



## «Kekava Bypass» Case Study

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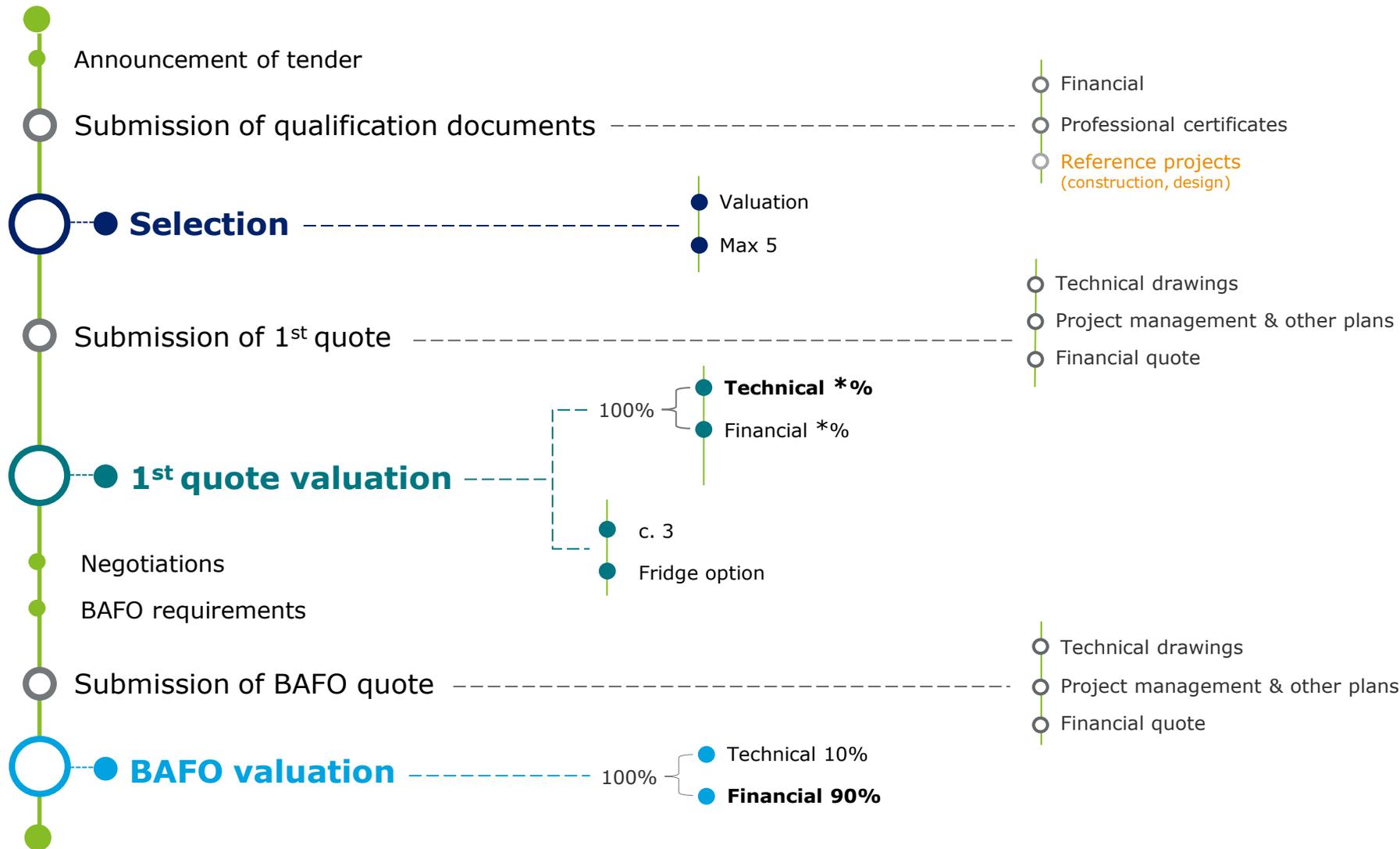
# Contents

Legal aspects – Procurement procedure	3
Legal aspects – PPP Agreement	9
Finance aspects	13
Off balance sheet treatment	19

