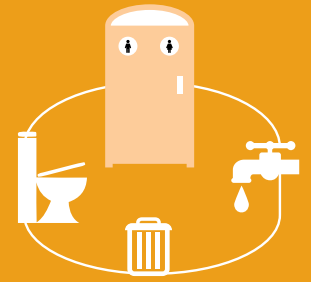


Ensuring Efficient Outsourcing (Contracts and Procurement)



Why is this important

Some of the critical challenges in the asset management of public toilets can be traced to gaps and inconsistencies in the contract award and structuring process. Reviewing the contract agreements between municipalities and private vendors and developing standardized and suitable contract templates is the first step to ensure and control effective implementation.

How to go about it

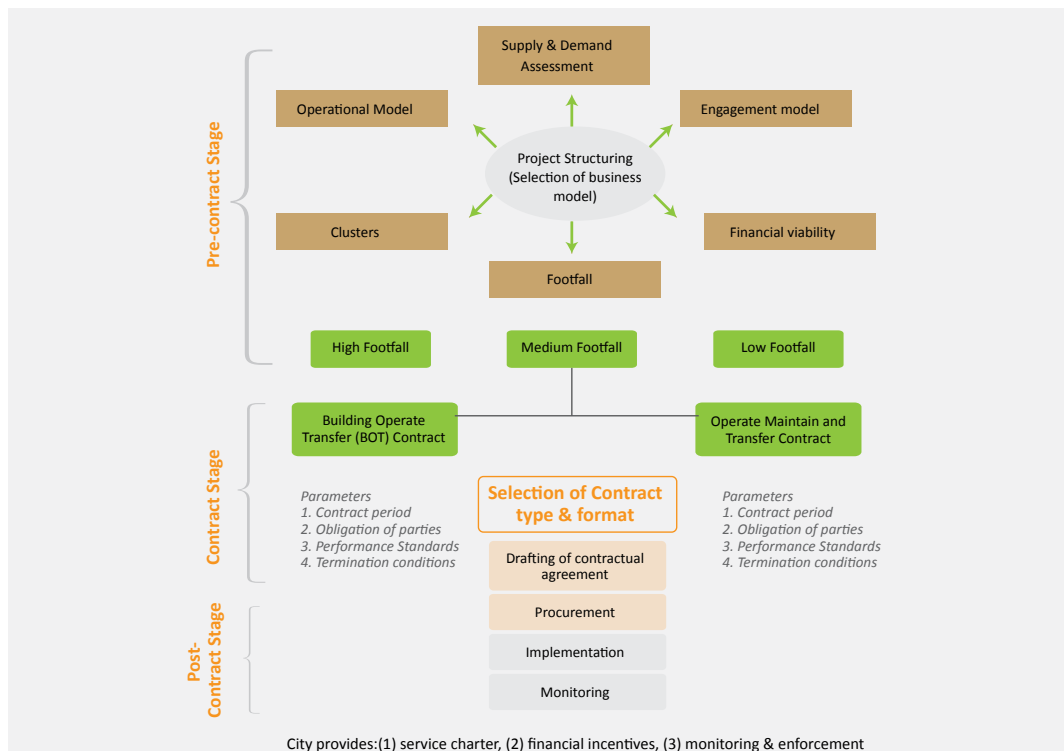
The existing sewage treatment plants in India have the capacity to treat only

37%

of waste water generated in cities

The business model chosen (operational model, footfall, financial viability), capacities of the potential operators and subsequent division of responsibilities (construction, maintenance, etc.) decide the type of contract. The contractual instruments for managing public toilets must have emphasis on service delivery and address performance concerns (incentives and penalties). The contracts must be drafted on a fair and equitable basis with risks being allocated between parties who are best suited to handle them. The main steps to consider when drafting a contract are:

CONTRACT SELECTION PROCESS



1. CONTRACT SELECTION : OMT, BOT, SC, ROMT, MAINTENANCE

The three most common contract structures for public toilet projects are Build Operate and Transfer (BOT), Renovation Operation, Maintenance Transfer (ROMT) and Maintenance Contracts (MC) and variants of the same (Table). BOT models are suitable for new constructions and retrofitting, while Maintenance Contracts can be used for new constructions, retrofitting as well as existing assets. They should be adopted in high footfall areas. Cross-subsidization of BOT and MC providers should be considered in areas of low footfall. In case a cluster requires a combination of contracts (i.e. BOT or MC), it should be packaged into 4–5 projects to achieve scale and ensure a reasonable mix of usage levels (e.g. 3 high-to-medium footfall; 2 low footfall locations; 2 open urinals).

