

HUNTON
ANDREWS KURTH

Competitive Tenders for IPPs in Africa A Practical Guide





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1. INTRODUCTION

Access to affordable and reliable electricity plays a critical role in economic development, poverty reduction, and the preservation of the environment. Unfortunately, approximately 1.1 billion people around the world live without access to it.

A recent analysis of studies by the International Renewable Energy Association demonstrated that over 250 GW of additional generation capacity, together with the transmission and distribution infrastructure that are necessary to deliver that capacity to end-users, would need to be constructed in Africa alone during the period from 2017 until 2030 in order to meet the growing unmet demand for electricity.¹ At an assumed cost of \$1.5 million per MW of capacity, this equates to an investment of approximately \$275 billion in additional generation capacity alone.

Governments and international financial institutions have many priorities. However a reliable and affordable energy supply is the bedrock of any modern industrial society and increased investment and economic growth in other sectors further enhances the demand for energy. Still, governments and policy planners must balance the need for new power assets against other competing priorities such as the need for basic infrastructure (such as roads, ports, and airports, water and sewer systems) and social infrastructure (such as hospitals and schools). Electricity is unique among these infrastructure needs because electricity is a saleable item that is capable of generating the revenues that are necessary to support investment and the public is, in general terms, willing to pay reasonable rates for reliable electricity service.

Since the 1990s, Independent Power Projects (IPPs) have been developed in many emerging market countries.

¹See, e.g., Africa 2030: Roadmap for a Renewable Energy Future, available at: <http://bit.ly/2gMXRtw>.

Offtakers continue to procure capacity through direct negotiations in spite of clear evidence that procuring IPPs through competitive tenders tends to materially reduce the levelized cost of electricity generated by IPPs.

The first IPP in Sub-Saharan Africa (SSA), for example, was developed in 1994 in Cote d'Ivoire. As of December 2016, there were 126 IPPs in 18 countries in SSA. IPPs now account for 25% of the generation capacity in SSA (excluding South Africa).²

Although the number and capacity of IPPs in SSA has grown remarkably over a short period of time, even growth at this robust level has been inadequate to meet the growing demand for electricity on the subcontinent. Although the development of IPPs has been hindered by many factors, the lack of clear and transparent procurement processes stands out as one of the single most important limiting factor. The majority of the capacity from IPPs that has been procured in SSA to date has been procured through direct negotiations between the offtaker and the developers.³ Offtakers continue to procure capacity through direct negotiations in spite of clear evidence that procuring IPPs through competitive tenders tends to materially reduce the levelized cost of electricity generated by IPPs.⁴

Sometimes there are valid reasons for an offtaker to procure an IPP through direct negotiations. By far the most common reason we hear offered is that competitive tenders for IPPs (and for other complex infrastructure projects) are too complex and time-consuming, with too uncertain

²Independent Power Projects in Sub-Saharan Africa by Anton Eberhard, Katharine Gratwick, Elvira Morella, and Pedro Antmann, 2016, pg. xvii. Hereafter, Eberhard, 2016.

³Eberhard, 2016, pg. xxxvi.

⁴See, e.g., Eberhard, 2016, pg. 89.



an outcome. Other reasons advanced include the need for speed and urgency in delivering particular projects, the ability to leverage on previous commercial relationships with developers, and the uniqueness of the technology involved making it unsuitable for competition. Although competitive tenders for IPPs must be well structured in order to achieve the desired outcome, they are not inherently more complex than direct negotiations, and they need not be (and usually are not in our experience) more time-consuming or uncertain than direct negotiations, which suffer from their own set of complexities and uncertainties. It should also be noted that in many jurisdictions the procurement laws either forbid entirely procurement by direct negotiation or allow it only in very limited circumstances. Thus direct negotiations may not be an option open to many offtakers.

In this *Practical Guide to the Promotion of IPPs*, we will examine the collection of practices that are, in our view, the best international practices for the promotion of IPPs through a competitive tender in emerging markets generally and in Africa in particular. These practices should be tailored to meet the requirements of the applicable law in effect in a particular jurisdiction and the circumstances that are unique to the country, the offtaker, and the project (or projects) that are being procured. Having said that, they should provide a robust framework from which to begin.

We recognize that in many countries the offtaker is not responsible for procuring Power Purchase Agreements. That function may be performed by the sector regulator or by a ministry or department of the host government. In spite of this, as a general matter this guide will speak as if the offtaker is conducting the competitive tender.

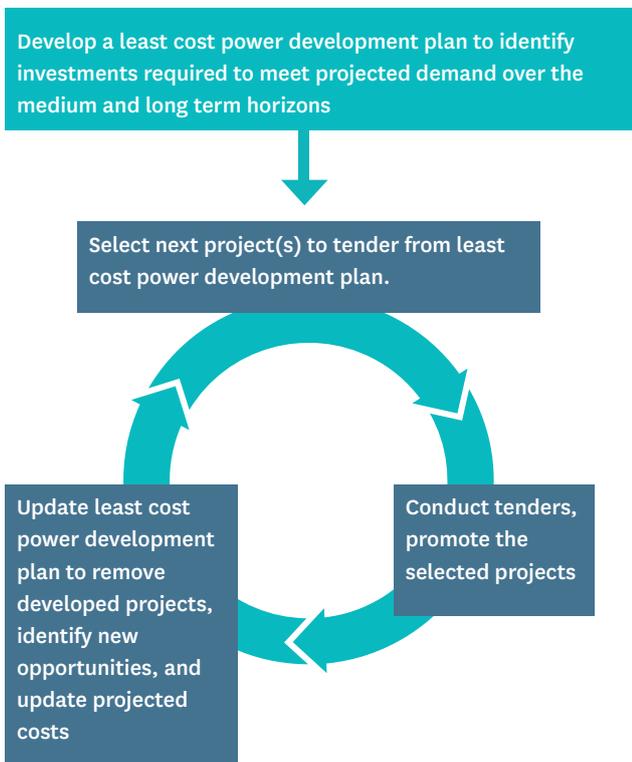
2. THE PREPARATION PHASE

Least cost generation planning

At any point in time in any given country, there will be a wide range of generation projects that could be developed. These projects will use a range of fuel sources and technologies. They will require varying investments in other sub-sectors in the electricity value chain, such as in transmission infrastructure and in fuel transportation and processing infrastructure. They may offer different patterns of availability and reliability. And, they will undoubtedly have very different costs.

In order for an offtaker to make informed choices on which of these projects should be developed, it will need to use a comprehensive planning tool such as an integrated resource plan or least cost power development plan. These tools are capable of identifying the type and quantum of investments that will need to be made in order to meet the projected electricity demand at the least cost over a given time horizon, taking into account related policy objectives such as security and reliability of supply, environmental sustainability, and the use of indigenous resources.

Figure 1 – The least cost power development plan cycle



These planning tools should identify the next least cost generation projects that can be developed from among the alternative projects that are available to be promoted. They should calculate the net present value of the investments required and the operating expenses that will be incurred, and convert those costs into the levelized cost of electricity per kWh so that valid comparisons can be made across potential projects. Without some estimate of the levelized cost of electricity from different potential projects, an offtaker will not have a mechanism for determining whether a given project will provide value for money or should be abandoned in favor of the development of another project. As technologies advance, the estimated cost of individual projects changes, and estimates of changes in the demand for electricity are refined, integrated resource plans and least cost power development plans should likewise change so that sector participants and regulators will be able to make decisions that are informed by up to date projections and estimates. In many countries, the legislation that governs the electricity sector requires the system operator, transmission licensee, or regulator to prepare and make regular updates to these planning tools.⁵

Conducting appropriate due diligence

After the offtaker, system operator, or regulator (or other entity that is responsible for doing so under applicable law) has used the sector planning tools discussed above to identify the need for additional capacity and the next least cost generation project that should be developed, the offtaker and its advisors should begin preparing to conduct the competitive tender. Although in some countries a sector participant other than the offtaker may be responsible for conducting competitive tenders to procure additional generation capacity, this guide assumes that the offtaker is responsible for conducting these tenders. If another sector participant is responsible for conducting these tenders, then some adjustments to the practices described herein may be necessary.

