usually set in the RFP—this is important for transparency.

At a minimum, this interaction involves providing information to bidders and responding to requests for clarification on the RFP. In some cases, the government may consider updating the RFP documents as a result. Typical channels for these types of communication include:

- A data room that is a physical or virtual space where bidders can find all available information that is relevant to the project.
- Question and answer iterations allow bidders to submit questions in writing; the implementing agency responds in writing to all bidders (ensuring that all bidders have access to the same information).
- Bidder's conferences allow the implementing agency to present the project and respond to questions from bidders. Some governments impose limits on when clarifications can be sought to avoid revealing information close to the bid deadline that could benefit some bidders over others

The following provide more information and examples of these approaches to interaction with bidders:

- **PPIAF's Toolkit for PPPs in Roads and Highways** (WB 2009a) in its section "Concessions: Main Steps in competitive bidding" describes what technical information should be available in the data room.
- The **ADB *PPP Handbook*** (ADB 2008, 71) presents a sample data room index.
- **Australia's national PPP practitioners' guide** (AU 2015, 24–25) briefly describes the use of a data room and a query process.
- The **Singapore *PPP Handbook*** (SG 2012, 61–62) presents the type of information that will be exchanged during the feedback period when the RFP has been issued.
- In **Colombia, Law 80 of 1993** (CO 1993) states that, after distributing the RFP documents to pre-selected bidders, if any of the bidders requests it, the contracting agency should hold a meeting with bidders to clarify any questions they may have, and listen to their concerns and comments. Based on this meeting the contracting agency may incorporate changes to the tender documents or may extend the submission date up to six days.

As described in *Negotiation with bidders: during bidding process* under Deciding the Procurement Strategy, some governments use an interactive tender or competitive dialogue process involving more extensive engagement with bidders as they prepare their proposals. Under this type of process, bidders typically initially submit technical proposals, which are then the subject of feedback and discussion with the contracting authority, to refine the proposed solutions to meet the authority's needs, before submitting a final proposal. Some bidders may be dropped out of the process at different stages.

For more detail and guidance on this procedure according to EU regulations, see the **Government of the United Kingdom's *Guidance on the Use of Competitive Dialogue*** (UK 2008). **Australia's National *PPP Practitioners' Guide*** (AU 2015, 70–71) describes how a similar interactive tender process is typically used in Australia.

Receiving bids

A reliable and credible system to ensure bids are handled confidentially is important, to prevent any opportunity for bid-tampering, and to protect commercially sensitive information in bids.

Often bids are delivered in hard copy in sealed envelopes. Typically, financial and technical bids are delivered in separate envelopes—financial bids are only opened for bidders that pass the technical assessment, and are often opened publicly to avoid any possibility of bid tampering. For example, the **Philippines BOT law rules and regulations** set out a two-envelope system for receiving bids (PH 2006, Rule 7). The **World Bank sample bidding documents** for output- and performance-based road contracts (WB 2006c, 19–21) also describe a sealed-envelope bid system, but allow for use of an electronic sealed bid system as an alternative. One advantage of an electronic system is that it prevents bidders from monitoring or interfering with physical bid delivery.

Dumol's diary of the Manila Water privatization by concession (Dumol 2000, 85–98) includes a detailed description of the process for bid submission and bid opening in practice.

Evaluating bids

As described in the ***Partnerships Victoria Practitioners' Guide*** (VIC 2001, 40–42), the evaluation process involves

- Assessing bid completeness and compliance with minimum requirements of bid process;
- Assessing conformity with requirements of the project brief. The Guide notes that conforming bids are evaluated before non-conforming bids—but that non-conforming bids may also be considered, particularly if no conforming bids are attractive;
- Bid clarification, which can involve a bidder presentation and a Q&A session. The guide notes that this should not include any opportunity to change bids;
- Detailed review by evaluation teams, following the pre-defined evaluation criteria. Evaluation Criteria provides options and guidance for setting evaluation criteria;
- Preparation of evaluation reports, detailing the process followed and the analysis of the evaluation teams. Comprehensive reporting is important to the transparency of the process. In some cases, bidders may be invited to formally comment on a draft report, with the evaluation team required to address comments in the final version.

Partnerships Victoria Practitioners' Guide (VIC 2001, Chapter 19.2) provides tips for evaluation, and lists what should be included in an evaluation report. **South Africa PPP Manual** Module 5: Procurement (ZA 2004a, 45–51) also provides detailed guidance on how to evaluate bids, as well as a description of South Africa's approach to defining evaluation teams.

Evaluation Criteria

The selection of evaluation criteria can be key to ensuring the PPP provides value for money. Evaluation criteria should be decided in advance and set out in the RFP documentation. Some countries specify evaluation criteria options in legislation. Evaluation criteria typically incorporate technical and financial elements. These may be evaluated separately—typically with a pass/fail technical evaluation, followed by ranking on financial criteria) or combined and weighted to rank bids (as described in Deciding the Procurement Strategy under *Basis for Award*).

The options for specific criteria depend on the nature of the project, as described (with examples) by **Kerf et al** (Kerf et al. 1998, 118–122)—for example, whether existing assets are involved, and whether the project will be user-pays or government-pays.

Many PPPs are ranked based on a **financial criterion** subject to passing other technical and financial requirements. The most common option for a financial evaluation criterion is the remuneration of the private sector. This could be the lowest tariff to users, or lowest cost to government (whether as a government-pays PPP, or subsidy in addition to user charges). The Least Present Value of Revenue criterion, introduced in Chile and Peru for toll roads, is another alternative, described by **Engel, Fischer and Galetovic** (Engel et al. 2002). Related criteria can include length of concession, or amount of investment.