2. PROCUREMENT AND BIDDING PROCESS

The procurement process starts after the project structure has been finalized. Bid documents are prepared according to the project specifics and bidder selection option. Processes are standardized across all states and sectors. The procurement strategy should be suitable to the selected contract type, staged and in line with the key governing principles. The procurement culminates in the issuing of the Letter of Acceptance (LoA) to the private partner. The main aspects of the process are:

Objectives of the procurement process:

- Reduction of cost associated with selection of a private partner
- Optimization of public services delivery
- Efficient public funds allocation & use
- Fair competition for eligible participants
- Transparency & legal certainty

Contract selection

Contract type	Asset Ownership	Type of Asset	Capital cost	O&M	Investment	Contract Duration
Maintenance Contract (MC)	Public	New or old	Negligible	Private	Public	<3 years
Renovation Operation, Maintenance Transfer (ROMT)	Public	Retrofit	Low	Private	Public or Private	3–5 years
(Design Finance) Build Operate and Transfer (BOT, DBOT, DFBOT)	Shared or leased	New or reconstruction	High	Private	Private	>7 years

Empanelment of operators (at city or state level):

Identify a pool of agencies that can render services of a particular order and scale. The number of potential bidders for a specific project and their capacities influence the selection of the bidder.

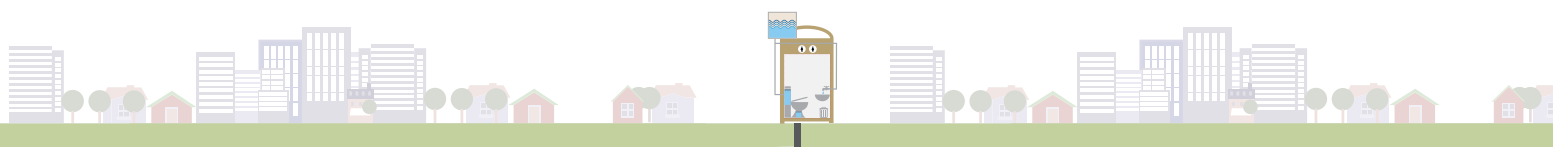
Bidder selection:

Bid parameters options to select the preferred bidder are:

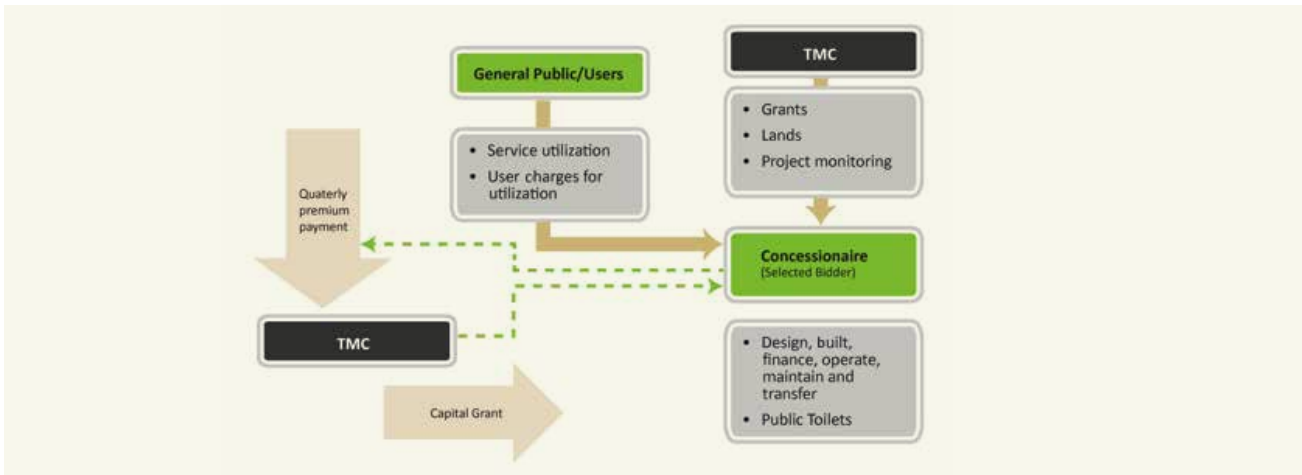
- Number and capacities of potential operators define the type of contract (i.e. BOT), the corresponding concession period as well as the premium and subsidy.
- Number and size of clusters are key aspects for finalizing the procurement strategy.
- Toilet structure and maintenance services rendered: Toilet structure elements such as solar energy system, wastewater treatment, rainwater harvesting, etc. as well as proprietary products such as e-toilets influence the bidder selection. It is recommended to have one contract integrating all elements and their respective modes of procurement to ensure that one entity is responsible for the overall service delivery (rather than separate contracts with multiple entities). To do so, the contract documents are to be adjusted to allow the operator to obtain or provide the specialized services. The corresponding requirements need to be integrated into the overall bid itself (service charter).
- Operation of the assets: Selection of bidder offering the highest premium (bidder's estimate of the footfalls and revenues when user charges retained by operator and no subsidy offered) or lowest capital grant or subsidy to be paid by the municipality (make development and O&M as per the prescribed standards more viable).

