

Planning Commission
(Secretariat for Infrastructure)

Bidding Process for the Delhi and Mumbai Airports

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This case study should not be reported as representing the views of the Planning Commission.

The views expressed in this case study are those of the author and do not necessarily represent the views of the Planning Commission. This study is being published as part of a larger effort in the Planning Commission to identify and disseminate best practices and highlight areas for improvement in the design of concession contracts for PPPs and the process for awarding them.

The bidding process for the selection of concessionaires for the Delhi and Mumbai airports was a controversial one. It involved much discussions and arguments in different government fora including the Empowered Group of Ministers at the helm. Amid rumours of criticism, the bid process was steadily moving towards the award of the Delhi airport in favour of a particular bidder, thanks to the flawed evaluation by the international consultants of the Airport Authority of India. Close to the conclusion of this process, one of the constituents of the inter-ministerial fora laid bare the infirmities of the evaluation scores. This led to much debate within the government and extensive coverage by the media. Once in the public domain, the entire process became open and transparent. It led to a fair outcome that not only withstood the scrutiny of the Supreme Court but was also free of any criticism in the media or Parliament. This reflected a complete swing of the pendulum, from a process that was regarded as manipulated to one that was entirely fair and transparent. This case study demonstrates the fragility as well as the strengths of the system in dealing with these two mega projects.

Overview

The two metro airports at Delhi and Mumbai were the largest in India and handled about 47 percent of the total air traffic. They were owned and operated by the Airports

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Authority of India (AAI), a statutory authority that typically suffered from inefficiencies and lack of resources. As a result, these airports faced severe congestion and prolonged neglect. In September 2003, the Union Government approved the proposal for redevelopment of the Delhi and Mumbai airports through Public Private Partnership (PPP) between the AAI and a Joint Venture (JV) company for each airport. Each of the proposed JV companies was to be set up by private entities to be selected through a global competitive bidding process. The selected entity would hold 74 per cent equity in the JV Company while the balance 26 per cent was to be held by AAI. These were to be exceptionally large PPP projects, even by international standards, and would also represent a watershed in reform and private participation in infrastructure.

To oversee the entire process of bidding and award, an Empowered Group of Ministers (EGoM) was constituted under the chairmanship of the then Finance Minister. An Inter-Ministerial Group (IMG) of officers was also set-up for assisting the EGoM. On December 22, 2003, the EGoM appointed ABN Amro as the financial consultant and transaction advisor. On February 17, 2004, AAI invited Expressions of Interest (EOI) for 74 per cent equity stake in the proposed JV companies. The last date for submission of EOI was June 4, 2004. The objective was to complete the bidding process by September 2004.

In May 2004, there was a change in government. The EGoM was re-constituted on June 15, 2004 under the chairmanship of the then Defence Minister. On June 25, 2004, EGoM approved the appointment of Air Plan, Australia as the global technical advisor (GTA) and Amarchand & Mangaldas & Suresh A. Shroff & Co (AMSS) as legal consultants (LC). The last date for submission of EOI was extended to July 20, 2004 when ten bidders submitted their EOIs, indicating a keen interest among domestic and foreign investors. Of these, nine were pre-qualified and one was disqualified because it had partnered with an airport consultant instead of an airport operator.

By April 1, 2005, the bid documents, including the Lease Deed (LD), the Shareholders Agreement (SHA), the State Support Agreement (SSA), the State Government Support Agreement (SGSA), the Substitution Agreement (SA) and the proposed Operation, Management and Development Agreement (OMDA), were issued to the bidders. The OMDA contained provisions that allowed the use of 230 acres and 190 acres of land at

the Delhi and Mumbai airports respectively for commercial purposes such as shopping malls, office complexes, commercial plazas, IT parks etc. The representative of Planning Commission in the IMG maintained that the law did not allow the airport land to be used for purposes unconnected to airports. The issue was referred to the Attorney General of India (AGI) who opined that the airport land cannot be used for commercial purposes unrelated to airports. The advice of the AGI was endorsed by the EGOM on June 22, 2005. Following this decision, two companies, DLF and Hiranandani, primarily real-estate developers, pulled out from their respective consortiums. Subsequently, two other bidders, Bharti-Changi and L&T-Piramal-Hochtief, opted out citing stiff conditions and time lines.

