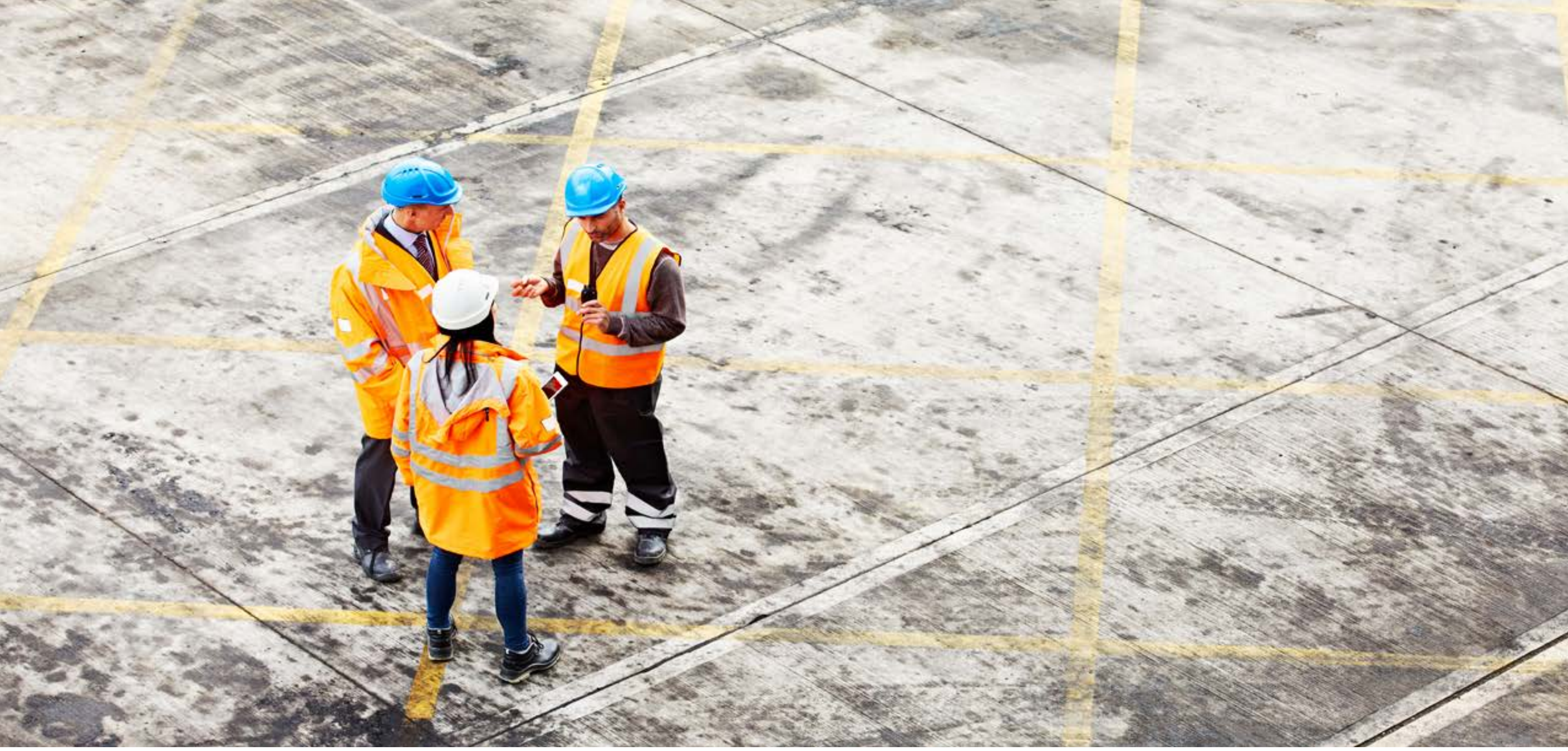

POLICY GUIDELINES FOR MANAGING UNSOLICITED PROPOSALS IN INFRASTRUCTURE PROJECTS

VOLUME II

GUIDELINES FOR THE DEVELOPMENT OF A POLICY FOR MANAGING UNSOLICITED PROPOSALS IN INFRASTRUCTURE PROJECTS

WORLD BANK GROUP

PPIAF
Enabling Infrastructure Investment

POLICY GUIDELINES FOR MANAGING **UNSOLICITED PROPOSALS** IN INFRASTRUCTURE PROJECTS

VOLUME II

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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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GUIDELINES FOR THE DEVELOPMENT OF A USP POLICY

In 2015, PPIAF launched an effort to develop policy guidelines for governments for the management of unsolicited proposals (USPs). The initiative consists of three key publications:

Volume I – Main Findings & Recommendations: A summary of the recommendations and an overview of key findings with some country examples from this initiative.

Volume II – The Guidelines for the Development of a Policy for Managing Unsolicited Proposals (the Guidelines): Based on the Experience Review, the Guidelines provide recommendations and considerations to assist governments in developing and operationalizing a USP policy.

Volume III – Review of Experiences with Unsolicited Proposals in Infrastructure Projects (the Experience Review): The Experience Review examined best practices and international experience in implementing USP policy frameworks and USP projects. This report presents the findings.

RATIONALE FOR THE GUIDELINES FOR THE DEVELOPMENT OF A USP POLICY

Public-private partnerships (PPP) for the private delivery of public services and infrastructure projects are traditionally publicly initiated. Unsolicited proposals (USPs) are an exception to the public initiation of infrastructure projects. Although international approaches to managing USPs differ, many USP projects have created challenges related to transparency, governance and lack of competition, particularly in developing countries. These Guidelines to the Development of a Policy for Managing Unsolicited Proposals in Infrastructure Projects (the Guidelines) provide a framework for considering and managing USPs and for developing a USP Policy.[1]

PURPOSE OF THE GUIDELINES

The recommendations contained in the Guidelines are based on an in-depth review of global best practices with USP policies and USP projects, summarized in the Experience Review Report (hereafter the Experience Review). The Guidelines and the Experience Review are companion documents, which governments are advised to read in parallel. The Guidelines are specific to USPs, and do not provide guidance on publicly initiated PPPs or concessions.

The Guidelines introduce USP-specific processes, regulations and institutions to ensure that privately initiated PPP projects are subject to equal or higher standards as publicly initiated PPPs. The USP policy frameworks should integrate seamlessly with PPP policies; public investment requirements; fiscal management processes; national infrastructure planning; environmental and social sustainability requirements; and climate-change and development goals. Adopting a higher standard for implementing USPs helps prevent them from being used to circumvent project checks and balances or fiscal constraints.

IMPORTANCE OF COUNTRY-SPECIFIC CONTEXTS

Governments are advised to consider their country's unique circumstances before adopting any recommendations provided in the Guidelines, as country-specific factors affect the relative appropriateness of various USP policy features.

Importance of Expert Oversight

Ensuring that a PPP contract that initiated as a USP generates value for money and meets the public interest is more challenging and requires greater public-sector technical capacity than for a publicly initiated PPP. This highlights the importance of hiring experienced external advisors to assist with project preparation and procurement.

The Guidelines do not prescribe precise courses of action, or recommend policies that will apply to each jurisdiction or context. Governments are therefore advised to formulate their USP policies in close consultation with experienced and well-resourced professionals. These may include government officials, external advisors, multilateral advisors, or a combination thereof.

The structure of the Guidelines is presented in Figure 1 (below).

