

*Let's talk about public projects*¹

Unsolicited proposals or unsolicited contracts?² **Involving private companies in shaping public project portfolios**

Stanisław Gasik, PhD

Introduction

Do private companies have to wait until the government announces a tender in line with their capabilities and qualifications? Or can they themselves take the initiative to implement a public project, which will then be financed from the budget?

In this article, we will discuss how to involve private companies in the process of deciding on the implementation of public projects. An important question related to their inclusion in this process is its scope: should it be limited to the proposal itself, or is its implementation by the proponent always an integral part of the proposal?

The three main stakeholder groups in public projects are society, public administration institutions and companies (usually private) implementing the projects. Communities can influence the selection of these projects in various ways so that they bring social benefits (Gasik, 2023a, 2023b). But public projects should also offer benefits for the companies implementing them.

One of the goals of governments is to ensure the socio-economic development of the country. Citizens and their communities should live better and companies should develop. Quality of life is the enjoyment of an increasing amount of public values (Moore, 1995). Increasing the amount of available public values takes place in the vast majority of cases through the implementation of public projects, which in turn are mostly carried out by private companies. The main purpose of private companies is to make a profit. If a private company does not see any direct or indirect profit prospects in a public project, it will not be interested in implementing it. Therefore, an external

¹ Editor's note: This article is the latest in a series related to the management of public programs and projects, those organized, financed and managed by governments and public officials. The author, Dr. Stanisław Gasik, is the author of the book "[Projects, Government, and Public Policy](#)", recently published by CRC Press / Taylor and Francis Group. That book and these articles are based on Dr. Gasik's research into governmental project management around the world over the last decade. Stanisław is well-known and respected by PMWJ editors; we welcome and support his efforts to share knowledge that can help governments worldwide achieve their most important initiatives.

² How to cite this paper: Gasik, S. (2024). Unsolicited proposals or unsolicited contracts? Involving private companies in shaping public project portfolios, *Let's talk about public projects*, series article, *PM World Journal*, Volume XIII, Issue VII, July.

public project must meet two basic conditions: providing public values to citizens and providing private companies with an appropriate level of profit (Jackson, 2004). Private companies operating in a specific area know best what can be produced. Also due to their knowledge of the functioning of a given area, they know a lot about the needs there. Therefore, it is natural to enable them to submit proposals for the implementation of public projects.

This situation has led to the emergence of the term **unsolicited proposal** (USP), which is a proposal to implement public projects (funded by public institutions) outside existing plans (e.g., World Bank, 2017; USA GSA et al., 2019; NSW Government, 2017; Arizona Government, 2005).³

The most important advantages of USP for private companies are stimulating innovation and creativity, as well as the opportunity to conduct business with the government in a legal and transparent manner. For the government, it means supplementing the portfolio with projects that solve existing social problems and/or bring material benefits. In this way, USPs contribute to the development of the state and its economy.

In the following sections, we will describe two main variants of USP implementation processes.

Australian states' USP

A good example of an unsolicited proposals process is the NSW Government procedures (2017).

USP is submitted as a proposal to conclude a contract with the government for the implementation of the project. Projects that are not related to strategic and operational planning by the government may be proposed as unsolicited. But consistency with existing government plans and actions may be assessed. Entities authorized to submit such proposals may be not only private companies but also individual persons, NGOs, etc. In this mode, proposals are considered that are so original and innovative that another entity would not be able to propose and implement them. Both the contractor and the government acting on behalf of society should benefit from the implementation of the project. The USP Steering Committee operates within the Department of Premier and Cabinet and is responsible for major decisions regarding all USPs.

USPs should be managed at the highest level of integrity, understood as impartiality, accountability, lack of conflicts of interest, transparency - while maintaining an appropriate level of confidentiality related to the intellectual property of the proponent. To ensure this level of integrity, the Probity Adviser role is established.

