Tendering Process in Asset Recycling

Guidelines for Implementing Asset Recycling Transactions

Tendering Process

The selection of a private partner through a tender process is the next step in the lifecycle of an asset recycling project involving a private operator. There are several milestones involved in this process as illustrated below.

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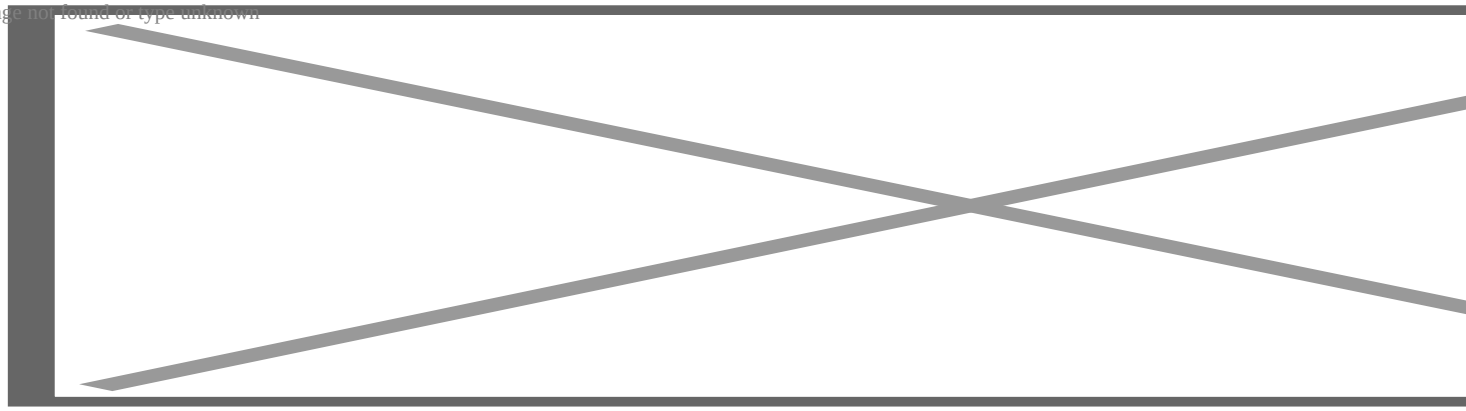
*The **Guidelines to Implementing Asset Recycling Transactions** is intended to be a living document and will be reviewed at regular intervals. Visit the **Asset Recycling: Decision maker's notes** for a practitioner's overview of Asset Recycling programs. To find more, check out the **Section Overview** and **Content Outline** , or **Download the Full Report**.*

Find guidelines, roles of tender committee and required documents to tender Asset Recycling Transaction.

Procurement guidelines

The selection of a private partner through a tender process is the next step in the lifecycle of an asset recycling project involving a private operator. There are several milestones involved in this process. An illustrative process is mentioned below; however, this is subject to the applicable laws of the relevant jurisdiction:

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The Relevant Authority should consider the following key principles when implementing the bidding process:

- ***Timeline management*** – The proposed bidding timeline should consider the availability of key decision makers at the Relevant Authority. To ensure efficiency, the Relevant Authority should adhere to the proposed timeline as much as possible. Uncertainty in bid timelines, repeated delays and ad-hoc extensions may discourage serious investors.
- ***High-quality bid documents*** - The Relevant Authority should invest sufficient time and effort into the development of a comprehensive bidding process and high-quality bid documents. The bid documents

should include both the Request for Qualification (RfQ) and Request for Proposal (RfP) and the draft transaction agreement.

- ***Transaction resourcing*** – An asset recycling transaction requires sufficient resources to achieve the optimal outcome for the Relevant Authority. This should entail the allocation of appropriate staff empowered to make necessary decisions to advance the transaction, as well as the appointment of advisors.
- ***Transparency in bid process*** - While changes are normally expected during a tender process, significant changes in the transaction structure, scope and timeline and documentation may indicate a lack of preparedness or understanding of the market. If these are unavoidable, the Relevant Authority needs to communicate the rationale for these changes to ensure that confidence of potential investors is not adversely impacted. Conducting market sounding in advance of a transaction offers them the opportunity to plan and provide inputs before the formal bid process starts. The initial discussions followed by clear and reasonable timelines should result in a smoother bid process.