The provisions of OMDA were discussed in several meetings of the IMG and numerous improvements were carried out. Though the final draft of OMDA was not approved by the IMG or EGOM, its approach was approved by the EGoM on February 15, 2005. The OMDA was issued to the six pre-qualified bidders on August 30, 2005 and they were invited to submit their bids by September 14, 2005. In response, five bids were received for the Delhi Airport and six for the Mumbai airport. Five consortia viz. Essel-TAV (Bidder A), GMR-Fraport (Bidder B), DS Construction-Munich (Bidder C), Sterlite-Macquarie-ADP (Bidder D) and Reliance-ASA (Bidder E) had bid for both the airports while GVK-ACSA (Bidder F) bid for the Mumbai Airport only.

Selection Process

The evaluation process designed by the consultants was divided into four phases. Phase 1 was the basic stage where bidders were qualified on the basis of mandatory requirements such as net-worth, participation of an Airport Operator in the consortium, etc. Phase 2 involved an assessment of certain mandatory financial parameters such as commitment for funding the debt and equity requirements. Phase 3 comprised the technical evaluation relating to development plans and track record. Phase 4 was the final stage where the preferred bidder was to be selected based on the highest share offered to the AAI as a proportion of the gross revenues from the airport. The evaluation was carried out by the Evaluation Committee (EC) consisting of the Financial Consultants (FC), the Legal Consultants (LC) and the Global Technical Advisors (GTA).

Evaluation of Technical Bids

As stated in the EC report, Phase 3 of the evaluation was based on factors that included “Transparency: full disclosure of approach”, “Alignment with the Government’s strategic objectives”, “Consistency of assessment” and “Objectivity: well defined evaluation of factors, evidence based assessment, multi stage review.” After a scrutiny of about 40,000 pages comprising the bid documents submitted by the six bidders, the EC submitted its evaluation report on November 21, 2005 and adjudged Bidder E and Bidder B as the only qualifying consortia who crossed the qualifying score of 80 per cent. Under the bidding rules, only one airport could be awarded to a consortium and as a result, these two bidders were assured of one airport each.

On November 24, 2005, the evaluation report of the EC was reviewed by the Government Review Committee (GRC), constituted under the chairmanship of the Additional Secretary of the Ministry of Civil Aviation (MoCA). In its report, the GRC stated that while they observed no biases or prejudices, for or against any of the bidders, they did notice that a majority of the criteria required purely subjective marking, thus making an objective scoring difficult. The GRC also expressed concern about the scoring based on consensus opinions of the evaluators rather than an average of individual scores given by each member of the EC. Concluding that the overall approach of EC was transparent and fair, the GRC endorsed the evaluation report. However, the representative of Planning Commission in the GRC pointed out anomalies in scoring.

Deliberations in the IMG

The report of the EC, along with the recommendations of the GRC, was considered by the IMG in its meeting held on December 2, 2005 when all the members except one endorsed the recommendations of the EC. The representative of Planning Commission expressed several reservations relating to flaws in the selection criteria and significant infirmities in the method of scoring, leading to inadequate competition between two bidders for the two airports. He gave an 11-page note disagreeing with the recommendations of the EC and suggested consideration of the following options viz: (a) evaluation by the EC be overlooked and a fresh evaluation be undertaken by the IMG; (b) accept the short-listing of all the nine bidders approved earlier by the EGOM and

consider their financial bids; or (c) reject the present bids and ask the shortlisted nine bidders to submit bids within two months on the basis of a simplified RFP.

