

# **Regional Workshop on Public-Private Partnership in Transport**

## ***An Overview of Concession Laws***

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# Concession Law

- An appropriate concession law is fundamental for a country to establish an enabling environment for PPPs
- It can serve as a possible marketing tool for investors

# Provisions in Concession Laws

- Definition of concepts and terms
- Transparent competitive bidding
- Assurance of national treatment to foreign investors
- Assurance of compensation in the event of expropriation
- Assurance of access to international arbitration for foreign investors
- Public disclosure of concession agreements

# Provisions in Concession Laws

- The concept of “canon,” that is, an annuity payment made by the concessionaire to the government. The initial payment, or “entry ticket fee,” is usually higher than the other annual payments
- The concept of contract renegotiation, as it is better to be prepared to manage the process when renegotiation may be necessary - about half of all concessions become subject to re-negotiation

# Toll Road Concession Laws

- Many countries or states have adopted laws specifically governing the granting of concessions for toll roads (e.g., UK, Poland, France, Ukraine, State of California in USA)
- Such laws typically identify the government agency responsible for overseeing the bidding, construction, and operation of the concession projects
- Tender frequently involves a two stage process, following pre-qualification. The exact terms of the concession are then negotiated between the finalist and the government before the concession is signed

# Toll Road Concession Laws (cont'd)

- Set standards and methods of toll collection, technical specifications for the physical structure and route, the state's obligations toward the concessionaire with respect to land acquisition
- Project structure (e.g., BOT, DBFO, Availability Fee), the term of the concession, and possibly limitations on the transfer of shares to third parties until the project has been completed
- Usually address the methods of financing, in some cases including state funding as part of the concession

# Level of Compliance with International Practices Regarding Concession Legislation

- The concession assessment is part of the EBRD effort to improve the legal environment in its countries of operations
- Using a checklist, specific country assessments were carried out for transition economies
- The results for individual countries are available at:  
<http://www.ebrd.com/country/sector/law/concess/assess/>

# 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 combined proposals (technical and financial)

# 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

# Some Basic References

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Thank you!

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