IMPORTANCE OF EXPERT OVERSIGHT

Ensuring that a PPP contract that initiated as a USP generates value for money and meets the public interest is more challenging and requires greater public-sector technical capacity than for a publicly initiated PPP. This highlights the

[1] For guidance on publicly initiated PPPs and concessions, please refer to the PPP Reference Guide Version 3.0.

importance of hiring experienced external advisors to assist with project preparation and procurement.

The Guidelines do not prescribe precise courses of action, or recommend policies that will apply to each jurisdiction or context. Governments are therefore advised to formulate their USP policies in close consultation with experienced and well-resourced professionals. These may include government officials, external advisors, multilateral advisors, or a combination thereof.

The structure of the Guidelines is presented in Figure 1.

FIGURE 1: THE STRUCTURE OF THE GUIDELINES

A INTRODUCTION TO USPS

Introduction to USPs: What are USPs? How do privately initiated PPPs differ from publicly initiated PPPs? What are the challenges and opportunities of USPs?
Guiding Principles of a USP Policy: Fundamental value drivers to embed in the USP Policy
Considerations Prior to Drafting a USP Policy: Strategic policy considerations to consider before drafting a USP Policy

B GUIDANCE FOR DEVELOPING A USP POLICY

USP Policy: Defining Parameters: Defining the basic elements
Stage One: Submission: Determining how to manage received USPs
Stage Two: Evaluation: Analyzing a USP and deciding how to proceed
Stage Three: Project Development: Undertaking project development and structuring
Stage Four: Procurement: Launching a competitive tender or direct negotiation

C TOOLKIT

Tool 1: Determining Submission Requirements
Tool 2: Determining the USP Review Fee
Tool 3: Compliance Check Form
Tool 4: Detailed Evaluation Criteria
Tool 5: Evaluation Form
Tool 6: Project-Development Agreement
Tool 7: Incentives During the Competitive Tender
Tool 8: Disclosure Throughout the USP Process
Tool 9: Benchmarking in the USP Process
Tool 10: Market Testing in the USP Process

D USP REFERENCES

USP Policies, Laws and Guidelines: An overview of countries' USP policies and guidelines
USP Key Policy Decisions: An overview of countries' key policy decisions
USP Literature: An overview of literature related to USPs

A

AN INTRODUCTION TO USPs

UNDERSTANDING USPs & THEIR UNIQUE CHARACTERISTICS

1. INTRODUCTION TO USPs

This chapter introduces unsolicited proposals for infrastructure projects; provides an overview of the differences between privately and publicly initiated public-private partnerships (PPPs); and highlights some of the challenges and opportunities associated with USPs. It also presents alternative solutions to achieving some of the objectives for which governments tend to accept USPs.

1.1 WHAT IS A USP?

Traditionally, the government involves the private sector in infrastructure development through a government planning process. A government agency develops an idea for a project that responds to an identified infrastructure challenge (set forth in an infrastructure plan or strategy), after which it prepares and develops the project (together with its external advisors). It subsequently launches a competitive tender to engage the most qualified private-sector bidder to implement the project.

Unsolicited proposals (USPs) are an exception to the public initiation of infrastructure projects. 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.

1.2 PRIVATELY VS. PUBLICLY INITIATED PPPs

In a government planning process, public agencies identify and develop projects that align with infrastructure plans and with identified societal and economic needs. When a private entity submits a project idea, however, it may not automatically align with the government's needs or infrastructure plans. Although aligning public and private interests is also a challenge in publicly initiated PPPs, the challenge may be exacerbated for privately initiated PPPs due to the public agency's lack of involvement in the origination of the project.

When a private entity submits a USP, the government's role is therefore to ensure that the project is designed and structured to meet economic and societal needs and tendered to ensure fair market terms, conditions, and pricing. To ensure that a PPP contract resulting from a USP is satisfactory to the government, the public agency must apply additional checks and balances to strengthen its oversight role. The purpose of these Guidelines is to provide governments with guidance on managing the USP process to increase the likelihood that a PPP contract resulting from a USP is fair, affordable, and in the public interest.

1.3 THE OPPORTUNITIES AND CHALLENGES OF USPs

Privately initiated PPPs often experience different (and potentially exacerbated) challenges during the project-development and procurement stages. However, privately initiated PPPs may also provide new solutions to infrastructure needs. This section discusses the opportunities and challenges of USPs in greater detail.

1.3.1 OPPORTUNITIES OF USPs

Privately initiated PPPs may allow governments to better identify and prioritize projects in their PPP pipeline; generate innovative solutions to infrastructure challenges; and help overcome challenges related to early-stage project assessment. However, USPs are not the only mechanism to achieve these objectives; alternative options are discussed below.

- **PPP Pipeline: USPs may help governments identify and prioritize projects for the government planning process.**

Identifying viable infrastructure projects requires significant technical, institutional and financial resources. Many governments lack the necessary resources to generate projects that address critical infrastructure gaps and are also expected to be feasible and suitable for PPP delivery.[2] By allowing private entities to propose project ideas, an appropriately designed USP process can harness the private-sector's interest in identifying viable project solutions.

This can also be achieved without the use of USPs. Governments can: (1) hire external advisors to identify infrastructure gaps and propose project solutions, and/or (2) organize formalized processes to solicit project ideas from the private sector (hereafter referred to as idea competitions).

- **Innovation: USPs may expand the range of potential solutions to address infrastructure gaps.**

A well-designed USP process may stimulate innovation by encouraging private entities or other organizations to propose new technologies or solutions. Private providers of technology may have more knowledge about potential solutions to infrastructure challenges than public officials. Allowing these entities

[2] Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs, PPIAF, 2014.

to present their ideas may generate smarter and more sustainable and cost-effective solutions.

USPs are not the only mechanism, however, to stimulate innovation (see Box 1 below).

BOX 1: ALTERNATIVE SOLUTIONS FOR ENCOURAGING INNOVATION

Alternative solutions to encourage innovation in PPPs include:

Idea Competition	In an idea competition, the public agency specifies a broad infrastructure challenge (e.g., city congestion) and invites private entities to submit ideas for specific projects. Idea competitions help bring private-sector innovation into the project conceptualization stage. Unlike with USPs, the firm that develops the winning project idea typically has no further role in project development, structuring and implementation.
Request for Information	A request for information is a standardized process with a two-fold purpose: (1) gathering written information about the technical capabilities of potential bidders, and (2) soliciting feedback from potential bidders on project scoping and structuring.
Output Specifications	PPP delivery models allow the public agency to specify the outputs or results that must be met by the private entity, rather than prescribing detailed technical inputs. When PPP contracts are based on output-based specifications, they provide wider scope for innovation, because they incentivize bidders to develop innovative or creative solutions to meet these specifications.
Multi-Stage Procurement Process	A multi-stage procurement process allows interaction between the public agency and bidders. It can range from simple Q&As to competitive dialogue rounds,* and can help ensure that solutions are aligned to needs and improve the quality of the final proposals.

* Processes such as competitive dialogue can help a public agency achieve the innovation benefits of a USP. Competitive dialogue, which is common in Europe, allows the public agency to set out the requirements, preserving the benefits of competition and value for money, while encouraging a multiplicity of different solutions to be put forward to meet that need. This approach, however, may demand significantly more time and resources and creates risks related to compromising transparency and fairness. Competitive dialogue therefore tends to work best in mature PPP markets. For more information on competitive dialogue please refer to "Procurement of PPP and the use of Competitive Dialogue in Europe: A review of public sector practices across the EU," European PPP Expertise Center.