Review of evaluation by the IMG

On December 5, 2005, a meeting of the EGoM was held for considering the report of the EC along with the recommendations of the IMG. The Secretary, MoCA briefed the EGoM about the discussions in the IMG, including the reservations recorded by the representative of Planning Commission. The EGoM took exception to the fact that the IMG had not given a clear recommendation on the report of EC. It, therefore, directed the IMG to undertake an independent review of the evaluation and give a clear recommendation. It further directed that no change should be made in the evaluation criteria and that the IMG should not undertake any fresh evaluation. The EGoM also directed the IMG to complete this exercise within two weeks. Accordingly, the IMG met on December 6, 2005 and decided that its members would review the bid documents and the evaluation report.

On December 7, 2010, MoCA decided to have all the bids re-evaluated by the EC. On December 12 and 13, the Consultants attended the meetings of the IMG and provided a detailed matrix of the marks allocated to each of the bidders. On December 14, the results of re-evaluation were placed before the IMG. The revised scores reflected some minor changes in the earlier scoring but maintained the earlier pre-qualification of two bidders.

Issues Paper by the representative of Planning Commission

During the meetings of the IMG, the representative of Planning Commission reiterated his reservations and circulated an Issues Paper identifying the flaws in the evaluation process. His concerns included the following:

Role of AAI: Under the AAI Act, the airports are vested in AAI and their lease can be granted by the AAI alone. Yet, the Board of AAI or its senior officials played no role in the selection process. Further, the EC was only an adviser and not a decision making authority, and the responsibility for evaluation rested entirely with the AAI.

Conflict of Interest: The two bidders who were finally pre-qualified by the consultants happened to be two of the six biggest clients (as advertised) of ABN Amro (the Financial

Consultants). In addition, Bidder E was a client of the Legal Consultants, Amarchand Mangaldas. This suggested a conflict of interest, especially in respect of Bidder E who happened to cross the qualification threshold by a few decimal points only.

Absorption of AAI employees: The bid documents assigned a high priority to the absorption of AAI employees by the JV company. However, under the factor “HR Approach”, the consultants earmarked 9.4 marks for the sub-factor “Approach to and level of commitment to the integration of AAI employees into the JVC” while only 3.1 marks were assigned to “Proportion of AAI employees targeted for integration into JVC by year 3.” As a result, 75 percent weightage was assigned to a subjective parameter. Moreover, this was the only case of unequal distribution of marks between two sub-factors of the same factor. Another anomaly was the award of 50 percent marks for absorbing the prescribed minimum of 40 percent of AAI employees even though the consequence of failing to meet this mandatory requirement was disqualification. As a result, Bidder E was awarded 2.19 marks for absorbing 40 percent of the AAI employees whereas Bidder C got 2.97 marks for absorbing 95.4 percent, implying that the latter was just 0.78 marks ahead even though it made a far better offer. The beneficiary of this approach was Bidder E who would otherwise have been disqualified.

Experience of airport operator: Experience of the Airport Operator carried a maximum score of 25, divided equally among 9 factors. Bidder E was given 80 percent marks for experience in Non-OECD countries even though its Airport Operator (Mexico) was from an OECD country. Further, the Mexico Airport, ranked 119 in international rankings, was awarded 13 marks higher than Istanbul Airport, ranked 46, and 3 marks more than Munich Airport, ranked 4. In addition, track record of the Airport Operator in commercial activities was to be scored. To be eligible for this scoring, the Airport Operator was required to have non-aeronautical revenues of 40% or more. However, Bidder E who had non-aeronautical revenue of only 37 percent in Mexico was awarded a score of 75 percent.

Property and infrastructure experience: Two factors, “Experience with major property development” and “experience with major infrastructure development” had been clubbed into a single matrix. Such clubbing was not done anywhere else and it could only benefit those bidders who would score low in one of the two factors. When the consultants were

asked to split these factors, they complied by giving 25 percent weightage to property development and 75 percent to infrastructure development. If both the factors were split equally, Bidder E would have got disqualified. Further, one half of the 12.5 marks allocated for this parameter were for the experience of a foreign member of the bidder's consortium. Though Bidder E had no such member, it scored 90 percent marks on this account.

