

# Plenary 15: Contract Award Methods

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Thursday, 14:00 to 15:00



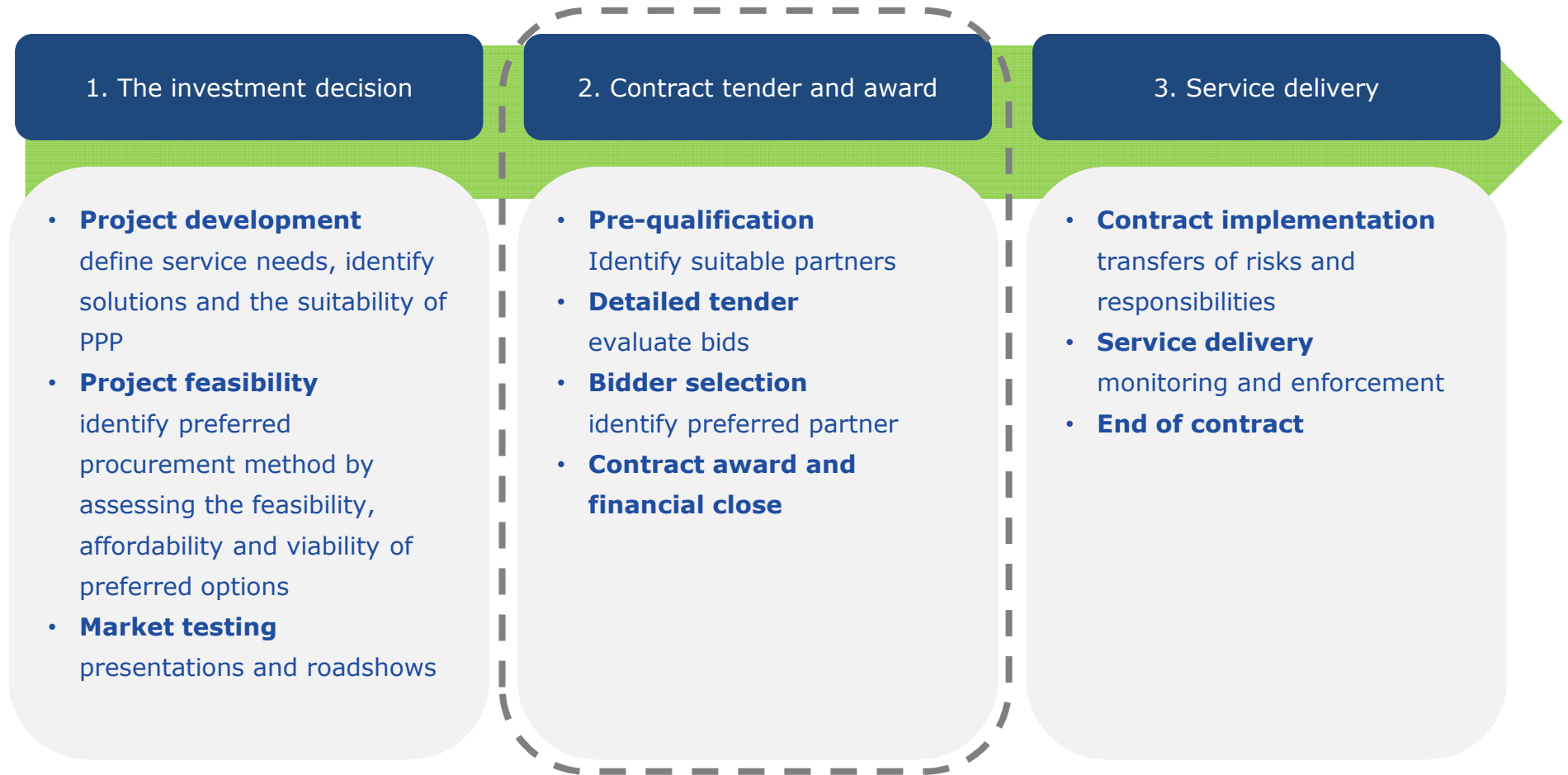
# Session agenda

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1. Contract tender and award in the PPP procurement process
2. Competitive bidding
3. Bid structure
4. Alternatives to competitive bidding
5. Summary and further reading