Early-Stage Project Assessment: USPs may help the government assess the preliminary feasibility of a proposed project.

During the early stages of the PPP process, the public agency must undertake preliminary feasibility studies (or pre-feasibility studies) to determine whether a project is the optimal solution to an infrastructure challenge (the economic perspective) and is expected to be feasible (the financial, technical and legal perspectives). Although developing these initial studies requires less technical capacity than developing detailed feasibility studies later in the PPP process, many governments do not have the technical, financial or institutional resources to develop them.

A well-designed USP process can partially mitigate these challenges by requiring the USP proponent to develop preliminary feasibility studies as part of the USP submission.[3] USPs are not the only mechanism, however, to overcome the challenges associated with developing preliminary feasibility studies; governments are encouraged to hire external advisors to assist them in this process.

[3] The public agency's role is then to: (1) ensure that the project is in line with infrastructure plans; (2) conduct a detailed expert review of the preliminary studies (with the help of external advisors); and (3) evaluate whether the proposed project is feasible and can move on to a more detailed project-development phase. Refer to Part B for more information.

Preliminary Indication of Market Interest: USPs can allow the government to assess market interest in specific projects and engage with the private sector regarding potential risks and opportunities.

Governments with nascent PPP programs may face challenges associated with attracting private-sector interest in the PPP program, or identifying which projects may generate market interest and could be viable for PPP delivery. Accepting USPs provides a signal that the government has an interest in receiving private-sector ideas. Furthermore, USPs act as a signal that the private sector has an interest in a project and that it could potentially be structured as a PPP. When the USP process involves opportunities for market testing,[4] it also provides opportunities to have a dialogue with private entities about the risks and opportunities associated with the project and the business environment.

Aside from USPs, a well-structured, publicly initiated PPP process also provides opportunities to test the market and solicit private-sector feedback.

1.3.2 CHALLENGES OF USPS

Although USPs may present opportunities, they also introduce potential challenges. Some of these are institutional—for example, governments must allocate resources to enable USPs to move through required procedures and approvals. Other challenges are related to aligning public and private interests, because a project idea initiated by a private entity must meet public objectives. Finally, the public agency may need to overcome adverse perceptions associated with USPs.

Public-Sector Capacity: USPs often exacerbate a lack of technical capacity to evaluate, prepare, procure and implement PPPs.

Many governments believe that USPs enable them to overcome public capacity constraints in the PPP process. Evidence shows, however, that USPs often exacerbate capacity challenges.[5] Because the USP proponent proposes the project concept and prepares elements of the project, information asymmetries arise between the public agency and the USP proponent. When the USP proponent has a greater understanding of the project than the public agency, the agency's bargaining position during project development and procurement is weakened. Ensuring that a PPP contract originating from a USP generates value for money and meets the public interest is therefore more challenging and often requires greater technical capacity than a publicly initiated PPP. This highlights the importance of public agencies hiring experienced external advisors.

Institutional Capacity: USPs often exacerbate institutional challenges related to managing USP submissions and managing the fiscal burden.

[4] Tool 10: Market Testing in the USP Process provides further guidance on market testing. For the avoidance of doubt, the Guidelines provide a specific definition of market testing in Section 2.4 of Part A of the Guidelines. The definition of market testing used in the Guidelines does not refer to the market testing used in the context of the UK's Private Finance Initiative (PFI)/PPPs, in which other suppliers are invited to compete with the incumbent supplier in an open competition.

[5] For more information on the USP capacity challenge, refer to Chapter 7.3.1. of the Experience Review.

Many governments face institutional challenges when they receive a large (and potentially unmanageable) number of USPs, many of which may not further the public interest. USPs often distract government officials from their stated priorities and may divert limited financial and human resources.[6] They may also create difficulties with fiscal planning if they were not part of the normal infrastructure-budgeting processes.[7]

Competition: Governments often struggle to attract market interest when competitively procuring a project that initiated as a USP.

Research shows that competitively procuring a PPP is more likely to generate a fair market price and value for money than directly negotiating a PPP contract.[8] Creating these competitive conditions is more difficult for a USP because: (1) the USP proponent has greater access to and control over project information (information asymmetry), and (2) potential competing bidders may be reluctant to develop a bid if they feel the USP proponent has a significant advantage. Generating equal bidding conditions is particularly difficult when: (1) the USP proponent has an active role during project development; (2) the USP proponent has the right to match competing bids or receives a significant bonus during bid evaluation;[9] and/or (3) competing bidders are not provided with sufficient time to prepare bids or equal access to information.

Corruption: USPs are often associated (or perceived to be associated) with corruption, which can result in the projects not being in the public interest, or challenged for legal or political reasons.

USPs are frequently subject to allegations of corruption or nepotism, particularly when directly negotiated. Some of these allegations may be based on actual irregularities, which can result in expensive and poor-quality projects. Complaints by stakeholders may also refer to a lack of transparency, lack of access to information, or a lack of due diligence by the government. Due to these problems, privately initiated PPPs are often vulnerable to being challenged for legal or political reasons, often resulting in project delays or even cancellations.[10]

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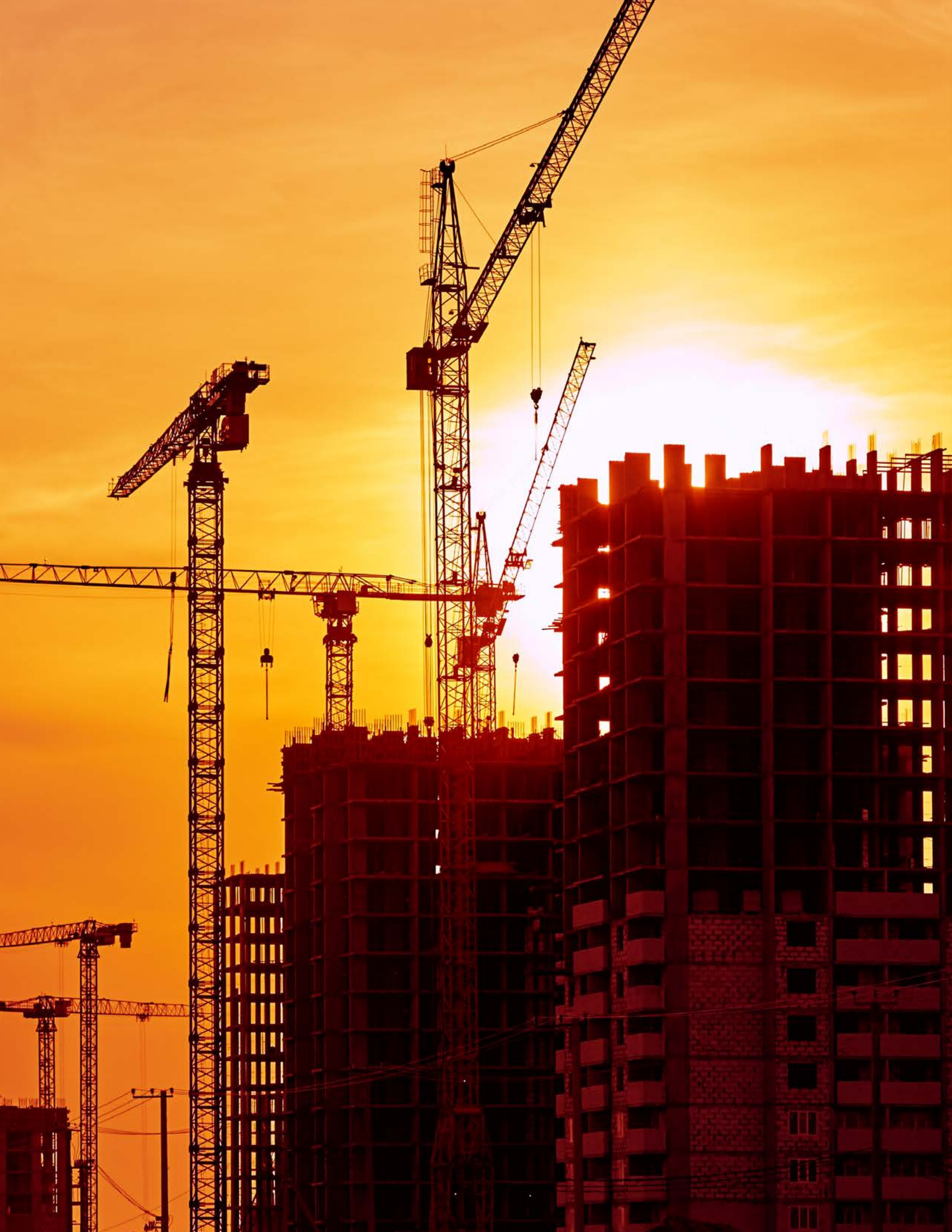
[6] Public agencies that evaluate PPP projects and receive USPs usually lack the resources to process USPs. Anticipating how many USPs will be submitted in a given fiscal year to justify deploying resources (if available) is challenging. For more evidence regarding the institutional challenges related to USP submissions, refer to Chapter 3 of the Experience Review.