The first step in preparing to conduct a competitive tender is to conduct a level of due diligence that is appropriate under the circumstances. The level of diligence required

⁵ See, for example, the Regulations for the Procurement of Generation Capacity, 2014 issued by the Nigerian Energy Regulatory Commission. Section 6.1 of those regulations requires the system operator to prepare annual reports that include projections for the demand and supply of electricity across the Nigerian electricity sector.

may vary depending on the experience and track record of the offtaker in promoting IPP projects and the nature of the project at issue. Projects that are ground-breaking in nature or that are particularly complex will require more thorough due diligence. Projects that follow previous successful tenders may require less due diligence because many of the issues that will arise will have already been identified and a conceptual structure for addressing them will have been developed.

The primary purpose of conducting due diligence prior to launching a competitive tender is to confirm the overall viability of the project. This requires due diligence principally in respect of the legal, technical, finance, tax and accounting, and social and environmental matters that are likely to arise in connection with the development of the project. In terms of legal due diligence, a prospective offtaker should consider conducting diligence in respect of:

- (a) the legal and regulatory framework governing the electricity sector;
- (b) the legal and regulatory framework governing the supply, processing, and transportation of the primary fuel (in the case of thermal plants), riparian rights (in the case of hydroelectric projects), or the primary energy source (in the case of projects fuelled by other primary energy sources);
- (c) the legal framework governing public procurement and the procurement of public-private partnerships (PPPs);
- (d) the corporate laws that will govern the organization of the project company and the relationship of the shareholders in the project company;
- (e) matters related to spatial planning, land use, building and construction and similar permits, and obtaining title (or another form of right to use) to the land required for the project;
- (f) laws concerning the preservation and conservation of the environment, including any applicable international conventions;
- (g) the standards of international lenders and international financial institutions in relation to the social and environmental impacts of the project and the mitigation thereof;
- (h) employment and collective bargaining matters;
- (i) considerations related to foreign investment and financing;

- (j) the legal framework that governs the provision of the insurance the project company will be required to maintain over the project and its operations;
- (k) competition and anti-trust matters;
- (l) dispute resolution, notably including the enforcement of foreign arbitral awards and the extent to which the sovereign may waive sovereign immunity against judgements and enforcements, and the attachment of its assets; and
- (m) taxes and duties, and the availability of tax concessions.

The foregoing list is a starting point, not an exhaustive list. In terms of the practicalities of conducting legal due diligence, the standard process involves the international and local law firms engaged to advise the offtaker submitting a due diligence questionnaire to the offtaker, the ministry responsible for setting policy in the sector, the sector regulator, and the other agencies involved. Following the receipt of responses (and responses to follow-up questions) the advisors then prepare a due diligence report that explains the legal and regulatory background in each of the areas listed above, and identifies areas of potential concern that should be addressed through the tender process, the allocation of risks in the project agreements, or in rare cases, by changes to the law.

Choosing and utilizing advisors

Selecting and engaging with the right set of legal, technical, financial, other advisors is critical to the promotion of any IPP. As an example, the management team of one IPP currently under construction in Sub-Saharan Africa estimated that the advisors to the sponsors and the lenders alone spent 76,000 man-hours advising on the project from the start of development through financial close. Of this total, approximately 80% was spent on legal and financial advice. Although this is perhaps an extreme example, and although an offtaker and host government are parties to a smaller number of agreements than the project company in a typical IPP and therefore should rightly expect to need less advice, this is indicative of the scale of the advice that can be required for complex first-mover projects. It is worth noting that this project was directly negotiated, not competitively procured.

The advisors to the offtaker (and the government in most cases) – led by the legal team – are usually tasked with developing the Implementation Agreement (also known as the Concession Agreement), Power Purchase Agreement, and related project agreements, which will

be attached to the Request for Proposals (the “RFP”) released by the off-taker. As a result, the advisors to the off-taker and the government play a key role in structuring the project and allocating the risks among the various parties. The project’s structure and risk allocation must be well considered and fair and balanced in order to attract investment. This requires that the advisors to the off-taker and government understand not just the objectives and concerns of their own clients, but also the objectives and concerns of investors, lenders, EPC contractors and equipment suppliers, operations and maintenance providers, fuel suppliers (and their lenders, contractors, and suppliers), and other project participants. Advisors that are only capable of seeing and reacting to their client’s positions and are asked to develop project structures that do not appropriately balance risks in order to incentivize investment and attract financing are unlikely to truly serve the long-term interests of their clients well. The astute off-taker or host government will seek for experienced advisors that have a well-established track record of advising on the development of IPPs.

Securing high-level government support for the project

Although IPPs bring many benefits to emerging market electricity sectors, like all large infrastructure programs, they are bound to attract some level of opposition, including opposition from vested interests, be they well-intentioned or otherwise. Strong backing at the political level is often required to overcome these interests. Experience has repeatedly shown that these projects need a project champion. By that, we mean someone with gravitas who is well briefed on the benefits the project will bring and the challenges it will face. Someone who is well placed to hear and understand the concerns that will inevitably be raised by opponents of the project, and bring those concerns to the attention of the project team so they can be addressed as best as is possible. Someone who can clearly and consistently highlight the benefits and explain how the challenges and concerns will be addressed.

Many a project has failed due to the lack of a such a patron. An off-taker, ministry, or department that plans for success will look to identify a project champion early on in the process of promoting a project.

Securing support from development finance institutions and export credit agencies

One of the more significant problems that utilities in emerging markets face is a lack of access to capital (in the



form of both debt and equity) on reasonable terms. The utilities in Sub-Saharan Africa provide a great example. Excluding South Africa, none of the utilities in Sub-Saharan Africa have an investment grade credit rating. As a result, they are not as a general rule able to raise sufficient levels of debt at affordable rates in order to make adequate investments in generation (or transmission or distribution). IPPs are a solution to this problem. Although IPPs have been developed in 18 countries in Sub-Saharan Africa (excluding South Africa) none of the off-takers or the sovereigns have an investment grade credit rating. In spite of this, the vast majority of the capital made available to finance IPPs in those countries has been invested or lent on reasonable terms.

One of the keys to the availability of debt on reasonable terms has been the widespread availability of third party credit support and risk mitigation tools from development finance institutions (DFIs), multi-lateral development banks (MDBs), export credit agencies (ECAs), and political risk insurers. Although the credit support and risk mitigation tools they offer differ considerably in their structure, terms, and conditions, for our purposes, it is important to note that these institutions should become involved at different stages in the promotion of an IPP project.

As an example, MDBs such as the World Bank, the International Development Association, the African Development Bank, and the Asian Development Bank tend to become involved in projects very early in the development phase – long before the off-taker or host government releases a call for expressions of interest. In contrast, ECAs by their nature only become involved in a project once the equipment supplier (and therefore the country from which the equipment will be supplied) has been identified. This usually happens only once a preferred bidder has been selected. Likewise, political risk insurance is procured by the sponsors and/or by the project company. As a result, political risk insurers usually only become involved during the development stage after the project has been awarded.

3. THE PROCUREMENT PHASE

Guiding principles

In general terms, an economic tariff is best achieved by ensuring that a sufficient number of pre-qualified bidders submit a proposal so that competitive pressures result in the most value for money for the offtaker. The offtaker can generate and maintain investor interest by:

- (a) using a two-step tender process (see more on this topic below) to pre-qualify a short list of pre-qualified bidders, so that such a restricted pool of peer companies can reassure pre-qualified bidders of the seriousness and exclusivity of the process;
- (b) performing an appropriate level of diligence (legal, technical, financial, and other) on the project in advance of launching the tender, and making the results of that diligence available to pre-qualified bidders so that they can quickly gain a better understanding of the project, the technical requirements, and the legal and regulatory framework;
- (c) including reasonable and financeable terms and conditions in the RfP and the project agreements that will be attached as forms to the RfP; and
- (d) including reasonable and balanced terms and conditions in the instructions to bidders (whether the instructions are a part of the RfP or are a separate document), including reasonable and balanced terms regarding:
 - (i) the amount of the bid security;
 - (ii) the events that will give the offtaker the right to draw on the bid security;
 - (iii) the bid validity period; and
 - (iv) the period for the negotiation of any exceptions to the form of the project agreements; and
- (e) going through a deliberate and consultative process described in the RfP through which the offtaker can hear the comments of pre-qualified bidders on the transaction, the terms of the draft project agreements, and the terms of the RfP and modify those terms to the extent that bidders raise thoughtful comments that should, in the judgement of the offtaker, be addressed.