Raising of Marks: In respect of two factors, the consultants awarded 3.75 marks each (on a scale of 5) to Bidder E. Nowhere else in the entire evaluation report did the consultants award 3.75 marks. They had either given 3.5 or 4 marks. If Bidder E was awarded 3.5 marks, as per practice adopted in the evaluation report, it would have got disqualified.

Imbalanced scoring: On subjective parameters, Bidder E scored exceptionally high marks. For example, under the sub-head of "Development Value Add", which carried a maximum score of 44.5 out of 100 in the Development section, Bidder E scored 43. Further, it scored 100 percent on both 'development path' and 'flexibility' while the next highest scores were only 60 and 65 percent respectively.

Possible bias against other bidders: Bidder C had Munich as its Airport Operator which was ranked 4 in the world and its Indian partner too had considerable experience. Yet it scored low, especially on subjective parameters, and did not qualify. Bidder D lost even though its Airport Operator received high scores. This was mainly because its Indian partner was a shell company that got no marks. Legal opinion should have been sought whether it could claim credit for its parent companies, as is usually the practice.

Further deliberations in the IMG

In the IMG meetings held on December 14 and 16, the other members of the IMG also gave their opinions on different issues. The representative of the Ministry of Law noted that the issue regarding conflict of interest had been adequately addressed by the consultants. He also noted that the AAI had to carry out the evaluation with the assistance of an advisor. He stated that he was comfortable with the evaluation in the absence of any material discrepancies. The Chairman and Member (Finance) of the AAI gave a common note suggesting that it would be in the overall interest of ensuring transparency and competitiveness to call for fresh bids from the eight pre-qualified bidders. The Financial

Advisor, MoCA suggested that a fresh evaluation be undertaken by an independent technical committee of eminent persons to be constituted by the government. The representative of Department of Economic Affairs stated that the overall balance would lie in endorsing the recommendations of the EC. The chairperson of the IMG did not record his opinion.

A majority of the IMG members rejected the recommendations of EC. Subsequently, chairperson of the IMG (Secretary, MoCA) submitted a note for consideration of the EGOM where he summarised the views of the individual members of the IMG and suggested two courses of action – (a) to go ahead with the present bids; or (b) refer the evaluation to another group.

Constitution of a CoS

On December 21, 2005, the EGoM considered the Report of the IMG and decided to set up a Committee of Secretaries (CoS), headed by the Cabinet Secretary, to assist in concluding the bid process. The CoS, in turn, constituted a Group of Eminent Technical Experts (GETE), headed by Mr. E Sreedharan, Managing Director, Delhi Metro Rail Corporation, to examine the evaluation process. On January 7 and January 14, the CoS received two GETE reports which pointed out several flaws in the evaluation process undertaken by the EC. It also moderated the scores of the shortlisted bidders.

Media coverage

This sea-saw selection process attracted a great deal of interest in the mainstream media which ran a number of stories on various aspects of the bidding process. An illustration of the media interest can be seen in the cover story published by a leading magazine (see Annex-I). While the Left parties and labour unions were staunchly opposed to the privatization process, there was general support for this initiative mainly on account of the congestion and inefficiency at the two airports. While the media reflected the general mood in favour of early award of these projects, it was often critical of the Planning Commission which was seen in several quarters as an obstruction in this entire process. In particular, several reports named Gajendra Haldea, the representative of the Planning Commission on the IMG, as the main stumbling block.

At the same time, there were also a number of media reports that criticized the evaluation process, alleging favouritism and manipulation of the scoring methodology of the evaluation process. One such report alleged that one of the bidders had initially applied without including a mandatory airport operator but that it was later allowed to add an airport operator. Some reports suggested that this bidder was being unduly supported and that the outcome was being tweaked in its favour.

Reports of the Group of Eminent Technical Experts (GETE)

The GETE confined its scrutiny to assess whether the EC had assigned scores and weightages in a logical manner. It did not study the documents submitted by the bidders, nor did it make an attempt at fresh evaluation.