Pre-submission review

An optional but strongly recommended phase in which the proposer presents the USP and the government assesses the chances of receiving a contract in this mode. Multiple meetings may be held to help the parties gain mutual understanding. The

³ An overview of projects implemented in this mode can be found, for example, on the NSW Government website (<https://www.nsw.gov.au/business-and-economy/unsolicited-proposals/completed-unsolicited-proposals>) or in a World Bank publication (WB PPIAF, 2017c).

proponent presents inputs and outcomes, main requirements and assumptions. It also demonstrates the uniqueness of its proposal. The government side presents its opinion on the success of the USP. The proposer is not obliged to accept the government's suggestions.

First assessment

The body responsible for coordinating the USP process is the Department of Prime Minister and Cabinet (DPC), to which proposals should be submitted. If a proponent submitted its proposal despite a negative assessment in the pre-submission review phase, the government may reject the proposal without further analysis.

The government side first analyzes whether the proposal actually qualifies for treatment as a USP and whether it is worth pursuing. The overall cost and impact on the operations of relevant government agencies or the government as a whole is assessed. The possibility of implementing the project by other entities is assessed. The existence of such a possibility is an argument against the use of the USP mode. The fact that the proposer has a resource - for example intellectual - that other entities do not have, is an argument for using the USP mode. The uniqueness of the proposal is a strong argument for using this mode.

If the first decision is positive, a strategic USP assessment is performed. An Assessment Panel is established to assess whether, based on the USP, it is possible to develop a Detailed Proposal, possibly processed in the Detailed Proposal stage. The most important USP evaluation criteria are uniqueness, Value for Money, impact on the entire government, return on investment, capability and capacity, affordability and risk level. These criteria are also used in the next stages.

If the proposal is evaluated positively, the next steps can either be performed with the original proposer or can be intended for implementation on general market terms. In the latter case, the USP process ends.

The proposer of a positively initially assessed USP receives a description of the further process, guidelines for developing a Detailed Proposal and a Draft Participation Agreement. Information about a proposal qualified for further work is published on the government's website. A Probity Adviser is appointed. No commercially sensitive information is published. In special cases, e.g. if it would threaten the intellectual property of the proposer, the information may not be published at all.

Detailed proposal

The parties sign a Participation Agreement and then work together to prepare a Detailed Proposal. An Assessment Panel is appointed, performing the main work, and a Steering Committee of the USP is appointed, too. An Establishment Meeting is held, in which the government presents its views on risks and concerns from the materials and work done so far, makes recommendations on evaluation criteria and further work, determines the set of future workshops, and the format of the Detailed Proposal is established. A discussion of commercial and legal issues that may form the basis for a future agreement is initiated. Relevant policies and assurance process must be considered. A Business Case is prepared.

The proposer submits such a Detailed Proposal, which is evaluated by the Cabinet and recommendations for moving to the next step are worked out. Relevant information is published on government websites.

Negotiations

Based on further government guidelines, the proposer submits a binding offer, including, among others: legal and commercial arrangements. The government side performs a comprehensive assessment of the binding offer. Negotiations are underway and a recommendation to Cabinet is being prepared. Relevant information is posted on the government website. As usual, the scope of published information is consulted with the proposer so as not to violate its IP and commercial rights.

Contract management

If the recommendations resulting from the negotiations are positive, a contract is signed and implemented with the proposer.

Some comments

Other Australian states have also developed their own USP procedures. The procedure of another Australian state - Tasmania - is similar to NSW (Tasmania DoTaF, 2019). This procedure sets out quantitative criteria for submitting a proposal: a minimum value of AUD 10 million and the creation of at least 100 new jobs. The government may reimburse the costs incurred by the proponent in the detailed proposal development phase.

Unsolicited proposals are implemented in the US Federal acquisition procedures on similar principles (USA GSA et al., 2019). USPs are proposed with the intention that the government will contract with the offeror and not with any other entity. USP procedures are defined by individual agencies (e.g., Department of State, <https://www.state.gov/unsolicited-proposals/>; National Security Agency, USA NSA et al., 2020). The process consists of three phases: notification and initial review, evaluation, and contract negotiation and implementation. The US USP process is less collaborative than Australian processes. Actually, the proposer should submit a contract proposal that can be negotiated, rather than an idea that is jointly refined by the proposer and the government agency, as is the case in Australian states.

