A Call for Infrastructure Development through Unsolicited Proposals : Tapping into private-sector innovation to improve infrastructure delivery

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Executive Summary

Finding the right strategy for using infrastructure development to boost economic activity has often been a struggle. The big infrastructure projects that can transform a city, a region or a country can take enormous amounts of time, money and effort to implement. For governments that have capacity constraints, this can hobble the ability to efficiently develop infrastructure. It is also a major inhibitor to the introduction of innovation into the process, compounding infrastructure's sectoral struggle to embrace new technologies.

In the wake of the COVID-19 pandemic, as governments assess how to put people back to work by developing future-ready infrastructure, how can we develop more, better-quality projects with less time, money and effort? This was the question the Global Future Council on Infrastructure's Unsolicited Proposals Working Group (UPWG) faced when tasked with trying to identify infrastructure-focused economic responses to the pandemic.

To meet this challenge, UPWG decided to give a fresh perspective on an old idea – unsolicited proposals. This type of proposal is a powerful tool that allows the private sector to lead on initiating and developing a project and, when used alongside other procurement methods, can rapidly mobilize investment, build stronger project pipelines, improve efficiency and increase innovation.

This note presents the UPWG's call to increase the use of unsolicited proposals and lays out important factors for ensuring they are successful, including adequate government capacity, solid programme frameworks, transparency, sustainability and the introduction of an appropriate level of competition.

The UPWG and the Global Future Council on Infrastructure hope this note will provide guidance to decision-makers on how best to incorporate unsolicited bids into their infrastructure development regimes – and that it will lead to the resilient, sustainable and inclusive infrastructure that the world needs to prosper far into the future.

Context

One of the key attributes of infrastructure services is their monopolistic nature[1], requiring a strong role by governments to licence and regulate their development and operation. Policy-makers struggle to establish legal and regulatory environments that deliver the required level and quality of services at affordable prices for their constituencies and have generally turned to solicited competitive bidding (SCB) arrangements to ensure the lowest possible cost for these services.

Another desirable objective for such arrangements includes some level of accountability and transparency to address the risk of licences and contracts being granted to favoured actors rather than proposals based on merit.

Competitive bidding arrangements entail publicized (for larger projects, often on an international scale) solicitation of requests for proposal from interested parties, followed by a selection process that often includes criteria based on both cost (or price) and the quality of the services offered.

Competitive bidding procedures, however, present their own challenges. They are often expensive to administer, time-consuming and require significant amounts of preparatory resources (e.g. pre- and full-feasibility studies) that require a high level of sophistication from policy-makers, regulators and administrators to implement. Additionally, they tend to limit innovation.

These challenges are particularly prevalent in jurisdictions with low levels of government capacity (human and capital), whether in smaller sub-sovereign jurisdictions in developed economies or at the national level in less-developed ones. As a consequence, alternative approaches, including frameworks for unsolicited proposals (UPs) – which are the focus of this note – have been developed by a number of countries, including at the sub-sovereign level.

In February 2015, the Public-Private Infrastructure Advisory Facility (PPIAF) published a landmark study, *PPIAF - Unsolicited*

Proposals – An Exception to Public Initiation of Infrastructure PPPs: An Analysis of Global Trends and Lessons Learned.[2] The report reviews worldwide experiences with UPs and presents some "key factors" governments must consider making informed decisions about the use of UPs in infrastructure procurement. This note builds on that work, as well as the expertise of the Global Future Council members, to share advice that meets the moment of this fast-changing world.

A call for action in infrastructure development: advocating unsolicited proposals

The UPWG advocates a renewed focus on UPs and the role that they could play in these challenging times. Unsolicited proposals generally entail a private sector entity reaching out to the government to propose an infrastructure project without being asked to submit a bid. UPs, while not a panacea for all infrastructure development needs, can and should be included among the tools that governments consider in awarding infrastructure contracts when developed under certain conditions.

They should also be developed in parallel to regulatory frameworks like PPP laws and build-operate-transfer frameworks such as was done with the pre-2015 Philippine PPP law[3] (see Box 1). A well-developed programme to assess and select proposals is essential to elicit sufficient interest from private developers as well as to gain the confidence of governments and, ultimately, the public.

