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Miller Thomson LLP Education Group
Morning Recess Webinar Series

**The Broader Public Sector
Procurement Directive:
Myths and Fairytales (and a few Truths)**

Dražen Bulat

dbulat@millerthomson.com

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Agenda

- 1. Introduction**
- 2. Contract A**
- 3. Myths / Truths**
- 4. Questions**

Introduction

- **BPSAA**
 - What is it?
 - Who does it apply to?
 - What does it do?
- **Procurement Directive**
 - What is it?
 - When does it apply?
 - What does it do?

Introduction

- **Procurement Directive High Points**
 - Posting on country-wide electronic database, eg. Biddingo, Merx
 - Evaluation criteria set out in docs
 - Debrief / complaint process
 - 25 mandatory requirements
- **Goals**
 - Clean up public procurement
 - Create process consistency
 - Create accountability
 - Create credibility with vendors

Introduction

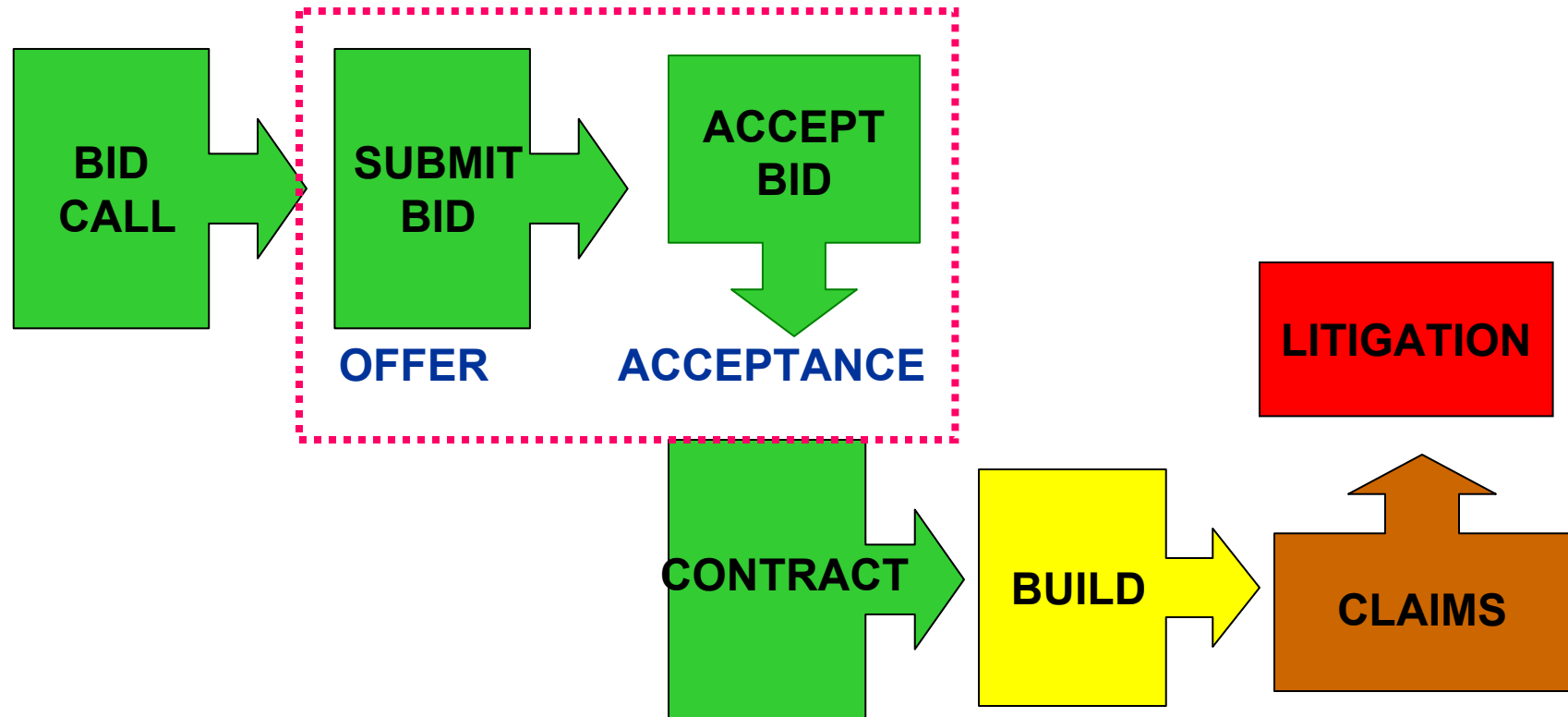
- **Tools**
 - Procurement Directive
 - Implementation Guidebook
 - Ministry of Finance website
- **Consequences of non-compliance**
 - Breach of funding agreement
- **Effects**
 - Inconsistent application
 - Some process consistency
 - Accountability
 - Confusion / Myths

