

Sustainable Water Integrated Management (SWIM) Regional Training Event

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**TRAINING ON EVALUATING AND STRUCTURING PPPs
IN THE WATER SECTOR**

Day 2

**Public-Private Interaction, Pre-tendering, Tendering, Award,
Negotiations, Construction and Performance Monitoring**

Securing PPP success, Rights & duties, Payments & charges

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Presentation Outline

- Pre-tendering Requirements, Rights and Duties
- Prequalification and Requirements for Candidates
- Prequalification Selection Criteria
- Bid Evaluation & Selection Criteria
- Payments and Charges
- Payment Structure

Pre-Tendering Requirements

Rights and Duties

An important steps toward achieving success and protect the rights of all PPP partners the Public Party shall fulfill certain duties before launching the PPP tender. The duties are:

- Clear objectives and needs definition/importance of transaction
- Clear and accurate demand projections (quantities, customers, etc)
- Transparency through out the bidding process
- Once the decision to involve the private sector is taken, the enthusiasm and support of management at all levels are important and shall continue with the same paste throughout the transaction

Pre-Tendering Requirements Rights and Duties

- Strong management team shall be on place on day one after the decision to involve private sector
- Carefully studied and prudent decisions to be taken on time without delays
- Owner needs legal, financial and technical experts guidance to provide specialized advice and in the formulation and preparation of tender documents. A good consultant can save a client large sums of money that might otherwise be wasted in bad contractual arrangements

Pre-Tendering Requirements Rights and Duties

- Full set of documents be prepared on time (feasibility study, preliminary studies, environmental and social studies , estimates, figures, laws, regulations, Agreements, technical requirements, financial requirements etc.)
- Rigid but sensible time table indicating duration of each step of contracting
- Project duration (5-15-25 years) depending on the PPP option

Pre-Tendering Requirements

Rights and Duties

- The right to provide a public service: In some countries the legislation does not foresee that certain public services (such as solid waste management and water supply) can be provided by the private sector. In such cases the legislation must be amended before the private sector can become involved
- Licensing: If plans are developed to license private companies to collect, transport, treat, recycle or dispose of waste or operate and maintain facilities or schemes, it is necessary to include enabling clauses in the legislation.

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Pre-Tendering Requirements

Securing Success for PPP Projects

- Special requirements (example- Special wastes): There may be particular regulations regarding the handling of special wastes (such as wastewater sludge, hazardous industrial wastes and hazardous healthcare wastes). It is also important that the definitions of such wastes in the contracts are the same as the definitions used in legislation. ,,
- Collection of fees: Legislation must allow the proposed method of collection of fees for water, wastewater, solid waste management service – for example, if fees are to be collected by the private sector or service provider or collected in conjunction with another service (such as water supply or electricity) or otherwise Public party provides payment assurances.

Pre-Tendering Requirements

Rights and Duties

- Participation of foreign contractors: In some countries, there are some restrictions on the participation of foreign contractors that shall be either amended or explained.
- Restrictions on contract duration: If there are regulations that limit the length of contracts to periods that are unsuitable for the investment, these regulations will need to be changed or solutions be found.
- Taxes and customs duties: Private enterprises that provide public services may be given special tax privileges in order to encourage them to become involved in public services. Tax holidays or exemptions for certain time

Pre-Tendering Requirements

Rights and Duties

- Charges and social security payments: the bidders shall be aware of any deductions during the tendering process, so they can make allowance for them when calculating their bid prices. A full investigation – during preparation of the proposal – of the law relating to such charges is therefore advisable.
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- Transfer of vehicles and personnel: Changes to the law may be required to allow local government to sell or lease their vehicles to a private enterprise and to enable them to change the status of government employees who will be transferred to contractors.

Pre-Tendering Requirements

Rights and Duties

- Monitoring and enforcement capacity: Enabling legislation may be needed to allow local government to establish an agency to monitor the performance of private sector service providers and to enforce fines or other sanctions.
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- Environmental standards: The tender documents and contracts will need to refer to current environmental standards (and anticipated revisions) when specifying the performance required of the contractor. In exceptional cases it may be justifiable to impose a standard that is higher than existing requirements. For this purpose a short input from a competent environmental specialist is desirable. „

Pre-Tendering Requirements

Rights and Duties

- Labor laws: labor laws may oblige that laborers be taken on as permanent employees – a serious liability for the contractor with a limited contract and who wishes to be free to dismiss less effective employees or to turn them back to the owner.,,
- Responsible agencies and ministries should be identified. The formation of a locally registered enterprise may be subject to some requirements and the process of registration may involve long delays and numerous requests.
- Limitations on market share: In order to prevent monopolies it may be necessary to enact legislation that limits the number of contracts that one enterprise or family can have. It may also be appropriate to review legislation that prohibits cartels.

