

Unsolicited proposals

This note is the sixth in a series of notes on developing a comprehensive policy, legal, and institution framework for public-private partnership (PPP) programs. This series is extracted from a PPIAF-funded analysis of Uganda’s enabling environment for PPPs, which was prepared by Castalia Limited in December 2008.

The procedures proposed by Table 5.1 in note five of this series apply to projects developed by the government. A second possible way to develop PPP projects is to allow private investors to approach the government with unsolicited proposals.

Accepting unsolicited proposals allows the government to benefit from the knowledge and ideas of the private sector. However, it requires additional procedures and rules to strike the difficult balance between incentivizing the private sector to develop projects and ensuring sufficient transparency and competition to achieve value for money for the government. International approaches to unsolicited proposals for PPP projects are mixed. Some countries, such as the United Kingdom, do not permit unsolicited projects. Others encourage unsolicited proposals—for example, the PPP law in the state of Virginia, USA is geared towards attracting unsolicited proposals, several of which have been innovative and valuable.

We recommend that a PPP framework should allow private firms to propose projects to government entities, and provide a framework for these proposals to be developed into PPP projects. Governments often have limited experience in identifying and developing PPPs, so private firms can be a good source of ideas for PPPs. However, it is crucial that the processes and rules by which these unsolicited projects will be considered and adopted are clearly defined. These processes and rules should:

- Encourage private investors to develop proposals for PPP projects that address policy priorities in relevant sectors
- Ensure projects based on unsolicited proposals are subject to competitive pressure
- Ensure transparency in assessing projects and awarding contracts based on unsolicited proposals
- Minimize incentives to submit poor-quality or frivolous project proposals, to avoid creating unnecessary workload in assessing unsolicited proposals.

Some countries have developed specific methods to achieve the balance between encouraging private proponents to develop projects and ensuring competitive procurement, as summarized in Table 6.1 below. Generally, private firms submit proposals to public bodies. If the public body finds the proposal to have merit, it then subjects the proposal to some kind of competitive process. The competitive process aims to ensure value for money for the public sector, while also allowing the original proponent to receive some form of advantage or compensation in recognition of the value of the proponent’s work in developing the project.

Table 6.1: Options for Implementing PPPs from Unsolicited Proposals

Type	Definition	Advantages and Disadvantages
Swiss Challenge	Following an unsolicited approach, an open bidding process is conducted. If unsuccessful, the original proponent has the option to match the winning bid and win the contract.	<ul style="list-style-type: none"> • Relatively clear rules based on bid evaluation criteria for each project, which do not require further analysis or subjective decision-making
Bid Premium	The original proponent receives a bonus in an otherwise fair and open bidding process—typically by adding a premium to the original proponent’s technical or financial offer when bids are evaluated	<ul style="list-style-type: none"> • Since evaluation criteria vary by project, the definition of appropriate bonuses is subjective and potentially open to manipulation

Type	Definition	Advantages and Disadvantages
Developers Fee	The project development costs of the original proponent are reimbursed, either by the government or the winning bidder	<ul style="list-style-type: none"> Recognizes the value of intellectual property developed by the proponent Encourages unsolicited proposals by reducing the cost of the original proponent if unsuccessful in the bidding process... ...but requires potentially subjective analysis to agree on appropriate costs, and risks encouraging frivolous proposals
Open Book	The government signs the contract with the original proponent, who receives a defined return and must conduct a transparent bidding process for each component of the project in order to get the best price	<ul style="list-style-type: none"> Increases complexity of the procurement process
Development Manager	The original proponent develops the project and conducts the bidding process on behalf of the government. The original proponent cannot bid for the project, but receives a development fee from the winning bidder	<ul style="list-style-type: none"> Reduces the government's control over the bidding process Does encourage experienced project sponsors to approach with proposals, as the proponent can act only as a transaction manager

We recommend governments initially adopt a simple Swiss challenge process for dealing with unsolicited proposals. This approach is used in the Philippines, Taiwan, and various state governments in India. The main advantage of the Swiss challenge is that it is relatively easy to define, both in general and for each project. The original proponent's "advantage" is based solely on the project bidding criteria and the bar is set by the competitive process. Since no further definition or negotiation is needed—of bonuses, bidding costs or returns—it does not create additional work for the government project team, nor provide room for subjective decision-making.

This is a relatively conservative approach, providing limited incentive to private sector proponents. In the early stages of the PPP program this conservatism is appropriate—the potential cost of over-loading the PPP framework with unsolicited proposals and of developing poor-quality projects is greater than the risk of receiving too few unsolicited proposals.

Irrespective of the choice of incentive structure, the procedures for dealing with unsolicited proposals must clearly define the requirements to qualify for these incentives. While potential proponents may approach the government earlier in the project development process, their status as project developer should not be officially recognized until they have completed a fully developed proposal to a level pre-defined by government. Table 6.2 below summarizes the proposed process for developing PPPs through unsolicited proposals.

