



POLICY GUIDELINES FOR MANAGING
UNSOLICITED PROPOSALS
IN INFRASTRUCTURE PROJECTS

VOLUME I

MAIN FINDINGS & RECOMMENDATIONS

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FOREWORD

When it comes to infrastructure projects, “unsolicited proposals” (USPs) represent an alternative to the traditional project initiation method where the private sector, rather than the government, takes the leading role in identifying and developing a project. In practice, many public authorities across the world resort to USPs motivated by the perspective of solving the challenges brought by their lack of capacity to identify and develop projects. However, many projects that originate as USPs experience challenges, including diverting public resources away from the strategic plans of the government, providing poor value for money, and leading to patronage and lack of transparency, particularly in developing countries. To ensure governments can mobilize the strengths of the private sector while protecting the public interest, USPs, when accepted, should be managed and used with caution as an exception to the public procurement method.

The World Bank Group (WBG) has developed several guidance notes on the subject, directed to both internal and external audiences. However, until now it has not provided dedicated recommendations on how to address the challenges related to unsolicited proposals.

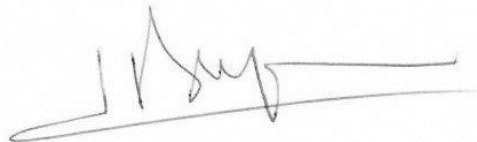
Through this initiative, the team carried out a comprehensive review of the various methods for managing and responding to unsolicited proposals and put together a consolidated set of literature on this topic. The experience with USPs in over 15 countries across the globe was thoroughly reviewed through questionnaires and interviews with public officials, experts, and private entities, and a public consultation process enabled valuable input and feedback from a broad range of stakeholders.

This initiative includes three documents: *Main Findings and Recommendations*, that is considered as a summary; *Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects*, which provides key policy decisions and considerations for the USP policy; and *Review of Experiences with USPs*, an in-depth review of global best practices with USP policies and projects, the findings of which informed the development of considerations and recommendations in the Guidelines.

Governments are advised to use the documents in parallel, with the hope they will support the fair and competitive delivery of infrastructure projects that generate value for money and meet the public interest.



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1. INTRODUCTION

The Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects is an initiative of the Public-Private Infrastructure Advisory Facility (PPIAF), a global technical assistance facility managed by the World Bank on behalf of donor governments. The main document Guidelines for the Development of a Policy on Unsolicited Proposals in Infrastructure Projects (the Guidelines) offers policy recommendations for managing unsolicited proposals (USPs).

The Guidelines are a companion document to the Review of Experiences with Unsolicited Proposals in Infrastructure Projects (the Experience Review), which provides an in-depth review of international experience with USP policy frameworks. The Experience Review is based on a comprehensive assessment of USP experience in more than 15 countries¹ (shown in Figure 1 below) and informs the USP policy recommendations provided in the Guidelines. The overall initiative on unsolicited proposals is summarized in the present Main Findings & Recommendations document.

FIGURE 1: COUNTRIES STUDIED AS PART OF THE EXPERIENCE REVIEW REPORT

CONTINENT	COUNTRY
Asia	India, Philippines, South Korea
Africa	Ghana, Kenya, Senegal, South Africa, Tanzania
Latin America & the Caribbean	Chile, Colombia, Jamaica, Peru
Developed Countries	Australia (New South Wales), Italy, USA (Virginia)

¹ The 15 countries were selected based on factors such as geographical and income-level diversity; experience with USP frameworks and projects; availability of data; and willingness of respondents to participate in interviews.

1.1 WHAT IS A USP?

Traditionally, governments involve the private sector in infrastructure development through a public planning process. In the case of a USP, a private entity reaches out to a public agency with a proposal for an infrastructure or service project, without having received an explicit request or invitation from the government to do so. A USP is therefore an exception to the norm, where infrastructure projects are initiated by the public sector.