Pre-Tendering Requirements

Rights and Duties

- Transparency, availability of information: some works or services may generate intense public opposition. Such opposition can be fuelled by secrecy. Therefore, consideration should be given to ways in which information related to financial and environmental issues could be made available to the public
- Prevent the sale of shares during the construction and few years after the start of commercial operation

Pre-Tendering Requirements

Rights and Duties

- Restrict the sale of shares to certain percentage until such time as all monies owed to the Lenders under the facility agreement or financial agreement have been fully repaid
- Sensible risk sharing: During construction and operation and maintenance. Type of risk shall rest with the party that can better handle it. Owner, Private enterprise, lenders, sponsors/financiers, suppliers, manufacturers, insurers, sellers, buyers etc.
- Financial limitations: Repayments of equities, dividends, variations between maximum and minimum payments

Pre-Tendering Requirements Rights and Duties

- Securities shall be provided by each party to another starting from the qualification until the end date. Securities in terms of financial guarantees, compensations, rights, and others

All points listed shall be clearly set in the request for proposals (RFP)

Which reflects the importance, seriousness and commitment of the owner to conclude fare deal with the private sector.

Pre-qualification/Requirements for the Candidates

- i. a firm shall be permitted to pre-qualify either separately or as a member of a Consortium, but not both;
 - ii. a Consortium may not include more than five (5)* firms, and no member may hold a share less than twenty (20) per cent; (number depends on complexity, cost, type and duration)
 - iii. a firm may not be a member of more than one Consortium;
 - iv. only one firm within a group of companies may prequalify either separately or as a member of a Consortium.
- (* Smaller number is better)

Pre-qualification

- The PQ documents include: project description, financing requirements (equity required, treatment charges payment formula, taxes, guarantees), duration of the contract, indicative contractual structure & agreements to be signed.
- An indicative time schedule shall be set for: The selection of eligible bidders (qualified), draft Request for Proposals, the Instruction to Bidders, Final Request for Proposals, latest date for the submission of proposals, evaluation of the Proposals, announcement of a preferred Bidder, signing the agreements and the Financial close /Effective date

Pre-qualification

- The PQ document shall describe the criteria and approach to select and pre-qualify *not more than five (5) Candidates* which will be invited to participate in the final phase of the selection process
- A data room shall be established to provide each Candidate with equal access to information and uniform data regarding the project/services. The room shall have all studies, laws, data, analyses etc. required for the work.

Why only 5 Firms or Consortia to be Qualified?

- A large number of bidders will discourage strong competitors from Participating because of :
 1. Percentage of failure is very high
 2. A large qualified number some times reflects weakness of the owner, his consultant or both. This usually leads to failure.
 3. Preparing bids is expensive (time, experts, guarantees etc.).Strong and serious bidders can not compete with weak firms and prefer to save money and time

Local examples:

1. Amman-Zarqa light rail project (BOT): 11 firms/consortia qualified, only 2 bids received, financial close never achieved and bid cancelled.
2. Hazardous solid waste (BOT) project: more than ten qualified, 1 bid received, contract never signed

Pre-qualification/Selection Criteria

Proposed Criteria-Example

- 1- Management Structure and Operational Capability (100 points)
- 2- Experience and track record:
 - (a) Design and Construction (100 points)
 - (b) Operation and Maintenance (100 points)
- 3- Financial Capabilities and Financing (200 points)

Candidates having a score of less than 400 points out of 500 points in total will not be prequalified. In the event more than five (5) Candidates have a score of 400 points or more in total, the five (5) Candidates having the highest total score will be prequalified.

Bid Evaluation & Selection Criteria

Two envelop system is recommended (Technical proposal and Financial). *Owner is looking for strong and professional partner.* Scoring system for evaluation of non-price factors is the best method and according to the following procedure:

1. Evaluation of Technical Proposals:

1.A - Examination of Technical Proposals and Bid Letters and Determination of Substantial Responsiveness.

A substantially responsive Technical Proposal is one that conforms to all the terms, conditions, specifications and requirements in the RFP without material deviation or reservation.

If a Technical Proposal is not substantially responsive, it shall be rejected and the Financial Proposal of that Bidder shall not be opened.

