

Regional Workshop on Public-Private Partnership in Transport

Competitive Selection of Concessionaires

Cesar Queiroz

Roads and Infrastructure Consultant
World Bank

Transport and Telecommunication Institute
Riga, Latvia, March 6-8, 2007

Procurement and Public-Private Partnerships (PPP)

- Procurement arrangements should be undertaken in a competitive manner
- PPP includes the full range of concession type arrangements for the provision, upgrading, maintenance, and operation of infrastructure projects
- PPP also includes long-term service contracts, management contracts, leases, and divestiture

Definition of Public-Private Partnership

- A Public-Private Partnership (PPP) constitutes a sustained collaborative effort between the public sector (government agencies) and private enterprises to achieve a common objective (e.g., a motorway or railway project) while they pursue their own individual interests.

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Concessions

- **Types of Concessions:**
 - Build, Operate, Transfer (BOT)
 - Build, Own, Operate (BOO)
 - Build, Own, Operate, Transfer (BOOT)
- In a BOOT scheme the private operator retains ownership of the facility in order to guarantee bank loans
- Concessions usually include some regulatory provisions to set the prices to be charged and the quality of service to be provided
- The assets are returned to the state at the end of the concession term (except BOO)

Procurement under BOO/BOT/BOOT Concessions with the World Bank Participation

a) If the concessionaire is selected through ICB



- The concessionaire is free to procure the goods, works, and services required for the facility using its own procedures
- The Loan Agreement specifies the type of expenditures incurred by the concessionaire to which World Bank financing will apply

OR

b) If the concessionaire is not ICB selected, the goods, works, or services required for the facility and to be financed by the World Bank should be procured through ICB

Evaluation Criteria for ICB Selection of Concessionaires May Include

- The amount of subsidies required from the public sector
- The performance specifications of the facilities offered
- The cost charged to the users
- Income generated for the Client by the facility
- The concession term (number of years)

Preparation for Bidding

- Issue an advertisement in the form of a GPN and an SPN and inviting bidders to prequalify - UNDB and local and international newspapers
- Adopt a strategy to minimize the costs to bidders of preparing their proposals
- Prepare a list of prequalified candidates (based on the outcome of the prequalification)
- Ensure that the tender process is undertaken swiftly and efficiently

Steps Before the Tendering Process

- Establishing a dedicated project team made up of experienced individuals
- Putting in place an appropriate legal and regulatory framework for the operation of the concession
- Establishing a clear definition of what is required from the private sector
- Launching an expert review of the financial viability of the project
- Deciding on how to handle the financing gap
- Developing a firm plan for the bidding process (timetable, the number of stages, and the objectives at each stage)

Use of Consultants

The Role of Consultants

- Providing governments with technical assistance and advice on procurement and the economic, regulatory, legal, financial and technical issues

Two Types of Consultant Contracts

- A consortium of firms under a single contract to deal with all the issues
 - May reduce the management demands on the government
 - May result in more consistent advice
 - ... but may not provide sufficient advice on complex issues
- Separate advisors under individual contracts
 - Contracting is straightforward
 - The government can coordinate them or assign one of them to coordinate the others

Consultants Can Support Government Activities Such As:

- Road Shows
 - Visiting potential bidders and make presentations on the proposed concession
- Conferences
 - Giving potential bidders information on the prequalification and bidding processes
- Data Rooms
 - Establishing a data room where all data relevant to the concession are made available for potential bidders for a specific period
- Reviewing Suggestions from the Potential Bidders
 - Allowing potential bidders to make suggestions for the bidding process can make the selection process more realistic

Incentive Schemes

How can the government provide incentives for private sector firms to participate?

