

Chapter 3

Selection of PPP Partner



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3.1 Bidding Process

Ministry of Finance issued (November and December 2007) two Guidelines for Invitation of Financial Bids and for Pre-qualification of Bidders for PPP Projects. The bidding process for PPP projects is held in two stages, viz., Request for Qualification (RFQ) or Expression of Interest (EoI) and Request for Proposal (RFP) or invitation of Financial Bids. The RFQ process is aimed at short-listing and pre-qualifying applicants who have the requisite technical and financial capacity for undertaking the project. The RFP process is aimed at obtaining financial offers from the bidders pre-qualified at the RFQ stage. The financial offer constitutes the sole criteria for selection of a bidder and the project is awarded to the bidder quoting the highest revenue share/premium.

Though the guidelines were silent on the time frame within which the bidding process was to be completed, MoS envisaged a time frame of 11 months from bidding to signing of agreement in the 'Pre-award Stage Monitoring Report' issued for compliance by Major Ports.

Audit findings on tendering process are summarized below:

3.2 Skewed Selection Process

We noted several inconsistencies in bidding process and selection of concessionaire having significant implications on revenue sharing arrangements. A few illustrative cases are narrated below:

3.2.1 Cochin Port Trust (CoPT) invited (January 2004) RFQ for construction, operation and maintenance of International Container Transshipment Terminal (ICTT) and LoA was issued (September 2004) to DPI based on its offer of highest revenue share of 33.30 *per cent* of gross revenue. The CA was signed with India Gateway Terminal Private Limited (IGTPL) (SPV formed by Dubai Ports International (DPI)) in January 2005.

Audit observed that as per the RFP, the bidder was to operate Rajiv Gandhi Container Terminal (RGCT) and start development of ICTT only when the traffic at RGCT reached the limit of 4 lakh TEUs per annum. In case this limit was not achieved within six years of award, the bidder was not contractually obliged to construct ICTT and RGCT was to be reverted to CoPT after the contractual period of 8.5 years. Subsequently, CoPT realized that the bidder might operate the berth for 8.5 years without exceeding the 4 lakh TEU limit and thereby evade the contractual obligation of constructing ICTT and requested DPI for early migration from RGCT to ICTT without linking it to the achievement of traffic at RGCT. In lieu of this deviation from the tender conditions, CoPT offered the following concessions from the RFQ terms, at the request of DPI, having a financial implication of ₹40.23 crore while signing the CA:

- (i) Payment of upfront fee in instalments spread over eight years;
- (ii) Reduction in the upfront payment to compensate for the short period use of existing equipments at RGCT;

- (iii) Deferment of 25 *per cent* of the royalty payable to the port for eight years;
- (iv) Relaxation in license fee for Q-7 berth;
- (v) Relaxation of height restriction at RGCT for operation of cranes

The Management replied (November 2014) that the possibility of getting a better offer if formalities were undertaken once again was duly considered by the Board while recommending the proposal to the Government. Management further stated that the concession of ₹40.23 crore was only 0.5 per cent of the NPV of entire revenue under the project.

While accepting the audit observation, Ministry (October 2015) stated that award of the project with the concessions under the circumstances was a conscious decision taken by the Government to prevent the concessionaire evading the contractual agreement of migration to ICTT by not exceeding the traffic limit of 4 lakh TEUs at RGCT and thus subverting the entire process from structuring to award of the project. During Exit Conference, Ministry further stated that reasons for the project running at lower capacity were extraneous.

The fact that port was compelled to extend post tender concessions to the bidder to ensure early migration to ICTT confirms that the sharing of risk and incentives were uneven between the port and the PPP partner initially. Even after migration to ICTT, the additional expected benefits out of the post bid concessions could not be achieved as the terminal operated at 35 *per cent* capacity. Such post tender concessions vitiate the sanctity of tendering process.

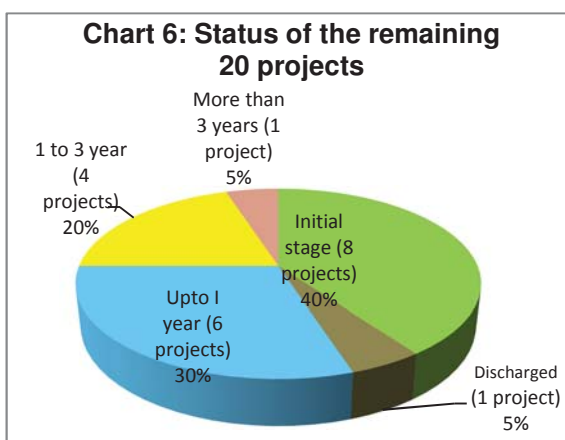
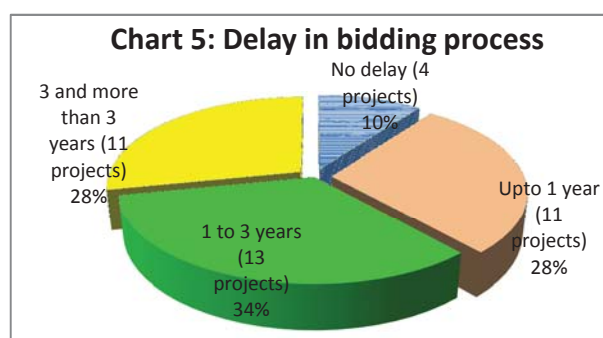
3.2.2 JNPT invited RFQ (March 2009) for development of Fourth Container Terminal on DBFOT basis and seven bidders were shortlisted (June 2010) from the nine applicants. Board approved (September 2011) the highest bidder, (consortium led by PSA Mumbai Investment Private Ltd. (PSAMIPL) with 74 *per cent* shareholding and ABG Port Private Ltd. (ABGPPL) with 26 *per cent* shareholding), with a revenue share of 50.828 *per cent*. Sterlite Industries was H-2 with 35.51 *per cent*. However, PSAMIPL requested twice (October 2011 and December 2011) for extension of time for signing the CA, citing reasons like refusal to pay stamp duty and registration fee (March 2012) and for change in composition of consortium (April 2012). After a delay of 14 months, JNPT cancelled letter of award (LoA) (October 2012) and RFQ was re-invited (June 2013). On a reference in this regard, Solicitor General opined that PSAMIPL could not be debarred from fresh bidding. The RFP was issued (December 2013) and PSA Bharat Investment Private Ltd. (PSABIPL) with a revenue share of 35.79 *per cent* stood H-1 again. The LoA was issued in February 2014 and the CA was signed (May 2014) with PSABIPL.