USPs offer several potential benefits to governments. For example, they may: (1) allow governments to better identify and prioritize projects in their pipeline of public-private partnership (PPP) projects; (2) generate innovative solutions to infrastructure challenges; and (3) help overcome challenges related to early-stage project assessment. However, they also introduce potential challenges. USPs often exacerbate a lack of technical capacity to evaluate, prepare, procure and implement PPPs. They may also create difficulties with fiscal planning if they were not part of normal infrastructure-budgeting processes. Other challenges relate to creating competitive conditions and aligning public and private interests. Finally, the public agency may need to overcome adverse perceptions associated with USPs, including perceptions of corruption.

To overcome these challenges, this initiative provides guidance and recommendations for governments that plan to develop and operationalize their own USP policies for infrastructure projects based on international best practices.

1.2 ASSESSING GOVERNMENT MOTIVATION FOR ACCEPTING USPS

Governments consider USPs for two main reasons: (1) they may lack technical or financial capacity to develop and structure projects; and (2) they wish to encourage private-sector innovation. Public officials may also potentially use USPs for corrupt purposes.

/// USPs do not allow public agencies to overcome technical or financial capacity constraints.

Many governments believe that USPs provide access to finance and allow them to expedite project implementation by overcoming capacity constraints.

USPs, however, do not expedite project implementation. Many USP projects took several years to reach operational stage after having been initiated as a USP. Two case studies from the Philippines took more than 15 years to become operational and, in Ghana, the Accra-Kumasi Highway USP faced delays for more than 11 years.

Evidence does not suggest that USPs, by themselves, solve financing challenges; rather, better project preparation (for example, by conducting relevant feasibility studies and carefully structuring transactions) enhances projects' bankability. A good example is Jamaica's experience with the North-South Link of Highway 2000, which had to be restructured to include a commercial real-estate component to make the project financially viable for the USP proponent.

/// Most USPs are not real innovations.

What most governments consider “innovative” is usually a project concept that is not part of the government pipeline. Additionally, governments often fail to consider alternative mechanisms to encourage innovation, such as organizing design competitions at the project-concept stage; using output specifications; and organizing multi-stage procurement processes.

/// USPs may be used to avoid competition and potentially engage in corrupt practices.

Several of the USP projects studied, particularly those that were directly negotiated, involved corruption allegations. Stakeholders often perceive USPs to be associated with corruption, regardless of whether or not the accusations have been confirmed.

1.3 THE USP PROCESS

USP projects typically follow a five-stage project cycle:

1. Submission of the proposal by the private entity;
2. Evaluation of the USP by the public agency;
3. Development of the studies for the USP project;
4. Procurement of the USP project; and
5. Implementation of the project (the construction and operations phases).

However, most public agencies expect privately initiated projects to be monitored and supervised in the same way as publicly initiated PPP projects, and most USP policy frameworks do not include USP-specific provisions for the project-implementation phase. Therefore, this initiative follows the first four phases of the USP process.

2. CONSIDERATIONS PRIOR TO DRAFTING THE USP POLICY

2.1 ESTABLISHING A USP-ENABLING ENVIRONMENT

The effectiveness of a USP policy will be influenced by the wider institutional and political environment. Governments must ensure that the development of a USP policy is accompanied by: (1) an effective PPP regulatory framework that follows international best practices; (2) an effective institutional organization that governs both publicly and privately initiated PPPs; and (3) the development of institutional and human capacity for the public officials and agencies tasked with PPP development and implementation.

2.2 PURPOSES AND OBJECTIVES OF A USP POLICY

The purpose of a USP policy is to ensure clarity, predictability, transparency and accountability for both public agencies and private entities:

1. A USP policy provides 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;
2. A USP policy provides guidance to public officials, helping them to process USPs effectively and efficiently using consistent and transparent procedures;
3. A USP policy helps ensure that submitted USPs are in line with the government's infrastructure priorities and development plans.

Governments are advised to articulate clear objectives for the USP policy. Several possible objectives for the USP policy are to: (1) increase the number of viable projects in the PPP pipeline; (2) increase innovation in the solutions used to address infrastructure gaps; (3) mitigate public-agency planning bottlenecks, such as a lack of capacity to develop preliminary assessments of projects.

