

Procurement Restrictions

Full Description

The laws in the particular country or a regional grouping (for example the European Union) may require that before a PPP project can proceed, particularly where powers and duties of a public entity are being delegated to a third party, it is necessary to follow a formal bidding or procurement process. It is important to understand the procurement procedures for the host country and the consequences of failure to follow them.

The following issues need to be considered early on in project development in relation to procurement laws of the host country:

- are there relevant procurement laws that apply to the PPP project concerned (distinction may need to be made between different types of PPP arrangements in finding an answer, for instance, in some civil law jurisdictions a distinction is made between concessions and other forms of PPP to determine what procurement requirements apply)?
- are there competing procurement laws at federal, state and city level? If so, is it clear which set will apply to the project?
- is there flexibility in the procurement rules as to the precise process to be followed - i.e., is there room for two stage as well as single stage bidding? Pre-qualification of candidates?
- is there a prescribed level of bid security required by law?
- are the evaluation criteria set down clearly in the law?
- are there legal restrictions on the project company as to procurement of services and supplies from subcontractors? Does the awarding authority wish to add additional restrictions such as requiring use of local suppliers?
- are there restrictions on extensions of the contract period without further competitive tender?
- where private finance is to be involved in the project, will the procurement rules extend to the selection of lenders for the project (and so require that the bidders have their lenders established at time of bidding), limit ability of lenders to syndicate lending, limit ability to refinance project at a later stage?
- what is the consequence of breaching procurement rules? Does a court have powers to require that the tender process be cancelled and a new process initiated? Can fines or damages be imposed? Can the courts cancel an award of a project?

Where the PPP project involves funding from an international finance institution (IFI) then its own procurement procedures and guidelines may apply.

For more on the importance of clear and transparent procurement processes in PPP Projects, go to [Procurement Laws](#) and links to various procurement guidelines for PPP Projects, go to [Procurement Guidelines and Standardized Bidding Documents](#).

back to [Evaluating the Host Country's Legal Environment](#)

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