[7] The role of well-functioning PPP cells and project-preparation facilities is critical for the initial screening of submitted USPs and for undertaking the design, preparation, structuring and tendering of projects, as well as to ensure a sustainable relationship with the private sector. Equally important is the continuous involvement of the ministry of finance to ensure that the public interest is maintained and fiscal risks are properly managed. USPs may end up costing more and taking longer than publicly initiated PPPs. For more information on PPP cells and project-preparation facilities, as well as the fiscal impact of PPPs , refer to the Public-Private Partnerships Reference Guide Version 3.0, p21; pp76-83 and pp84-95.

[8] Unsolicited Proposals – An Exception to Public Initiation of Infrastructure PPPs, PPIAF, 2014.

[9] For more information about incentives given during a tender that originated from a USP, refer to Chapter 3.3.5 of Part A and Tool 7 of Part C.

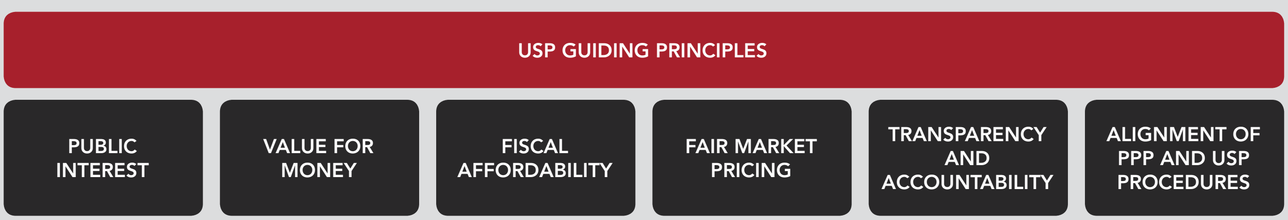
[10] Refer to Chapter 6.3. of the Experience Review for more detail regarding allegations of corruption resulting in legal and political challenges for directly negotiated USP projects.



2. 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. Experience has shown that it can be challenging for governments to achieve these objectives for publicly initiated PPPs.[11] As discussed in Chapter 1, these challenges are potentially exacerbated in the case of USPs, which may require additional due diligence to ensure they meet these public objectives.

FIGURE 2: USP GUIDING PRINCIPLES



This chapter presents six guiding principles 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 and implementation. Guiding principles should also be embedded in the approvals and decision-making processes

[11] Challenges associated with publicly initiated PPPs may include difficulties evaluating and managing the fiscal implications of projects; loss of control over project planning; and difficulties associated with organizing a high-quality procurement and effectively monitoring the PPP contract. For more information, refer to Public-Private Partnerships Reference Guide Version 3.0, p16.

that are required for the USP project to move on to the next stage of the USP process.[12]

2.1 PUBLIC INTEREST

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

When a project concept originates in the private sector,[13] the public agency must ensure that the proposed project is in the public interest. The assessment of whether a USP project is in the public interest should consider the country's national infrastructure strategy, policies, and development goals. This public-interest assessment is most relevant during the initial evaluation of a USP project, but it should be revised and reconfirmed throughout the project-development and procurement stages. If the public agency believes that other project solutions or actions may better address the societal need, it should either reject the USP project or propose amendments to align it with public-interest needs. The public-interest criteria should reflect a government's growth policies and development plans.

The public-interest criteria used to assess USP projects should consider sustainability and climate-change challenges (from a mitigation and resilience perspective). The public-interest criteria should include a review of the proposed project's impact on the environment and climate change, and other criteria that capture sustainability dimensions.[14] The depth and breadth of the assessment will depend on how material those considerations are for each project. Whenever relevant, the public authority shall analyze the USP in terms of its contribution to (intended) nationally determined contributions (NDCs)[15] and climate change. The same can apply to sustainable-development goals.[16]

2.2 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.

Generating value for money from a USP requires greater technical capacity than doing so from a publicly initiated PPP. Because the USP proponent proposes the project idea and may develop elements of the project, it often has a greater

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[12] Depending on the country's specificities and institutional organization, the introduction of a national autonomous technical decision-making body may be considered to manage these six guiding principles and ensure that decision-making is protected from undue political interference.

[13] The Guidelines recommend that governments first prioritize strengthening their own internal technical capacity to identify project needs and solutions, and only use USPs as an exceptional method to identify project ideas and solutions.

[14] Depending on the characteristics of each project, sustainability may include considerations such as social impact, or resilience to earthquakes, terrorism or floods.

[15] United Nations Framework Convention on Climate Change - Intended Nationally Determined Contributions (INDCs). INDCs are viewed as necessary to hold the increase in global average temperatures below two degrees Celsius, to pursue efforts to limit the increase in global average temperature to 1.5 degrees Celsius, and to achieve net zero emissions of greenhouse gases (GHGs) in the second half of the century.

[16] United Nations Sustainable Development Goals. For a discussion of SDGs and PPPs, please refer to Public-Private Partnerships Reference Guide Version 3.0.

understanding of the project than the public agency. The government often finds itself in a weaker negotiating position due to these information asymmetries. Additionally, USP proponents may scope the project to meet their own competitive advantages, which could limit market interest and competition, and thus also value for money. To mitigate these risks, the government will need to assess the reasonableness of costs and risk allocation; ensure a tender process with equal bidding conditions; and negotiate a contract that protects the expected value for money. Value-for-money assessments (or their equivalent) should therefore inform key approvals throughout the USP process.