2.3 GUIDING PRINCIPLES OF A USP POLICY

Establishing clear and effective guiding principles is a critical step towards ensuring that a USP policy results in projects that provide societal benefits at an affordable cost. Six guiding principles are presented that are critical for the management of USPs. They should be adapted by governments to fit local contexts. The principles are relevant throughout the USP process—from evaluation through project development, procurement to implementation. Guiding principles should also be embedded in the approvals and decision-making processes that are required for the USP project to move on to the next stage of the USP process.

- **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 to allay stakeholder concerns regarding transparency and accountability.
- **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.

2.4 HIGH-LEVEL POLICY DECISIONS

Although the Guidelines presents numerous policy decisions that must be made throughout the USP process, governments need to consider the five most important decisions before drafting a USP policy to shape the nature of the policy.

- **Policy decision 1:** Governments must first decide whether to allow USPs. This decision should be based on an informed understanding of the advantages and disadvantages of USPs. The Guidelines present the following criteria to help determine whether to allow USPs: (1) the public agency is able to protect the public interest during the evaluation, development and procurement of a USP project; and (2) the public agency can ensure transparency and accountability. Governments that are unable to protect the public interest and ensure transparency and accountability are advised not to allow USPs in the short term.
- **Policy decision 2:** Governments must determine the extent to which they will define the parameters of the USPs. Governments may choose to en-

courage USP submissions that address specific infrastructure challenges, geographies, sectors or technologies. This allows the government to encourage USP submissions that correspond more closely with public objectives. Defining parameters too narrowly, however, may limit the scope for innovation.

- Policy decision 3: Governments must determine how to incorporate the USP policy in the existing regulatory framework. Governments may incorporate a USP policy: (1) in procurement laws used for conventionally delivered projects; (2) in PPP-specific laws, regulations or policies; or (3) as a stand-alone policy. The Guidelines recommend ensuring consistency across PPP and USP frameworks, ideally by incorporating procedures for both publicly and privately initiated PPPs in the same policy document.
- Policy decision 4: Governments must determine the extent to which the USP proponent may be involved in project development. Involving the USP proponent in project development has significant disadvantages for the public agency, including: (1) loss of control over project structuring; (2) loss of negotiating power due to information asymmetries; and (3) difficulties in generating competition during a competitive tender. The Guidelines present two options: (1) project development by the public agency (with external advisors); and (2) project development by the public agency and the USP proponent, whereby specific public-interest studies are undertaken by the public agency (and its external advisors), and the public agency and its advisors undertake a detailed review of any studies developed by the USP proponent.
- Policy decision 5: Governments must determine which procurement methods and incentives will be allowed. Governments are advised to competitively tender USPs whenever possible. Some governments may decide to directly negotiate with the USP proponent when market interest is limited to the USP proponent but the project is in the public interest. The USP policy should clarify whether direct negotiation is acceptable, and, if so, in which circumstances. In case of a competitive tender, the USP policy should also specify if the USP proponent will be given any advantages over competing bidders. The Guidelines strongly discourage against the right-to-match mechanism, given its potential to discourage competition compared to the bonus mechanism and automatic shortlisting (refer to Figure 3).

3. DEVELOPING A USP POLICY

3.1 DEFINING THE PARAMETERS

Before defining the specific procedures that need to be followed at each stage of the USP process, governments will need to define some high-level parameters, including the objectives, scope, and guiding principles of the USP policy.

USP submission parameters can be defined within three broad levels: (1) the public agency identifies and defines a project concept and allows private firms to submit proposals for the implementation of the project; (2) the public agency defines a wider infrastructure need or priority and allows private firms to submit proposals for specific projects that respond to that need; (3) the public agency does not provide guidance and considers any type of privately initiated proposals, regardless of whether or not they correspond to a previously defined project concept or infrastructure plan.

3.2 USP PROCESS AND MAIN CONSIDERATIONS

The following flow chart shows the main considerations for each phase of the USP process—submission, evaluation, project development, and procurement. The following chapters provide best practices and recommendations for each phase in detail.