The legal framework for competitive tenders for IPPs

Generally

A variety of bodies of law may apply to, or directly or indirectly affect, a competitive tender for an IPP. The most significant of these bodies of law are identified below.

Public procurement laws

In most countries, public procurement laws require governments and government owned and controlled entities (including the types of government owned and controlled utilities that often serve as offtakers in an IPP) to procure goods and services through competitive tenders, subject to certain exceptions. There are good public policy reasons for such requirements. A properly conducted competitive tender is an effective tool to achieve the best value for money, and governments should ensure value for taxpayers and utility consumers.

Unfortunately, however, many public procurement acts explicitly prevent, or have been interpreted to prevent, the offtaker from considering exceptions taken by pre-qualified bidders to the terms of an RfP (or more accurately, to the terms of the draft project agreements that will be attached to the RfP).

Although all parties to a competitive tender would like to minimize the exceptions taken to the terms of a tender, the development of an IPP is sufficiently complex that it has proven to be impractical – in both emerging and developed countries – to conduct a tender without the ability to discuss exceptions. For this reason, the law in the European Union, for example, has evolved to permit offtakers to conduct what is known as a *competitive dialogue*. The competitive dialogue procedure is a procurement procedure whereby the offtaker enters into a dialogue with pre-qualified bidders about its requirements before inviting them to submit a final tender. It is used in complex projects where the offtaker cannot adequately specify its requirements in at the outset of the tender.⁶ As we will see in the next section on public-private partnership laws, the law of many emerging market countries is quickly evolving in this direction through the adoption of public-private partnership laws, which permit more flexibility in relation to exceptions.

⁶ See Directive 2004/18/EC.

Note that the exact scope of the applicable public procurement law is very important. In some countries it is not clear whether the purchase of electricity under a long-term Power Purchase Agreement constitutes the purchase of goods or a service. This confusion is sometimes compounded by the existence of a public-private partnership law and perhaps by the existence of a separate regulatory structure for the regulation of the electricity sector.

Public-private partnership laws

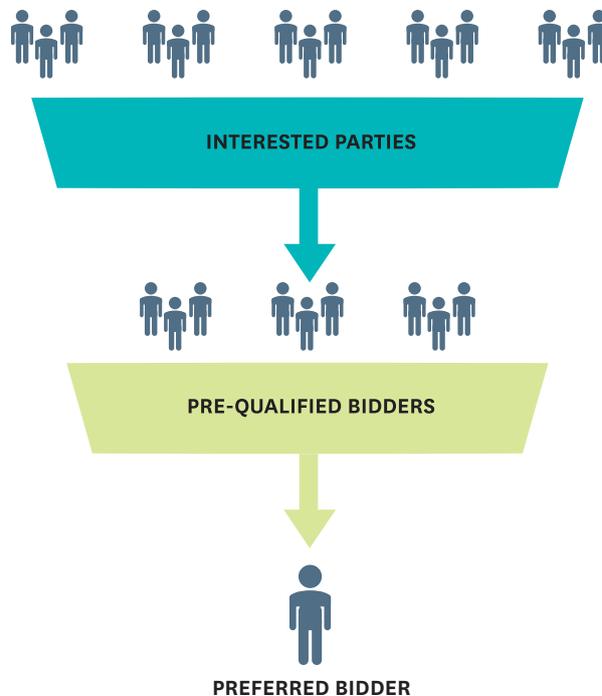
In order to establish a clear legal framework for the promotion, award, and administration of public-private partnerships (including, in some cases, IPPs), many countries have passed public-private partnership laws. Many of these laws create a series of procedures through which a potential project must go before it can be tendered and/or to centralize the promotion of public-private partnerships so that experience with public-private partnerships can be rapidly gained by an identified group of officials. The procedures are, in large part, designed to ensure that a country tenders only those projects that are reasonably expected to deliver value for money to its citizens and consumers. In some cases, however, these procedures have not been tested in practice and appear to have long time horizons. For these reasons, many offtakers and investors are anxious to avoid the application of these laws. Their scope needs to be carefully considered.

Sector laws

The electricity sector of many emerging market countries is governed by one or more specific pieces of legislation. Usually, these laws establish a sector regulator that is empowered to regulate the electricity sector by, among other things, establishing the tariffs that electricity utilities are permitted to charge their customers. Starting with sector reforms that swept through the United Kingdom, Argentina, and other parts of Latin America during the 1980s and 1990s, many countries recognized that prices in the generation sub-sector could be established by competition instead of by regulation. A large divergence between countries in how the generation sub-sector is regulated however remains. For this reason, it is critical to explore and understand how the sector laws, public procurement laws, and public-private partnership laws of a particular country work together (or, as often as not, fail to work together) to set the framework against which a competitive tender will be conducted. Given the wide variations between countries, it is difficult to draw conclusions as to this issue in the abstract.

The procurement process – step by step

In spite of the difficulties that are often encountered in determining which set(s) of law applies to a competitive tender and how those laws interact, it is possible to describe a set of practices that can, in our view, be seen as the best international practice in conducting a tender for an IPP. This section briefly describes those practices.



The pre-qualification stage

Competitive tenders for an IPP are usually conducted using a two-step tender. During the first step, interested parties express interest in response to a Request for Qualification (an “RfQ”), and the offtaker pre-qualifies those interested parties that meet the pre-qualification criteria. During the second step, pre-qualified bidders submit a proposal in response to the RfP. The RfP is only made available to pre-qualified bidders. Only pre-qualified bidders may submit a proposal.

From the offtaker’s perspective, a two-step tender is necessary because it ensures that the offtaker only needs to invest time in consultations with serious bidders that are qualified to deliver the project. From a bidder’s perspective, a two-step tender allows the bidders to see who they are competing against. This gives them some assurance that will not need to compete against bidders that are not qualified to deliver the project and may engage – intentionally or unintentionally – in unscrupulous practices such as submitting a proposal they cannot honor.

Mistakes in the RfQ are some of the most difficult and costly mistakes to correct. Avoid making them by taking time to properly prepare the RfQ, which will govern some aspects of the tender through to the end.

It also gives them a view of the number of bidders against which they will be competing – the number should be large enough to ensure that there is competitive tension, but not so large that bidders are not willing to invest time or funds in the development of a competitive proposal.

The first stage in a two-step tender is the pre-qualification phase. It is governed by the terms of the RfQ (and the applicable law). The contents of an RfQ are discussed below.

In our experience, many host governments and offtakers come under tremendous time pressure to promote an IPP for various reasons. The RfQ is the first project-specific document that is developed in the course of conducting a tender. As a result, the development of the RfQ is often rushed and/or undertaken without the advice of advisors in an effort to fast track the promotion of the project. Many people mistakenly believe that the RfQ will be replaced by the RfP, and therefore is of little importance. As we will see, the RfQ will set the stage for the entire procurement process, and will continue to govern some aspects of the tender all the way through to the award of the contract(s). Mistakes in the development of the RfQ have therefore proven to be some of the most difficult mistakes to correct after they occur

The request for qualifications

The primary objective of an RfQ is to request that interested parties submit expressions of interest in which the interested parties express interest in participating in the tender and demonstrate that they meet the pre-qualification criteria.