# Legal aspects

## Procurement procedure

# Indicative awarding process



# Key facts on procurement procedure

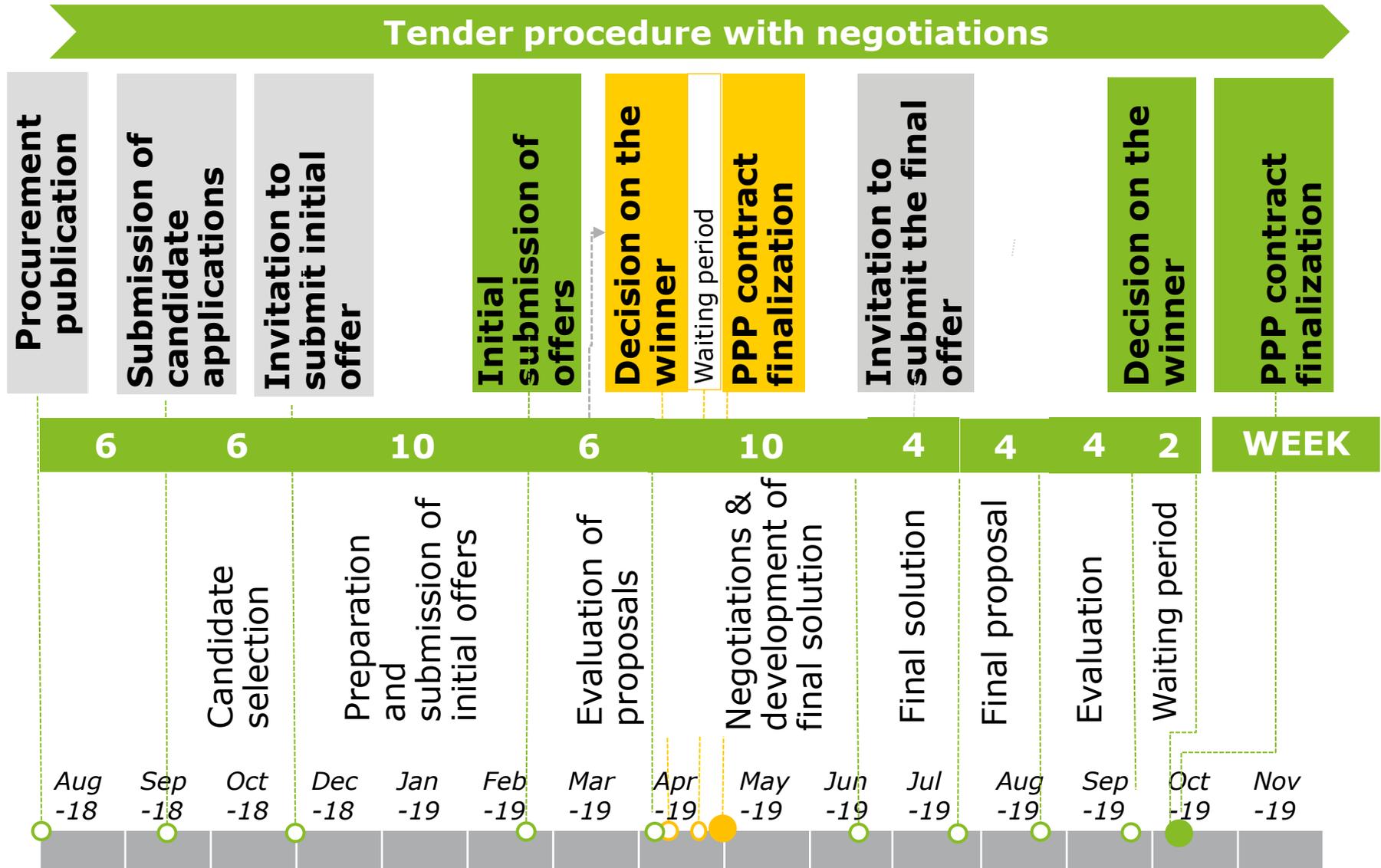
Description	Tender procedure with negotiations
Selection of candidates	min 30 days
Minimum of invited candidates	3
If only one candidate corresponds	<b>Procedure must be discontinued</b>
Initial proposal submission timeframe	<b>min 30 days*</b>
Invitation is sent	To all corresponding candidates
Content of negotiations procedure	<b>Goal:</b> improvement of the proposal content (except final submissions) Minimum requirements, appraisal criteria are <b>not</b> negotiated
Decision on the winning bidder without negotiations	<b>Possible</b>
<p><i>* Minimum timeframe can be 10 days, if the mentioned conditions of Cabinet Regulations No 107, 28.02.2017 have been accounted for.</i></p>	

# Key facts on procurement procedure

Description	Tender procedure with negotiations
Negotiation of the non-essential conditions of the PPP agreement after decision on the winner	Not possible
Harmonizing of procurement procedure documentation with CFCA*	Before initiating the procurement procedure
Draft PPP agreement must be added to	Invitation to submit initial proposal (detailed, qualitative draft PPP agreement is elaborated prior to the tender announcement)
Draft PPP agreement during negotiations	<ul style="list-style-type: none"> <li>• PPP agreement is harmonized with CFCA prior to commencement of the procedure;</li> <li>• Specifically marked and non-essential parts of the draft PPP agreement can be altered during negotiations</li> </ul>