2.3 AFFORDABILITY

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

USP proponents may submit USPs that request direct or indirect government support. The criteria that are used to assess the fiscal affordability of publicly initiated PPPs should also be applied to USPs. The government will need to assess the direct and contingent liabilities associated with the USP and determine whether these can be adequately managed throughout the PPP contract term. This task may be more challenging for USPs than for publicly initiated PPPs, due to information asymmetry. The government will need to develop the technical capacity (either directly or through external advisors) to understand the project's fiscal liabilities and the risks retained by the government, and negotiate a contract that limits unexpected liabilities.[17]

2.4 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.

An assessment of fair market pricing begins during the early stages of the USP process. The Guidelines advise that the public agency use benchmarking (see Tool 9: Benchmarking in the USP Process) to assess whether a USP submission contains acceptable terms. If benchmarking does not provide sufficient information, the public agency may use market testing to solicit feedback on prices and terms.

Like publicly initiated PPP projects, USP projects are more likely to generate a fair market price when they are procured in a competitive tender that attracts more than one bidder. It can be challenging to guarantee equal bidding conditions, however, when information asymmetries exist between the USP proponent and other bidders.[18] Competition will likely be further reduced when the public agency fails to provide competing bidders with sufficient time to prepare

[17] Should the government not have the capacity to assess, manage and negotiate the fiscal liabilities associated with the PPP contract, the government is advised to either hire experienced external advisors or to prohibit USPs until public agencies have the capacity to protect the public interest. The public agency is also advised to work in close collaboration with the Ministry of Finance (or equivalent) to assess the project's fiscal liabilities.

[18] Information asymmetries are particularly strong if the USP proponent was involved in project development.

bids, or provides significant incentives[19] to the USP proponent. Market testing can be used to determine whether there is likely to be market interest in a project, informing the decision about whether to organize a competitive tender.

If market testing demonstrates a lack of market interest,[20] governments may negotiate a PPP contract directly with the USP proponent. In a direct negotiation, the public agency will not be able to compare the price proposed by the USP proponent with prices proposed by other bidders. Therefore, it will need to rely on alternative approaches to ensuring that the contract represents a fair market price. These alternative approaches include benchmarking and introducing competition in specific sub-contracts of the project.[21]

Tool 9: Benchmarking in the USP Process and Tool 10: Market Testing in the USP Process provide guidance on benchmarking and market testing, respectively, for a USP project.

BOX 2: 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.

2.5 TRANSPARENCY AND ACCOUNTABILITY

Governments should disclose all relevant project information to allay stakeholder concerns regarding transparency and accountability.

To ensure transparency and accountability, public agencies must disclose information throughout the PPP process.[22] Disclosure is even more important for USP projects, which are often subject to stakeholder concerns about the fairness of the deal; the public need for the project; accountability of public expenditure; and even misappropriation of funds. Disclosure is particularly important

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[19] Refer to Chapter 3.3.5, Policy Decision 5: Which Procurement Methods will the USP Policy Allow? of Part A for more information regarding incentives during a competitive tender.

[20] As described in Part B of the Guidelines, the likelihood of generating market interest in a competitive tender is first assessed through benchmarking exercises, and subsequently through market testing (if benchmarking does not yield sufficient information).

[21] For further guidance on awarding subcontracts via a competitive process, refer to Chapter 5.3.3: Specify Direct-Negotiation Procedures of Part B of the Guidelines.

[22] According to a 2015 World Bank report, disclosure throughout the PPP process proffers benefits, including "greater accountability in expenditure, higher level of confidence in the fairness of the process, better quality of bids, and the potential for the formulation of improved policies and practice relating to PPP in the long run." A Framework for Disclosure in Public Private Partnerships," World Bank Group, 2015.

for directly negotiated USPs, which often are negotiated behind closed doors. Perceptions of corruption and irregular processes will likely reduce public support and private-sector interest in participating in PPP tenders. To mitigate these risks, governments should stipulate which documents must be made public throughout the USP process; carry out stakeholder awareness campaigns; establish mechanisms to ensure accountability in the USP policy; and ensure that bid evaluations are undertaken impartially, with prompt disclosure of results.

Tool 8: Disclosure Throughout the USP Process provides guidance on disclosure throughout the USP process.

2.6 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.

The Guidelines recommend that the USP policy reference the same procedures as the PPP policy throughout project evaluation and screening, project development, competitive procurement, and contract monitoring.[23] There are important benefits to ensuring consistency between PPP and USP procedures, or even integrating them into one policy:

- Harmonizing procedures has important benefits for ensuring stakeholder support for a USP. When USPs are subject to the same checks and balances as publicly initiated PPPs, stakeholders are less likely to see USPs as controversial. By showing that USPs are subject to the same level of scrutiny, stakeholders can be ensured that project decisions will be equally robust, regardless of how the project was initiated.
- Harmonizing procedures also has important benefits for the consistency and effectiveness of government oversight, and will likely reduce public transaction costs.
- Finally, harmonizing procedures reduces complexity for private entities that may submit bids for both privately and publicly initiated projects. This may increase private-sector interest in tender processes and reduce private transaction costs, because bidders do not need to become familiar with two different processes.

[23] For jurisdictions with well-developed competitive tender procedures, the Guidelines recommend that the USP policy refer to existing PPP procurement procedures. In jurisdictions in which the existing PPP procurement process is insufficiently transparent or does not stimulate equal bidding conditions, governments are advised to define USP-specific tender procedures to guarantee transparency and competition. For more information on PPP procurement procedures, refer to the Public-Private Partnerships Reference Guide Version 3.0.

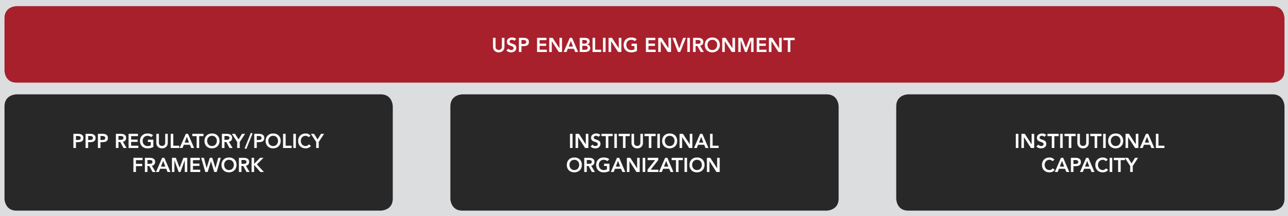
3. CONSIDERATIONS PRIOR TO DRAFTING THE USP POLICY

This chapter provides an overview of the institutional and political environment that is required to successfully implement and operationalize a USP policy. It also highlights the five key policy decisions that will need to be made prior to beginning to draft the USP Policy.

3.1 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;[24] (2) an effective institutional organization that governs both publicly and privately initiated PPPs; and (3) the development

FIGURE 3: USP ENABLING ENVIRONMENT



[24] The Guidelines use "PPP regulatory/policy framework" to refer to the combination of a jurisdiction's PPP laws, regulations and/or policies, recognizing that PPP frameworks vary between countries.

of institutional and human capacity for the public officials and agencies tasked with PPP development and implementation.

3.1.1 PPP REGULATORY AND POLICY FRAMEWORK

The success of the USP policy will partly be determined by the effectiveness of the PPP regulatory and policy framework. A USP policy should complement this framework, addressing only the areas that are specific to privately initiated PPPs. For elements that are common to both publicly and privately initiated PPPs, governments should refer to the existing PPP regulatory/policy framework.[25] Where a PPP regulatory/policy framework does not exist, or does not follow international best practices, governments are advised to update the PPP framework prior to, or in parallel with, the development of the USP policy.