Box 1: Building UPs into PPPs

The Philippines – The Philippine government's Build-Operate-Transfer law included well-integrated UP guidelines with the help of the Asian Development Bank. From 2011 to 2015, the country was able to prepare 12 public-private partnerships (PPPs) up to tender stage, and approve several large UP projects.

The objectives of such programmes would be to:

– Enable rapid mobilization of infrastructure investment to drive economic stimulus aligned with a government vision for productive, liveable and sustainable cities

– Build a robust pipeline of infrastructure development projects

– Improve the efficiency of infrastructure development by harnessing the capabilities of the private sector

– Enhance the adoption of innovative and more sustainable solutions to infrastructure needs

Enabling such programmes to be successful would require the establishment of a clear framework for UPs, including:

– An upfront political decision from governments that will welcome this approach, and clarity on the type of infrastructure for which such an approach is being considered

– Sufficient government capacity to evaluate and administer such proposals

– Transparency and clarity of the criteria and process for the submission of proposals and the approval of winning proposals

– Efficiency of the process both for government entities and the parties that would prepare and submit proposals

This note will focus on infrastructure proposals entailing private participation alongside government involvement (often referred to as public-private partnerships or PPPs). Key to ensuring the optimal utilization of the UPs approach are the following success factors.

1. Adequate government capacity

Adequate government capacity is required to evaluate UPs and to negotiate a balanced deal from the government's standpoint. This capacity could be largely centralized in one of the government agencies with strong experience in structuring PPPs (e.g. PPP agencies, ministries of finance or local development banks) as it will be difficult and expensive to have that capacity decentralized in the administration.

Complementary support should also be sought by governments. Such support can be sought from:

– Specialized agencies, for example, the multilateral development banks (MDBs) and bilateral aid organizations (sometimes referred to as development finance institutions or DFIs) through their project preparation facilities (PPFs) for less developed economies

– Peer-to-peer international cooperation among government PPP units (centralized administrative units within governments tasked to support the development of PPP infrastructure projects)

– Other reputable transaction advisers (investment banks, consulting firms and other specialized boutique firms with highly developed infrastructure practices and significant prior experience with similar PPP, including UP, transactions)

This capacity can also be supplemented by input from country-owned sovereign wealth funds or infrastructure funds such as NIIF in India or Africa50.

For countries with relatively low government capacity, the establishment of a revolving project development facility (RPDF) to fund the public-sector participation in the predevelopment process should be considered. This could be financed from available public funds or by donor financing. The key to an RPDF is a requirement to have the public and private development expenses incurred by the RPDF reimbursed (sometimes with a fee) by the winning bidder. This approach also gives the approving authorities an incentive to reach financial close.

2. Transparency, clarity and ensuring efficiency in the administration of UP programmes

The second most important challenge in the adoption of the UPs approach is balancing the needed incentive for the private sector to invest in the development of proposals with the requirement for public probity in the award of any contracts.

From the private-sector perspective, developing a UP is a potentially huge investment. Development costs for an infrastructure project typically range from 5% up to 10% of the final outturn cost, so for a $200 million project, the development costs could be as much as $20 million. Few private developers have the capacity or appetite to invest such sums speculatively, and institutional investors will rarely commit development-stage funding until at least the in-principle support of government and any regulators is assured.

For a UP programme to succeed, the government needs to provide a high degree of clarity, and a clear framework, to the private sector (in particular) covering:

- The **commitment of the government** to the programme, evidenced at a minimum by an open request for UPs issued at the outset of the process, and ideally confirmed in both law and administrative procedures; these types of programmes could even have windows of invitations during the year to receive proposals to better organize the limited capacity in governments and to elicit interest potentially from more than one party.

- The **nature of the bids**, which are of particular interest, both in terms of the type of project/sector, and the terms which the government might consider acceptable. The latter needs to cover, for example, any potential for government funding or whether only user-pays investments can be considered, the scope for government guarantees etc.

- The process for **considering applications**. Timescales need to be clearly laid out with efficient government response times. The level of detail required needs to be specified and not onerous.