Where technical requirements have been clearly set out in the proposal, **technical evaluation** requires checking compliance with those requirements. As **Kerf et al** (Kerf et al. 1998, 118–119) describe, in some processes bidders are asked to submit project design, business, or investment plans, which are evaluated based on multiple criteria. The authors note the drawbacks of this approach—including the possible subjectivity of assessing plans, and the likelihood of plans changing substantially over the lifetime of the concession.

Procuring authorities should assess, with their transaction advisors, whether the project and the draft contract, as it is, are commercially viable and bankable—avoiding post-bid negotiations, before contract signing or before financial close, that may significantly change the project and its risk allocation, but that were not evaluated in the bid process. The risk-allocation implications of those post-bid negotiations may be far more significant than the user fees and other criteria assessed during the tender process. If allowing bidders to present, in their proposals, changes to the draft contract, procuring authorities should define which specific changes are allowed, and how they will be scored in the bid evaluation criteria.

The following resources provide further guidance and examples on choosing evaluation criteria:

- **EPEC's *Guide to Guidance*** (EPEC 2011b, 23) briefly discusses the criteria that could be used for bidder selection.
- **Guasch** (Guasch 2004, 97–105) describes the choice of award criteria, drawing on his extensive review of the factors leading to renegotiation in concession contracts in Latin America.
- **The World Bank Toolkit for PPP in the water sector** (PPIAF 2006, 171–179) describes and provides examples of evaluation criteria options for awarding a user-pays PPP contract in the water sector including technical, financial, and combined approaches.

Australia's *National PPP Practitioners' Guide* (AU 2015, 62–65) describes a more holistic approach to evaluating bids. It includes quantitative and qualitative Value for Money, commercial and financial evaluation, service delivery evaluation, and project design evaluation.

Dealing with issues—only one bid received

If only one bid is received, this can raise concerns about whether that bid will provide value for money. As described in **EPEC's *Guide to Guidance*** (EPEC 2011b, 29–30) there are two broad options in this case, depending on the reason for only receiving one bid:

- **Re-package and re-tender** may be the best approach if the low turnout seems to be because of deficiency in the tender.
- **Conduct thorough due diligence and select the sole bidder** may be a better option if it appears that the bidder believed the process would be competitive, and is in full compliance with the requirements.

World Bank procurement guidelines (WB 2011b, 25) note that rejection of all bids is justified where there is a lack of effective competition, but says "even when only one bid is submitted, the bidding process may be considered valid, if the bid was satisfactorily advertised, the qualification criteria were not unduly restrictive, and prices are reasonable in comparison with market value." The **United Kingdom Government's guidance on the competitive dialogue procedure** (UK 2008, Box 5.7) provides further guidance.

Dealing with issues—no clear preferred bidder or no conforming bids

In some cases, despite multiple bids being received, there may not be a clear preferred bidder. For example, this could be because no bids conform to requirements; or because a non-conforming bid appears to present a better value-for-money option than conforming bids.

One common cause of this problem is poor clarity or quality of the RFP documents—the references listed above under *Preparing and issuing Request for Proposal documents* provide guidance on preparing a clear, comprehensive, and well-structured RFP. The multi-stage and competitive dialogue procedures described in Deciding the Procurement Strategy also help avoid this issue, by enabling changes to the RFP during the bid process that help ensure final bids are all comparable and compliant.

One option if no bids conform, and none appear to be of high quality, is simply to re-package and re-tender the project. The alternative is to extend the procurement process, to identify a preferred bidder—typically, through discussions with the higher-ranked bidders on the points where the bids do not conform, often followed by asking for a revised bid.

For further guidance, see **Australia's *National PPP Practitioners' Guide*** (AU 2015, 27–28), which describes two options in cases where no preferred bidder can be selected—entering into a *Best and Final Offer* (BAFO) process with two bidders, or structured negotiations. The **South Africa PPP Manual Module 5** (ZA 2004a, 51–56) also describes in detail when and how to run a BAFO process, if no clear preferred bidder can be identified.

Finalizing the PPP contract with the preferred bidder

Once the preferred bidder has been selected, governments sometimes enter into further discussion to finalize the PPP contract. Extensive negotiation at this stage can undermine the competitive tender process, as described in Deciding the Procurement Strategy under *Negotiation with bidders: post-bid.* However, some level of negotiation may be necessary to clarify elements of the proposal or contract, particularly when the bid process has not included significant interaction. If financing arrangements have not already been finalized, lenders may also have demands at this stage that create pressure to negotiate on elements of the contract and risk allocation.

Many governments define and limit the extent of negotiations possible at this stage. For example, the **EPEC's Guide to Guidance** (EPEC 2011b, 31) describes a European Union rule that no issues that are material to the procurement can be changed—that means that no change that could have resulted in a different result from the bidding process should be incorporated during the post-bid negotiation phase. Where changes are allowed at this stage, the final contract is often subject to further approval.

The following resources provide guidance on carefully managing post-bid negotiations:

- **Australia's National PPP Practitioners' Guide** (AU 2015, 30) provides guidance on setting up a negotiation framework that includes, among other things, defining the negotiation issues and the timetable, setting the dispute resolution processes, and ensuring that the participants have the authority to make decisions on behalf of their organizations.
- **South Africa PPP Manual** Module 5 (ZA 2004a, 59–61) describes principles for negotiation, and the negotiation process.
- **ADB PPP Handbook** (ADB 2008, 79–80) briefly describes important elements for negotiation—including having a fallback plan (which may be the second-place bidder).

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

- Managing the Bid Process in Asset Recycling
- Innovative Revenues for Infrastructure (IRI)

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

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