The GETE expressed reservations relating to the scoring for certain sub-factors. From the reports of the GETE it could be inferred that the concerns raised by them were similar to those raised in the Issues Paper of the Planning Commission. The GETE noted that the EC had also considered other published statistics as well as the personal perceptions of its members. This was not endorsed by the GETE as it was not in conformity with the bid documents. Based on its findings, the GETE made the following changes in the scores awarded by EC:

- (a) The EC had assigned equal weightage to all the sub-factors within a given factor, except in two cases. As the RFP did not specify the weightages to be assigned to these sub-factors, GETE decided to allocate equal weightage.
- (b) On the performance in non-aeronautical revenues, Bidder E was awarded 75 percent even though its non-aeronautical revenue at Mexico Airport was only 37 percent of the total revenue. This score was reduced to 50 percent.
- (c) For operations in non-OECD countries, Bidder E was awarded 75 percent marks even though Mexico is an OECD country. The GETE nullified this score.
- (d) For absorption of AAI employees, the EC had awarded 50 percent marks for meeting the mandatory absorption of 40 percent. The EC nullified the marks awarded to Bidder E as it was only absorbing 40 per cent of the AAI employees. It allocated scores only to the bidders who offered absorption of more than 40 per cent.

(e) For ‘Development Value Add’, Bidder E was awarded exceptionally high marks. The GETE felt that this scoring was very liberal, especially when compared to Bidder B. Out of 44.5 marks, Bidder E scored 43 while Bidder B scored 30.2, despite the excellent credentials of its airport operator (Frankfurt Airport, rank 42).

(f) The GETE felt that if a more rational approach had been adopted, Bidder E, which had crossed the threshold by only 0.3 marks (80.3) in Mumbai and 1.1 marks in New Delhi (81.1), would have been disqualified.

Recommendations of GETE

The GETE recommended that (a) there was no need to scrap the current process or invite fresh bids; (b) Bidder B’s financial bid should be opened for both the airports and one of the two airports could be awarded to it; and (c) the other airport should be restructured using a Special Purpose Vehicle (SPV) where the government’s equity should be limited to 50 per cent so that the SPV will have flexibility and freedom for taking decisions.

Award of Concessions

Since the report of GETE disqualified Bidder E, the only remaining qualified consortium was Bidder B who could be awarded only one of the airports as per the bidding rules in the RFP. As the airport modernisation plans had already been unduly delayed, EGoM was not in favour of a fresh bid process. It, therefore, decided to lower the qualifying marks from 80 percent to 50 percent so as to qualify more bidders, and then proceed to the financial bid stage. However, the number of bidders for each airport was restricted to four. The pre-qualified consortia based on this new criteria were – Bidder B, Bidder E, and Bidder C for both Mumbai and Delhi airports, Bidder D for the Delhi airport only and Bidder F for the Mumbai airport only. Bidder B was given the option to choose the airport it preferred as long as it matched the highest financial bid for that airport since it was the only consortium to have qualified against the initial eligibility criteria.

On January 24, 2006, the EGoM met for deciding on the award of airport concessions. The EGoM reached a conclusion and by January 30, 2010, AAI sent a communication to the pre-qualified bidders that their financial bids would be opened on January 31, 2006. The highest bid for the Delhi Airport was made by Bidder E, but as Bidder B had been

allowed to choose between Delhi and Mumbai airport, it chose Delhi by matching the bid given by Bidder E, which was a revenue share of 45.99 percent out of the gross revenues of the airport. The Mumbai Airport was awarded to Bidder F as it had offered the highest financial bid for the Mumbai airport which was a revenue share of 38.70 percent.

Review by Supreme Court

The award process was unsuccessfully challenged by Bidder E in the Delhi High Court and the Supreme Court. Its main contention was that the EGOM should have accepted the recommendations of the EC and should not have asked the GETE to undertake further examination. It was contended that the appointment of GETE was illegal, unauthorised, and without jurisdiction as it was outside the guidelines of the RFP.