Bid Evaluation & Selection Criteria

1.B. Award of Non-Price Score - Example (300 points maximum)

Each Technical Proposal will be awarded a score based on the following factors:

1. Technical approach: design, reliability, operability, experience, managers and experts etc. (Maximum 100 points)
2. Organizational approach: experience of personnel during construction and/or O&M, use of local resources etc. (Maximum 100 points)
3. Time schedule: time for construction and successive operation (Maximum 100 points)

Bid Evaluation & Selection Criteria

Evaluation of Financial Proposals:

1. Examination of Financial Proposals and Determination of Substantial Responsiveness

Prior to the detailed evaluation of Financial Proposals, a determination whether the Financial Proposal is substantially responsive to the requirements of the RFP;

2. Verification of Comparable Bid Price

Prior to the award of scores, the Comparable Bid Price shall be verified. Each Financial Proposal shall be awarded a score based on the following factors:

Financial approach (Maximum points)

Financial strength during construction period - (higher points)

- Quality of funding commitments and guarantees (? points)
- Robustness of liquidity (? points)
- Robustness of solvency (? points)

Financial strength during operational period - (lower points)

- Quality of funding commitments and guarantees (? points)
- Robustness of liquidity (? points)
- Robustness of solvency (? points)

Bid Evaluation & Selection Criteria

The Comparable Bid Price will be calculated based on a formula and an assumptions stated in table setting the quantity and quality of wastewater in million cubic meters in different years throughout the contract period.

The net present value of the Comparable Bid Price is to be calculated based on an discounted rate of 10 % per annum.

An adjustment of the Comparable Bid Price of each Proposal will be made due to the combined non-price score awarded to the Technical Proposal and Financial Proposal. "Adjusted Bid Price".

Adjustments will be made using the following formulae:

$$ABP = (0.6-0.8) CBP + (0.4-0.2) CBP (1 - a/b)$$

Where:

ABP = Adjusted Bid Price

CBP = Comparable Bid Price

a = combined non-price score

b = maximum possible non-price score.

Payments and Charges

Project Company's Revenues

➤ *Fixed Treatment Charge*

Payable monthly, made up of five parts to reflect:

- Repayment of Principal of Project Loan
- Interest on Project Term Loan
- Principal and Interest on Shareholder Loans, Dividends (linked to USD/JD exchange rate)
- Fixed Renewal cost (indexed)
- Fixed Operating Costs (indexed on local inflation)

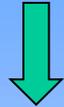
➤ *Variable Treatment Charge (example)*

Payable monthly, and made up of two parts to reflect:

- Additional Volume of Influent (above 160,000 m³/day)
- Additional Pollution of Influent (for BOD₅ above 0.55kg/m³)

Payment Structure/Treatment Charges

Treatment Charge= (Fixed Portion + Variable Portion)



Fixed Portion = (Fixed Capital) + (Fixed Operation)

Fixed Portion:= {Fix (Cap) + I_I . Fix_I (Cap) + I_C . Fix_F (Cap)} + { I_L . Fix (Op) + I_R . I_C Fix_R (Op) }

- Fix (Cap) : Repayment of Senior Debt
- I_I . Fix_I (Cap) : Payment of Senior Debt Interests
- I_C . Fix_F (Cap) : Remuneration of Sponsors Investment
- I_R . Fix_R (Op) : Payment of Fixed Renewal Expenditures
- I_L . Fix (Op) : Payment of Fixed Operation Expenditures

I_I = Interest rate index

I_C = Currency Exchange rate index JD/USD

I_R = Renewal Index – Construction & Machinery index

Treatment Charges Structure- Samra Example

Variable Portion:= $I_L \cdot \{(A \cdot (V_p - 160)) + B[(X_p \cdot (V_p - 160)) + 160 \cdot (X_p - 0.55)]\}$

- $I_L \cdot A \cdot (V_p - 160)$: Payment of Variable OPEX (Flow)
- $I_L \cdot B \cdot (X_p \cdot (V_p - 160) + 160 \cdot (X_p - 0.55))$: Payment of Variable OPEX (Load)

A & B are fixed values proposed by the Company during bidding.

Minimum guaranteed volume of water is 160,000 m³/day

Minimum waste concentration BOD₅=550 mg/l.

I_I = Interest rate index

I_C = Currency Exchange rate index JD/USD

I_R = Renewal Index – Construction & Machinery index

$I_L = (50\% \times A_{Lm}/A_0) + (40\% \times B_{Lm}/B_0) + (10\% \times C_{Lm}/C_0)$

A- Labour Index B- Producer price index C- Electricity Index

Indexes are changed monthly while the A_0 , B_0 , C_0 are fixed at the signing date