FIGURE 2: USP PROCESS AND MAIN CONSIDERATIONS

PPP PROCESS	1	USP PROCESS	USP PROCESS FLOW	USP APPROVALS
PPP IDENTIFICATION & SCREENING	2	SUBMISSION	<p>USP proponent submits USP to public agency</p> <p>Public agency may request clarifications from USP proponent</p>	<p>COMPLIANCE CHECK Public agency checks whether the USP submission is compliant</p>
	EVALUATION	<p>The public agency:</p> <ul style="list-style-type: none"> Verifies whether the USP meets the evaluation criteria Requests evidence of USP proponent qualifications (if relevant) Uses benchmarking and market testing (if relevant) to evaluate the project Discloses relevant documentation Determines the most appropriate project development and procurement method 	<p>PROJECT EVALUATION Public agency verifies whether the USP meets the evaluation criteria</p> <p>DEV & PROCUREMENT DECISION Decision-making authority selects project-development and procurement method</p>	
PPP BUSINESS CASE	3	PROJECT DEVELOPMENT	<p>The public agency:</p> <ul style="list-style-type: none"> Either: (1) undertakes project development with its external advisors, or (2) signs a project-development agreement with the USP proponent for specific studies Uses benchmarking and market testing (if relevant) to evaluate the project Discloses relevant documentation Confirms the most appropriate procurement method 	<p>PROJECT APPROVAL Decision-making authority determines whether the project should proceed to procurement</p>
PPP PROCUREMENT	4	PROCUREMENT	<p>To prepare for procurement, the public agency:</p> <ul style="list-style-type: none"> Secures right-of-way and/or acquires land Obtains environmental and social clearance Develops a draft PPP contract (together with external advisors) If competitively procuring, develops draft procurement documentation If preparing for a direct negotiation, signs the direct-negotiation protocol Uses benchmarking and market testing (if necessary) 	<p>PROCUREMENT APPROVAL Decision-making authority approves procurement documentation</p>
	<p>The public agency either: (1) undertakes a competitive tender, or (2) directly negotiates the PPP contract with the USP proponent according to the direct-negotiation protocol</p>		<p>CONTRACT AWARD Decision-making authority awards the PPP contract</p>	

4. STAGE I: SUBMISSION

During the submission stage, the public agency receives a USP from a USP proponent. A well-articulated submission framework helps ensure that the USP meets the government's requirements and is processed efficiently. It also provides guidance to USP proponents in developing quality proposals that comply with the public agency's requirements.

▮ Specifying the documentation and information that private entities need to provide as part of their USP submission helps increase the quality of proposals.

Clear and standardized submission requirements allow USP proponents to know what documentation to submit. They also discourage private entities from submitting poor-quality proposals, ensuring a better use of limited public-sector resources. The Guidelines recommend that submission requirements cover public-interest, project-feasibility, PPP-suitability, and affordability considerations.

Minimum submission requirements for USPs were observed in almost 80 percent of the USP frameworks studied as part of the Experience Review. Minimum submission requirements are common in all developed jurisdictions and countries, including Virginia (United States), New South Wales (Australia), and Italy, and also in some developing countries, such as South Africa. Public officials in various jurisdictions confirm that stringent minimum requirements are effective at reducing the number of low-quality USPs.

▮ Centralizing the submission process in a single agency creates clarity for the private sector and minimizes coordination challenges in the public sector.

Governments that allow USPs to be submitted across multiple departments and levels of government often face coordination difficulties that drain public resources and result in lack of clarity for private entities.

Countries such as Colombia, the Philippines, and Italy have decentralized USP submission processes, allowing USPs to be submitted to different departments and levels of government. Public officials in these countries indicate that they experience challenges, including: (1) a large flow of USPs, especially at lower government levels; (2) coordination difficulties during the USP evaluation and implementation process, which drain the public sector's technical and financial resources; and (3) lack of public capacity to evaluate and develop USPs, particularly at lower government levels.

Introducing a dedicated time window for USP submissions helps governments plan for additional resources needed to review USPs, thereby streamlining USP processing.

A dedicated time window can also create certainty for USP proponents, who receive some assurance that their USPs will be reviewed in a timely manner. In Peru, the USP submission window corresponds to the first 45 calendar days of the year. Similarly, Pennsylvania (United States) guarantees that there will be at least two periods of at least 30 days every year during which private entities can submit proposals.