3.1.2 INSTITUTIONAL ORGANIZATION

Successfully implementing a USP policy requires an institutional structure that can manage both publicly and privately initiated PPP projects. The institutional structure includes the government agencies involved in PPP initiation, development, implementation and oversight. Each of these entities should have a clear role and mandate at each stage of the PPP (and USP) process to avoid duplication of tasks and ensure the necessary checks and balances.[26] Roles and mandates should be consistent across both privately and publicly initiated PPPs.

3.1.3 INSTITUTIONAL CAPACITY

The effectiveness of the USP policy will also depend on the technical skills and experience of the public officials responsible for managing USPs. USPs require greater technical capacity than publicly initiated PPPs, due to the challenges associated with information asymmetries and a weaker government negotiating position. The staff of the mandated agencies or unit[27] will need to evaluate and prioritize USPs; manage project development; and lead procurement. Governments are advised to assess the technical capacity of the relevant staff when determining whether to accept USPs, and, if necessary, devise strategies for increasing institutional capacity.

3.2 DEVELOPING A USP POLICY

A USP policy allows governments to articulate their policy on USPs; clearly define what constitutes an acceptable USP; define the conditions and procedures that need to be followed; and lay out the roles and mandates of the different agencies and institutions throughout the USP process. Establishing a clear, consistent and transparent USP policy has several advantages, some of which are detailed in the box below.

[25] For additional guidance on which elements of the USP policy can be harmonized with the PPP regulatory and policy framework, refer to Chapter 3.3.3 of Part A: Policy Decision 3: How will the Government Incorporate the USP Policy in Existing Regulations?

[26] Effective checks and balances, including clear approval processes, help ensure that the project (whether publicly or privately initiated) meets public interests and maximizes value for money.

[27] In some jurisdictions, a centralized PPP unit will accept USPs, whereas in other jurisdictions, sectorial departments may also have the mandate to accept and manage USPs.

BOX 3: ADVANTAGES 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.

Private Sector Interest	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.
Transparency	A USP policy provides guidance to public officials, helping them to process USPs effectively and efficiently using consistent and transparent procedures.
Public Interest	A USP policy helps articulate the government's policy objectives, ensuring that submitted USPs are in line with the government's infrastructure priorities and development plans. This may include the USP's contribution to and impact on nationally determined contributions (NDCs).

Governments are advised to articulate clear objectives for the USP policy. The box below provides several possible objectives for the USP policy.

BOX 4: POSSIBLE OBJECTIVES OF A USP POLICY

The possible objectives of a USP Policy may include:

Pipeline	Increase the number of viable projects in the PPP pipeline.
Innovation	Increase innovation in the solutions used to address infrastructure gaps.
Preliminary Project Assessment	Mitigate public-agency planning bottlenecks, such as a lack of capacity to develop preliminary assessments of projects.

Additionally, governments are advised to clearly define the scope of the USP policy. The definition of USPs proposed by the Guidelines focuses on a proposal submitted by a private entity without an explicit request by the government. However, there are specific subtypes of USPs that governments typically exclude—projects in highly regulated markets or sectors (e.g., power, telecommunications, utilities and water); proposals resulting from bilateral or sovereign agreements; and proposals based on resource-backed financing (e.g., the oil and gas or mining sectors).

3.3 HIGH-LEVEL POLICY DECISIONS

Although Part B of the Guidelines will present numerous policy decisions that must be made throughout the USP process, this chapter presents the five most important decisions that will shape the nature of the USP policy. These will be discussed in more detail in Part B.

3.3.1 POLICY DECISION 1: WILL THE GOVERNMENT ACCEPT USPs?

Governments must first decide whether to accept USPs as part of their overall PPP program. This decision should be based on an informed understanding of the advantages and disadvantages of USPs (described in Chapter 1.3) as well as a country-specific assessment of whether the advantages are likely to outweigh the disadvantages. Box 5 shows the main considerations for determining whether to accept USPs.

BOX 5: DETERMINING WHETHER TO ACCEPT USPS

The key factors for governments to consider when deciding whether or not to allow USPs include the following:

Is the public agency able to protect the public interest during the evaluation, development and procurement of a USP project?	**Early-Stage Project Evaluation:** Does the public agency have the experience and technical capacity needed to evaluate and assess preliminary financial, economic, technical, legal, and social and environmental feasibility studies submitted by the USP proponent? If not, does it have access to external advisors to support the public agency during the evaluation process?
	Public-Interest Assessments: Does the public agency have the experience and technical capacity to develop economic-feasibility, value-for-money, and affordability and fiscal-impact assessments, or access to external advisors to help develop these studies?
	Project Structuring and Procurement: Does the public agency have the experience and technical capacity to manage project development and procurement, or access to external advisors to support the public agency during project development and procurement?
Is the public agency able to ensure transparency and accountability throughout the USP process?	**Disclosure:** Are the disclosure requirements specified at each stage of the USP process in line with international best practices?
	Mandates: Are roles, responsibilities and mandates clearly defined throughout the stages of the USP process?
	Capacity: Does the public agency have the technical and institutional capacity to adhere to the transparency requirements set out by the USP policy?
	Precedents: Has the public agency experienced transparency-related concerns with previous privately or publicly initiated PPP projects?

A government's position on USPs should be clear, well-publicized, and consistently applied.28 This will help ensure that: (1) private entities only spend resources when they know the government will consider their proposals, fostering private-sector interest, and (2) public agencies know whether to accept such proposals and how to respond to them in a consistent, transparent and accountable manner.

3.3.2 POLICY DECISION 2: WILL THE GOVERNMENT DEFINE THE PARAMETERS OF USP SUBMISSIONS?

Governments may choose to encourage USP submissions that address specific infrastructure challenges, geographic locations, sectors or technologies. By defining specific parameters, the government may receive narrower USP submissions that correspond more closely with the government's objectives. The box below discusses different levels at which USP submission parameters can be defined.

3.3.3 POLICY DECISION 3: HOW WILL THE GOVERNMENT INCORPORATE THE USP POLICY IN EXISTING REGULATIONS?

Once a government has decided to accept USPs, it must decide how to incorporate the USP policy in its existing regulatory framework.

[28] A government's position on USPs does not necessarily need to be permanent—in fact, its approach may be adjusted and refined based on actual experience.

BOX 6: POLICY DECISION: DEFINING THE NATURE OF USPS RECEIVED*

The three levels at which USP submission parameters can be defined include:

Public Definition of Project Concept	The public agency identifies and defines a project concept and allows private firms to submit proposals for the implementation of the project.
Public Definition of Infrastructure Need	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.
Open Solicitation	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.

* These options are not mutually exclusive and may be combined within a USP policy.

Governments may incorporate a USP policy: (1) in procurement laws used for conventionally delivered projects (non-PPP-specific); (2) in PPP-specific laws, regulations or policies; or (3) as a stand-alone USP policy document. The Guidelines recommend ensuring consistency across PPP and USP frameworks. Incorporating procedures for both publicly and privately initiated PPPs in the same policy document may be the most effective way to do this.[29] Integrating the two policies requires a robust PPP policy—jurisdictions that do not possess a robust PPP policy are advised to develop a stand-alone USP policy in the interim. Box 7 shows some areas of the USP policy that can be integrated with the PPP policy.

