INFRASTRUCTURE

Quick Reads on InfraFinance

UNSOLICITED PROPOSALS

WHY, WHY NOT, UNDER WHAT CONDITIONS?

Public-Private Partnerships (PPPs) were once believed by many to be the solution to all infrastructure-related issues—including financing, capacity constraints, and efficiency. We've since accumulated enough experience to understand that only well-planned, managed, executed, and monitored PPPs can bring success.

Now, what do we do about unsolicited PPP proposals (USPs)? PPIAF published detailed *Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects* and an e-learning course[1] to guide government and practitioners, but below is a cheat sheet with the essentials. The full policy guidelines are on the PPP Knowledge Lab in English, French, and Spanish: www.pppknowledgelab.org.

What are USPs?

A simple definition is a proposal for a project submitted by a private entity to the public agency without an explicit request by the public agency. It can also be considered a proposal for a project concept submitted by a private entity to the public agency without an explicit request or solicitation by the public agency that is either 1) not listed in the government's project or PPP pipeline or 2) proposes an innovative solution to a project listed in the government's project pipeline. While some may think USPs are directly negotiated deals between the public authority and the USP proponent, the only key difference between publicly and privately initiated PPPs occurs at the project initiation stage.

The World Bank published *Policy Guidelines on USPs*. Does this mean that the World Bank recommends or promotes them?

The simple answer is no. Solicited PPPs (or publicly initiated PPPs) can bring the same benefits as USPs, and they are better suited to offer a level playing field for all bidders, secure public interest and value for money, and conform to basic principles of transparency.

The *Policy Guidelines* were intended to fill the knowledge gap and guide public authorities once they decide to allow USPs. They were meant to ensure governments can mobilize the strengths of the private sector while

1 https://olc.worldbank.org/content/policy-guidelines-managing-unsolicited-proposals-infrastructure-projects-self-paced

protecting public interest in dealing with challenges associated with USPs. Alternatives to USPs exist when it comes to incentivizing private sector's innovation—such as shaping output-based approaches instead of focusing on input technologies, or allowing for a transparent dialogue and interaction between the public agency and the bidders during the tender process so that the quality of the contract is improved and tailor-made to the public sector's needs. When contemplated, USPs should be managed and used with caution as an exception to the public procurement method.

Proponents argue that USPs accrue some benefits. What is the World Bank's position?

Let's look at these arguments one by one.

"Implementing a USP will be easier and faster than implementing a publicly initiated PPP project."

There is no evidence that USPs are easier or faster to implement. When USPs bypass procurement regulations or are directly negotiated, public controversies often delay projects. Negotiating and implementing a project with the USP proponent is typically more challenging and takes more time due to information asymmetries and a weaker public agency negotiating position.

"USPs are more likely to provide access to finance than publicly initiated projects."

Better project preparation is what enhances a project's bankability and finance-ability, period. No evidence suggests that USPs provide access to finance that would not be available under a well-structured publicly initiated process. Challenges in securing financing are usually due to poor project structuring including design, revenues, government support, or credit support. The real, long-term solution is for governments to enhance their technical capacity in project preparation or to hire advisors to assist them in developing bankable projects.

"USPs help governments overcome a lack of technical capacity to prepare, procure, and implement PPPs."

USPs are not a solution for overcoming capacity constraints. In fact, ensuring a good deal from a USP requires even more capacity than for a publicly-initiated PPP project, as noted before. Governments that lack capacity are unlikely to be able to negotiate a PPP agreement that guarantees the public interest and value for money, increasing chances that USPs become bad deals for society.

"USPs allow governments to take advantage of private-sector innovation, resulting in efficiencies in infrastructure delivery."

Most USPs submitted and accepted by government are not real innovations. Very few USPs' studies contained new technologies or unique concepts as most were simply highway or railway projects that had not been identified by public agencies—or had been identified but not yet implemented. Unsubstantiated claims of innovation or intellectual property by USP proponents lead to lack of transparency and makes it more difficult to level the playing field in a competitive procurement. Innovation can be achieved through other means, such as idea competition, multi-stage procurement processes, and output-based specifications.

Do USPs enable corrupt or nepotistic practices?

One of the motivations for USPs highlighted by stakeholders we interviewed to prepare the policy guidelines relates to the potential misuse of USPs to engage in corrupt and nepotistic practices, especially through avoiding competition. Directly-negotiated USPs may favor these practices, in part because they make it easier to conceal corruption and nepotism. Also, due to lack of transparency or failure to competitively procure, USPs are prone to the perception of corruption, even if untrue. This often leads to legal and political challenges, delaying projects. The key question is what policy solutions might allow governments to overcome the perception of corruption associated with USPs. Elements such as adopting a clear policy for USPs and applying a disclosure policy at given steps of the process are part of the solution.

What does the World Bank recommend? Should governments allow USPs or not?

Governments should carefully weigh the advantages and disadvantages of USPs and consider country-specific factors in making this decision. They should consider accepting USPs only if they are able to 1) protect the public interest during project evaluation, development, and procurement and 2) ensure transparency and accountability throughout the USP process. A government's position on USPs should be consistent and well-publicized. Also, a government's position on USPs need not be permanent. It can change over time as capacity, experience, or private-sector interest evolve, as long as the position is clear.