Glossary

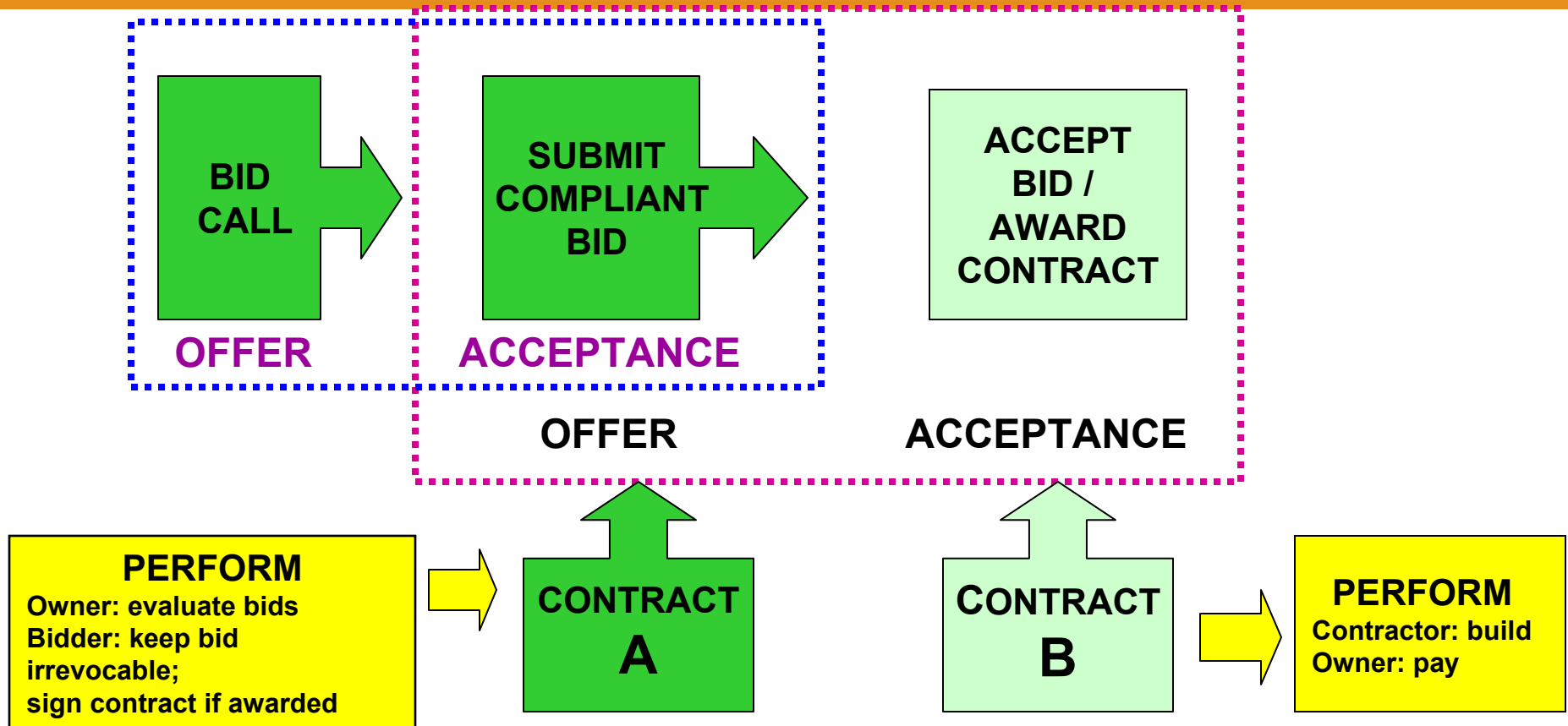
- **The term RFP includes**
 - **Tenders**
 - **Bids**
 - **RFQ**
 - **RFP**
 - **RFT**