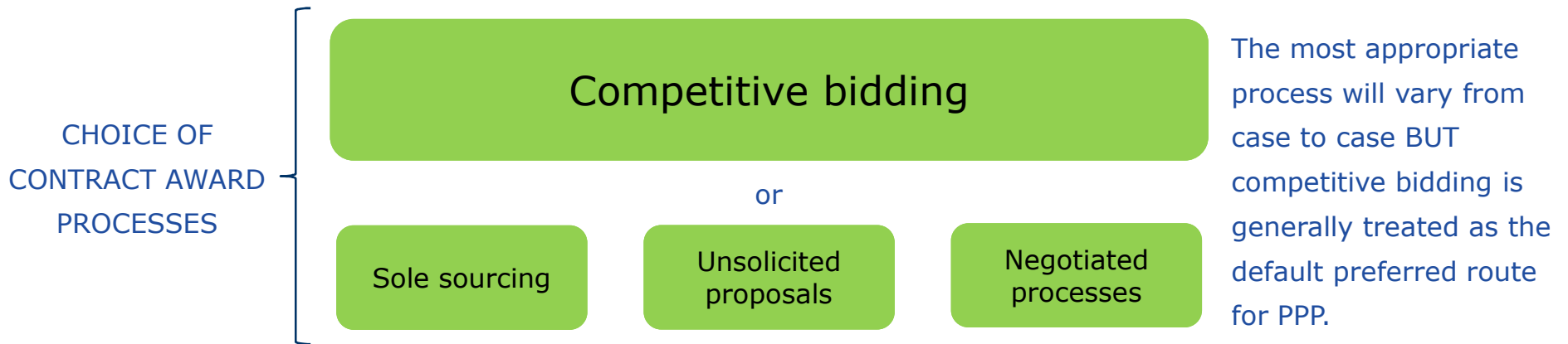
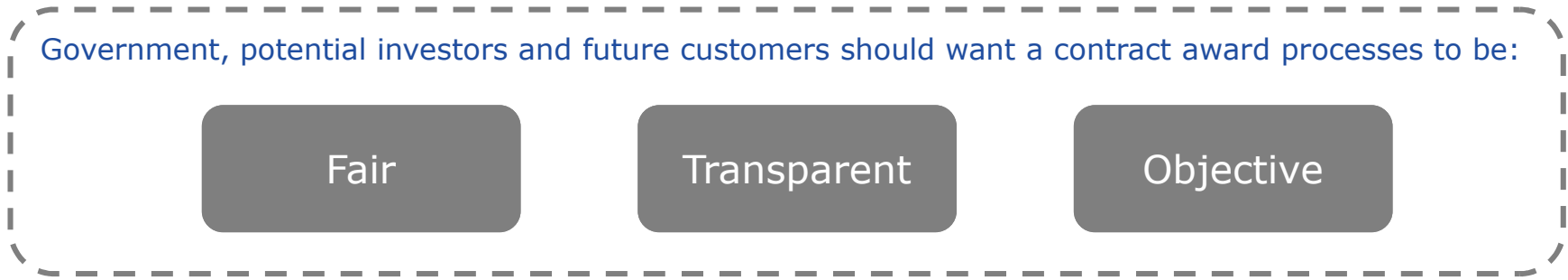
# The competitive bidding in the project procurement process

- The contract award process is an important part of the PPP procurement cycle.



# Key features of public procurements

- Once the government has identified and clearly defined a viable project (see plenaries 8 and 9 on “Project Feasibility” and “Value for money”) it must identify the private sector partner who can best implement their plans through a contract award process.



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# Competitive bidding

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- Competitive bidding is just one type of contract award process.
- The defining feature of these processes is that the procuring authority will openly publish its requirements and invite any party to submit bids.
- Bids are then assessed on equal criteria, before being awarded to the objectively best bidder (subject to meeting minimum acceptable standards).

## Why use it?

- it ensures transparency in the contract award (if performed correctly);
- it provides a market mechanism for selecting the best proposal (this is most useful when price is important and technical specifications are uniform);
- it should results in lower costs (but must be weighed against high procurement costs); and
- it usually creates interests among a wide range of potential investors.

# The competitive bidding process

- OBJECTIVE : to identify and confirm the PPP contractual arrangements and price with the private party who will work with the government