The pre-qualification criteria should require interested parties to demonstrate that they have the technical capability and the financial strength to develop the project. Once a firm or consortium of firms has been pre-qualified, they will be able to participate in the tender all the way through its conclusion. This means that the offtaker may end up awarding the project to any of the pre-qualified bidders. For this reason, the pre-qualification process is the offtaker's first (and with limited exception) only opportunity to decline to do business with a bidder because they do not have the strength to develop the project.

Financial criteria

The financial criteria should demonstrate that the bidder has the ability to contribute the equity that will be required

to develop the project and that the bidder can demonstrate that ability to the satisfaction of the lenders. In general terms, prospective bidders are usually required to submit their financial statements for their prior three fiscal years. These financial statements must demonstrate either:

- (i) the ability to contribute equity from short term assets on the balance sheet or from retained earnings; or
- (ii) the ability to raise the funds that will be contributed as equity by borrowing from lenders or the capital markets

Commonly used financial metrics such as financial indebtedness to earnings before interest taxation, depreciation, and amortization (EBITDA) can be used as a proxy for the firm's ability to raise capital that could be contributed to a special purpose vehicle as equity. Tests that are stated in terms of the net assets of a company or the annual revenues of a company are also commonly seen. These tests should be carefully stated to apply (or not apply) to parents and other affiliates of an entity that is part of a consortium.

Given the proliferation of private equity firms seeking to invest in greenfield IPPs, special attention should be paid to the unique financial structures of private equity funds. Many of these funds are structured so that their investors only invest in the fund when the fund calls on them to do so. These investors will have committed to invest under written agreements, but will not actually contribute money to the fund until the fund can deploy the capital. For this reason, a fund may not be able to meet a financial statement test in spite of having ready access to capital. This should be addressed in the RfQ or during questions and answers regarding the RfQ.

Technical Criteria

The technical criteria are usually stated in terms of the track record of the bidder in developing and/or operating projects that are similar to the IPP that will be developed. The required technical strength varies greatly by technology and site. The developer of a photovoltaic solar array could, for example, readily contract out virtually every aspect of the construction, operation, and management of such an IPP. In contrast, the developer of a large hydroelectric dam would need significantly more expertise in order to negotiate and administer an EPC contract. Even so, care should be taken not to

require experience that only a few firms worldwide can demonstrate. Or, if such experience is truly necessary, then the decision to require it should be made in the knowledge that the requirements could limit competition.

Legal Criteria

The legal criteria should include proof of the formation of the bidder and its existence as a going concern. It should also include representations and warranties or an affidavit attesting to the good standing of the bidder (i.e. the absence of any civil or criminal penalty, forfeiture or handicap) in its jurisdiction of incorporation and all other relevant jurisdictions.

The aim is to demonstrate that it would be prudent and palatable to do business with a particular bidder or consortium of bidders. If additional information is required for a particular offtaker to make this determination, then the RfQ should request it.

The bidding stage

The second stage in a two-step tender is the bidding phase. It is governed by the Request for Proposals (the “**RfP**”), which is described below.

The Request for Proposals

The principal objectives of an RfP are to:

- (a) describe the opportunity for which bidders will be bidding in some detail;
- (b) describe the process from the issuance of the RfP through to the award of the contract(s), including consultative processes by which pre-qualified bidders will have the ability to comment on the terms of the transaction and the draft project agreements;
- (c) set forth the material that must be contained in a proposal; and
- (d) describe the criteria the offtaker will use to select the preferred bidder.

The sections below examine each of these objectives in more detail.

Describing the opportunity

The RfP should summarize the opportunity for which bidders will be bidding. It is now customary for the offtaker to make a virtual data room available to bidders. Detailed information can be included in the data room, but the RfP should, at a minimum, describe the project, the site(s)

(if selected by the offtaker), the nature of the diligence performed by the offtaker, and the studies that are available (and will be posted in the data room).

Describing the process

Before pre-qualified bidders submit their proposals, the offtaker will usually host at least one and perhaps multiple bidders’ conferences. These bidders’ conferences will include general question and answer sessions, networking opportunities, and opportunities for site visits. One or more of the bidders’ conferences should include an opportunity for pre-qualified bidders to meet one on one with the offtaker and its advisors. Bidders will be reluctant to ask the tough questions, or the questions that other bidders may not have thought of, in an open forum. The offtaker should, however, take care to offer all pre-qualified bidders an equal opportunity to raise questions during their one on one sessions. In general, the offtaker should not have an obligation to publish questions or answers asked or given during these one on one sessions to bidders generally. Bidders should have an opportunity to provide substantive comments in advance of these one on one sessions. These substantive comments should also generally not be shared with other bidders.

In contrast, bidders should have an opportunity to ask for clarifications in writing. These questions and the answers generally are shared in writing with all bidders.

Describing the contents of a proposal

RfPs for an IPP should require pre-qualified bidders to submit a technical proposal and a financial proposal in separate envelopes. The contents of both should be specifically set out in the RfP.

The evaluation criteria

Two step vs. combined scoring

Although the specific evaluation criteria are limited only by the imaginations of the offtaker and its advisors, offtakers need to decide at the outset whether to use one of the following two options.

- (i) The Two Step Evaluation Approach

Under the two step evaluation approach, the offtaker reviews and scores the technical proposal first. In scoring the technical proposals, the offtaker should use a set of clearly defined criteria set out in the RfP and known to the pre-qualified bidders in advance.

The oftaker will only open the financial proposals submitted by pre-qualified bidders whose technical proposal achieves a minimum score specified in the RfP. The oftaker then evaluates the financial proposals according to the financial evaluation criteria, and declares the preferred bidder to be the pre-qualified bidder that submitted the financial proposal that results in the most economically advantageous tender.

The key advantages of this approach are that:

- it reduces the effect of the subjectivity that is inherent in scoring a technical proposal, which increases the transparency of the tender;
- it ensures that the most economically advantageous tender submitted by a pre-qualified bidder that has provided an acceptable technical proposal will be the winning tender.

(ii) The Combined Score Approach

Under the combined score approach, the oftaker reviews and scores the technical proposals first, using a set of criteria specified in the RfP. As with the two-step approach, the oftaker does not open the financial proposals until after the technical proposals have been scored, and only the financial proposals submitted by pre-qualified bidders whose technical proposal achieves a minimum score specified in the RfP are opened.

Following the evaluation of the technical proposals, the financial proposals are evaluated to determine a financial score. The financial score and the technical score are then combined to result in an overall score. The highest scoring proposal wins.

The advantage of this proposal is that it allows oftakers to explicitly consider the technical approach proposed by the pre-qualified bidders. In unusually complex projects in which bidders are given wide discretion in how they approach a technical problem – such as in a large hydroelectric project – this can be valuable. This approach can also be valuable where the oftaker wishes to explicitly consider factors other than price and is will affirmatively willing to pay a higher price for electricity in order to achieve a given outcome.

In most projects, however, the disadvantages of this approach render it a less than optimum choice. The principal disadvantages of this approach are that:

- it reduces transparency by increasing the effect of the technical score, which is inherently a subjective process;
- unless the tender and the project agreements are carefully structured to provide binding incentives for the project company to honor the commitments made in the technical proposal, it will reward the pre-qualified bidder that tells the most convincing story, regardless of whether they are able to honor the commitments made in the technical proposal; and
- it can require the oftaker to award the project to a bidder that did not submit the most economically advantageous tender.

The last point is worth repeating. The oftaker that uses a combined score approach may be required to award the project to a bidder that is not the lowest bidder. In our experience, this can put oftakers that were not prepared for this outcome in an awkward position.

Transparency in technical scoring

Regardless of which of these options the oftaker chooses, the technical scoring criteria should be objective and specified to the pre-qualified bidders in advance – ideally in the RfP itself. We have often been asked to assist oftakers in creating a more detailed set of evaluation criteria that the tender evaluation committee will use to evaluate technical proposals. In our view, overly detailed evaluation criteria that are not made available to the pre-qualified bidders well in advance of the deadline for submitting proposals should be avoided because they reduce transparency and could be challenged under the laws of many countries.