Table 6.2: Proposed Procedures for Processing Unsolicited Proposals

Project Stage	Proposed Procedures	Comments and Points for Consideration
Identifying a Project and Developing Preliminary Proposal	<ul style="list-style-type: none"> Private sector proponent identifies a potential project Private sector proponent develops a preliminary proposal and submits to the relevant line ministry, or other responsible procuring entity 	<ul style="list-style-type: none"> A project proponent may approach the relevant line ministry or the PPP Unit for an early understanding of the likely interest in a proposal—any information shared at this stage is not treated as privileged The PPP Unit should define the required form of a preliminary proposal. This should be similar to the initial business case described in Table 5.1 in note 5 of this series and include:

Project Stage	Proposed Procedures	Comments and Points for Consideration
Identifying a Project and Developing Preliminary Proposal		<ul style="list-style-type: none"> • Nature of the proposed investment, including the technical pre-feasibility study, and description or quantification of expected economic benefits • Initial assessment and proposed allocation of project risk • Estimated total project cost and financing plan, including proposed form of government support and expected cost to the government • Proposed work to be done upon initial approval and before contracting, such as technical feasibility, economic or social impact studies • Initial evidence that the project proponent is technically and financially capable of implementing the project • Note that the preliminary proposal for a PPP project should be submitted to the line ministry or other entity that will be the government party to the PPP contract.
Assessing and Approving Preliminary Proposal	<ul style="list-style-type: none"> • Line ministry assesses preliminary proposal for consistency with budget and policy priorities, and for completeness of proposed further work • Line ministry submits preliminary proposal to PPP Unit for certification • Proposal is forwarded to the Development Committee for approval to continue to project development stage 	<ul style="list-style-type: none"> • The PPP Unit will review and certify the preliminary proposal according to defined criteria based on the PPP policy. These criteria should be defined and published by the PPP Unit, should be similar to those for assessing an initial business case, and include: <ul style="list-style-type: none"> • Initial assessment of economic, technical, and financial viability • Consistency of PPP structure and risk allocation with defined guidelines based on PPP policy • Value for money of proposed PPP compared with other service delivery options, including assessment of country-factual analysis if necessary • Relevance and completeness of proposed studies or further work to fully develop project prior to contracting • Initial assessment of capacity of private sector proponent • If the preliminary proposal does not fulfill all the required elements, it may be returned to the private sector proponent for further work and re-submission by either the line ministry, the PPP Unit, or the Development Committee • If a developers' fee is introduced, the PPP Unit should publish guidelines and limits within which that fee will be set

Project Stage	Proposed Procedures	Comments and Points for Consideration
Developing Project	<ul style="list-style-type: none"> • Private sector proponent undertakes detailed studies as agreed in preliminary proposal • Private sector proponent submits a detailed proposal to the relevant line ministry • A Project Team is formed—similar to that described in Table 5.1 in note 5—and is responsible for assessing the detailed proposal. This may include negotiation between the Project Team and the private sector proponent to further develop technical aspects of the proposal as necessary • Project Team reports with a recommendation to the Accounting Officer of the line ministry, who specifies whether project tender documents should be developed • Upon approval by the Accounting Officer of the line ministry, the Project Team will then prepare detailed bidding documents, as described in Table 5.1 above. The Project Team may be expanded at this point, for example to include additional legal specialists 	<ul style="list-style-type: none"> • By the end of the project development process, the proposed structure of the project should be fully specified • Bid documents must specify the procedure for carrying out the Swiss challenge process, including timelines within which the private sector proponent must match the winning bid • The project team formed to assess a detailed unsolicited proposal will be similar to that described in Table 5.1 in note 5, comprising members from the line ministry, the PPP Unit, other sector bodies if appropriate, and external advisors. The team will be smaller than that required for developing project proposals, since the private sector proponent carries out the detailed feasibility and other studies. Additional advisors may be hired if the proposal is put through to the contract preparation stage
Approving Procurement	<ul style="list-style-type: none"> • Once draft contracts and tender documents are prepared, these are submitted to the Contracts Committee of the line ministry for approval • Where the PPP project requires a financial commitment by the government—whether regular payments or guarantees—it should then be submitted for approval to Cabinet and to Parliament, by the Accounting Officer of the line ministry, supported by the Project Team 	<ul style="list-style-type: none"> • Final approval procedures is as for solicited proposals (see Table 5.1 in note 5 of this series)
Procuring	<ul style="list-style-type: none"> • Once approved by 	<ul style="list-style-type: none"> • The PPP Unit should incorporate the potential

Project Stage	Proposed Procedures	Comments and Points for Consideration
Procuring	Parliament, the Project Team conducts the bidding process. Team Leader is main point of contact <ul style="list-style-type: none"> • The Project Team evaluates bids according to pre-specified evaluation criteria and selects the winning bid. The Project Team has the option to appoint an Evaluation Committee which may include additional specialists • If the original private sector proponent does not have the winning bid he has the option to match this bid and become the preferred bidder • The Project Team negotiates with the resultant preferred bidder, an contracts are agreed and signed as described in Table 5.1 in note 5 	Swiss challenge process into standard proposal procedures
Monitoring, Enforcing, Recording, and Reporting	<ul style="list-style-type: none"> • Monitoring, recording, and reporting responsibilities are as described in Table 5.1 in note 5 of this series. 	

For additional information on unsolicited proposals, please see the PPIAF working paper [Unsolicited Infrastructure Proposals: How Some Countries Introduce Competition and Transparency](#)