**Stylised competitive bidding process**

1. Public notice of project tendering and invitations for expressions of interest

2. Distribution of information memoranda, bidding docs and draft contracts

3. Formal prequalification of bidders

4. Formal process for presenting and evaluating proposals

**CONTRACT AWARD and Financial Close**

## Timing

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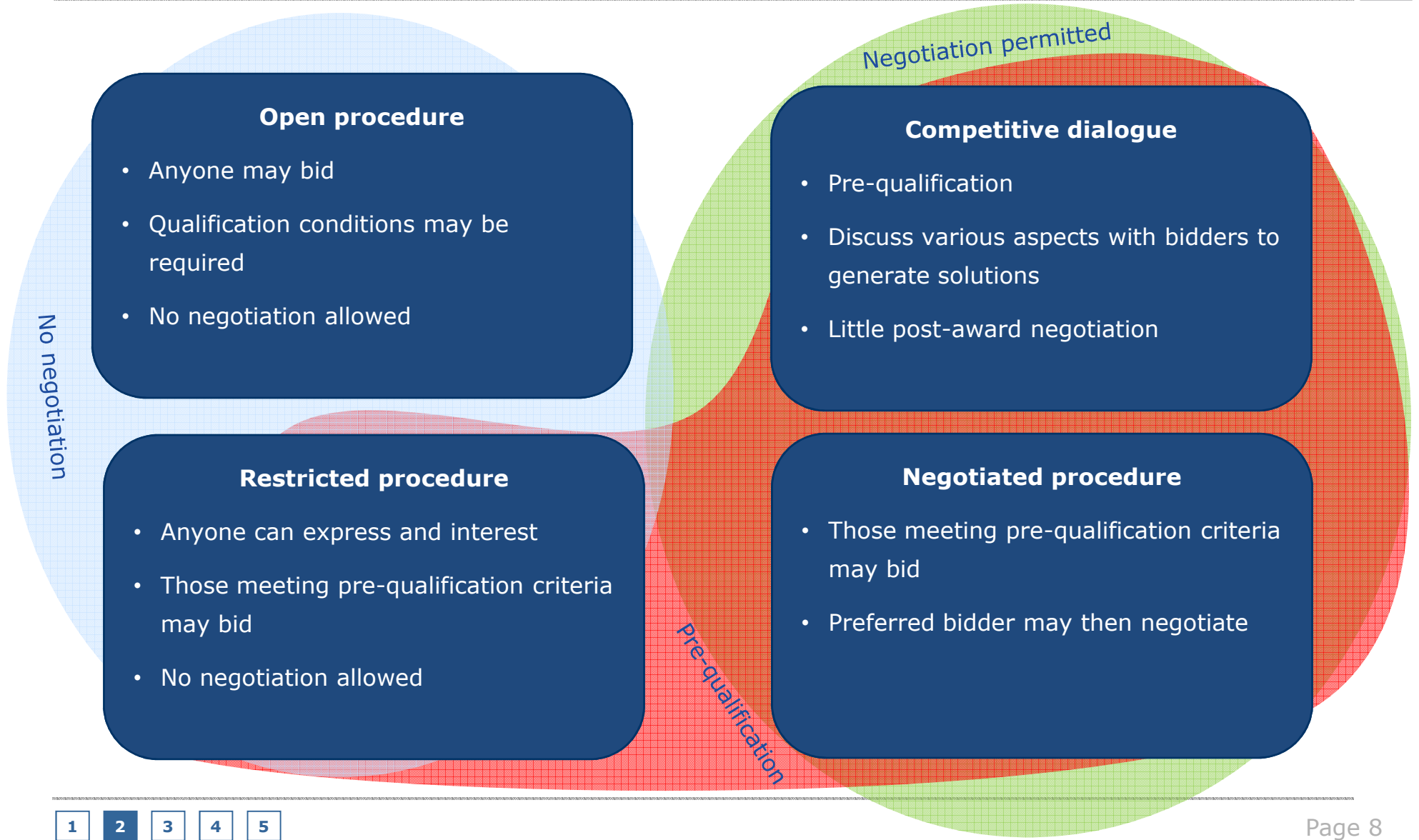
- Each phase of a competitive procurement process can take one or two months, with the whole procedure generally lasting six months to a year.
- There are many examples where the process has been delayed / stalled.
- Stages of negotiation may be difficult, time consuming and subject to delay.
- In some cases the procurement process may have to be abandoned or restarted.
- Competitive procurement has however been observed to be a faster process than sole sourced / direct negotiation transactions.
- The South African PPP manual notes an indicative timeline ranging from 41 to 103 weeks for the process, based on the particular project circumstances.

### World Bank procurement guidelines:

“**not less than six weeks** from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for International Competitive Bidding. Where large works or complex items of equipment are involved, this period shall generally be **not less than twelve weeks** to enable prospective bidders to conduct investigations before submitting their bids.”



# The competitive bidding – different forms



# The competitive bidding – prequalification

## Pros

Cost of additional bidders may exceed benefits of extra competition

Firms can be excluded to ensure minimum technical and financial capacity from the partner

Reducing the number of bidders can encourage suitable firms to put more effort into proposals

## Cons

Fewer bidders can lead to less competitive bids

Government may exclude bidders for unrelated reasons

Prequalification stages may increase the time to financial close and increase costs



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# The bid structure

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- There are many different ways to structure the bid process and each may favour particular types of bid.
- In order for the contract award process to be open and transparent, the “rules of the game” need to be set out clearly from the start. For example:
  - What technical and financial information is required? (should match procuring authority objectives)
  - Are some factors evaluated as pass/fail? (for technical elements)
  - What form should bids take? (usually defined by type of PPP)
  - How is this assessed and how are different criteria weighted? (should match procuring authority objectives)
  - How many stages are required?