- Cost sharing and pricing arrangements
- Incentive payments (*or penalties*) linked to performance standards
- Insurance arrangements
- Support the provision of guarantees
(e.g., World Bank Partial Risk Guarantee)

Cost and Risk Sharing

PPP may involve various risks including commercial, political, exchange rate risks



- The concession contract should be designed in a way that risks are allocated to the party who can best manage the risk
- Consult with potential bidders in areas where there is uncertainty about the private sector's appetite for assuming different levels of risk:
 - Alternative designs
 - Different levels of risk transfer

International Competitive Bidding (ICB)

- Ensures transparency
- Provides a market mechanism for selecting the best proposal
- Stimulates interest among a broad range of potential bidders

Single versus Two Stage ICB

Single Stage ICB

The Client prepares and issues the bid documents

Bidders offer bids containing their final technical proposal and a financial proposal

The Client evaluates the combined proposals (technical and financial)

Single versus Two Stage ICB

Two Stage ICB

The First Stage

The client prepares a first stage bidding document with functional performance specifications (not detailed technical specifications)

Bidders offer unpriced technical proposals (i.e., no financial proposal is submitted at this time)

The client assesses the bidders' qualifications, evaluates the technical proposals, and indicates what bidders should do to make their bid technically responsive

The Second Stage

The client prepares the memoranda of changes for each bidder and may prepare addenda to the bid documents, and initiates the second stage

Bidders offer amended bids containing their final technical proposal and a financial proposal

The Client evaluates the technical and financial proposals

Single versus Two Stage ICB

- The concession project is not complex and technical and performance requirements are clearly defined

Single Stage ICB

- The concession project is complex and both technical and performance requirements are not clearly defined

Two Stage ICB

Prequalification Process

The objective

- Determine, among all interested applicants, those who are qualified for the main bidding process

Required conditions

- Prequalification is strict so that the government can make an adequate selection
- Applicants are provided with sufficient information on the concession
- In the case of joint ventures, qualified small operators are allowed to join large contractors or banks to compete with traditional concessionaires

Prequalification Documents

Information to Be Provided by the Client

- Demand forecasts with the estimated revenue and demand elasticity
- Progress on various critical actions relevant to the project
- Scope of the proposed concession
- An outline of bid selection and evaluation criteria

Main Requirements to Prequalify Candidates

- The financial, technical, and managerial capacity
- Expertise to build, finance and operate the facility
- Experience of bidding successfully for similar concessions and mobilizing project finance
- Demonstrated commitment and competitive enthusiasm to participate in the main bidding process
- Experience in the host country

Examples of Prequalification Criteria

Country	Transaction	Prequalification Procedure	Technical Criteria	Financial Criteria
Mexico	Concession of rail freight lines	Registration through written statement of interest; authorization of registered parties by the Ministry of Communications and Transportation based on uniform criteria	Demonstrated legal, technical, and administrative capacity	Demonstrated financial capacity
Hungary	BOT for toll road	Invitations for prequalification based on approved preliminary design plans evaluated by expert assessment committee	Capacity of bidders to design, build, maintain, and operate toll road	Capacity of bidders to finance road without state aid

Source: Kerf and et al. (1998)

Pre-qualification for the St. Petersburg Western High Speed Diameter Motorway

Country	Transaction	Prequalification Procedure	Technical Criteria	Financial Criteria
Russia	<ul style="list-style-type: none"> ■ Concession for the Design, Construction and Operation of the WHSD Motorway ■ Estimated Cost: Euro 3 billion 	<ul style="list-style-type: none"> ■ Registration through submission of application and relevant documents, following a deposit of 500,000 Rubles ■ Deadline for submission: 28 February 2007 	<p>Minimum experience:</p> <ul style="list-style-type: none"> ■ Two 10 billion-ruble road construction projects ■ Operation of two toll motorway concessions, minimum 30 km, 20,000 pcu/day 	<ul style="list-style-type: none"> ■ Ruble 60 billion minimum annual turnover ■ Experience in mobilizing finance for PPP ■ No bankruptcy proceedings

Documents for Prequalification

The Information to Be Provided by Applicants

- Experience on the design, construction, and operation of the project
- Proposed commercial structure, if awarded the concession
- Their understanding of commercial issues
- Likely sources of financing
- Proposed scale of financial commitment and, if relevant, the level of the financial commitments of consortium members
- Likely level of financial returns sought

Documents for Prequalification

The Information to Be Provided by Applicants (Continued)

- The approach toward managing construction contracts
- Experience in competitive tendering for projects involving designing, building and operating concession
- The agreement and organization among partners in case of a joint venture
- Experience in major construction and operational undertaking in the host country
- Economic and financial history
- History of litigation or arbitration

Assessing the Financial Capabilities of Candidates in the Prequalification Process