Key points to consider during the bidding process

The following key points should be considered during the bidding process:

- ***Anti-corruption***: Clear policy should be set out to manage perceived or actual corruption (if any). Measures for countering such activities should be developed in detail and laid out accordingly. All processes should have built-in safeguards for disclosure, clear disclosure of the applicable code of conduct, structured oversight, and internal and external audits.
- ***Disclosure – Conflicts of interest***: Predefined guidelines should set out governing conflict of interest so that all parties are clear as to the rules. A conflict check should be conducted for parties involved in the bidding process, including transaction advisors, tender committee and Relevant Authority officials. Parties to the transaction should disclose any potential conflict between their personal and family interests as per the predefined guidelines.
- ***Code of conduct***: Compliance with the code of conduct will be mandatory for all parties involved in the bidding process. The pre-qualified bidders will also sign this code of conduct to be developed by the Relevant Authority. The code of conduct should cover the following:
    - Protocol for communications between the bidder and the Relevant Authority (and its delegates including advisors).
    - Prohibition of collusions between separate bid teams; and
    - Timely disclosure of any conflict of interest.
- ***Audit***: Audits should be conducted to ensure compliance, as per predefined guidelines/procedures. This is particularly important for the process of selection of the preferred bidder.
- ***Prohibited participants***: A list of prohibited/blacklisted bidders should be maintained. These bidders should not be allowed to participate in the bidding process. The Relevant Authority may utilize any existing list it has for this purpose. The Relevant Authority should also consult with other relevant government procurement agencies to develop this list.
- ***Security environment***: All bid-related documents should be kept confidential and in a secured environment to prevent espionage. This is the responsibility of all those responsible for handling bid related documents.
- ***Changes in composition of bidding consortia***: Changes in consortia during the bidding process should only be permitted in compliance with the terms of the RfQ/RfP and, if so permitted, must be communicated to the Relevant Authority in writing, along with reasons for the change and its impact on the consortium.
- ***Bidder due diligence***: The Relevant Authority should facilitate bidder due diligence by providing a data room containing historical information regarding the asset. In some cases, it may be considered more efficient for the Relevant Authority to prepare "due diligence reports" by the appointed advisers for inclusion in the data room. If the advisors are globally reputed firms and the reports are perceived as non-partisan, this would help the bidder due diligence process and provide potential bidders with

confidence in the process.

- ***Site visits***: Bidders should also be given adequate opportunity to conduct their own due diligence on the asset. The protocol for due diligence and site visits should be communicated in the bid documents.
- ***Bid validity period***: A sufficient bid validity period should be specified in the bid documents. The duration should balance the need for certainty for the Relevant Authority while avoiding an overly long bid validity period that will impact investors' perception of the deal and to price in a risk premium for an overly long validity period.
- ***Bid security/bond***: A bid security/bond commensurate with the transaction size should be provided by bidders.

Role of Tender Committee

In proceeding with tendering an asset recycling transaction, a tender committee should be formed. The functions of the tender committee include:

- finalization of bid documents (in case of changes in project/contract structure).
- evaluation of bids.
- selection of the final preferred bidder; and
- final negotiations.

The decision to form a tender committee is transaction-specific and at the discretion of the Relevant Authority. Generally, the Relevant Authority should mobilise an internal team for this function. However, for certain transactions the Relevant Authority may appoint representatives from external parties. Other members, such as legal, financial, or technical experts, who may be considered necessary for the project evaluation may also be appointed to the tender committee. Alternatively, they could provide their expertise to the tender committee as external experts or advisors.

In case of material changes to the transaction structure, the tender committee also needs to ensure that the Relevant Authority agrees with any revised risk allocation and contractual terms. A formal approval from the Relevant Authority is required where there are material changes to the previously agreed transaction structure or scope.

Outline of the main steps in the tendering process

In the tendering process of an asset recycling transaction, the following steps are required:

Sections

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Request for Qualification (RfQ) in Asset Recycling

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Request for Proposals (RfP) in Asset Recycling

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Managing the Bid Process in Asset Recycling

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Bid Evaluation and Award in Asset Recycling

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Contract Finalisation in Asset Recycling

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Towards Financial Close in Asset Recycling

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This section has not been prepared with any specific transaction in mind and are meant to serve only as general guidance. It is therefore critical that the content will be reviewed and adapted for specific transactions.

This is a new section of the website and is currently in draft form. For feedback on the content of this section or to suggest additional links or materials, please contact the PPP Resource Center using the feedback form.

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