The financial evaluation criteria

The fundamental purpose of a tender is usually to award the project to the most economically advantageous tender. In the case of a renewable project from which the oftaker will purchase energy generated at a price per kWh of energy delivered, it will be relatively easy to determine which financial proposal results in the most economically advantageous tender.

For projects that use more complex tariff structures that combine availability payments with energy payments, start-up charges, stand-by charges, and other charges, determining which financial proposal is the most economically advantageous presents a more difficult challenge. Perhaps the most common (and intellectually satisfying) answer to this problem is to construct a financial

The tariff structure will have a significant impact on the financial evaluation criteria. They must be finalized in parallel.

model that uses the financial bid parameters to estimate the net present value of the offtaker's financial obligations under each financial proposal. Under this approach, the financial proposal with the lowest net present value will emerge as the most economically advantageous tender.

As the above discussion shows, this is a complex area that requires extensive coordination between the legal team that is developing the RfP, the financial and legal team that is developing the tariff, and the financial team that is developing the bid evaluation model.

The end game – achieving commercial close and financial close

The development of the IPP does not end with the selection of the preferred bidder, but with commercial close, financial close, construction, and finally, commercial operations.

Commercial Close

After selecting the preferred bidder, the offtaker must achieve commercial close by successfully executing (and seeing to it that the project company executes) all of the project agreements that underpin the project. It is worth emphasizing that, even in a well-run tender with clear project terms, there is a lot of work to do at this stage in order to finalize and agree on the dozens of complex, tightly integrated agreements that underpin the project, including the Power Purchase Agreement, put and call option agreement (or other form of government support agreement where one is necessary), operations and maintenance agreements, EPC contract, and fuel supply agreements, among others. As a first step, this will require the preferred bidder to incorporate the special purpose vehicle (also called the project company) that is the counterparty to the project agreements and therefore the entity at the center of the project financing. Furthermore, it will require the negotiation of any exceptions taken (see more on this topic below).

Financial Close

After the project agreements have been executed, the project company will complete the process of raising the debt financing for the project by achieving financial close, which involves the execution of all of the finance documents (which will include facility agreements, security documents, and direct agreements between the offtaker and the lenders) and the fulfilment of all conditions precedent under the financing agreements for the initial draw under the project loans. Depending on the scale of the project and the financing approach adopted, this may occur simultaneously with commercial close. More likely for an IPP, however, this will occur after commercial close.

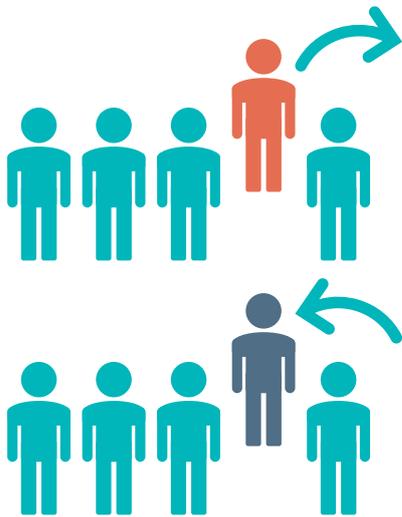
It is critically important for offtakers to remember that, unless commercial and financial close occur simultaneously, there will inevitably be two sets of negotiations – negotiations with sponsors to achieve commercial close, and negotiations with lenders to achieve financial close. Fundamentally, project finance is about lowering net financing costs through high debt to equity ratios and long loan tenors. The views of lenders, therefore, cannot practically be ignored or side-lined, no matter how balanced the allocation of risks in the project agreements or how carefully the documents have been prepared. In the end, the goal of the procurement is to provide “bankable” documents and rely on competitive pressures to result in the best possible tariff for consumers. Governments should be prepared, therefore, for lenders to comment on, and insist on some changes – some of which will be material and many of which will seem terribly immaterial – to the project agreements before financial close can occur. The best approach to minimizing these requests is to develop the project agreements with the requirements of a reasonable lender in mind from the outset.

4. RELATED TOPICS

This section addresses related topics that frequently arise during competitive tenders for the procurement of IPPs.

Proposed changes to consortium members

As is noted above, competitive tenders for an IPP are usually conducted using a two-step tender. During the first step interested parties express interest in response to an RfQ, and the offtaker pre-qualifies those interested parties that meet the pre-qualification criteria. During the second step, pre-qualified bidders submit a proposal in response to the RfP.



In order to meet the pre-qualification criteria or strengthen the proposal they will eventually submit, it is more common than not for a prospective bidders to organize themselves into a bid consortium rather than put forward individual bids. It is fairly common for a pre-qualified bid consortium to look to strengthen its position during the tender process by adding members to the consortium or changing the members of the consortium. It is also fairly common for individual members of a consortium to lose interest for various reasons, some of which may be related to the tender at issue, others of which may be completely unrelated. If these members drop out of a consortium, their departure may actually weaken the consortium.

Host governments and offtakers often ask us whether they can (or should) permit these types of changes to the membership of a consortium that is a pre-qualified bidder. Although the answer to this question can be impacted by the public procurement law or PPP law under which the

tender is being conducted, it is possible to describe the framework for answering this question.

As a general rule, the RfQ usually provides that a pre-qualified bidder that is a consortium may make changes to the members of the consortium only with the express consent of the offtaker, which may be granted at the discretion of the offtaker. Where this is the case, the question becomes one of whether the offtaker should grant its consent to a change in the membership of the consortium.

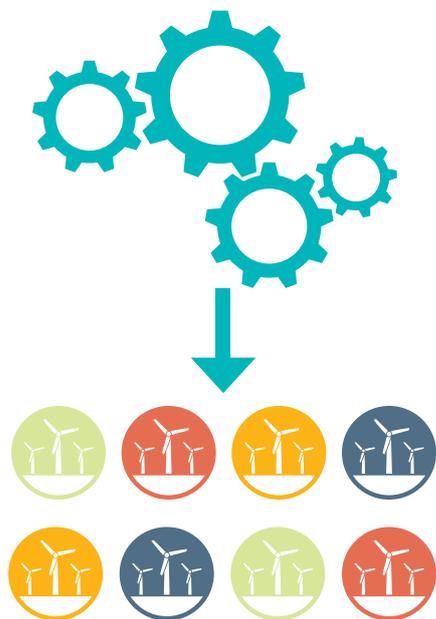
When evaluating such a request, it is important to keep in mind that the overall objective of conducting a competitive tender is to use competitive tension to arrive at a competitive outcome. This is best achieved when there are a sufficient number of pre-qualified bidders to ensure that there is competitive tension, but not so many pre-qualified bidders that pre-qualified bidders have little incentive to invest in understanding the project and submitting a competitive proposal. Although the facts and circumstances related to a particular tender can result in a different outcome, the best approach is usually to approve a change to a consortium if the changed consortium continues to meet the pre-qualification criteria specified in the RfQ. This means that the revised consortium must, in effect, pre-qualify again by demonstrating that the revised consortium continues to meet the pre-qualification criteria.

Although the offtaker may wish to exercise its discretion to require a revised consortium to meet a high standard, the public procurement law or PPP law would usually prevent the offtaker from exercising its discretion to approve changes to a consortium that would cause a consortium to fail to meet the pre-qualification criteria. This would, in effect, lower the pre-qualification criteria. Although offtakers are free to lower the pre-qualification criteria, the proper approach to lowering the pre-qualification criteria after a shortlist of pre-qualified bidders has been pre-qualified is to cancel the tender and commence a new one with a revised RfQ that reflects the lower pre-qualification criteria.

Multi-project tenders

The dramatic drop in the capital cost associated with renewable technologies has resulted in a dramatic increase in the capital invested in renewable projects. In 2015, for example, worldwide investment in renewable technologies (excluding hydroelectric project greater than 50 MW)

was slightly more than double the worldwide investment in thermal projects. Given the need to address the fuel source, thermal and hydroelectric projects are usually more complex to promote and develop. These complexities generally require that only one thermal project be the subject of a competitive tender.