BOX 7: HARMONIZING THE USP POLICY AND PPP POLICY/FRAMEWORK

The key factors for governments to consider when deciding whether or not to allow USPs include the following:

PPP Process	PPP Objectives	PPP Identification & Screening		Business Case	Procurement
USP Process	USP Objectives	Submission	Evaluation	Proj. Development	Procurement
Areas to Harmonize	The objectives and guiding principles of the PPP and USP policies Stages of the PPP and USP processes Institutional roles and responsibilities, including approvals by decision-making bodies Stakeholder engagement processes Disclosure and transparency requirements	Pre-feasibility requirements used during PPP identification and screening, with pre-feasibility requirements that are part of the USP-submission requirements	Criteria used to assess and prioritize a PPP project during PPP identification and screening, and USP evaluation Criteria used for screening the capability and experience of the USP proponent, and those used to screen bidders for PPP projects	Feasibility studies required as part of the PPP business case, with those required during USP project development	Procurement processes, including required documentation and disclosure PPP structure and contracts

[29] An integrated policy would require publicly and privately initiated PPPs to follow the same procedures in most circumstances, introducing different procedures where necessary.

3.3.4 POLICY DECISION 4: WHICH PROJECT-DEVELOPMENT METHODS WILL THE USP POLICY ALLOW?

Once the public agency has evaluated and accepted the USP submission, the proposed project must be developed and structured.[30] Governments will need to decide to what extent the USP proponent will be involved in this process. The USP proponent may have greater skills and experience in project development than the public agency. However, involving the USP proponent has significant disadvantages for the public agency, including: (1) loss of control over project development and structuring; (2) loss of negotiating power due to information asymmetries; and (3) challenges in generating competition during a competitive tender, because other private entities perceive that the USP proponent has a strong advantage. Due to these disadvantages, involving the USP proponent in project development is likely to lead to higher costs and lower value for money. The Guidelines present two options regarding the USP proponent's role in project development, as shown in the box below.

BOX 8: PROJECT DEVELOPMENT METHODS IN THE USP POLICY

The Guidelines provide two options regarding the public agency's and USP proponent's roles in project development:

Project development by the public agency	The public agency takes over project development with the support of external advisors. This maximizes competition and retains government control over project development and structuring. This option is most likely to maximize value for money and public-interest considerations and is the option recommended by the Guidelines.
Project development by the public agency and USP proponent	The public agency may engage the USP proponent to carry out specific feasibility studies.* By involving the USP proponent, the public agency will likely struggle to stimulate market interest during the competitive tender. Private entities may decide not to bid, perceiving that the USP proponent has an undue advantage due to its involvement in project development.

* The public agency will need to ensure independent oversight of any studies developed by the USP proponent. In case the public agency does not have sufficient technical capacity, it is advised to seek assistance from external advisors. The public agency will also need to determine how to reimburse the USP proponent for the development of feasibility studies. Options for reimbursement of the costs incurred in project development are provided in Chapter 4.2.4: Specify Project-Development Agreement Requirements of Part B of the Guidelines.

3.3.5 POLICY DECISION 5: WHICH PROCUREMENT METHODS WILL THE USP POLICY ALLOW?

The Guidelines advise governments to competitively tender USPs wherever possible. However, some governments may decide to directly negotiate with the USP proponent in specific circumstances. These may arise from project characteristics that limit market interest, such as proprietary technological solutions or strategic considerations such as national security.[31] The USP policy should clarify whether direct negotiation is acceptable and, if so, in which circumstances. It should provide criteria for public agencies to determine whether a direct negotiation is appropriate and establish safeguards to protect the public interest.

[30] For more information on project development, refer to Chapter 5: Stage Four: Procurement of Part B.

[31] For further guidance on undertaking a successful direct negotiation, refer to Chapter 5.3.3: Specify Direct-Negotiation Procedures of Part B.

BOX 9: PROCUREMENT METHODS IN THE USP POLICY

Although the Guidelines provide two procurement approaches that governments may consider,* they strongly recommend competitively tendering USPs whenever possible.

Only Allow Competitive Tender	Under this approach, all USP projects must be competitively procured. USP projects would follow the same tender procedures as publicly initiated PPPs, in order to ensure consistency and transparency in procedures.
Allow Competitive Tender and Direct Negotiation	Under this approach, most USP projects would be competitively procured, with direct negotiation allowed in exceptional circumstances. These (and their associated criteria) should be clearly specified in the USP policy. Direct negotiations should only be pursued if suitable safeguards for value for money, transparency, accountability, and public interest have been established and operationalized.

* For further guidance on selecting a procurement approach, refer to Chapter 5.3 of Part B

Governments choosing to competitively tender USPs may decide to reward USP proponents through incentive mechanisms. Box 10 below provides an overview of the most common incentive mechanisms and discusses their advantages and disadvantages.[32]

BOX 10: 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 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 Experience Review found that 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.

[32] For further guidance on incentive mechanisms refer to Tool 7 of Part C.

B

DEVELOPING A USP POLICY

POLICY DECISIONS IN THE USP PROCESS

1. USP POLICY: DEFINING THE PARAMETERS

Before defining the specific procedures that need to be followed at each stage of the USP process, governments will need to answer some high-level questions, including defining the objectives, scope, and guiding principles of the USP policy. This chapter provides guidance on defining these parameters, with sample clauses and policy considerations for the key policy decisions.

TABLE 1: OVERVIEW OF POLICY DECISIONS

POLICY DECISION	KEY COMPONENTS
Determine the Objectives, Scope, and Guiding Principles	Objectives: Determine the objectives of the USP policy. Scope: Define the types of USP submissions that will be subject to the USP policy. Guiding Principles: Define the value drivers that will guide decision-making and approval processes throughout the USP process.

1.1 DETERMINE THE OBJECTIVES OF THE USP POLICY

Determine and articulate the objectives of the USP policy.

Once a government has decided to allow USPs, one of the first steps is to articulate the government's objectives for the USP policy. Defining clear objectives creates clarity for public and private entities and increases the likelihood that USPs will align with stated priorities. A USP policy that fails to articulate the government's objectives is likely to result in opportunistic USPs that may drain public resources during the evaluation stage. The sample clause below provides guidance on articulating the purpose of the USP policy.

SAMPLE CLAUSE 1: PURPOSE OF THE USP POLICY

The purpose of the USP Policy is to define procedures for the development and implementation of PPP projects initiated as USPs.

The USP Policy seeks to ensure that projects initiated as USPs follow the same or similar procedures as Publicly Initiated PPP projects during Project Development, Procurement, and Implementation.

The USP Policy aims to harness private-sector innovation in the delivery of infrastructure projects, while protecting public-policy objectives, encouraging competition, and ensuring transparency and accountability. The Public Agency encourages Private Entities to present USPs that either:

i. Identify infrastructure needs that the Government has not identified, but which conform with the Government's stated infrastructure policy or plans, or

ii. Propose innovative solutions to an infrastructure need that has been previously identified by the Government in its infrastructure policy or plans.

1.2 DEFINE THE SCOPE OF THE USP POLICY

Define clearly the types of proposals that will be subject to the USP Policy.

The sample clause below provides a generic definition of USPs.

SAMPLE CLAUSE 2: GENERIC DEFINITION OF A USP

A USP is a proposal for a Project submitted by a Private Entity to the Public Agency without an explicit request by the Public Agency.

