



Photo: The Edition

Position Paper

Unsolicited Proposals in a Nutshell

1. What are USPs?

An unsolicited proposal (USP) is a written proposal submitted to the government by a private entity wanting to implement a unique and innovative project that they believe has good potential economic and financial returns. Such projects usually propose building/financing infrastructure, providing goods or services, or undertaking a major commercial transaction. USPs are initiated outside the normal planning and competitive procurement processes without government supervision, endorsement, direction, or direct government involvement.

2. What happens when a USP is initiated?

Generally, once a government receives a USP, it may either go to a direct negotiation stage with the private entity or invite bids through a competitive process.

What is important is that governments have a USP policy or framework that spells out the process governments must follow, and criteria a proposal must meet. Without a USP framework, a government's choice would be to make an arbitrary decision on the proposal.

3. How are USPs different from PPPs?

Public-private partnerships (PPPs) are long-term cooperative contractual agreements formed between the government and private entities as a result of open government solicitation or when a private entity responds to call for proposals by the government to provide a public asset or service. PPPs are a way for the government to contract the private sector to innovate and implement large-scale projects (primarily infrastructure projects) more efficiently, cheaper and often quicker than the government can do alone. In PPPs, the private entity often bears significant risk and management responsibilities and remuneration is linked to performance.

USPs, while a type of PPP, are not requested by the government and originate from private entities. USPs are most different from solicited PPPs in the initial phases. Where standard PPPs begin by identifying the need and opening a screening process, the USP process begins at any time the government receives a USP submission from a private entity. For this reason, USPs present different corruption risks, patronage or malfeasance than typical PPPs that follow standard contracting procedures.

4. Are USPs beneficial?

Many governments believe USPs allow governments to implement projects more rapidly and provide access to finance that would otherwise not be available. They also believe accepting USPs encourage private entities to submit unique and innovative solutions to infrastructure challenges.

However, according to a World Bank study¹ that reviewed 15 countries with USP frameworks, USP projects are not necessarily faster to implement and do not provide access to finance that would not have been available under solicited PPP projects. The study also found that most USP projects were not innovations and governments often lack clarity or understanding on what it means to be truly innovative. “Innovation” is often defined as “original” – in other words, projects not already part of the government’s list of planned projects.

Another key finding of the study is that widespread allegations of corruption and nepotism are common in USP projects. There is a strong public perception that USP projects easily enable influential and corrupt public officials to award public contracts to underserving parties. For these reasons, governments of some countries—for instance, the United Kingdom, India and most of Western Europe—strongly discourage or do not consider USPs.²

5. What are the corruption risks of USPs?

Several corruption risks are associated with USPs:³

5.1 Low transparency

The use of USPs is sometimes thought to reduce the transparency of a project because it is unclear a) what the origins of the project idea were, b) if the private sector partner made the proposal in good faith or was, at least partially, motivated by corruption, and c) if corrupt government officials and the private sector partner entered into corrupt agreements and orchestrated the USP from the beginning, leaving the extent of their relationships or true intentions very opaque.

5.2. Lack of competition

The lack of competition is one of the most important risks of corruption that USPs face. Not only does a lack of competition raise concerns about whether the private sector contractor is already in cahoots with government actors but it opens the door to several vulnerabilities down the line

¹ The World Bank, 2017, Review of Experiences with Unsolicited Proposals in Infrastructure Projects, available at <http://pubdocs.worldbank.org/en/246961488983068025/Experience-Review-Report-Final-Draft-March-7-2017.pdf> [accessed: 12 October 2020].

² The World Bank, Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects: Volume I, available at https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/UnsolicitedProposals_Volume1_MainFindings_WEB%20%281%29.pdf [accessed: 14 October 2020]

³ This section provides a summarised version of a paper published by Transparency International. Transparency International, 2019, Corruption and unsolicited proposals: Risks, accountability and best practices, available at: <https://knowledgehub.transparency.org/helpdesk/corruption-and-unsolicited-proposals-risks-accountability-and-best-practices> [accessed: 13 October 2020]

5.3. Direct Negotiation

Direct negotiation occurs when governments receive a USP and do not open a subsequent competitive bidding process. On one hand, it may be more efficient and cost-effective in the short-term to begin negotiations just with the initial bidder. On the other, the lack of competition [when governments accept USPs and directly negotiate with just one bidder may increase the risk of kickbacks or nepotism.](#)

A study in Mexico found that 44 percent of private bidders submitting USPs admitted giving a “piece of the pie” to public authorities. And several USP projects studied internationally, particularly those that were directly negotiated, involved corruption allegations.