In response, AAI pointed out that the argument of Bidder E was flawed as it put too much stress on EC being the only advisor to the EGOM. In the RFP, the EC was not specified as the agency on whose evaluation the government was obliged to act upon. Hence, the report of the EC had no binding effect on the IMG, much less the EGOM. Further, AAI contended that the appointment of GETE was part of a multi-tier decision making process and that the EGOM had given a reasoned decision. AAI further stated that if Bidder E's argument was accepted, then the constitution of committees such as GRC, IMG, and COS would also be in question as none of them were specifically mentioned in the RFP.

After an extensive hearing where several legal luminaries argued on behalf of the government, the AAI and the affected bidders, the Supreme Court decided that the appeal of Bidder E was 'sans merit' and deserved dismissal. The Supreme Court also felt that Bidder E had breached certain terms of confidentiality mentioned in the RFP, and although such a breach has no penal consequences it goes "against the very concept of fairness in the process and evaluation of bids."

Conclusion

Several conclusions can be drawn from this case study. The most obvious was the demonstration of the government's determination to see these projects through. The frequency at which numerous meetings were held between December 2005 and January 2006 at the level of EGoM comprising of senior ministers, the CoS headed by the Cabinet

Secretary and the IMG comprising of several secretaries clearly suggests that when political will is unambiguous, what is otherwise considered unachievable can often fall in place overcoming political controversies, bureaucratic hurdles and opposition of employee unions.

This case also demonstrates the role of transparency and open debate. Initially, the deal was as alleged as an ‘open and shut’ award in favour of one of the bidders, and it was about to be concluded on those lines. At the last moment, a single participant of the IMG expressed strong observations which the IMG was unwilling to endorse. But as events unfolded, this dissent snowballed into a reversal of the outcome of the entire selection process. The issues were discussed in several high level fora and a fair and balanced outcome followed. This outcome was endorsed by the Supreme Court too. As a result, while India rolled out two of its largest PPP projects, there was no criticism from any quarter regarding the outcome of the selection and award process. In an open democracy like India, where virtually all big deals involving the private sector are routinely criticised and questioned, this would seem to be a singular achievement, made possible by a fair and transparent approach.

While the final outcome was generally applauded, a key learning from this case lies in the role of institutions and processes. While the system finally ensured a robust outcome of the selection process, it also exposed its fragility. It seems that but for the issues pressed by a dissenting individual participant, the entire selection process seemed amenable to capture, as a manipulated outcome was almost achieved. This exposed the inherent weaknesses of the prevailing institutions and processes. Unless addressed through systemic improvements, similar problems can not only recur but also jeopardise growth and development while enabling rent-seeking.

This case suggests that hiring world-class international consultants is no guarantee for a fair and professional outcome. The manner in which the evaluation criteria and processes were designed by the consultants actually led to a very complex, opaque and subjective methodology that was open to abuse and virtually enabled a manipulated outcome that led to much criticism and eventual rejection. Since the consultants are not accountable and usually take cover under omnibus disclaimers, it is the accountability of public institutions that matters. This case demonstrates the usefulness of inter-ministerial and

inter-disciplinary consultations that not only enables significant value addition but also introduces checks and balances. The value of free and open debate where the incumbents perspective can be contested is an important learning from this case.

Post Script

The learning from this complex and high-profile case did not go unheeded. The Planning Commission, acting as the Secretariat for the Committee on Infrastructure (CoI) chaired by the Prime Minister, initiated the task of drafting the guidelines for selection of bidders in PPP projects. After an year-long consultative process, these guidelines were approved by the CoI and notified by the Ministry of Finance. These guidelines mandate a two-stage process based on model RFQ and RFP documents. The first stage comprises of pre-qualification which is based on financial and technical parameters. The financial parameter is a pre-determined net-worth requirement. The technical parameter is based on the actual track record of the applicants.

Scores of projects have since been awarded by the Central and State Governments using these model bidding documents. These numerous projects seem to have sailed through successfully. The last such award was for a Rs.12,200 crore project for building and operating a metro rail system in Hyderabad (now India's largest PPP project). The ease and transparency with which this project was awarded in August 2010 demonstrates that if lessons are carefully learnt and implemented, significant achievements can be expected.