World Bank's USP

Public-Private Infrastructure Advisory Facility (PPIAF) of the World Bank Group has developed its guidelines for the implementation of USPs in the area of PPP infrastructure projects (WB PPIAF, 2017a, 2017b, 2017c).

According to the World Bank, USPs are acceptable and implemented when a government realizes that it cannot properly manage its portfolio of projects. USPs should be an exception to standard procurement methods. But if government institutions have problems implementing projects in the usual way, they will also have problems implementing USPs. To implement USPs, you need to have a well-organized overall environment for implementing public projects. Problems with USPs are the result of issues other than their initiation by the private party, e.g., too weak public

oversight, direct negotiations with the proposer, failure to ensure transparency and accountability of the public party.

The World Bank cites the generation of innovation and early evaluation of submitted proposals as benefits of USPs. USPs are sometimes better prepared than projects initiated by the public side, which increases their chances of being financed by banks.

In contrast, increasing technical deficiencies in the ability to evaluate and implement projects, problems with budget planning, impeding competition, difficulties in aligning public and private interest and hostile public perception including suspicion of corruption are cited as problems with USP.

Submission

The government side, as part of the development of procedures, should prepare and publish USP submission forms, which promotes the quality of proposals. There should be room in them not only for a description of the proposed project and its features but also for a description of the proposer's qualifications and experience. The government side should have a designated single point of contact for accepting USPs. Consideration could be given to specifying a time window for submitting USPs, making budgeting easier – for example, the first 45 days of the year. Review fee reduces submission of poor proposals. USP evaluation criteria should be formalized and published. It should be noted, however, that the proposal to pay a fee or indicate a window for submitting proposals is, compared to the Australian process where there are no such restrictions, the first manifestation of discouraging private companies from submitting unsolicited proposals.

The first action after submitting a USP is to check compliance with required regulations and the accuracy of submissions. The public party can request detailing of the proposal.

Evaluation

If the initial evaluation is positive, the proposal moves to the detailed evaluation phase. Formal criteria are used to evaluate the USP. These criteria should include public interest, project feasibility, PPP-suitability and affordability. In this step, one of the essential evaluation criteria is the inability of other contractors to perform the project. The proposal is compared with similar public projects. It is also possible to test the market, that is, to ask companies about the feasibility of the project.

As much USP data as possible should be made public.

Project Development

In this phase, it is checked whether the project guarantees value for money and the project is structured. A detailed feasibility study is being carried out.

After qualifying the proposal for further analysis, further preparatory work should be performed by the public party. The World Bank strongly advises against involving a USP proponent in project development, pointing to the lack of governmental influence on the USP implemented in this way. Moreover, it limits the subsequent opportunities of competitors in the tender and project. But the public side does not always have the competence to work on the USP. External advisors may be used in such situation. If the proponent is to participate in this work, consideration should be given to paying

him. Another option is to finance this work only when the project is qualified for implementation.

Procurement

One of the main decisions for the procurement phase is to determine whether and on what terms the proponent can participate in the procurement. The range of possible solutions ranges from excluding his participation, giving him preferences, to recognizing him as the only proposer. WB suggests using general, competitive procurement procedures in which all possible participants in the process have equal opportunities. The implementation of the project by the proponent may result in the loss of public control, loss of negotiating power, and loss of competitiveness in the tender. It is possible to use direct negotiations with the proponent, but the World Bank focuses on advising against this method, pointing out its main disadvantages - limitation of competitiveness and the risk of corruption.

