



MEETING European PPP Units

Topic 1: Procurement process

COMPETITIVE DIALOGUE AND BIDDING COSTS



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Competitive Dialogue: PPP's Regulatory Framework

Five memos about Competitive Dialogue (CD)

1

Definition: CD in art. 29 and recital 31 Directive 18/04/EC and Explanatory note 5 october 2005

2

Contracting Authorities (CA): Regulator of PPP's market and in the meantime Player side-demand

3

CD Procedure: is a negotiated procedure among others in the Directive 18/04/EC + “Free Style Procedures”

4

CD Rules: is a regulation with a large-meshed net; CA must use a discretionary power to set up final procedure discipline

5

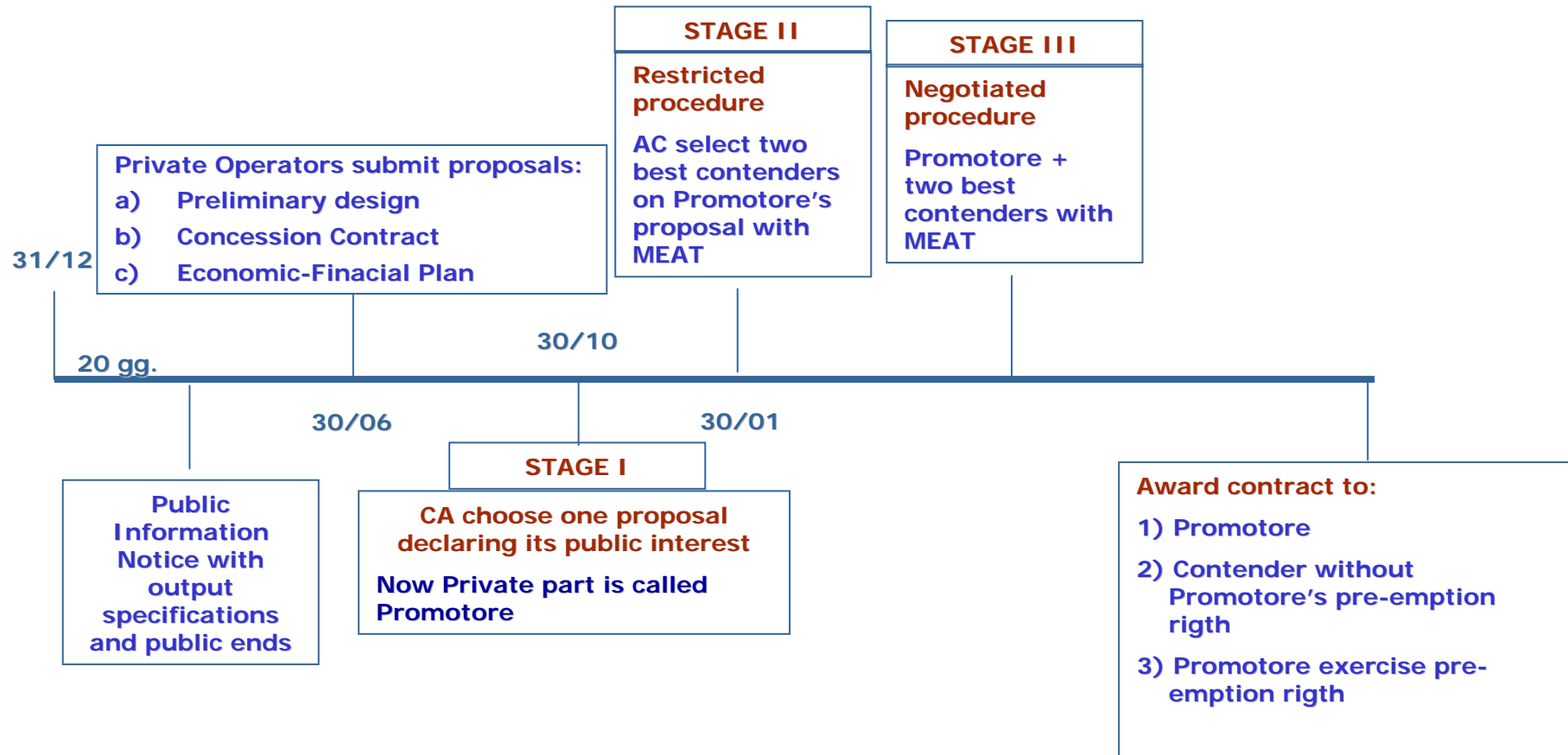
CA Designer: it is possible design ex ante several routes of CD depends a) the ends bear in mind; b) capabilities to manage process

Main Questions: 1) Is bidding costs reimbursement necessary ?

2) Which is the proper device to face them?

3) How it works with different CD procedures designed ?

Bidding Costs: a lesson from Promotore's italian way



This set of rules depresses competition, nearly 98% contracts have been awarded to Promotore:

- a) Pre-emption righth***
- b) Bidding cost (2.5% total investment) only for Promotore***

GRC: intelligent clause bidding costs reimbursement for contenders

GRC: Gain Redemption Clause

Two conditions to be active

Promotore exercise pre-emption righth

Tendering process reach a certain amount (X) of savings

If happened it is a success for CA

Reimbursement Bid Costs to Contender deprived of PPP contract awarded is a “% of X savings”

- Lesson learned:**
- 1) necessity bidding costs reimbursement for competitive pressure
 - 2) the reimbursement mechanism should be dynamic, to establish when proposal is complete and CA can look inside
 - 3) It consents to avoid “Cherry Picking Syndrome”

Competitive Dialogue: “Chinese Walls” and GRC

Chinese Walls Solution

1

CA after dialogue phase identifies three solutions corresponding three selected candidates

2

CA asks to the candidates to submit BAFO on owns tender

3

GRC cannot work and BAFO should not obtain improvements in tenders’s value for money

4

The trade off of Chinese Walls scheme, between low degree of judicial litigation and gaining value for money, inclines for the first one

5

Chinese Walls Solution suits for CA beginner in implementig CD procedure

Competitive Dialogue: “Promotore’s Italian Way” and GRC

Promotore’s Solution

1

CA after dialogue phase identifies three solutions corresponding three selected candidates

2

CA selects and improves one solution and declared it of public interest and calls Promotore the candidate selected

3

CA open a tendering process, on the basis of selected solution after a proper disclosure of the documents to others candidates, asking contenders to submit BAFO; then evaluating these tenders with MEAT

4

GRC: 1) Contender awarded gives to Promotore bid cost % of investment in case he is not the best tenderer (the cost to be shown in EFP; 2) CA gives to the others bid costs as a % of a global economic saving obtained by BAFO through GRC clause

Competitive Dialogue: “Patchwork” and GRC

Patchwork Solution

1

CA after dialogue phase selects three candidates corresponding three proposals, each composed of different solution (see recital 31 Directive 18/04/EC)

2

CA creates a new proposal using the different solution in convenient mix

3

CA open a tendering process on the basis of created solution after a proper disclosure of the documents, asking contenderers to submit BAFO, evaluating by MEAT

4

GRC: 1) CA gives to the competitors, whose solutions covered by copyrights they must cede to CA, a sum to be shown in EFP; 2) GRC: CA gives to the others bid costs as a % of a global economic saving obtained by BAFO through GRC clause

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