\* *Central Finance and Contracting Agency of the Republic of Latvia (CFCA)*

# Indicative procurement timeline

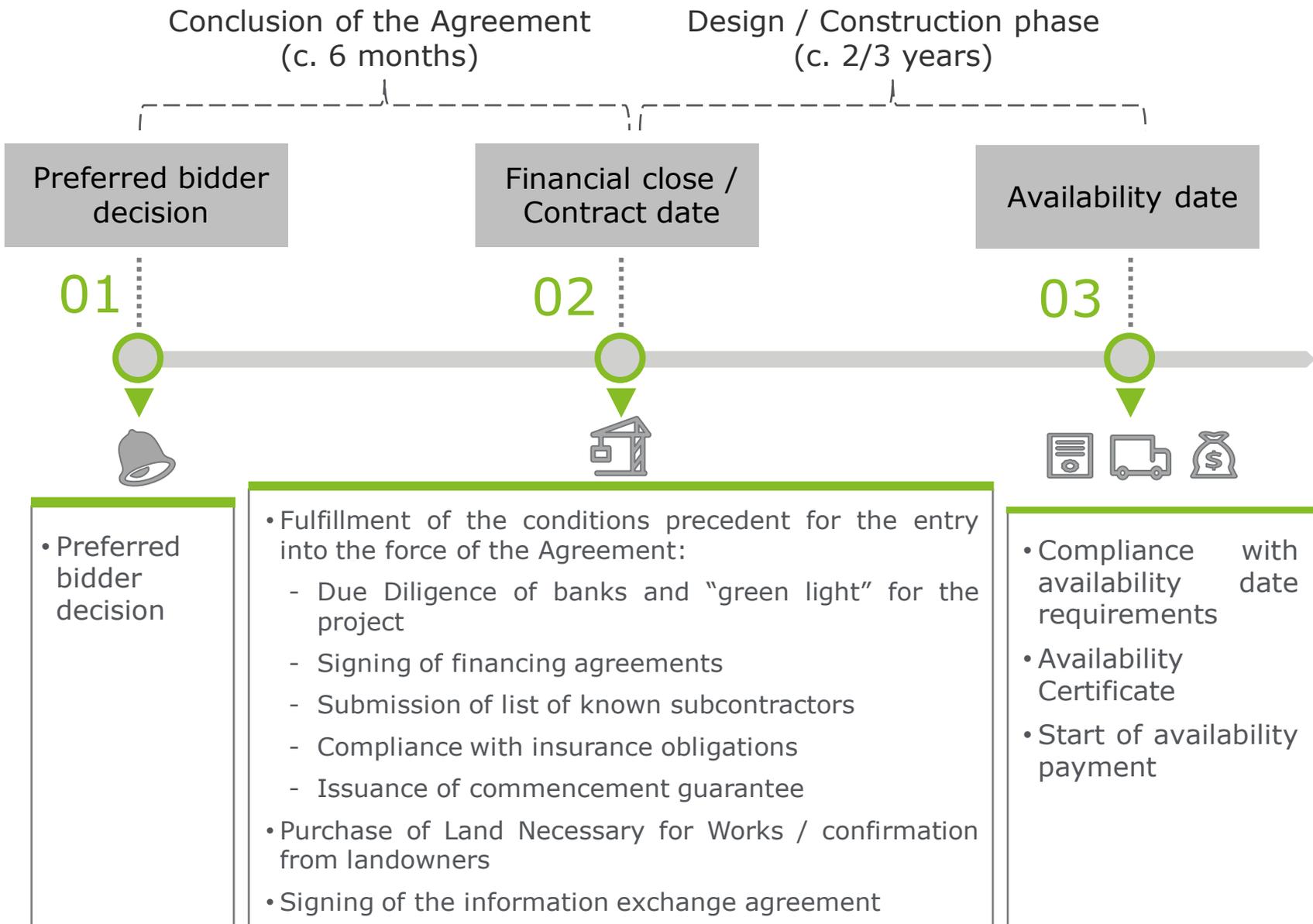


# Required qualifications to participate in procurement process

<b>RANGE</b>	<b>REQUIREMENT</b>
<b>ECONOMIC AND FINANCIAL</b>	<ul style="list-style-type: none"><li>• Average turnover from construction works</li><li>• Requirement for equity capital level</li><li>• Ability to finance the project (support letter)</li><li>• General working capital, liquidity, profitability, solvency ratio</li></ul>
<b>TECHNICAL AND PROFESSIONAL</b>	<ul style="list-style-type: none"><li>• Experience of construction in similar infrastructure (roads, other transport-related structure):<ul style="list-style-type: none"><li>• Roads of the national significance (freeways, highways, regional)</li><li>• Annual average daily traffic volume</li></ul></li><li>• Experience of designing road infrastructure (main state roads or regional roads or equivalent roads abroad)</li><li>• Long term road maintenance capacity:<ul style="list-style-type: none"><li>• Road type</li><li>• Term of maintenance</li><li>• Annual average daily traffic volume</li></ul></li><li>• Capacity of professional staff in the above stated projects</li></ul>