Requiring the USP proponent to submit a review fee may discourage private entities from submitting poor-quality, incomplete or opportunistic USPs.

A fee also ensures the effective use of public resources during evaluation, defraying some of the costs associated with processing USPs. This is primarily observed in the United States, where Virginia (United States) has instituted a USP review fee of \$50,000. Other states, such as Arizona (United States), also require the submission of a USP review fee, the size of which depends on the project's investment cost. The USP review fee can cover a public agency's cost to review and evaluate a USP, ensuring that USPs do not drain limited public-sector resources.

Instituting criteria for assessing the USP proponent—including integrity-due-diligence criteria and requests for past qualifications—helps the public agency assess the reputation, experience and integrity of the USP proponent.

The USP proponent should be required to submit evidence of its qualifications and experience if it is expected to be involved in project development or to bid for the implementation of the project.

Specifying how the government will address requests to protect proprietary or confidential information will minimize requests from the USP proponent for unnecessary protections that reduce transparency.

In most jurisdictions, intellectual property is protected by law. Although governments will need to respect intellectual-property rights in the management of USPs, typically no specific additional protection is required beyond what is specified in the law.²

² For detailed information regarding disclosure in PPPs and confidential information, refer to [A Framework for Disclosure in Public-Private Partnerships](#), World Bank, 2015.

/// Prior to starting the official evaluation process for a USP, governments are advised to check the compliance of the USP submission.

Public agencies should check whether the USP meets the definition of a USP; whether the USP meets the submission requirements; and whether the USP proponent meets integrity-due-diligence criteria. The results of the compliance check should be communicated to the USP proponent.

5. STAGE II: EVALUATION

During the evaluation stage, the public agency evaluates the USP and determines whether or not to study it in greater detail. A well-articulated USP evaluation process ensures that only projects that meet public objectives and basic feasibility criteria are considered for the third stage (project development).

Introducing clear evaluation criteria and procedures helps the public agency efficiently process USPs and ensures that the accepted USPs are aligned with public objectives.

Lack of clear evaluation criteria and procedures can result in public agencies accepting projects that are not in the public interest; USPs stagnating for years, draining public-sector resources; and USP proponents submitting proposals that do not meet the government's requirements. The timeframe for evaluation in the USP Policy should be realistic and in line with existing resources.

In Virginia (United States), the initial analysis and screening of the USP is known as a "Policy Review," and the evaluation criteria are called the "Policy Review Criteria" including the requirement that a USP meet sector goals, plans, and public needs. The Policy Review must be completed within 90 days of submission of the USP.

Evaluation criteria should cover public-interest, project-feasibility, PPP-suitability, and affordability considerations.

More specifically: (1) Does the USP project advance the public interest and align with government priorities (public interest)? (2) Is the project expected to be feasible from technical, financial, legal, economic, environment and social perspectives (project feasibility)? (3) Is the USP project expected to deliver value for money as a PPP (PPP suitability)? (4) Are the proposed implications for government support acceptable (affordability)?

Using benchmarking to evaluate the USP project allows the public agency to compare the terms of the project with similar projects.

Benchmarking allows the public agency to undertake a structured comparison of the proposed project with similar projects in the same sector or jurisdiction, thereby testing the reasonableness of specific elements of the USP. Where benchmarking yields insufficient information, market testing can also help to inform project evaluation. Benchmarking and market testing can also be used to determine the most appropriate project-development and procurement method. The figure below provides more information on benchmarking and market testing.

FIGURE 3: INTRODUCING BENCHMARKING AND MARKET TESTING

What is Benchmarking?

Benchmarking refers to identifying and qualitatively and/or quantitatively analyzing projects in similar sectors and market settings. Benchmarking allows the public agency (and its external advisors) to draw comparisons with the USP project. The comparison can focus on the type of solution being proposed, the cost components, the proposed timelines, the proposed risk allocation, and the extent of market interest.

What is Market Testing?