Criteria

- The combined net worth of the applicants
 - This should exceed the sum of the equity and the quantified value of any guarantee-like undertakings by a margin that is comfortable enough for the sponsors to undertake their original business commitments
- The source and application of the bidder's funds
- The bidder's short and long-term debt schedule
- The bidder's income statements
- How well the bidder demonstrates its understanding of the key commercial and financial issues
 - Clients should indicate the minimum acceptable equity

Designing Performance Indicators While in the Prequalification Process

Clients should design performance indicators that assist in the supervision of the concession

Indicators

- Expansion of the service to be provided under the concession
- The quality of the technical operation of the system
- The quality of maintenance of concession facilities
- The quality of attention to customers
- The consistent economic and financial soundness of the concessionaire

Critical Issues to Be Addressed Before Issuing Bid Documents

- Whether the concession period is fixed, or bidders may propose the duration of the concession
- The basis upon which the concession will revert back to the government
- What sort of remedies will be applied in case of delay in commencement and completion of the project
- The degree of allowance for innovative designs by bidders
- Incentive schemes in the operation of the concession and the mechanism for their application
- Final decisions on risk sharing

Critical Issues to Be Addressed Before Issuing Bid Documents (Continued)

- Common information provision
- Final decisions on government support
- Any performance bonding or guarantee requirements
- Treatment of qualified but variant bids
- Restrictions on competing infrastructure
- Agreements on external support
- Potential reimbursement of abortive bidding costs

The Bidding Process

- Bidders should be given a minimum of five to six months to prepare their bids, depending on the complexity of the project and the levels of detail required
- During this period the Client should promptly answer bidders' questions and comments on a consistent and open basis
- The Client should hold a pre-bid conference to provide bidders with information on the government's expectations, clarifications
- New information should be provided to all bidders
- Governments should address the inconsistencies and issues identified by the bidders in the bid documents and amend the documents if necessary

Technical Specifications

Output-based specification

➔ gives bidders a scope for innovation in design and risk taking

Input-based specification

➔ may reduce costs for bidders, but transfers more risk to the government

If the government chooses output-based specification, it needs to:

- Ensure that its technical team has the relevant experience to support the government to evaluate the concessionaire's performance
- Be prepared to issue amendments to output specifications after consultations with bidders

Bid Documentation

Contents

- A detailed definition and description of the project
- A draft concession schedule
 - A technical performance specification (both construction and operations)
 - Any other key agreements (e.g., details on the government's proposed support for the project)
- Details on any external support agreed for the project (e.g., IFIs)

Bid Documentation

Bidders should be made aware that the information is provided in good faith and the government shall not be liable contractually for the information

The document should contain:

- Detailed, independently validated underlying demand forecasts and revenue projections, with assumptions and methodology used
- Survey reports including detailed soil or ground condition tests that may be relevant; detailed environmental assessment of the project
- Information on existing and proposed legislation that will affect the project (e.g., environmental regulations or guidelines)

Bidding Instructions and Information

It is important to give bidders precise information on what they need to do in order to submit a compliant tender and what will happen to the bids once they have been submitted

The instructions should set out:

- The timetable for the bid submission
- The required form of tender
- Details of any bonds and guarantees required of bidders
- Details on what bids should contain
- The precise criteria on which both compliant and variant bids will be evaluated

Bidding Instructions and Information

In general, bidders should include the following documents with their bids:

- A signed form of the tender in the specified format
- Technical proposals that identify how the bidder intends to meet the government's specifications
- A coherent and well developed commercial and organizational plan for operations of the concession company
- Financial projections and analysis demonstrating the viability of the concessionaire's operations over the life of the concession

Bidding Instructions and Information

- The assumptions on all aspects of construction and operation
- Comprehensive and detailed financing proposals together with the evidence of lending support and investing institutions
- Evidence of adequate financial resources from the bidder, other investors, and lenders to cope with unforeseen circumstances
- Any bonds or guarantees required at the bidding stage

Evaluation of Bids

- Bidders' proposals are more likely to match the government's critical objectives if the evaluation criteria are precise and transparent
 - This also enables the Client to evaluate tenders easily and rapidly
- The bids should be evaluated based on the criteria specified in the bid documents