# Financial bids

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- Financial proposals can take a variety of forms. For example:
  - highest concession fee (to the government);
  - lowest cost (to the government) for constructing/ operating facilities/services;
  - largest amount of new investment;
  - lowest tariff (to consumers);
  - lowest NPV of future revenue (to the developer) from the service or project; or
  - lowest subsidy (to the bidder) to operate a loss-making service.

# One or two-stage process?

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## One stage

- Bids are made against a uniform technical specification and set of service requirements.
- Technical specifications may be consulted on with bidders.
- All bids are largely financial – but may require information on the capacity of the bidder to undertake the project.
- × Does not take advantage of innovative private sector technical proposals.
- × Less risk transfer can be achieved.

## Two stage

- A separate technical proposal is evaluated before financial offers are opened.
- After removing bidders with unacceptable technical standards, the contract is awarded to the bidder with the best financial proposal or based on a weighting of technical and financial scores.
- × Greater discretion for procuring authority.

## Pakistan's experience of competitive procurement

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- Private Power and Infrastructure Board initiated a competitive tendering process for three private power projects in 2004:
  - 400-500MW UCH-II Power Project;
  - 450MW Faisalabad Power Project; and
  - 350–400MW Power Project near Lahore.
- 25 year PPA two part tariff for capacity and energy purchasing.
- Only the first of these appears to be still moving ahead.

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## Alternatives approaches – The issue of unsolicited bids

- Public authorities may receive ‘unsolicited proposals’ or proposals from private sector consortia, made without the issue of any formal tender request.
- The government has no obligation to accept or even look at these proposals.

### Benefits

- The private sector may generate innovative plans for feasible projects that fit into the country’s strategic infrastructure plan and the government may wish to take them forward.
- Approved unsolicited proposals can harness the benefits of private sector creativity.

### Costs

- If consortia providing the proposals have too strong an advantage in being awarded the contract to implement their plans, the result can be a non-transparent, potentially corrupt or uncompetitive tender process, that generates projects with **poor value for money.**

## Managing unsolicited proposals a

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- Authorities need a clear framework in place to deal with the ad hoc nature of unsolicited proposals.
- There is no one-size-fits-all policy and each authority must find its own balance of incentives to develop projects and mechanisms to ensure transparent and competitive award of the final contract.
- While the best solution will vary from situation to situation, there are three broad options:
  - total ban;
  - proposal cost reimbursement; and
  - providing an advantage in an open bidding process.

### **Option 1:** Total ban

- Where it is unlikely that there could be a transparent and competitive bidding process the best policy may be a total ban.
- They cannot be used for World Bank funded projects.

# Managing unsolicited proposals b

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## **Option 2:** Proposal cost reimbursement

- Governments must accept that developing proposals is costly and time consuming. Awarding the unsolicited contract will not always be efficient.
- Therefore the government may purchase the proposal / concept and then tender it competitively.
- ✓ Guarantees some payment and they do not lose out completely if a competitor is awarded the contract.
- ✓ Encourages bids from small companies along with large ones that can afford to play the odds.
- × Difficult to set the level of reimbursement for each project, trading off the risk of having to pay for numerous poor proposals, with ensuring the generation of high quality projects.

# Managing unsolicited proposals c

## Option 3: Advantage in an open bidding process

- This has been done in three main ways:

### Bonus System

- e.g. Chile and South Korea
- The original proposer may be awarded a defined advantage in the bidding process e.g.:
    - bonus technical or financial proposal points; or
    - financial advantage (e.g. win if bid is within x% or \$x higher than others).
  - The bonus may scare away other bidders from the auction, leading to fewer competitive bids.

### Modified Swiss Challenge

- e.g. Philippines, Italy, Taiwan, Guam and India
- Other parties may be given the opportunity to make better offers than the original, with no allowance for bonuses.
  - The original firm then has the opportunity to counter their offer.
  - Often little time for counter offers to be prepared, discouraging firms to bid.
  - This approach may encourage aggressive bidding to deter the original proponent and then an expectation of renegotiation.

### Best and Final Offer

- e.g. South Africa and Argentina
- This system is a hybrid of the previous two.
  - This involves multiple rounds of tendering.
  - Unless the proposer has already won the contract, it is always given access to a final bidding round (even if they have not submitted the most competitive bids up to that point) where all bids are assessed on equal terms without bonuses or pre-determined advantages.

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# Summary

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- Competitive tendering is the main contract award method for PPP.
- There are many variants of this approach, which need to be tailored to each project's objectives as well as the procuring authority's capacity.
- Bidding structures must be clearly structures from the outset to ensure transparency and fairness.
- Unsolicited proposals may be damaging in many circumstances but it is possible to implement a framework to take advantage of their benefits if a fair process can be implemented.

## Further sources

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### Online

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