# Legal aspects PPP agreement

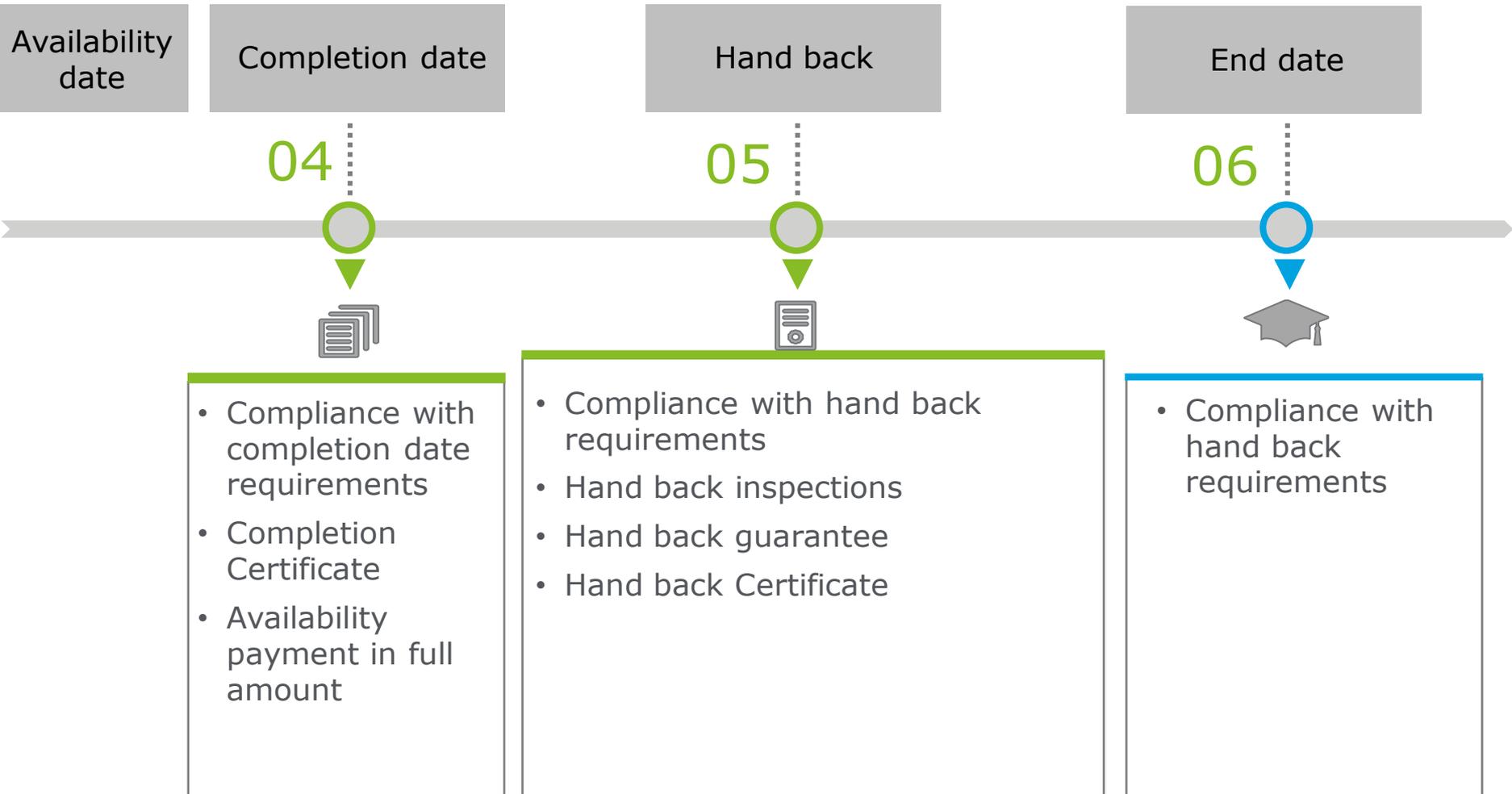
# Lifecycle of the agreement



# Lifecycle of the agreement

Availability phase  
(20 years)