Defining the Successful Bidder

- Objective: Selecting the bidder who offers the best proposal, according to the bid documents
- When the concessionaire might seek to impose charges in return for the services provided
 - Assess the cost to the government of the charges required by the concessionaire over the concession period
 - This can be done by calculating the present value of the charges imposed by each bidder
 - The lowest evaluated bidder in this case will be the bidder who offers the lowest present value of the charges

Defining the Successful Bidder

- Where the environment is unregulated, it is not necessary for the Client to take toll levels into account, as it may be assumed that any concessionaire will eventually adopt a revenue maximizing strategy regardless of its initially proposed toll charges
- Where no government support is necessary and all aspects of the project are prescribed in bidding documents except for the construction period, the best value for money could be offered by the bidder proposing the shortest construction period

Technical Evaluation

Criteria

- Whether the bidder's technical and management proposals are likely to meet the requirements of the performance specification
- Technical and design risks of the proposals
- The proposed construction timing and the likelihood of its attainment
- The proposed operating and maintenance procedures and the likelihood of their attainment

Technical Evaluation

Evaluation of technical aspects relating to the construction and operating period could be simplified by:

- Specifying stringent technical standards
- Providing for penalty points to be given for noncompliance
- Adopting high standards in relation to the bidder's experience

Only proposals that meet the required technical standards should be put forward for a financial evaluation

Financial Evaluation

- The Client must assess the credibility of the commercial and financial aspects of the bidders' plans over the concession period
- The underlying assumptions in each bid should be strictly reviewed
- Track records of the bidders' sponsors, financial advisors, and supporting financiers should be assessed
- The credibility of a bidder's proposal will be assessed with respect to the bidder's own capital structure and the sources and availability of funding

Financial Evaluation

- Using an adequately specified financial model, the robustness of the financial structure can be tested by sensitivity analysis to assess the ability of the bidder's projected cash-flow to withstand adverse variations in economic assumptions
- The assessment can be converted into a yes-no judgment or into a weighting sufficient to limit the risk of failure

Financial Evaluation

- If the bidder is willing to provide a guarantee for the repayment of debt, the financial structure and availability of funds need not be evaluated
- In the absence of guarantees, the government should consider:
 - The amount and nature of the subscription of equity
 - The strength and credibility of financial support from banks and institutions
 - The requirements of lenders and other project participants such as suppliers and operators
 - The realism of the bidder's revenue projections as compared with the government's projections
 - The bidder's proposed timetable for obtaining underwritten commitments

Final Financial Evaluation

Recommended Approach:

- Apply the formula or formulae provided in the bid documents and obtain the numerical assessment for each bid
- The bidder with the best score, according to the terms of the bid documents, should be declared the successful bidder
- Prepare a Bid Evaluation Report
- Invite the successful bidder for negotiations

To Be Confirmed at Negotiations:

- Private sector finance can be underwritten on terms contained in the preferred tender
- Construction and equipment supply contracts have been negotiated that reflect the terms of the concession agreement, and are executed at the same time
- The process of obtaining legal powers and ensuring other conditions are completed on time
- The government's timetable of actions and contributions is consistent with the proposed timetable
- Underwritten offers of debt finance and shareholders' guarantees are required to ensure that:
 - The financial markets are not flooded with competing financial proposals for the same concession
 - Abortive bidding costs are minimized by necessitating the completion of financier's due diligence and imposing commitment fees only after the preferred bidder has been identified

In case of World Bank financing, the Client should submit the final draft concession contract to the World Bank for no objection/comments.

Final Concession Contract

Points to Include:

- The definition of the services to be provided by the concessionaire under the contract
- The concession area
- The rights and obligations of the Client and concessionaire
- The performance indicators to the quality of the service
- The regulations to be applied
- The power of the regulator to inspect installations and books

Final Concession Contract

Points to Include (cont'd):

- The penalty for noncompliance with the concession agreement
- The tariff regime, adjustment mechanism, and process for resetting the tariffs
- The guarantees/performance bonds
- The duration of the contract
- The process for termination, renewal, or rebidding of the concession
- The dispute resolution mechanisms and applicable law

Renegotiation

Why Renegotiation?