Conversations behind closed doors could give family or close friends opportunities to propose USPs offering a “piece of the pie” to familial authorities.

5.4. Tender Process

[When governments do not open a competitive tender process, it makes it easier for them to conceal patronage, collusion or to not award the tender to the most deserving bidder.](#) Collusion in the tender process can happen when the private sector partner and the government make behind-the-scenes negotiations about their procurement or implementation partners, perhaps not choosing the most efficient or cost-effective but choosing a partner that can provide some kickbacks or patronage to them, personally.

6. How to mitigate the risks?

The USP process can be broken down into five major stages. Below are policies and safeguards governments can implement to minimise the risk of corruption at each of the stages. ⁴

Stage 1: Submission of the proposal by the private entity

To minimise risk of corruption and ensure accountability from the beginning, [governments should have a well-specified submission process with clear guidelines and request thorough submission materials and/or an application fee for quality assurance.](#) Part of the benefits of having an explicit, efficient system from the beginning are to increase transparency and send an implicit message that the process is transparent, above board, and that there is little room for collusion, nepotism or patronage. These specific, actionable items are ways that the government can effectively communicate their commitment to transparency and fair competition at the first stage of the USP process.

One way to reduce bureaucracy in the USP submission process is to streamline and centralise USP policymaking in one agency. While government agencies may want to consider making the USP submission process simple and streamlined, the application itself should not be. Not only could a thorough submission packet and possible application fee eliminate the non-serious bidders from the pack and save government employees’ time but it could have possible corruption reducing effects as well. Requiring lengthy submission materials could also possibly save governments money in the long run by tying the hands of applicants: if they require a detailed budget upon application, it may be more difficult to conceal patronage and kickbacks into the budget later down the line.

⁴ Ibid.

Stage 2: Evaluation of the USP by the public agency

Once the private company has submitted their bid, the project is in the government's hands for stage two: evaluation of the USP by the public agency. Several potential pitfalls and corruption risks are present at this stage, particularly regarding corruption via lack of competition. At this stage, [governments should take care that their evaluation procedures are clear with specific timelines, and that the USPs actually work in the public interest.](#)

The USP evaluation process, including whether or not the government will advance the proposal to some type of competitive tender process, should be very clear to the private sector before they submit the application. They should have clarity on the specific steps of the evaluation process including roughly what criteria they will use to evaluate the proposal.

Stage 3: Development of the studies for the USP project

In this stage, the government and USP partner prepare the project, including opening it for (possible) tender. This includes any further feasibility studies, the project documentation and logistics, and procurement information for subcontractors. There are again many opportunities for corruption in this phase of the USP process, but there are steps the government can take to minimise them. [Government should take the lead in project development at this stage to ensure they are creating appropriate accountability structures and should create equal bidding conditions during the competitive tender.](#)

Although the government would have requested feasibility studies in the first stage of the submission process, a corruption-minimising step at this stage would be for the government to take the reins and lead all further feasibility studies, detailed analyses and plans. This is so the government can define the project according to its objectives and strengthen its negotiating position, building in appropriate bargaining or accountability structures where necessary. Government control over this stage could increase accountability and reduce the possibility that funds are diverted to private sector bosses or to corrupt officials they have bought. A benefit of government control of this phase means that more government employees will have an idea of the true costs of the project and the technicalities of implementing it – this will be useful for the longevity and transparency of the project.

Another policy the government can implement that will serve this dual purpose--making the project better while also making it more transparent--is to open it for competitive tender. If the government chooses to open a competitive tender, they should have control over the bidding conditions (the criteria they will use to evaluate the potential partner) so that the USP proposer does not rig them unfairly or create criteria irrelevant to the actual task at hand. By controlling this, the government can curtail future corruption by the bidder, and if the bidder really is the most cost-effective, best choice for the job, then they will have won using the government's criteria, not their own. If this is the case, and if they do win in a competitive market, then there likely will not be as many opportunities for corruption, because all possible rents from corruption would have been competed away as they were trying to win the contract from their competitors. This is another small policy in the overall USP process that can greatly affect public perceptions of corruption in the USP process.