Some comments

When reading the World Bank guidelines, one gets the impression that their main purpose is to warn against the undesirable effects of USP (non-competitiveness, risk of corruption...) and even to suggest not using this form of contracting. For USPs to be implemented, governments must have a positive attitude towards private companies (Marques, 2017). Perhaps the World Bank's negative attitude towards USP results from the search by private entities for unearned rents where the institutional environment on the public side is weak (Takano, 2017). Of course, the World Bank generally has a positive attitude towards private companies (as evidenced by many of its activities and publications). However, the attitude towards USP, which is an important element of the activity of private companies, is difficult to describe in any other way than negative – throwing the baby out with the bathwater.

The World Bank could consider including in its recommendations some of the practices used in USPs in management-mature countries, for example from the described Australian process – such as appointing a probability adviser or working together between the parties to develop the final contract proposal.

When the proponent is not the preferred contractor of the USP, he loses much motivation to act in this mode. Mallisetti et al. (2021) suggest that if the project is implemented by an entity other than the proponent, the contractor should pay a certain sum to the original proponent - which will preserve the incentive for private companies to submit a USP, while maintaining competitive conditions.

Summary

The biggest advantage of USPs is the development of the private company's innovation and creativity (e.g., Roth, 2013; Mallisetti et al., 2021). USPs make it possible to solve problems that the government side is unable to solve (e.g., WB PPIAF, 2017b), are implemented faster than other projects, increase interest in implementing projects in remote locations, and ease of securing funding (Mallisetti et al., 2021). For private companies, the criteria that encourage participation in USPs are gaining more business opportunities, increasing market share and also helping to solve social problems. For public institutions, on the other hand, it is support from private

companies in solving public problems (Mallisetti et al., *ibid*). USPs can significantly expand the potential reach and impact of public programs and projects.

These benefits justify the submitting and implementing of USPs by private companies.

Transparency and probity are among USP's most important critical success factors.

The main difference between the Australian and the World Bank's approach to the USP is that the World Bank tries to limit the participation of private companies to just submitting proposals. For the next phases of the process, the World Bank presents the disadvantages of involving the proponent in refining the proposal, primarily due to possible power differences between the original proponent and the government and other potential bidders. The USP, as preferred by the World Bank, is the introductory phase of the standard competitive contracting process. The proponent's participation in the implementation of the proposed project is not recommended (but it is also not completely out of the question).

In contrast, in the Australian approach, the main idea is to enter into a contract with the government just by the company submitting the proposal. In special cases, when the proposal does not meet all the USP criteria, a competitive tender can be organized on this basis. But in this case, it is no longer the USP process that thus ends. It should be noted that the Audit Office of New South Wales (2016) generally gave a positive assessment of NSW USP procedures, in particular making no comments on corruption or more generally on the probity of this process.

Whether the proposer is the main potential contractor for the project, or whether the project should be carried out on the basis of competitive bidding, is the main factor that differentiates these approaches. This leads to the definition of two versions of the process starting with the submission of a proposal by a private entity.

A full USP process is one in which only the proponent can be the contractor. In contrast, the limited version of USP is the one in which, after the private party submits a proposal and its evaluation by the government, a competitive tender is organized.

The USA and Australian states have advanced public management systems, in particular mature GPIS (Gasik, 2023c). However, the countries in which the World Bank operates are less advanced in these areas, which is probably the reason for the structure of the USP processes recommended for them by this institution.

To organize these issues and avoid misunderstanding, a distinction should be introduced at the level of process names. The World Bank's approach emphasizes the submission of a proposal, and therefore the name **Unsolicited Proposal (USP)** is appropriate there. On the other hand, for the approach of management-advanced governments, a more appropriate name would be **Unsolicited Projects** (or **Unsolicited Contracts, USC**) – because their main idea is the implementation of the project by the entity submitting an unsolicited proposal, and not just the submission of the proposal itself.