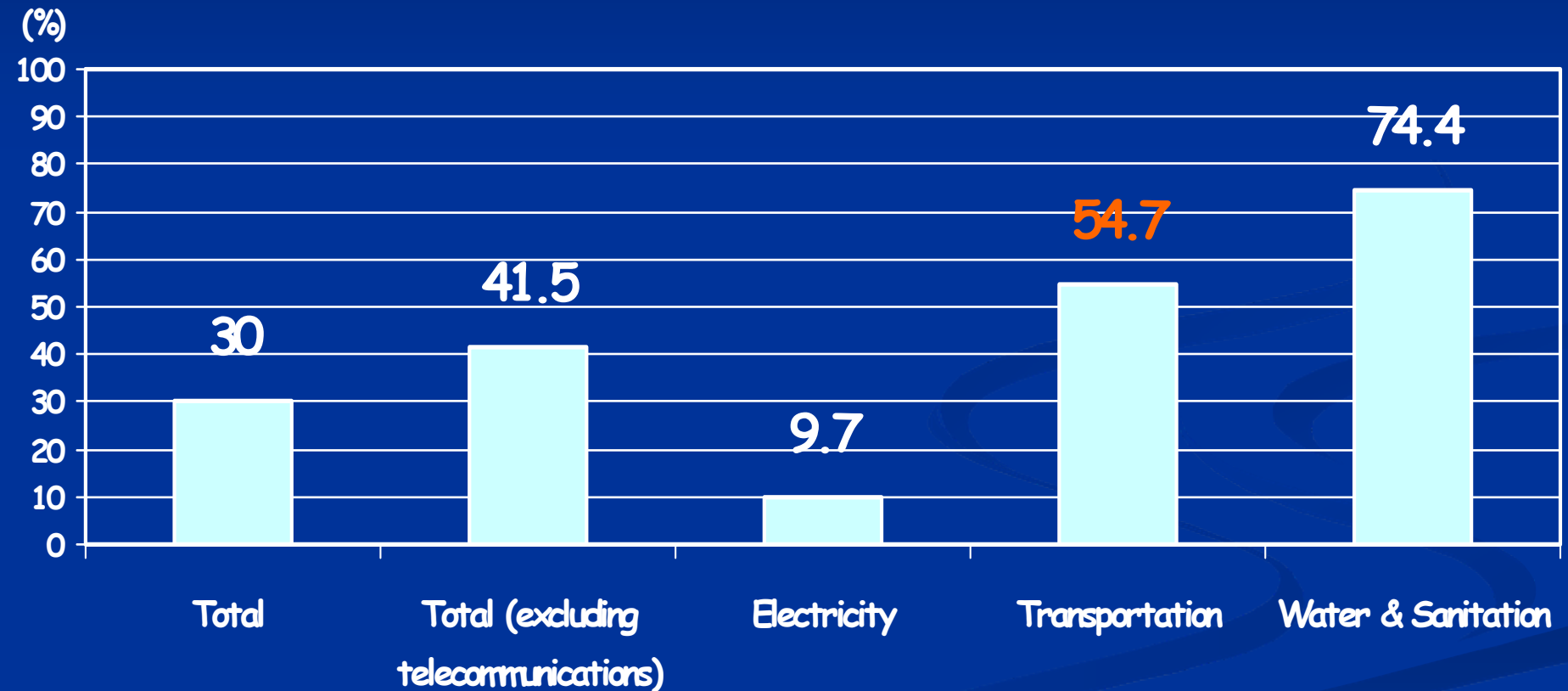
- The concession designs and regulations are incomplete
- The conditions in the original contract are largely changed
- Governments interfere with contract clauses

Cost of Renegotiation

- Undermines the competitive bidding process, consumer welfare, and sector performance
- Increases public opposition to PPP
- Compromises the credibility of the reform program