This is not the case for renewable projects. It is possible, and is often desirable, to conduct a competitive tender for the procurement of energy from more than one project. Such tenders are generally referred to as multi-project tenders. Although multi-project tenders can be structured in a variety of ways, the most common approach is for the offtaker to take one of the following two approaches.

- The offtaker may identify and secure the rights over the land on which solar arrays or wind farms will be located. The offtaker then tenders the right to develop projects on those sites and indicates the number of MW of maximum capacity for which it will contract from each site.
- The offtaker may require sponsors to identify the land, and simply indicate that it will enter into Power Purchase Agreements for a specified minimum and maximum capacity at each site up to an overall maximum quantity of maximum capacity.

Under the first approach, the offtaker must procure the land rights and study the resource available at that site. Although this requires additional up-front time, effort, and expense on the part of the offtaker, it significantly lowers the barriers to entry into a tender and should materially

increase the number of interested parties that will express interest in a tender.

Under the second approach, bidders will need to identify available sites and secure a legally enforceable right to enter into a lease or other interest over, or purchase the title to, the site they plan to develop. This requires bidders to make a considerable investment in terms of time, effort, and expense at a point during a tender when they have the weakest incentive to do so (generally at the pre-qualification stage or, at the latest, in advance of the submission of their proposal). Although this approach has been used successfully, Zambia's experience with the first implementation round of the IFC's Scaling Solar program (under which the offtaker identifies and procures the sites) would seem to indicate that the first approach is effective at increasing competition.⁷

The negotiation of exceptions

Promoting an IPP, whether through direct negotiations or through a competitive tender, is a complex undertaking. In an ideal world – the type of world in which perfect competition is possible – the following conditions would hold true.

- (a) Contracting authorities would have perfect information about the terms and conditions bidders would be willing to accept.
- (b) All bidders (and the lenders from which they anticipate borrowing) would be willing to accept the same terms and conditions.
- (c) Contracting authorities could use the perfect information they possess about bidders and lenders to establish tough but fair terms that all bidders could (reluctantly) accept if they were selected as the preferred bidder.

In such a world, it may not be necessary for bidders to take exceptions to the terms of a tender. Unfortunately, we do not live in such a world. As a result, it has proven to be impractical to conduct a competitive tender that absolutely prohibits the taking of exceptions by bidders in anything other than the simplest projects, for which the offtaker has conducted extensive diligence, and for which stapled financing on pre-approved terms is available.

⁷ See <http://bit.ly/2gEVz4> (explaining that Zambia was able to achieve a price of US\$0.602 per kWh from a solar PV project, the lowest to date in Sub-Saharan Africa).

For the vast majority of projects, some mechanism to address the potential for exceptions is required. In our view, the approach that is most likely to balance the competing objectives of flexibility and transparency works as follows.

- (i) The RfP should require bidders to clearly and specifically identify each exception they wish to take in their technical proposal. Exceptions should be noted by marking up the project agreements and these should be explained by bidders in an explanatory note, which often takes the form of a table of exceptions.
- (ii) The tender evaluation committee may, in its discretion, reject a technical proposal on the basis of the nature or the number of exceptions taken by a pre-qualified bidder. A decision by the tender evaluation committee to open and evaluate a financial proposal accompanying a technical proposal containing exceptions does not constitute an acceptance of the exceptions.
- (iii) After the preferred bidder has been notified that it is the preferred bidder, the offtaker will negotiate the Exceptions taken in the Technical Proposal submitted by the Preferred Bidder. Negotiations regarding the exceptions shall conclude, and the project agreements shall be agreed upon, prior to the expiration of a period established in the RfP for the negotiation of exceptions.
- (iv) The offtaker will not entertain additional comments on the project agreements that are not contained in the exceptions set forth in the technical proposal.
- (v) In the event the offtaker and the preferred bidder have not executed the project agreements within the exceptions negotiation period, or if the offtaker determines, in its discretion, that it will not be feasible to agree on the exceptions within the exceptions negotiation period, then the offtaker may move on the next highest ranking proposal.

Note that this structure grants fairly broad discretion to the tender evaluation committee and the offtaker in terms of how they may manage exceptions. At one end of the spectrum, they may refuse to negotiate exceptions altogether and discard proposals that contain significant exceptions. At the other end of the spectrum, they may engage in extensive negotiations – even by extending the negotiation period – if those negotiations are warranted. Although we have heard many principled objections raised about this level of discretion, in our experience it is necessary to enable the offtaker to deal with those situations

in which competition is extremely limited and those situations in which competition among bidders is robust.

Protection against changes in interest rates

One of the most fundamental principles of project finance is that risks should be allocated to the party that is best able to manage or mitigate those risks. If it is not possible to allocate a risk using that principle, then risks should be allocated to the party that is best able to bear the risk. In the context of an IPP, allocating risks according to these principles results in increased competition and lower tariffs.

One risk that is always present relates to interest rates. Base rates (such as LIBOR or EURIBOR) are virtually certain to change between the time a pre-qualified bidder submits a proposal and financial closing. At financial closing, the project company can enter into interest rate swaps to protect itself (and, indirectly, the offtaker) against the risk of rising interest rates. Prior to financial closing, however, it is impractical for a bidder to hedge this risk. Given this impracticality, in our view an offtaker should give serious consideration to allocating this risk to itself (and it should then have the ability to re-allocate this risk to the consumers of electricity, which is the group that is in the best position to bear this risk).

Where a tariff is structured using a cost-plus approach (which is otherwise known as a *regulation by contract* approach), the terms of the tender and the tariff are likely to collectively allocate this risk to electricity consumers. Simpler tariff structures that may require bidders to bid a price per kWh of energy delivered and/or a price per MW of capacity made available may allocate this risk to bidders. Sometimes this allocation of risk is a conscious decision. In our experience, however, this risk is often inadvertently allocated in this manner.

One approach to reallocating this risk to the offtaker (and indirectly to electricity consumers) is to require bidders to provide a financial model that includes the base rates (typically LIBOR or EURIBOR) that were prevailing immediately prior to the proposal submission deadline as an explicit input. This model can be updated by changing that variable (and only that variable) at financial closing. Care must be taken to ensure that the model is appropriately sensitive (and not overly sensitive) to changes in interest rates if this approach is adopted.



Another approach is to require bidders to indicate in their proposals how changes in the base rates of interest would affect the price they bid. If this approach is taken, then the offtaker should be sure to give some weighting to higher and lower interest rate scenarios when the financial evaluation criteria is developed. Otherwise, bidders will have an opportunity to gain by exploiting weaknesses in the evaluation criteria.

Proposal security

As has been emphasized throughout this guide, all parties involved in an IPP procurement, particularly large IPPs, can benefit from a degree of flexibility in conducting both pre-bid discussions with pre-qualified bidders and post-bid negotiations based on (i) any exceptions to the terms of the Power Purchase Agreement and other project agreements that may have been submitted with the preferred bidder's proposal, and (ii) comments that may be received by lenders prior to or following the execution of the project agreements. The offtaker's willingness to be flexible should not, however, be confused with a willingness to accept imbalanced or inappropriate allocations of risk or to negotiate for longer than is necessary to address exceptions or lender comments. The principal tool offtaker's use to ensure that bidders do not seek to introduce new issues after they have been declared the preferred bidder or otherwise to take advantage of their position as preferred bidder is the requirement that each pre-qualified bidder deliver proposal security (also known as a bid bond) from a credit-worthy third-party bank as security for the obligations of the pre-qualified bidder under the RfP. Proposal security is typically required to take the form of a letter of credit or bank guarantee governed by the uniform rules for demand guarantee. Proposal security aims

to ensure that bidders remain committed to the process, do not withdraw without due cause prior to the execution of the project agreements, and do not attempt to introduce changes to the terms of the project agreements that were not properly included as exceptions in their proposal.