- The **process of award**, which needs to make clear how the proposal will be evaluated in terms of price and quality (whether in terms of government funding contribution or, for example, the regulated level of a toll) and whether the government can invite bids against the UP. This may include an initial phase where the government agrees to enter into a discussion with a company for a specific project. In some UP programmes, a bidding process (e.g. a Swiss challenge[4]) is included at the end of the process; this may be optimal in many circumstances, especially in countries and larger sub-sovereign jurisdictions that can attract many bids. From the public-sector perspective, there is a risk of a perception that concessions and contracts are granted without sufficient transparency and competition, at least as compared with SCBs, although they too suffer from such perceptions, leading to suboptimal arrangements that may also lead to corrupt activities and the provision of undeserved benefits to the politically connected.

- Some type of **mechanism that increases transparency**. It is important to find a process to introduce competition so that all sides involved are assured that a fair deal is reached. This can be partially achieved by introducing a form of low-cost competition (addressed in section 4). A third-party assessment or benchmarking exercise, perhaps on sustainability, could also help achieve this.

  The mere act of having a well-developed and publicized UP programme is key to addressing transparency perceptions. Several countries and sub-sovereign-level government entities have developed robust programmes that have been widely promulgated. The programme run by ProInversion in Peru[5] is one example of such a scheme on a national level. It has a tightly managed process for considering UPs for particular types of projects, which must be submitted during specified time windows (see Box 2).

  Another recent example is in Canada, where Ontario province announced a UP programme in December 2019[6]. The Australian states of New South Wales[7] and the Australian Capital Territory[8] also have well-developed UP programmes with widely disseminated details (see Box 3).

- A clear **mechanism to manage the project** once it has been awarded and to deal with issues that may come up during implementation.

Box 2: National UP programmes

Peru – Peru's Proinversión accepts self-financed and co-financed proposals and considers the financial and technical capacity of the UP proponent to develop the project, whether the project is economically and socially profitable and whether the project will have any negative impact on the environment, on a protected area of land, or on the nation's cultural heritage

3. Desirable success factors for increased sustainability

Other approaches that the UPWG recommend be included in such programmes are:

- A **high bar for the qualifications** of sponsors of such UPs. Such qualifications should include financial and other commercial requirements and prior experience with similar PPPs. In addition, a criterion that entails the sponsors' reputation, such as a requirement to disclose ongoing or planned litigation, along the dimension of integrity and probity should be included (admittedly challenging). This should reduce the time required for government bodies to sift through proposals from less competitive or worthy sponsors

- Sufficiently **detailed requirements for project proposals** to limit the submission of frivolous or insufficiently developed proposals. Such requirements would include feasibility studies, financial models, cost-benefit analysis, value-for-money evaluations, risk assessment and allocation among stakeholders. The studies should be developed, taking into consideration life cycle requirements, such as ongoing operating and maintenance costs, decommissioning and crisis management. The level of detail requested should nonetheless be no more than necessary to allow the public sector to make a reasonable decision, bearing in mind the high cost being borne by the private sector on a speculative basis.

- The proposal should include a preliminary **assessment of social and environmental impacts and proposals to address them**, including proposals to enhance positive impacts, rather than only focusing on ways to mitigate negative ones. Governments ought to make it a requirement that all PPPs sourced through UPs should obtain in due course (after signing or at completion) an independent sustainability assessment in the form of an ESG or SDG rating in line with globally recognized methodologies (e.g. the IFC's Performance Standards, Equator Principles or other standards under development that may become widely adopted). This would demonstrate high standards in project development and implementation and reduce the risk of future challenge.

- Governments should **encourage innovation** as a key benefit of UPs. This could take the form of the definition of output specification[9] – a form of technical specification – that intentionally adopts predominantly performance-related requirements (rather than prescriptive requirements) to define the project scope and intent to translate the government vision into concrete technical requirements. This promotes the principles of sustainability, economic efficiency and resilience.

- A process of **consultation and coordination among relevant government stakeholders** to ensure as smooth a process for assessment and approval of UPs.