Frequency of Renegotiation

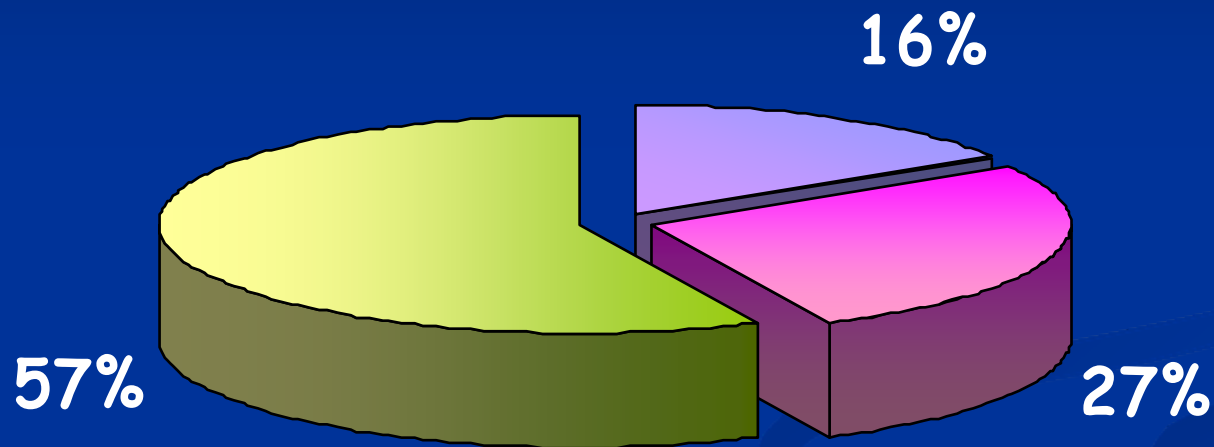
Example: Percentage of Renegotiated Contract
in Latin America-Caribbean (1985-2000)



Note: The reason for the exclusion of telecommunications is that all telecommunications projects were not concessioned but privatized

Source: Guasch (2004), based on the compiled dataset of more than 1,000 concessions granted

Who Initiated the Renegotiation?



- Both government and operator
- Government
- Operator

Source: Guasch (2004)

Unsolicited Proposals to Governments

- Origin of most controversial private infrastructure projects
- In theory, generate beneficial ideas
- In practice, some unfavorable experiences; attempt to avoid competition; exclusive negotiations behind closed doors
- Usually sole-source negotiations take much longer than expected

Should governments forbid unsolicited proposals?

- Some governments forbid all unsolicited proposals to reduce public sector corruption and opportunistic behavior by private companies
- Some governments recognize a good project idea in the tender by compensating the original project proponent

In summary...

- Avoid, to the extent possible, unsolicited proposals
- Renegotiations may undermine the competitive bidding process
- Competitive bidding leads to efficiency and economy. ICB better for larger projects
- Consider a two-stage bidding procedure for complex projects

Thank you!

Some Basic References

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Kerf and et al. (1998). "Concessions for Infrastructure: A Guide to Their Design and Award." Technical Paper no. 389. Washington, D.C.: World Bank.

Suggested steps to select the concessionaire

- Carry out prequalification
- The Grantor provides the prequalified bidders information on the concession as complete as possible (e.g., traffic studies, geometric and structural preliminary design, preliminary design of toll collection facility) to avoid the bidders incurring unnecessary time or expense seeking for clarification, and to enable them to meet the government's requirements
- The bid documents should include a statement that all such information is provided in good faith and the Grantor shall not be liable contractually for such information
- The bidding documents should include the requirements for horizontal and vertical alignments (including, for example, minimum height in tunnels, minimum clearance under bridges), number of traffic lanes, the level of riding quality to be provided by the Concessionaire during the life of the concession (e.g., maximum acceptable roughness of IRI not greater than 3 m/km), and any other parameters considered essential

Suggested steps to select the concessionaire

- The bidders offer unpriced technical proposals. The Grantor then evaluates the technical proposals
- The Grantor prepares a memorandum of changes for each bidder (indicating to each bidder precisely what must be done to make his bid technically responsive) and may prepare addenda to the bidding documents, including revisions to the technical requirements made in the light of feedback from the bidders. The Grantor invites the bidders to submit their technical and financial proposals
- The bidders offer bids containing their final technical proposal and a financial proposal
- The Grantor evaluates the technical proposals on a pass-fail basis, and selects those technically satisfactory bidders for evaluation of their financial proposals
- The Grantor evaluates the financial proposals, according to the method specified in the bidding documents (for example, net present cost to the Grantor, or specific evaluation formulae), and selects the successful bidder