In setting the requirements for proposal security, offtakers should balance a number of competing objectives. For example, the credit rating of the issuing bank should be high enough to ensure payment on demand, but, potentially, low enough to allow for the participation of local banks if required by law or desired as a policy objective. The maximum amount available to be drawn under the proposal security should be large enough to deter bad behavior from bidders, but not so large as to deter credible bidders from participating in the tender. In our experience, proposal security typically falls within the range of 0.5% to 2.0% of the expected capital cost of the project, but rarely exceed the equivalent of US \$5,000,000 regardless of the size of the project.

The RfP should clearly specify the circumstances in which the offtaker may draw on the proposal security. Typically, these circumstances include:

- (a) the bidder's untimely withdrawal of its proposal during a defined period of time referred to as the bid validity period;
- (b) the failure of the preferred bidder to form the project company and cause the project company to execute the project agreements within a defined period of time after the naming of the preferred bidder;

- (c) an attempt by the bidder to reopen negotiations on contract terms to which it did not expressly take exception when it submitted its bid;
- (d) the inclusion of false or misleading statements by the bidder in its proposal documents;
- (e) any form of bribery or corruption by the bidder in relation to the project.

Decisions to actually draw on a proposal security, however, involve many considerations – commercial, political, and reputational – and should not be taken lightly.

Unsolicited proposals

Part of the theory behind independent power projects and public private partnerships generally is that governments should harness the strengths of the private sector without losing sight of the government’s core responsibility of protecting the public from harmful private exploitation and of preserving and developing public resources for the public good. IPP programs also reflect the hard truth that governments do not have endless resources and time, and are sometimes not adequately funded or staffed to enable the offtaker to develop all of the infrastructure that would benefit the public. It would be strange, therefore, if an IPP procurement strategy relied solely on the government, with its limited time and information, to identify projects for development, and discouraged the private sector from proposing projects that could serve the interests of both the government and the private sector. With its access to new and disruptive technologies, the private sector is in the best position to propose, in particular, the next generation of IPPs.

A properly designed procurement program will, therefore, encourage the private sector to make unsolicited proposals

for the development of projects that may have been overlooked by the offtaker. Unsolicited proposals, however, require special handling in order to:

- (a) ensure that development proceeds in accordance the integrated resource plan or least cost power development plan described in above;
- (b) ensure that the limited and valuable energy, time and resources of the offtaker are used for those projects that are most important for the health and welfare of the public;
- (c) ensure that the allocation of risks are fair and in the public interest;
- (d) ensure that the public gets the best value for its money on this project and future projects;
- (e) ensure that the project is affordable;
- (f) ensure that the cost reflects market prices and that the private sector does not reap exceptionally high returns; and
- (g) ensure public confidence in the project through a transparent, lawful, and disinterested evaluation and procurement process.

Jurisdictions around the world have proven that it is possible to achieve all of the goals above, without forfeiting the advantages of private sector participation, by (i) establishing and publicizing a clear, comprehensive policy for unsolicited proposals that benefits from the buy-in of all of the relevant players in the government; and (ii) devoting resources to develop the institutional capacity of the offtaker to administer the unsolicited proposal policy. Doing these two things will provide clarity, transparency, predictability, and accountability, thus benefiting both the private sector and the public.

When developing an unsolicited proposal policy, it is important to remember that there is more than one approach to developing a successful program, and offtakers (and, more generally, government actors of all types) should tailor their policy to reflect the realities of their jurisdiction’s particular institutional and legal conditions. Some jurisdictions may choose, for example, to allow unsolicited proposals for IPPs for only certain types of technologies or certain regions in the country. Similarly, depending on the legal environment and existing practice for procuring IPPs, it may be better to develop the policy as a stand-alone implementation manual rather than as a



section of an overall IPP or PPP legislation, or rather than as a completely separate statute or regulation. Aside from these big picture decisions, policy makers will have to make a number of process-oriented choices, including:

- (a) whether to charge private sector participants a fee for submitting an unsolicited proposal to cover the costs of reviewing the proposal or other administrative costs;
- (b) the submission requirements for an unsolicited proposal, including the possible provision of feasibility studies, technical designs, social and environmental impact studies, value for money analysis, and other analyses and studies;
- (c) the roles and responsibilities of the individuals and organizations charged with reviewing, responding to, and approving the unsolicited proposals;
- (d) the evaluation criteria and the composition of evaluation committees for deciding whether to advance an unsolicited proposal to the next stage;
- (e) the treatment of intellectual property included in an unsolicited proposal;
- (f) whether to allow direct negotiation following an unsolicited proposal or whether to require a competitive tender of the project that has been proposed, and the procedures for both approaches;
- (g) for a competitive tender following an unsolicited proposal, whether to provide some incentive to the unsolicited proposer in the form of extra points during an evaluation, automatic qualification, or the right to match another proposers bid (sometimes called a Swiss challenge).

In Africa, Ghana,⁸ Kenya,⁹ Tanzania,¹⁰ and South Africa¹¹ have taken the lead in providing clear policies for publicly and privately initiated PPPs, and have offered answers to all of the questions above. We would encourage the governments of other African countries to look to the lessons learned in those countries, as well as other jurisdictions, such as the Commonwealth of Virginia in the United States,¹² New South Wales in Australia,¹³ Chile,¹⁴ and the Philippines¹⁵ when fashioning their own unsolicited proposal policies.

⁸ The National Policy on Public Private Partnerships (2011); available at <https://ppp.worldbank.org/public-private-partnership/library/national-policy-on-public-private-partnerships>.

⁹ See PPP Policy statements (2011 and 2012); the Public Private Partnerships Act of 2013; PPP regulations (2014); available at <http://pppunit.go.ke/index.php/legal-regulatory-framework>.

¹⁰ See PPP Act, 2010 available at http://www.tic.co.tz/media/PPP%20Regulations_1.pdf; the PPP Regulations, 2011; PPP (Amendment) Act, 2014 available at <http://extwprlegs1.fao.org/docs/pdf/tan153761.pdf>.

¹¹ See The National Treasury Practice Note No 11 of 2008/2009 available at http://www.treasury.gov.za/divisions/ocpo/sc/PracticeNotes/Practice%20note%20SCM%2011%20of%202008_9.pdf.

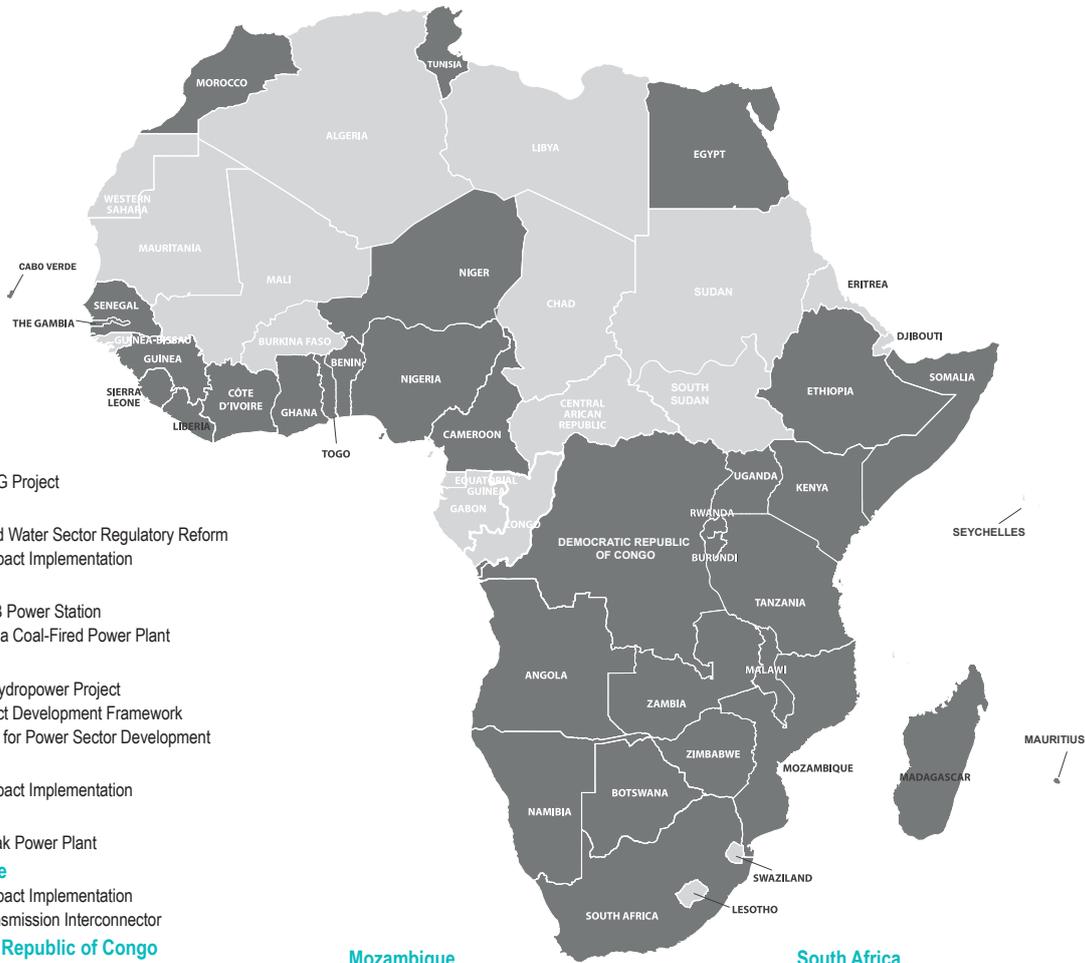
¹² See Implementation Manual and Guidelines: For the Public-Private Transportation Act of 1995 (As Amended), 2014; available at http://www.virginiadot.org/office_of_transportation_public-private_partnerships/resources/UPDATED_PPTA_Implementation_Manual_11-07-14_FOR_POSTING_TO_WEBSITE_-_changes_accepted.pdf.