Audit observed that, LoA was issued to the consortium of PSAMIPL and ABGPPL at the first instance, disregarding an adverse report on the performance of ABG at KPT. Subsequently, PSAMIPL delayed the signing of CA to the extent that JNPT had to withdraw the LoA after 14 months. However, as PSAMIPL had not backed out from the project execution on its own, it was allowed to participate in the re-tender and could again bag the award with 35.790 *per cent* compared to earlier bid of 50.828 *per cent*.

Ministry stated (October 2015) that a direct comparison of the revenue share percentage offered by the same bidder on re-bid with that offered and accepted in the first bid was not tenable as the project on re-bid was restructured based on revised estimates of project specifications, scope and cost. Also, the revenue share of 35.79 per cent obtained on re-bid was in line with the current range of around 30–35 per cent for PPP projects in Major Ports and also validated the apprehension that the aggressive revenue share offer of 50.828 per cent was not sustainable. Ministry further added that the port had encashed the bank guarantee of ₹67 crore towards bid security as liquidated damages and issued a demand notice for ₹446.28 crore to PSAMIPL for the revenue lost due to late signing of the agreement and the matter was under arbitration.

3.3 Delay in Bidding Process

Out of the 61 projects reviewed, CA had been executed only in 41 projects 39 of the 41 projects went through the bidding process and the remaining two projects were allotted on nomination basis. Audit verified the time taken from the date of issue of RFP to signing of the CAs and found that in 11 projects it took three years and more for signing of the CA. The



time taken varied between one and three years for 13 projects and upto one year for 11 projects. Only in 4 projects the CAs were signed within the stipulated period of 11 months. The position is depicted in **Chart 5**.

Out of the remaining 20 projects eight projects are in initial stage (December 2014) where tender is not invited, 11 projects are under tendering stage and one project (MPT) was discharged due to non-obtaining of environmental clearance. In eight out of the 11 projects under tendering, CAs could not be signed even after lapse of time ranging from six to 61 months beyond the time frame of 11 months. The position is depicted in **Chart 6**.

The main reasons for delay in tendering were analyzed as follows:

- Protracted time taken by ports for finalization of tenders, which was as high as up to 61 months (Multi Cargo Berth 15 and 16 at Kandla Port Trust (KPT)) ;
- Time taken by MoS for obtaining environmental clearance in three cases, which went up to 33 months (Development of Dry Bulk Terminal off Tekra near Tuna at KPT);
- Time taken by MoS for formal sanction of projects/CA provisions in three cases, which went up to 22 months (Multi Cargo Berth 5 and 6 at MPT);

- Time taken by MoS for obtaining security clearance of prequalified bidders in three cases, which went up to 13 months (Multi Cargo Berth 13 at KPT);
- Time taken for obtaining formal approval of the project from PPPAC and Competent Authority in five cases, which went up to 20 months (Development of Dry Bulk Terminal off Tekra near Tuna at KPT);
- Litigations by bidders during tender process in three cases, which delayed the projects up to 48 months (Extension of Container Berth north of Nhava Sheva (India) Gateway Terminal Private Ltd. (NSIGT) at JNPT).

Delay in bidding and selection of PPP partner leads to delay in implementation of PPP projects and consequential delay in achievement of planned capacity and revenue loss.

Ministry stated (October 2015) that the status of implementation of PPP projects is regularly reviewed by Government and corrective action to remove any bottlenecks are taken due to which there was substantial improvement in the timelines for grant of security/environmental clearance.

The reply of the ministry confirms the fact that there were delays in bidding process in the cited cases. Considering the limited number of players in the field, Ministry should evolve a system of clearance of potential bidders to avoid subsequent delay in obtaining statutory clearances like security etc.

Recommendation 2: *Scope of Project offered to the private operator should be carefully determined and should not be varied after bidding as this vitiates the sanctity of the bidding process.*

Recommendation 3: *The Ministry/Port should ensure adherence to the time frame fixed for completion of the bidding process from issue of tender to signing of CA.*