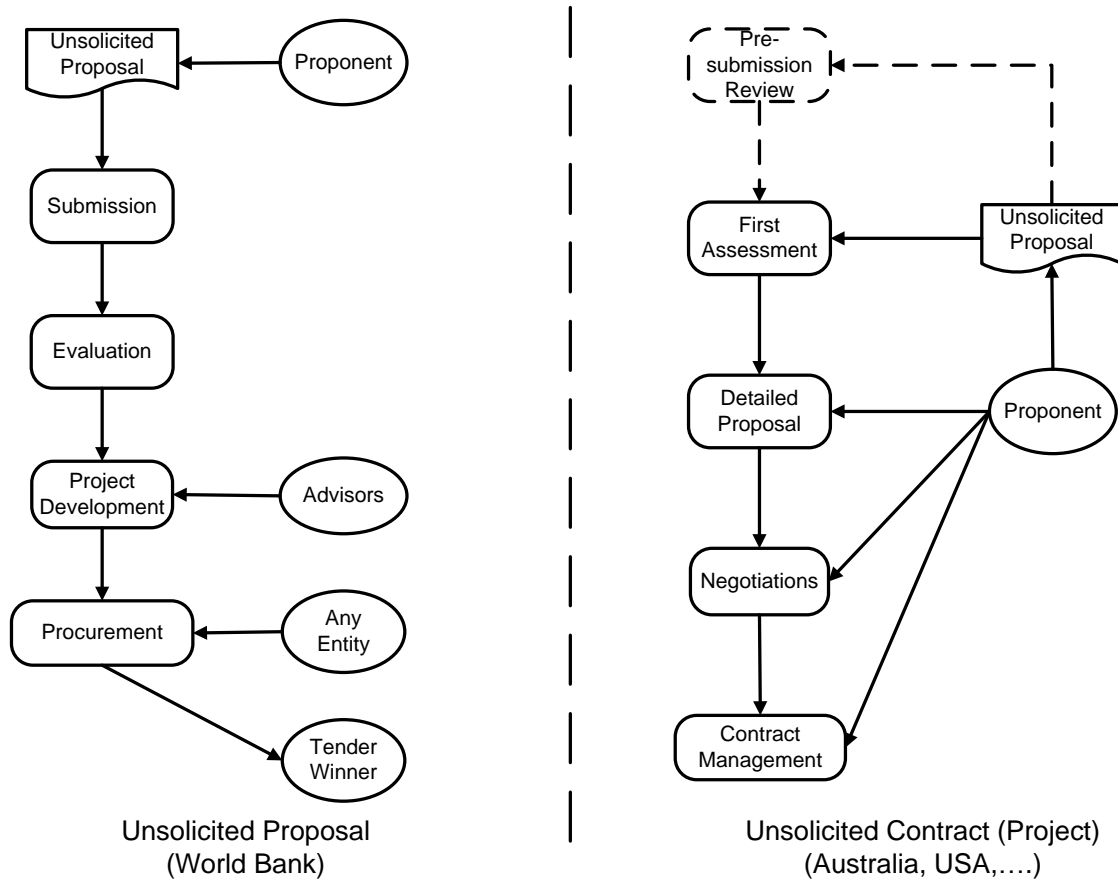


Figure 1. Unsolicited Proposals vs. Unsolicited Contracts

Once this distinction is made, it would be advisable to develop recommendations regarding the scope of application of these versions. It seems that the basic criterion should be the level of institutional maturity of the Governmental Project Implementation System and, in general, institutional efficiency. For more advanced governments, the USC process may be recommended, and for less advanced governments – the USP process.

References

Arizona Government (2005) Arizona Revised Statutes - Title 41 - State Government, §41-2557 Unsolicited proposals. Phoenix, Arizona: Arizona Government.
<https://law.justia.com/codes/arizona/2005/title41/02557.html>

Gasik, S. (2023a). Who defines public policies and policy programs? Let's talk about public projects, series article, PM World Journal, Volume XII, Issue IV, April.
<https://pmworldlibrary.net/wp-content/uploads/2023/04/pmwj128-Apr2023-Gasik-Who-defines-public-policies-and-policy-programs.pdf>