Market testing refers to interactions between the public agency and private entities to solicit feedback on the USP project. Market testing can focus on the type of solution proposed; the cost components; the timelines; the proposed risk allocation; and the extent to which private entities would be interested in bidding. Market testing requires the public agency to disclose information about the USP project and should therefore be undertaken as part of a formalized and carefully managed process. The process should align with the government's communication strategy for the USP policy. These Guidelines recommend that market testing only be used in cases where benchmarking is not able to provide the required information.

// Disclosing parts of the USP submission and evaluation process helps enhance transparency and accountability.

The Guidelines recommend disclosing: (1) material elements of the USP submission; (2) the process and findings of the evaluation process; and (3) a description of the proposed project-development and procurement process. The Guidelines also recommend that public agencies seek approval from a decision-making authority prior to moving on to the next stage.

6. STAGE III: DEVELOPMENT

During the project-development stage, the public agency determines whether the proposed project is expected to generate value for money through PPP delivery, and how it should be structured to maximize value for money. The feasibility studies undertaken during this stage are significantly more detailed than the (preliminary) feasibility studies developed by the USP proponent as part of its USP submission.

/// Allowing the USP proponent to develop feasibility studies and structure the project limits competition during a competitive tender.

When the USP proponent develops the project, the public agency typically struggles to: guarantee equal bidding conditions; ensure that the project meets public-interest criteria; and develop long-term public-sector capacity to develop projects. Competing bidders are unlikely to bid for a project if they know the USP proponent was heavily involved in project structuring, resulting in tenders with limited or no competition.

The Experience Review found that governments with greater PPP maturity either conduct project development themselves (Virginia, South Korea), or allow the USP proponent to develop specific studies while the public agency oversees the process (Chile). In most of the countries that rely on the USP proponent to develop the project—including India, the Philippines, Kenya, Tanzania and Senegal—public officials cited a lack of public-sector capacity (both technical and financial) as the main constraint to developing projects.

/// Equal bidding conditions are maximized when project development is undertaken by the public agency (assisted by external advisors).

Limiting the involvement of the USP proponent in project development allows the public agency to: define the project scope to meet its objectives and strengthen its negotiating position; create equal bidding conditions that in-

crease the likelihood of generating value for money; and build the public-sector technical capacity required to develop projects.

▮ Requiring that any involvement by the USP proponent in project development be governed by a project-development agreement maximizes transparency.

If the public agency is unable to hire external advisors to develop studies, it may ask the USP proponent to develop specific technical or financial studies. The public agency and its external advisors, however, should develop any value-for-money assessments; fiscal-impact assessments; economic or cost-benefit analyses; and PPP-procurement and contract documentation (including the PPP contract). A project-development agreement should include the responsibilities of the public agency and USP proponent; the compensation structure; communication modalities; timelines; provisions for termination; and provisions for transparency, disclosure, and conflicts of interest.

Half of the USP frameworks examined in the Experience Review allowed the USP proponent to be reimbursed for project-development costs. The feature is more common in mature PPP markets, including Chile, Peru, Colombia, Virginia (United States), South Africa and Italy. In most countries, the USP proponent is only reimbursed if the project is accepted and tendered; this approach discourages non-serious proposals. Although it is common to reimburse the USP proponent for the costs incurred in developing the project, this may be an intermediate solution while the public agency develops the capacity to prepare projects.

▮ Disclosing information about the project allows stakeholders to hold public agencies accountable and allows potential bidders to familiarize themselves with the project.

The Guidelines recommend that the public agency publish all project documentation once the decision-making authority has approved the project for procurement.

7. STAGE IV: PROCUREMENT

During the procurement stage, the public agency prepares and undertakes procurement. An effective procurement process ensures that the PPP contract represents a fair market price and protects the public interest, including through a sustainable and robust risk allocation.

/// In jurisdictions with well-developed tender procedures, referring to existing procurement procedures helps ensure transparency and accountability for USP projects.

If existing PPP procurement procedures do not stimulate equal bidding conditions or transparency, governments are advised to define USP-specific tender procedures to guarantee transparency and competition.