How will the government incorporate the USP policy into existing PPP and non-PPP regulations?

Governments should ensure consistency between PPP and USP frameworks and procedures; incorporating USP procedures in the PPP policy document may be the most effective way to do so. Jurisdictions that do not possess a robust PPP policy can use the opportunity to strengthen it, to also include a USP procedure therein. Developing a standalone USP policy in the interim is also an option. USP frameworks should be consistent for PPP and non-PPP delivery models to avoid regulatory arbitrage.

What are purposes of a USP policy? How can it improve USP management?

A USP policy provides the "rules of the game" by ensuring clarity, predictability, transparency, and accountability for both public agencies and private entities. It provides the following benefits in USP management:

- Clarity to USP proponents in terms of the procedures and treatment of USPs, which helps foster and maintain private-sector interest in the PPP program
- Guidance to public officials, helping them process USPs effectively and efficiently using consistent and transparent procedures, as well as rules to which they can refer. World Bank experience shows that when there is no USP policy or when policy is vague, civil servants struggle with private-sector proposals—not knowing how they can proceed; how to manage confidentiality, intellectual property rights, and eventual claims; and how to reject the proposal if not relevant or insufficiently documented.
- Insurance that submitted USPs are in line with the government's infrastructure priorities and development plans.

Are there guiding principles on which a USP policy should be based?

We use six guiding principles:

Public Interest: A USP project must align with national infrastructure priorities and meet a real societal and economic need.

Value for Money: Governments should only structure USP projects as PPPs if they are expected to generate greater value for money under PPP delivery than under conventional delivery.

Affordability: Governments must understand a USP's impact on public finances, including whether fiscal liabilities are acceptable, and risks are sufficiently manageable.

Fair Market Pricing: Governments must ensure that PPP contracts resulting from USPs reflect market prices, avoid excessive private returns, and include a risk allocation appropriate for the government.

Transparency and Accountability: Governments should disclose all relevant project information.

Alignment of PPP and USP Procedures: Governments should align PPP and USP policies to increase stakeholder support, enhance market interest, and ensure consistency in public decision-making.

What are best practices in creating competition during procurement?

Five areas of best practices are proven to work:

Public agency leads project development: when the public agency "takes over" the project soon after USP submission—leading project development, including feasibility studies and procurement documentation—it reduces the strategic advantage of the USP proponent and helps level the playing field.

Transparency and disclosure: all bidders should have access to the same information. Disclose the same, if not more, documentation as for publicly initiated PPP projects. The rules should be clear for everyone, including what incentives or advantages are provided to the USP proponent.

Question incentives: avoiding both direct negotiation and significant benefits for the USP proponent (for example, the right to match, or a significant bonus during bid evaluation) helps equalize bidding conditions.

Bid preparation time: sufficient time must be given to prepare a bid, with more time for larger and complex projects.

Strategic advantage: public agencies can either reject or restructure USP projects when the USP proponent possesses a strategic advantage that is difficult for competing bidders to overcome (such as ownership of land, contract extensions, or proprietary technology). Or they can conduct benchmarking exercises and market testing before directly negotiating with the USP proponent.

Public agencies face challenges managing many low-quality USPs. What options are available?

Mechanisms that allow governments to receive fewer but higher-quality USPs include introducing submission requirements and a compliance check, instituting USP review fees, and centralizing the submission process.

Governments lacking technical and financial capacity to implement projects experience particular challenges with USPs. What is to be done?

There is a paradox here: some authorities use USPs precisely to overcome their lack of capacity, when in fact a USP requires even greater capacity from the government's side. Two strategies may help:

Governments decide not to allow USPs. Even though some believe that this would result in a limited number of projects in low-capacity jurisdictions, there are strong arguments for simply not allowing USPs when governments face a large, unmanageable flow of submissions or a lack of public-sector resources to evaluate them.

Governments allow USPs once a robust and transparent USP policy is in place. Governments then hire external advisors to develop and structure projects. Hiring advisors not only brings confidence to the market and helps equalize bidding conditions, it maximizes the government's chances to make a fair deal that brings value for money—ideally through a competitive process.

Can the World Bank agree to finance USPs[2]?

The Bank may agree to finance PPP projects initiated from USPs. In all instances of USPs, the process to assess and determine the best fit-for-purpose and value-for-money approach to awarding a contract initiated by a USP shall be clearly defined by the Borrower.

When a USP is subjected to a competitive selection process, the Borrower may use one of the following approaches in allowing the firm that submitted the USP to participate in the process:

a. The Borrower grants no advantage to the firm in the process. The Borrower may separately compensate the firm if permitted under Borrower's applicable regulatory framework; or

b. The firm is granted an advantage in the selection process, such as a point bonus in the evaluation or a guaranteed access to the second stage of a two-stage process. This advantage shall be disclosed in the request for bids/request for proposals document and defined in such a way that it does not prevent effective competition.

2 Procurement Regulations for IPF Borrowers, Annex XIV, Paragraphs 5.3-5.4,

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