Gasik, S. (2023b). Citizens' participation in public projects. Let's talk about public projects, series article, PM World Journal, Volume XII, Issue XI, November.
<https://pmworldlibrary.net/wp-content/uploads/2023/11/pmwj135-Nov2023-Gasik-Citizens-participation-in-public-projects.pdf>

Gasik, S. (2023c). *Projects, government, and Public Policy*. Boca Raton, Florida: Taylor and Francis. <https://www.routledge.com/Projects-Government-and-Public-Policy/Gasik/p/book/9781032232683>

Jackson, B. J. (2004). *Construction Management Jump Start*. San Francisco: Sybex.

Malliseti, V., Dolla, T., & Laishram, B. (2021). Motivations and Critical Success Factors of Indian Public–Private Partnership Unsolicited Proposals. *Journal of The Institution of Engineers (India): Series A*, 102(1), 225-236.

Marques, R. C. (2018). Empirical evidence of unsolicited proposals in PPP arrangements: A comparison of Brazil, Korea and the USA. *Journal of comparative policy analysis: research and practice*, 20(5), 435-450.

Moore, M. (1995). *Creating Public Value: Strategic Management in Government*. Massachusetts: Harvard University Press.

NSW AO (2016) *Managing unsolicited proposals in New South Wales*. Sydney: Audit Office of New South Wales.

NSW Government (2017). *Unsolicited Proposals. Guide for Submission and Assessment*. Sydney, Australia: NSW Government.

Roth, L. (2013) *Unsolicited proposals*. Sydney: NSW Parliamentary Research Service e-brief 6/2013.

Takano, G. (2017). Public-private partnerships as rent-seeking opportunities: A case study on an unsolicited proposal in Lima, Peru. *Utilities Policy*, 48, 184-194.

Tasmania DoTaF (2019). *Unsolicited Proposals Policy And Guidelines*. Hobart: Government of Tasmania, Department of Treasury and Finance.

USA GSA, DoD, NASA USA (2019). *Federal Acquisition Regulations*. Washington, DC: General Services Administration.

USA NSA (2020) *Guidance for the preparation and submission of unsolicited proposals*. Annapolis, Maryland: Unsolicited Proposals Office, Maryland Procurement Office.

WB PPIAF (2017a) *Policy guidelines for managing unsolicited proposals in infrastructure projects. Volume I Main findings and recommendations*. Washington, DC: Public-Private Infrastructure Advisory Facility, World Bank Group.

WB PPIAF (2017b) *Policy guidelines for managing unsolicited proposals in infrastructure projects. Volume II Guidelines for the development of a policy for managing unsolicited proposals in infrastructure projects*. Washington, DC: Public-Private Infrastructure Advisory Facility, World Bank Group.

WB PPIAF (2017c) *Policy guidelines for managing unsolicited proposals in infrastructure projects. Volume III. Review of experiences with unsolicited proposals in infrastructure projects* Washington, DC: Public-Private Infrastructure Advisory Facility, World Bank Group.

About the Author



Stanisław Gasik, PhD, PMP

Warsaw, Poland



Dr. Stanisław Gasik, PMP is a project management expert. He graduated from the University of Warsaw, Poland, with M. Sc. in mathematics and Ph. D. in organization sciences (with a specialty in project management). Stanisław has over 30 years of experience in project management, consulting, teaching, and implementing PM organizational solutions. His professional and research interests include project knowledge management, portfolio management, and project management maturity. He is the author of the only holistic model of project knowledge management spanning from the individual to the global level.

Since 2013, his main professional focus has been on public projects. He was an expert in project management at the Governmental Accountability Office, an institution of the US Congress. He is the author of "[Projects, Government, and Public Policy](#)," a book that systematizes knowledge about government activities in the area of project management.

He was a significant contributor to PMI's PMBOK® Guide and PMI Standard for Program Management and contributed to other PMI standards. He has lectured at global PMI and IPMA congresses and other international conferences.

His web page is www.gpm3.eu.