¹³ See Unsolicited Proposals: Guide for Submission and Assessment, February 2014; available at <https://s3-dpc-nsw-website-files.s3.amazonaws.com/siteassets/Uploads/Unsolicited-Proposals-Guide-February-2014.pdf>.

¹⁴ See Concession Law, 1996 (latest modification in 2010, Law 20.410); available at <http://portal.mop.gov.cl/CentrodeDocumentacion/Documents/Concesiones/Ley%20de%20Concesiones.pdf>.

¹⁵ See BOT law (R.A. 7718), available at <https://ppp.gov.ph/wp-content/uploads/2015/01/Republic-Act-7718.pdf>; 2013 NEDA Joint Venture (JV) Guidelines, available at <http://www.neda.gov.ph/wp-content/uploads/2014/03/2013-Revised-JV-Guidelines.pdf>.

HIGHLIGHTS OF OUR AFRICA PRACTICE



Angola

- Angola LNG Project

Benin

- Electric and Water Sector Regulatory Reform
- MCC Compact Implementation

Botswana

- Morupule B Power Station
- Mmamabula Coal-Fired Power Plant

Burundi

- Ruzizi III Hydropower Project
- Joint Project Development Framework
- Agreement for Power Sector Development

Cabo Verde

- MCC Compact Implementation

Cameroon

- Bini à Warak Power Plant

Côte d'Ivoire

- MCC Compact Implementation
- CLSG Transmission Interconnector

Democratic Republic of Congo

- Ruzizi III Hydropower Project
- Power Sector Development

Egypt

- Dairut Gas-Fired Power Plant (2,250 MW)
- Ayoun Moussa Coal-Fired Power Plant (2,640 MW)
- Sidi Krir Power Project

Ethiopia

- Nile Basin Initiative Power Project Development Workshop

Ghana

- ECG Distribution Privatisation
- Ashanti Gold Mine Financing
- Financing Counsel for Investment Fund
- MCC Compact Implementation

Guinea

- CLSG Transmission Interconnector

Kenya

- SEACOM Subsea Fiber Optic Cable
- Oil and Gas Legal, Fiscal and Regulatory Review
- Geothermal Development
- Various Emergency Power Projects

Liberia

- Liberia Electricity Corporation Transaction Advisory Services
- MCC Compact Implementation
- CLSG Transmission Interconnector

Madagascar

- SEACOM Subsea Fiber Optic Cable

Malawi

- Solar Power Project
- ESCOM Restructuring
- MCC Compact Implementation

Mauritius

- Review of Energy Sector/IPP Status

Mozambique

- Moatize Coal-Fired Power Plant
- Transmission Sector Restructuring
- Transmission Line Development
- Power Sector Restructuring and Reform
- SEACOM Subsea Fiber Optic Cable

Morocco

- MCC Compact Implementation

Namibia

- NamPower Private Sector Participation
- Advisory (World Bank)

Niger

- MCC Compact Implementation

Nigeria

- NBET Representation/IPP Development
- GIZ Representation/Renewable Energy Program
- Nigerian Gas Flare Commercialization Program
- Sapele 750 MW Power Project
- PHCN Representation/IPP Development

Rwanda

- Nyaborongo and Rukarara Hydroelectric Power Projects
- Ruzizi III Hydropower Plant
- Hwange Thermal Power Station I Upgrade (World Bank)

Senegal

- Electric Sector Restructuring and IPP Development
- MCC Compact Implementation

Sierra Leone

- Sierra Rutile Mine Financing
- Bumbuna Hydroelectric Project
- Electric Sector Reform
- MCC Compact Implementation
- CLSG Transmission Interconnector

Somalia

- Petroleum Legislative Frameworks Review
- AIM Admission

South Africa

- Eskom Coal-Fired Power Plant Lease Financing
- AIM Placing
- Fiber Optic Capacity Arrangements
- African Renewable Energy Fund (AfREB)
- SEACOM Subsea Fiber Optic Cable

Tanzania

- Songo Songo Gas-to-Electricity Project
- Mnazi Bay Gas-to-Electricity Project
- Petroleum Legal and Regulatory Reform
- Power Plant Arbitrations
- Ubungu Expansion Project
- SEACOM Subsea Fiber Optic Cable
- Joint Project Development Framework Agreement for Power Sector Development

The Gambia

- Utility Sector Legal and Regulatory Reform
- HFO Power Project

Togo

- MCC Compact Implementation

Tunisia

- Workshop on Financing Private Concessions (World Bank)

Uganda

- Bujagali Hydroelectric Power Project
- Uganda Electricity Board Generation and Distribution
- Privatization
- Nile Basin Initiative Power Project Development Workshop

Zambia

- Zambia Scaling Solar Round 2
- Oil and Gas Legal, Fiscal and Regulatory Review
- Kansanshi Copper Mine
- MCC Compact Implementation

Zimbabwe

- Hwange Thermal Power Station I Upgrade (World Bank)



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KEY CONTACTS



John J. Beardsworth, Jr.

Partner and Global Head of the Business Practice

Richmond and Washington, DC

jbeardsworth@HuntonAK.com | +1 804 788 8637

With 35 years of experience, John focuses his practice on energy and infrastructure transactions and project finance. He is an internationally recognized speaker on the principles of privatization and infrastructure in the developing world and has consistently been ranked for Africa Projects & Energy Law in *Chambers Global* since 2007.



Ryan T. Ketchum

Partner

London

rketchum@HuntonAK.com | +44 20 7220 5755

Ryan focuses his practice on the development and financing of energy and infrastructure projects in Africa and other emerging and frontier markets. He is a frequent speaker and author on topics related to the development of independent power projects and is recognized in *Chambers Global* and *IFLR1000* for his practice in Africa.



William L. Newton

Partner

Richmond

wnewton@HuntonAK.com | + 1 804 788 8603

Bill focuses his practice on project development and finance transactions, including developing, privatizing, restructuring, and financing diverse types of projects throughout the United States and internationally, with a particular focus on the energy sector.



James W. Head

Senior Attorney

London

jhead@HuntonAK.com | + 44 20 7220 5628

Jamie's practice focuses on project finance and infrastructure, particularly in the energy and transportation industries. He has considerable experience advising clients on the development of independent power projects in Africa and other emerging markets.



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