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PPP PROCUREMENT CYCLE – KEY ACTIONS AND OUTCOMES: INDIA

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Presentation Structure

- Stages of the PPP procurement cycle;
- Managing the PPP procurement cycle; and
- Advantages and disadvantages of PPP procurement approaches

PPP Procurement Cycle

Stages & Forms

PPP Procurement: Evolution!

- In the '90s, most project procurements were through a “MoU” route, where agreements were signed through direct negotiations
 - These were either with contractors or “developers” who acted as an intermediary for procuring finance, contractors and operators
 - In many cases, ‘Joint Ventures’ were also set up
 - Many of these agreements got into trouble
- Even today, the ‘MoU’ is not entirely dead
 - Though it comes in other garbs...

PPP Procurement... (2)

- Post Dabhol, Government of India and some State Governments have put in a lot of thought into the PPP process
 - Planning Commission & Department of Economic Affairs have standardized a very large set of process documents and set in place guidelines
 - “Transparent processes” are strongly advocated
 - Many Government of India support schemes are not available if procurement is non-transparent

PPP Procurement... (3)

- Some departments still follow a not-very transparent process, especially if there is no Central Government funding
 - “Swiss Challenges” and *suo-moto* proposals
 - “Joint Venture” or “Joint Development”
 - “G2G” Agreements

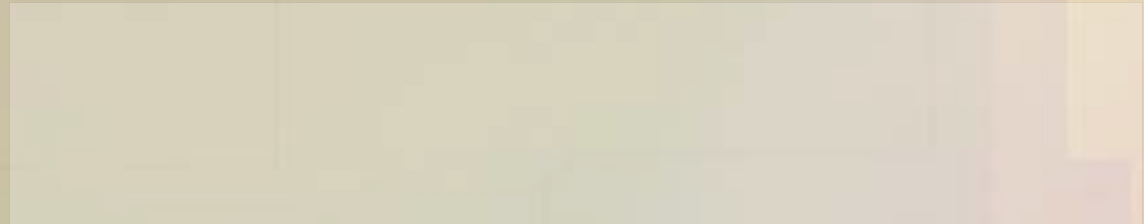
2-Stage Procurement

- Qualification (RfQ)
 - Based on financial strength and experience in (similar or other infrastructure) projects
 - Criteria are very clearly set out
- Proposal (RfP)
 - Technical proposals and “marking” are not recommended since they bring an element of subjectivity
 - Except in ‘special projects’ that require such a proposal
 - “Price proposal” is a single-number recommended determinant

Qualification Criteria

- Experience Criteria:
 - 1. Of having done (contract or PPP) similar projects;
 - 2. Of having done infrastructure projects in other sectors;
 - 3. Of having operation and maintenance capabilities.
- Financial criteria:
 - 1. **Net worth**;
 - 2. Turnover;
 - 3. Cash accruals.
- Qualification thresholds are specified for each criteria. Once the threshold is crossed, the bidders are qualified, and there is no 'carry over' into the next stage from the criteria

Managing the PPP Procurement Cycle



Legal Framework

- There is no separate legal framework for PPP projects
 - Governed by existing legal structures and administrative orders
- The authority to grant a PPP concession is vested in the Government department in charge of the project, or in a statutory entity vested with such powers
 - Subject to obtaining the authorizations required to do so
- Land title is not transferred
 - Given on lease, license, or concession

Tender Preparation

- Concerned Government Agency would procure internal administrative approvals
- Basic documents prepared are:
 - Feasibility report/ Detailed Project Report/ Project Information Memorandum
 - Normally, the extracts of these reports given to the bidders are stripped of the financial model in these reports
 - RfQ and RfP
 - Draft concession agreement

Tender Preparation... (2)

- Level of detail and studies varies very widely
 - DPR and designs on one extreme, to “let the bidder do its own studies” school of thought
- Anticipated timelines:
 - About 90 days for the DPR
 - 120-180 days for bid process
 - Ends up in the 1-2 year timeline for most projects, by the time the actual agreements are signed
 - In many cases, there is substantial time-lag between receipt of bids and actual award

Signing the Agreement

- “Tender Committees” normally evaluate the bids and make a recommendation
- In many cases, the files then run the gauntlet of internal administrative approval
 - Including legal and finance
 - It is at this point that other departments start taking a serious look at the process, documents, and bid price!
 - Sometimes ‘closed’ issues are re-opened
 - Significant delays encountered at this stage
- The agreement itself has certain “conditions precedent” such as obtaining clearances and hand-over of land
 - Signing the agreement by no means ensures that the project gets implemented

Single Bids and Unsolicited Tenders

- “Single bids” mean single responses to open bids
 - While there is no bar on accepting single bids, most jurisdictions are wary of going ahead
 - Because the ‘price discovery’ mechanism of open competitive bids is no longer available
 - A lot more calculations, justifications, and benchmarks are required to proceed with award
- Unsolicited tenders are not encouraged by the Planning Commission/ DEA
 - However, many States have a “Swiss Challenge” mode permitted under Acts and Policies
 - But not many projects have come under this construct

PPP Procurement Approaches

Advantages &
Disadvantages

“Transparency Premium”

- There is certainly a cost and time resource in a transparent tender process
 - But there is no other way of ensuring that the public service is procured in a manner that stands the test of public scrutiny
- The Government Agency has to also put in a lot of managerial effort and thought into the process
 - Studies, documents, process management

The Alternatives

- In suo-moto proposals or direct negotiation, the department (apparently?) can leave the costs to the potential PPP partner
 - Isn't this what partnerships are about?
 - However, most departments have found that there are no free lunches...
- Joint Ventures
 - Have been a common method, practiced by a few institutions
 - An SPV is set between the private sector and the Government Agency, which does all the development work
 - The SPV could then transform into the Concessionaire...
 - » No free lunches here too...

OK With the Price?

- Assessing the 'reasonableness' of a bid is a major task, which gets bogged down in subjective discussions
 - The problem is exacerbated since most projects draw a limited number of bids (sometimes only one), and this makes 'price discovery' through bidding very difficult.
- Projects are also not very comparable (geography, bid conditions, project conditions), so other projects do not set a sound precedent
 - Enough number of projects not available to set a 'statistically significant' inference

Thank You...