Check that prerequisites are fulfilled:

Before the procurement process begins, the municipality needs to ensure that prerequisites such as technical, financial feasibility, administrative approval, funding, etc. are in place.



BIDDER SELECTION



Prepare bid and tender documents

This is the stage where the project bid documents are prepared to bind both the public entity and the private party upon completion of the procurement process. Bid documents are to ensure:

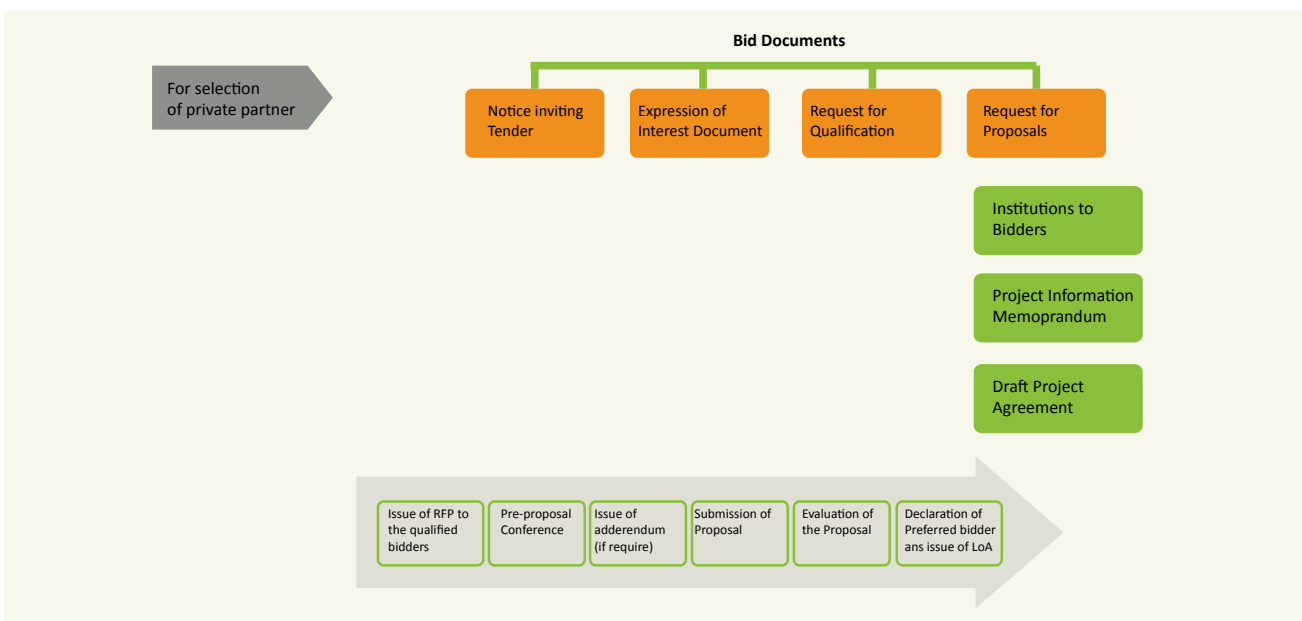
- Fair and transparent process compliant with public procurement rules and laws (legal strength and tenability to the transactions carried out by the contract parties)
- Submission of informed proposals (project details, eligibility criteria, evaluation methodology, instructions for bidding and submission of proposals, bids, timelines, terms and conditions)

The tender and eligibility criteria (capabilities, number of PT operated) define who (existing national, regional and local PT operators; potential new entrants) will be able to bid for the project.