Stage 4: Procurement of the USP project

The fourth stage of the USP process is all about competition, when the tender process has been opened. There are ways, however, to make a competitive tender process look like window dressing and not introduce an element of competition at all. Instead, [accountability can be increased and corruption reduced during the procurement process by avoiding directly negotiated deals and establishing fair bonus mechanisms](#)

4.1. Avoiding directly negotiated deals

Directly negotiated deals may be appealing because they may seem more efficient, because the government has already developed a working relationship with the USP partner, or because of corruption. [Policymakers should establish clear criteria before USPs are in progress what the competitive tender process will be, and should make few to no exceptions for USP partners that try to directly negotiate a deal.](#)

There is scant evidence of directly negotiated deals being more efficient than those that enter the competitive process; in fact, they seem more prone to corruption and can lead to subsequent public unrest about corruption.

4.2. Fair bonus mechanisms

Many competitive tenders that stem from USPs will have a bonus mechanism for the original bidder that submitted the USP. This is because governments do not believe that companies would be incentivised to submit USPs (in the absence of corruption) if there were no bonuses or advantage during the tender process as there would be no reason for them to go through all of the effort and cost of the feasibility studies and submission if the government could pick another company to implement their idea.

It is not necessarily the case that no bonuses should be invoked, but [bonuses should be a small percentage of the bid-evaluation criteria to avoid the introduction of gross externalities and disincentivise competitors from entering.](#) If bonuses were too high competitors would not be incentivised to enter, even if they believed they could provide the good or service for a more competitive price. One possible solution is a bump of a few percentage points in their final evaluation when the competitive process is over.

The most commonly used bonus is called “right to match”, used by India, the Philippines, Peru, Colombia, Jamaica and Italy. The right to match means that if the USP bidder is not selected initially, they can resubmit a proposal that matches the one selected by a different firm and still win the contract. A downside of the “right to match” criteria is that it disincentivises competition.

Also relevant is the timing of the open tender process. If governments open the tender for just a few weeks, depending on how complicated the bidding process is, then it may not be enough time for other firms to put together their submission materials and could also result in low levels of competition. A study on PPPs in the US found that a key reason why firms do not enter competitive processes is because of the short time frame.

Both of these factors – little time and the perceived preference towards the USP partner – could disincentivise companies from entering the competitive process. It could also be used by corrupt employees of either the government or private company to purposely disincentivise them from entering the competitive process. For this reason, [setting fair guidelines for bonuses and length of time to open the competitive market is important and will send a strong signal that the government is accountable and that the process is open for competition.](#)

Stage 5: Implementation of the project

The final stage of the USP process is where it all comes to life, but in reality, the policies in the first four stages are what lay the groundwork for this stage being transparent, accountable and non-corrupt. It will vary extensively depending on the project, but the **government should establish reporting norms with the USP partner and their subcontractors to receive frequent and detailed information on the progress of the project.** Any deviations from the plan should be explained to the government.

6. USPs in the Maldives

In July 2009 the government published a directive which included guidelines on carrying out developmental projects.⁵ Under the guidelines the National Planning Council was mandated with evaluating and approving developmental projects. Although USPs were not mentioned specifically in these guidelines it came under public private partnerships (PPPs) that was identified in the directive.

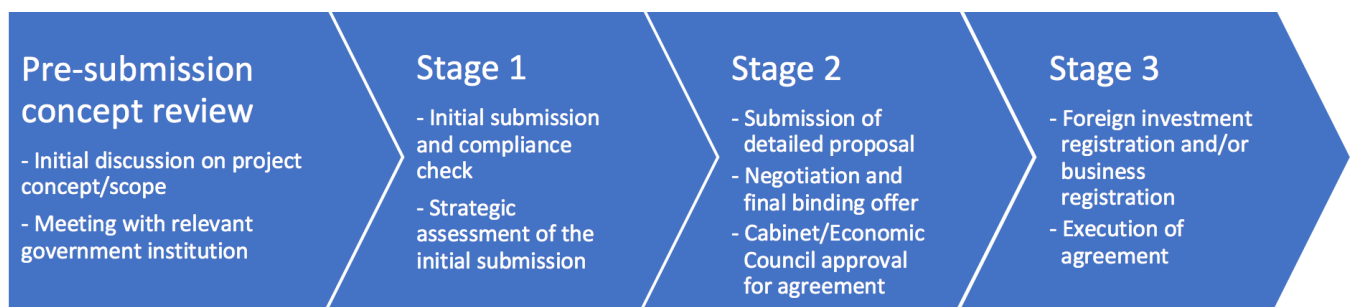
On 28 January 2019, the President's Office enacted the Unsolicited Proposals Policy (USP) Policy.⁶ The USP Policy allows domestic and foreign private entities to submit proposals that:

- Identify strategic projects that the government has not identified but which conforms with the government's broad development agenda.
- Propose innovative and affordable solutions to needs that have been identified by the government in its Strategic Development Plan.