/// Competitively tendering USP projects is most likely to result in a well-structured PPP contract that maximizes value for money.

Competition can still be distorted, however, by providing significant incentives to the USP proponent during the tender (such as the right-to-match mechanism or a significant bonus). The figure below provides an overview of the most common incentive mechanisms and discusses their advantages and disadvantages.

The first two incentive mechanisms (bonus mechanism and automatic short listing) may still allow for equal bidding conditions. Because the right-to-match mechanism significantly limits competitive tension, the Guidelines strongly discourage the use of this mechanism.

The controversies surrounding right to match in Italy show how delicate this issue can be. Public officials estimate that the contract is awarded to the USP proponent in 85 percent of cases. In 2007, the government eliminated the right to match, in response to significant domestic and European Union criticism. The mechanism was reintroduced, however, in 2008, allegedly in response to pressure from private-sector lobbies.

FIGURE 4: USE OF INCENTIVES DURING PROCUREMENT

The three most common incentive mechanisms used to reward the USP proponent during a competitive tender include:

Bonus Mechanisms	The public agency may provide a bonus (usually expressed as several percentage points) to the USP proponent during the evaluation of bids. The Guidelines recommend that the bonus remain small, to encourage equal bidding conditions and maximize value for money from a competitive tender.*
Automatic Short Listing	This allows the USP proponent to be automatically included in either the bidding stage (automatic pre-qualification) or the final bidding stage (in the case of several bidding stages). Under this mechanism, the USP proponent must still clearly demonstrate its capacity to implement the project. This mechanism is less commonly used, but it has the benefit of not directly impacting competitive tension (and therefore value for money).
Right to Match	This allows the USP proponent to match a more competitive bid to win the contract (also known as Swiss Challenge). The right to match significantly limits competitive pressure. Competing bidders have little incentive to spend resources developing a bid when they know it can be matched by the USP proponent. Most procurements that allow the right to match receive few or no competing bids.**

* The bonus mechanism does not necessarily limit competitive tension as long as bonuses constitute a small percentage of bid evaluation points. For country evidence related to the bonus mechanism, refer to Chapter 6 of the Experience Review.

** For country evidence related to the right to match, refer to Chapter 6 of the Experience Review.

Providing a short period for competing bidders to submit bids (usually less than six months) limits competition.

Failing to provide sufficient bid-preparation time and access to equal information will also limit interest from competing bidders. Competing bidders must be given sufficient time to prepare a competitive bid and must have timely and equal access to all relevant information about the project.

Experience shows that a shortage of preparation time strongly deters private entities from submitting competing bids. In the Philippines, public officials noted that allowing only 60 working days for a competing bidder to submit a competitive bid under the right-to-match (Swiss-challenge) mechanism has led to most USPs being won by the USP proponent. Private entities note that they require at least three to six months (depending on the complexity of the project) to develop a serious competing proposal.

It is challenging to create equal bidding conditions when a USP proponent has a strong strategic advantage over its competitors.

A strategic advantage may be the result of the USP proponent owning land; proposing use of its proprietary technology; or having existing contracts on adjacent infrastructure projects and benefiting from economies of scale or in-depth knowledge. In those exceptional circumstances, some governments justify a direct negotiation if the project is in the public interest. Directly negotiated USPs, however, are often subject to controversies, primarily related to transparency and accountability, and are also more likely to lead to more implementation delays and renegotiations.

In Colombia, highway concessionaires have submitted USPs for projects that, in many cases, are simply extensions of ongoing highway concessions. When procured, these projects attracted no competing bidders, in part because the concessionaires benefited from economies of scale and in-depth knowledge of demand conditions.

// Developing a direct-negotiation protocol helps ensure that a negotiation process is well managed.

A direct-negotiation protocol specifies timeframes for the direct negotiation; compensation schemes for delays or additional requests; modalities for communication; rights and obligations; management of potential conflicts; requirements related to the competitive award of subcontracts; and requirements related to disclosure.

// Disclosure of key documents is critical for both competitive tenders and direct negotiations.

For a competitive tender, disclosure of all relevant project information ensures market interest and public support for the PPP project. Disclosure of project information and the PPP contract is even more important for a direct negotiation, given the perceptions surrounding lack of transparency and fairness.