ALL USED IN “COMPETITIVE PROCUREMENT”

Bidding Until 1981



Contract A: Alive and Well



You Must Always Use the “Bid Contract”

- **Preferred under PD**
- **Opt out permitted**
 - **MR16 and MR21**
 - **Guidebook, Sn. 11.2.6**
- **Why would you not want “Bid Contract”?**
 - **Looking for differing solutions**
 - **Output specs key**

PD APPLIES: BID CONTRACT OR NOT!

You Never Have To RFP Professionals

- **PD incorporates AIT (s. 5):**
 - **If an exemption, exception, or non-application exists in AIT, can apply to PD**
- **AIT Annex 502.4 (Sn. L)**
 - **Non-application**
 - **Accountants / architects / lawyers etc.**
- **Truth, provided**
 - **Professional not “consultant”**

WHAT’S A CONSULTANT?

You Always Have to RFP Professionals

- **MR3: O must procure consulting services irrespective of value**
- **What's a consultant / consulting services?**
 - **Very broad definition**
- **Defined in the PD Implementation Guidebk:**

What's A Consultant?

- **“Consultant” means a person or entity that under an agreement, other than an employment agreement, provides expert or strategic advice and related services for consideration and decision-making.**
- **“Consulting Services” means the provision of expertise or strategic advice that is presented for consideration and decision-making.**

The PD Prohibits Prequalification!

- **PD provides for**
 - **Open prequalification (Biddingo, Merx, etc.)**
 - **Creation of select list of qualified vendors**
 - **Comply with / evaluate per PD**
 - **Then, bid documents to select list only**
 - **Second process still follows PD rules**

Owners Can Never Negotiate!

- **PD, no prohibition**
- **Addressed by implication (MR16)**
- **OK if:**
 - **Prices over budget (not concurrent)**
 - **RFP specifies/requires**
 - **Contract not issued with RFP**

Low Compliant Bid Always Wins!

- **PD says (MR9):**
 - “maximum justifiable weighting must be allocated to the price / cost component of the evaluation criteria”
- **Somewhat rigid sounding**
 - Value for money goal
- **Can produce unwanted results**
 - Sometimes lowest price ≠ best
 - Concern with poor technical winner

Low Compliant Bid Always Wins!

- **Low compliant bid may lose**
 - **If points reward other things**
 - **No prequalification**
- **Approach:**
 - **Don't accept myth**
 - **Model evaluation matrix**

If Process Has Problems, You Must Cancel

- **Assume “bid contract”**
 - O must follow process
 - Most RFPs include cancellation clause
- **Nothing in PD**
 - Requiring cancellation
 - Preventing adjustment/re-negotiation
- **“Bid contract” is a contract**
 - Contracts can be amended
 - Consider option to negotiate/change

SAVING PROCESS = TIME AND MONEY

Wrap Up

- **PD is still fairly new**
- **Owners still learning**
- **Everyone will be better off**
 - **Process consistency**
 - **Accountability**
 - **Evaluation criteria are public**
 - **Debrief available**

- **Questions?**

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