The USP Policy was enacted under Article 10.27 of the Public Finance Regulations. This article includes provisions for awarding no-bid contracts and allows the President, in consultation with the Cabinet or a Cabinet committee, the authority to award no-bid contracts.

Using this article to enact the USP Policy is problematic for two reasons. Firstly, USPs are different from no-bid contracts. USPs are initiated by private entities without direct or indirect government involvement while no-bid contracts are solicited by the government from a sole source outside the standard process of bidding in order to procure a service more quickly. Secondly, if a USP policy is made under no-bid contract provisions, the government can use it to justify not entering the competitive bidding process and go for directly negotiated deals.

The policy also states that all USPs have to be submitted to Invest Maldives, which is the government agency under the Ministry of Economic Development entrusted with promoting, regulating and licensing foreign investments in the Maldives.



Source: <https://trade.gov.mv/dms/500/1550116533.pdf>

⁵ President's Office, 2009, Press Release: New guidelines on undertaking developmental projects introduced, available at: <https://presidency.gov.mv/Press/Article/357> (accessed 12 October 2020)

⁶ President's Office, 2019, Press Release: Government announced Unsolicited Proposals Policy to promote private sector participation in development, available at: <https://presidency.gov.mv/Press/Article/20492> [accessed 12 October 2020]

Before a USP can progress to Stage 2, the Unsolicited Proposals Steering Committee (PSC) is required to submit its recommendations to either the Cabinet or Economic Council (EC). Information on all USPs that progress to Stage 2 are required to be published on the website of Ministry of Economic Development.

While the USP Policy provides a framework for managing and implementing USP projects, some of the provisions do not align with international good practices in USP management. This makes the Maldives' USP model vulnerable to many challenges, including lack of competition and transparency, perceptions of corruption and fraud, and low quality of infrastructure assets and/or services.

Good Practice	Maldives Model
Submission through to a central government agency	Yes. Submissions are to be made to the Ministry of Economic Development
A well-specified submission process with clear guidelines	The USP Policy contains a submission process, albeit not well-specified with clear guidelines
Application fee	No
Submission should have 'unique attributes' (e.g.those involving new concepts or technology)that justify a departure from publicly tendered projects	No mention of uniqueness or innovation as a criterion
Clear evaluation procedures with specific timelines	Partly. There are clear evaluation procedures, but no timelines
Comprehensive needs assessment	Yes. Stage 1 of the evaluation
Government leads project development	No. The USP Policy states that the proponent and government shall work cooperatively in the development and assessment of a detailed proposal and negotiation of key issues. There is no provision stating the government will lead all further feasibility studies, detailed analyses and plans
Procurement: Establishment of equal bidding terms	Partly. The USP Policy states that the Unsolicited Proposals Steering Committee (PSC) can recommend to the Cabinet/Economic Council to go for competitive bidding. However, PSC can also recommend proceeding to direct negotiations without competitive bidding. In the event the government decides to open the proposal for competitive bidding, the USP Policy does not indicate whether provisions for bonus mechanisms for the original bidder that submitted the USP will be adopted or not
Establishment of reporting norms with USP partner and sub-contractors to receive frequent and detailed information on progress of thereport	No provision on the USP Policy for this practice

In addition to these vulnerabilities in the USP Policy, how the Maldivian government is managing USPs in practice is also concerning. For instance, in October 2019 the Minister of Economic Development announced that the government had received 137 USPs, of which most proposals were submitted to the Economic Council.⁷ The Minister also stated that there was a high likelihood of some USPs progressing to Stage 2 of evaluation and that 20 proposals were, in fact, already under discussion.

The government has not made any further announcements on the status of these USPs since the initial announcement. It is unclear whether any of the proposed projects made it to Stage 2 since no information has been published on the Ministry's website as required by the USP Policy.

7. Recommendations

- Require USP submissions to demonstrate uniqueness and innovation.
- Increase transparency of the USP process by:
 - Introducing a public register of USP proposals
 - Publicising the proposals under consideration by the government to provide space for the democratic process
- Publicise a timeline for consideration of USP proposals.
- To prevent corruption risks, suspend the USP process until the recommendations above are implemented.
- Consider repealing the USP process due to the high bureaucratic load, inherent corruption risks within the USP process and perceptions of corruption

⁷ The Edition, 2019, 137 proposals received without bid: Economic Minister, available at: <https://edition.mv/news/13101> [accessed 12 October 2020].