8. CONCLUSIONS

Public agencies face challenges related to managing large numbers of low-quality USPs, and stimulating competition in tenders for USP projects.

Mechanisms that have allowed governments to receive fewer but higher-quality USPs include: (1) introducing submission requirements; (2) instituting USP review fees; (3) centralizing the USP submission process; and (4) establishing a dedicated time window for USP submissions. Governments can also overcome lack of competition in USP tenders by taking ownership over project development; minimizing incentives to the USP proponent that distort competition; and providing bidders with sufficient time to prepare bids.

Governments that lack the technical and financial capacity to implement projects experience challenges with USPs due to the same lack of capacity.

Three potential strategies may help overcome these challenges:

1. Governments decide not to allow USPs (some experts believe, however, that this would result in a limited number of projects in low-capacity jurisdictions);
2. Governments allow USPs but hire external advisors to develop and structure projects (hiring advisors brings confidence to the market and contributes to equal bidding conditions); or
3. Governments allow private developers to develop USPs, who structure the transaction, competitively procure the major subcontracts, and take an equity stake in the project.

More experienced governments use various mechanisms to encourage private-sector innovation.

Some governments—including those of the United Kingdom, India, and most Western European countries—strongly discourage USPs or do not allow them, favoring other ways to generate private-sector innovation.³ Some governments—including those of Chile and Virginia and other U.S. states—allow USPs and either require the public agency to develop the project or allow the USP proponent to develop limited studies with strong public oversight. Some governments—including those of South Africa and Australia—approve only innovative USPs that show unique benefits.

/// PPP projects initiated as USPs but developed by the public agency and competitively tendered appear to perform no better or worse than publicly initiated PPPs.

This suggests that the concern with USPs is not related to the initiation of the project by a private entity, but is instead due to:

1. The USP proponent developing the project without sufficient public oversight;
2. The public agency directly negotiating the USP; and/or
3. The public agency failing to ensure transparency and accountability.

³ Alternative ways to encourage private-sector innovation may include output-based specifications, multi-stage procurement processes (including competitive dialogue), or idea competitions with private firms at an early stage of project design (refer to Chapter 1.3.1 of the Guidelines).

RELEVANT PPP TOOLS AND RESOURCES OF THE WORLD BANK GROUP

[A Framework for Disclosure in PPP Projects](#)

The Framework provides systematic structure for proactively disclosing information pertaining to PPP projects including USPs. This too can help client-countries create effective policies and practices for public disclosure of PPP transactions (#2906)

[PPP Fiscal Risk Assessment Model \(PFRAM\)](#)

PFRAM is a tool that assesses potential fiscal costs and risks arising from PPP projects. This tool is mostly designed to help PPP units in ministries of finance make informed fiscal decisions on PPP projects based on impacts and risks (#2893)

[Benchmarking PPP Procurement 2017](#)

This report flags potential improvements that can help governments fill the gap in an effort to provide better PPP procurement and enable better infrastructure service delivery to all. The report benchmarks government capabilities in 82 economies across four key areas: PPP preparation, PPP procurement, unsolicited proposals, and PPP contract management (#3751)

[PPPIRC \(PPP in Infrastructure Resource Center for Contracts, Laws and Regulations\)](#)

A comprehensive site containing sample legal materials including laws, regulations, contracts, toolkits, checklists, and case studies to assist in planning, designing, and legally structuring PPPs.

[PPP Reference Guide Version 3](#)

The Guide provides the most relevant examples and resources on key PPP topics and helps readers navigate the substantial body of knowledge that has been generated across the world by governments, international development institutions, academia, and the private sector (# 4699).

[PPP Knowledge Lab](#)

The PPP Knowledge Lab brings together relevant and authoritative resources on public-private partnerships in one location to empower governments and their advisors to design and deliver best in class infrastructure projects. The PPP Knowledge Lab is an initiative of the world's multilateral development banks, in partnership with the Global Infrastructure Hub, OECD, UN ESCAP, UNECE and the World Economic Forum.





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