3. DRAFTING AND ISSUING THE CONTRACTUAL AGREEMENT

Roles, responsibilities and capacities of the parties, payment conditions, default conditions etc. need to be considered while developing the contract document. The service charter defines the required facilities, service level and standards (O&M, construction or retrofitting) to ensure quality and sustained use. To guarantee service delivery, clear incentives and penalties should be chalked out. Incentive mechanism can be in the form of awards and recognition for contractors based on the actual service delivery. Penalties can be imposed through mechanism of performance guarantee at the point of signing the contract and appropriated by the municipality upon non-performance. To do so, the municipality is to always retain monitoring and enforcement of roles and responsibilities. The performance monitoring mechanism needs to be set out in the contract (Monitoring Framework).

BID AND TENDER DOCUMENTS



Contractual measures to ensure operator compliance

Performance related measures of contract	Detail	Requirement
Inputs for contract drafting		
Cash flow analysis	Assessment of revenue and expenditure scenarios of public toilet projects (within and across PT clusters)	Mandatory
Clustering	Division of public toilet projects to achieve economies of scale or allow optimal cross-subsidization	Recommended
Packaging of contracts	Define what projects/clusters to be packaged under one contract according to operator's capabilities and availability (complete clusters vs. individual cluster contracts)	Mandatory
Contract drafting		
Contracts structuring	Standardized contract across providers	Mandatory
Bid process	Transparent, open bid process	Mandatory
Provision for cross-subsidization	Refinancing agreement across clusters/toilets to achieve competitive resources	Recommended
Contract period	Maintenance contracts for shorter duration; BOT for longer duration	Recommended
User/advertising fees, etc.	Define fees for cost and capital recovery: Standardized fees across toilets (city). Differential user fees within PT for special category users (e.g. no fee for children)	Optional
Performance commitments	Defines service level requirements (quantify; stringent O&M protocols, monitoring and evaluation standards)	Mandatory
Penalties for non-compliance	Define and quantify non-compliance of performance commitments	Mandatory
Monitoring and enforcement	Define mode and schedule of monitoring including communication flows	Mandatory

Application on the ground

Tirupati: The increased use of BOT contracts did not bring about improved service delivery. Some of the critical challenges that Tirupati faced in the asset management of public toilets could be traced back to gaps and inconsistencies in the contracts award and structuring process (i.e. no standardized contract agreements, no design specifications and service standards, no cross-subsidization requirement, inconsistent and too long concession periods, no penalties and lack of clarity on land transfer or acquisition and clearances). To put an end to monopolies, unfair competition, poor service provision, dilapidated facilities and sub-optimal return for municipality, GIZ assisted the municipality to develop effective model contracts and tender documents.

Shimla: The tender documents and contracts for the three cluster options (revenue potential) have different

qualification criteria as per the respective operational and business models, to help select the most suitable operator for each cluster: ROMT or O&M Contract for high & medium footfall with revenues just sufficient to cover O&M: (1) Operator: minor and major maintenance works; Municipality: finance renovation works; (2) Operator receives periodic payments during operation period and grant for refurbishment (based on viability); (3) Listing of specific details for each toilet (inventory, current status, repair works). Community-based model for low footfall: (1) Operator to take assistance from community for operating the toilets (training in book-keeping, monitoring etc.); (2) Maintenance through service contracts, specifying cleaning cycles for peak and non-peak hours; (3) Monthly passes at nominal rates to regulate usage; (4) Municipality ensures adequate water and power supply and covers cost of construction.

For more information contact

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Reference documents

- *Common contract options and selection criteria*
- *Key clauses in the RFP document and sample contracts*
- *Key bidding criteria for the different cluster options (Shimla)*
- *Basic facilities and design parameter*

Reference documents are available on the website www.publicsanitation.org