Guarantee period  
(to be specified)



# Overview of the draft contract

## Main provisions of the contract

Subject of the Agreement: DBFM\*

### Design of the Bypass

- ✓ Obtaining all permits for design
- ✓ Designing of the Bypass in line with the instructions of the Public Authority and Permits

### Construction of the Bypass

- ✓ Obtaining all permits for construction
- ✓ Construction of the Bypass in line with the Design and Permits

### Ensuring Availability of the Bypass

- ✓ Compliance with Availability Requirements
- ✓ Reinstatement obligation

### Ensuring Maintenance of the Bypass

- ✓ Compliance with Maintenance Requirements

### Hand Back of the Bypass

- ✓ Compliance with Hand Back Requirements

### Termination & Step-in rights

### Dispute resolution

\* *Design, build, finance, maintain*

# Finance aspects

# Indicative financing plan

- **Envisaged financial structure:**

- Project finance type
- D/E ratio: 90/10
- Hedged interest rate risk

- **Possible financing sources:**

- Shareholder equity/sub-debt (10 %)
  - EIB\* loan (up to 50 % senior debt)
  - NIB\*\* loan (up to 50% senior debt)
  - And/or commercial banks
- } (up to 90 %)
- At BAFO: uncommitted financing

## Cooperation of EIB with other potential lenders

- EIB can finance the lesser of up to 50% of total project costs and 50% of the total senior debt.
- EIB needs to be at least pari-passu with other senior lenders, meaning that the tenor of other lenders may not be shorter than EIB's, etc.
- Except from being potential co-lenders for long term senior debt, commercial banks have other roles to play: account bank, security agent, intercreditor agent, equity bridge provider (if requested from bidders), etc.
- There are certain credit rating requirements for co-lenders, account banks, security agents, hedging banks, Letters of Credit providers: at the level of A-/BBB+

# Payment mechanism

## General principles of Availability payment

- Spread from availability to contract end date
- Paid periodically and only during availability phase
- Fixed at the time final bid is submitted (certain exceptions exist)



<b>P1</b>	<b>Non indexed annual payment related to construction cost</b>	<ul style="list-style-type: none"><li>▪ Covers:<ul style="list-style-type: none"><li>▪ construction costs</li><li>▪ debt financing costs</li><li>▪ equity/sub-debt cash flows</li></ul></li></ul>
<b>P2</b>	<b>Indexed annual payment related to maintenance cost</b>	<ul style="list-style-type: none"><li>▪ Covers:<ul style="list-style-type: none"><li>▪ maintenance costs</li><li>▪ major maintenance costs (periodic investments)</li></ul></li></ul>

# Output specification

## Payment adjustment structure

### Output specification structure:

- Technical requirements
- Availability requirements
- Performance requirements

### Penalty regime is applicable:

- Unavailability deductions (proportional to availability)
- Under-performance deductions (deduction points)

### Deductions are not applicable in case of:

- Relief events
- Rectification periods (except failures to meet rectification periods)

# Compensation on early termination

Compensation principles for different scenarios

## Termination due to Public Entity Fault (or authority voluntary termination)

- The amount of senior debt outstanding at the date of termination
- Sponsors' equity and sub-debt (including loss of return)

## Termination due to Private Partner Default

- Compensation on the basis of an estimated market value of the contract
- Applicable if step-in/re-tendering options fail

## Termination without Fault of the Parties (Force majeure)

- The amount of senior debt outstanding at the date of termination
- Sponsors' equity and sub-debt actually contributed (but not loss of future return)

# Off balance sheet treatment

# Indicative risk sharing (list is not exhaustive)

Identified main risks and critical aspects

Key risks	Private sector	Public sector	Shared
Obtaining site ownership		X	
Granting access rights		X	
Site conditions	X		
Obtaining permits	X		
Authority inaction		X	
Design	X		
Construction (incl. delays)	X		
Variations requested by Authority		X	
Availability of bypass	X		
Failure to meet quality standards	X		
Changes in traffic volumes (capped)			X
Legislation changes: general	X		

# Indicative risk sharing (list is not exhaustive)

## Identified main risks and critical aspects

Key risks	Private sector	Public sector	Shared
Legislation changes: discriminatory		X	
Legislation changes: taxes	X		
Changes in VAT		X	
General price changes (excl. Indexation)	X		
Availability of financing (after financial close)	X		
Interest rate risk (after financial close)	X		
Environmental damages	X		
Damage by users (accidents)	X		
Liability to 3 <sup>rd</sup> parties	X		
Force Majeure			X



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