- A proposal for a **consultative process with other stakeholders**, including the communities affected by the proposed project.

Box 3: Sub-sovereign UP programmes

Ontario, Canada – Infrastructure Ontario allows bidders to submit projects with no limitations on the project size, asset class, delivery model or type of proposal that relate to Ontario's "core infrastructure" needs.

New South Wales (NSW), Australia – launched in 2012, NSW's UP programme encourages the best ideas and solutions from the non-government sector and a greater level of non-government-sector investment and participation in projects with the goal of providing consistency and certainty to non-government-sector participants.

Australian Capital Territory (ACT), Australia – ACT's UP Guidelines provide a viable framework for prospective bidders to submit innovative and unique ideas that do not fit readily within the government's normal procurement processes, provide value for money for the Territory and align with the government's strategic objectives.

4. Considering UP benchmarking through ex-post competition

Some commentators, including the PPIAF study, advocate the introduction of an element of competition in the process to ensure a fair market price. This could be achieved eventually through a competitive final bidding process for the UPs, as mentioned earlier.

While this could be envisioned in many circumstances, especially in countries and larger sub-sovereign jurisdictions that attract large numbers of investors, the UPWG would argue that this should not be a requirement for all such proposals as it could discourage developers from making proposals in smaller jurisdictions, or ones that are perceived to be riskier. (Why go to the effort of developing a proposal if, in the end, it will not succeed? While some mechanisms have been developed to address this concern, such as reimbursing the original developer of the proposal if they do not win the concession in the final round, this may not be sufficient to mitigate this perceived risk.)

In countries and smaller sub-sovereign entities that do not attract a lot of interest, the governments could increase the level of comfort with a programme that does not require a competitive process as the final step by committing to one or more of the following risk-mitigating steps:

- Require the winning UP entity to **contract out the works using open-book competition**, so the public sector can evidence that best value has been achieved

- Declare a winning bid and announce the winning terms for a **public consultation period** (e.g. 2-3 months) to solicit public input before awarding the contract

- Assess bids on the basis of **predetermined and declared criteria** (e.g. expected return on equity or other technical criteria)

- Require that an MDB or local development finance institution serve as an **independent assessor or financier**

- Introduce **competition at subsequent levels** of a project (i.e. equipment procurement)

Conclusion

The UPWG expects competitive processes to remain the norm in most countries and smaller governmental jurisdictions but would encourage governments to also consider UPs, in particular for projects where the private sector may come up with innovative approaches and better solutions for a specific infrastructure need. UPs can also play a role in supplementing government capacity where it is low or stretched (as is likely to be the case in the current recovery phase following the pandemic-driven economic crisis).

The adoption of a UP approach can also afford countries and governments at all levels an opportunity to encourage greater innovation in the development of infrastructure solutions, as the traditional approach of a government soliciting proposals within clearly predefined parameters often militates against innovative solutions.

The UPWG calls for a concerted action plan to develop an approach to administer UPs and then invite such proposals to address the pressing need for a robust and innovative infrastructure development programme.

Acknowledgments

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Endnotes

1. While not all infrastructure services are monopolistic in nature, this note will focus on those services that have these attributes and therefore traditionally entail strong government regulation and involvement.
2. World Bank Group, 2014, Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs: An Analysis of Global Trends and Lessons Learned, ppp.worldbank.org/public-private-partnership/library/ppiaf-unsolicited-proposals-%E2%80%93-exception-public-initiation-infrastructure-ppps-analysis-global-trends-and-lessons-learned.
3. Public-Private Partnership Governing Board, 2018, Guidelines on Managing Unsoliticed Proposals Under Republic Act NO.5957 As Amended by Republic Act NO.7718. https://ppp.gov.ph/wp-content/uploads/2018/07/PPPC_Guidelines-Unsolicited-Proposals-BOTLaw_20180419.pdf
4. A Swiss Challenge is a method of bidding, often used in public projects, in which an interested party initiates a proposal for a contract or the bid for a project. The government then puts the details of the project out in the public and invites proposals from others interested in executing it. On the receipt of these bids, the original contractor has an opportunity to match the best bid.
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