Under no circumstances shall a USP involve a Project that relates to a project that is already under Procurement or has been substantially developed for Procurement by the Public Agency.

Governments may decide to include additional criteria in their definitions of a USP, to limit the scope of their USP policies to projects that meet certain public priorities. Potential additional criteria are described below.

1.2.1 DEFINING THE PARAMETERS OF USPs

Governments may choose to limit the scope of USPs to specific geographic locations, sectors or technologies. An alternative is for governments to define a broad infrastructure need (e.g., reducing congestion in a city or increasing the recycling rate) to which USP proponents may respond with specific project concepts.[33] Limiting the scope of USP submissions increases the likelihood that USPs will align with government priorities.[34]

The Guidelines encourage governments to restrict USPs to projects that are not contained within the government project pipeline. Governments may decide

[33] If the government decides to define an overall infrastructure need and have private entities submit project concepts to address the need, the Guidelines recommend that this be done in a formalized and organized process (referred to as an "idea competition").

[34] Regardless of the approach followed, governments must ensure that any limitations to the scope are not interpreted by the USP proponent as requests for a USP submission. If the USP proponent perceives that the government has (implicitly or explicitly) requested a USP submission, it may create expectations that the USP will be approved or directly negotiated.

to make exceptions, however, for USPs that offer innovative solutions to projects in the government's pipeline or master plan. In such cases, governments are advised to publish detailed parameters for what types of solutions may be considered innovative. The clause below provides sample language that can be used to stipulate these types of exceptions.

SAMPLE CLAUSE 3: ADDITIONAL CRITERIA IN THE DEFINITION OF A USP

OPTIONAL: A USP is a proposal for a Project Concept submitted by a Private Entity to the Public Agency without an explicit request or solicitation by the Public Agency, that is either:

i. Not listed in the Government's Project or PPP Pipeline, or

ii. Proposes an innovative solution to a project listed in the Government's Project Pipeline.

For the purposes of this clause, the Public Agency's Project or PPP Pipeline is contained within [insert name of infrastructure plan or official document].

1.2.2 GOVERNMENT SUPPORT FOR USPs

Some governments do not allow public financial support for USP projects, for reasons detailed in the box below. Some governments only include restrictions on direct financial payments, while others also restrict the extent to which the government can accept contingent liabilities or other types of government support (such as the provision of land or grants). The USP policy should clearly define any restrictions on government support.

For most jurisdictions, the Guidelines recommend that governments retain the flexibility to provide discretionary support to the extent the USP project is valuable to society. This support may come in different forms, including grants

BOX 11: DEFINING WHETHER USPS SHOULD ACCESS GOVERNMENT SUPPORT

Often-cited reasons for not allowing government support for USPs include:

- **Budgetary limitations:** Some governments may not have the budget to provide public support to publicly or privately initiated PPPs.
- **Procedural requirements:** Some governments require more extensive procedures and approvals when a project requires government support, which may constrain public resources and delay project implementation.
- **Long-term fiscal planning:** Some governments may choose not to provide government support to projects that are not contained within their project pipelines, because these may not have been factored into the fiscal plans.
- **Public interest:** Governments should avoid providing government support to USP projects if they are unable to protect the public interest, due to the risk of private entities making excessive returns.
- **Direct negotiation:** Governments may decide not to provide public support to USP projects that are directly negotiated. A competitive tender process helps establish (and minimize) the amount of public support that needs to be provided. Without a competitive process, it can be challenging for the government to know whether the amount of government support provided is fair and appropriate. Countries with limited budgetary resources may choose not to risk the inefficient use of their funds by limiting government support to projects that are competitively procured.
- **Stakeholder concerns:** In jurisdictions in which allegations of corruption are common, it may be prudent not to provide government support to USP projects in order to allay stakeholder concerns.

or subsidies, tariffs, guarantees, rights, access to land or existing government-owned assets, etc.[35]

1.3 ARTICULATE THE GUIDING PRINCIPLES

Specify the core value drivers that will shape the direction of the USP policy.

The USP policy should specify which principles will guide decision-making and approval processes throughout the USP process. Guiding principles for the USP policy are presented in Part A of the Guidelines and are summarized below. Governments are encouraged to adapt these principles to reflect their own priorities.

BOX 12: ARTICULATING THE GUIDING PRINCIPLES OF THE USP POLICY

Guiding principles of the USP policy:

- **Public interest:** The proposed project must align with national infrastructure priorities and meet an identified societal need. Considerations regarding sustainability—including progress towards the sustainable-development goals (SDGs) and NDCs— should also be considered, where relevant.
- **Value for money:** USP projects should only be delivered as PPPs if they are expected to generate higher value for money as a PPP than under conventional delivery.
- **Fiscal affordability:** Governments must sufficiently understand each USP's impact on public finances, and evaluate whether liabilities are affordable and risks are sufficiently manageable.
- **Fair market pricing:** PPP assets or services should be delivered at a price that is no higher than market rates and avoids excessive private-sector returns. The terms, conditions, and risk allocation should be acceptable to the government.
- **Transparency and accountability:** All relevant project information should be disclosed to mitigate stakeholder concerns and ensure accountability.
- **Alignment of PPP and USP procedures:** Principles and procedures used for publicly initiated and privately initiated PPPs should be aligned to the extent possible.

The following chapters provide guidance on key policy decisions throughout the stages of the USP process, namely submission, evaluation, project development, and procurement. The figure below shows the key policy decisions at each stage of the process, including the key approvals; these will be discussed in subsequent chapters. The figure below also compares the USP and PPP processes.

Each subsequent chapter describes key components of the USP policy, providing sample clauses and policy considerations. Further practical guidance during the USP process can be found in Part C (Toolkit) and Part D (USP References).

[35] Existing assets and toll revenues are also public resources, even if they may not be counted as budgetary support in the government budget. Allowing a private entity to make use of an existing government asset or collect and retain toll revenues in a user-pays concession should also be seen as a form of government support.

FIGURE 4: USP PROCESS FLOW

PPP PROCESS	1	USP PROCESS	USP PROCESS FLOW		USP APPROVALS
PPP IDENTIFICATION & SCREENING		SUBMISSION	USP proponent submits USP to public agency	Public agency may request clarifications from USP proponent	COMPLIANCE CHECK Public agency checks whether the USP submission is compliant
	2	EVALUATION	The public agency: • 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		PROJECT EVALUATION Public agency verifies whether the USP meets the evaluation criteria DEV & PROCUREMENT DECISION Decision-making authority selects project-development and procurement method
PPP BUSINESS CASE	3	PROJECT DEVELOPMENT	The public agency: • 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		PROJECT APPROVAL Decision-making authority determines whether the project should proceed to procurement
PPP PROCUREMENT	4	PROCUREMENT	To prepare for procurement, the public agency: • Secures righ-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)		PROCUREMENT APPROVAL Decision-making authorityapproves procurement documentation
			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		CONTRACT AWARD Decision-making authority awards the PPP contract

2. 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.

TABLE 2: KEY POLICY DECISIONS DURING SUBMISSION STAGE

POLICY DECISION	KEY COMPONENTS
Define Roles and Responsibilities	Delineate the roles and responsibilities of the public agency (or agencies) and USP proponent.
Determine Submission Procedures	Submission Requirements: Specify the documentation and information that private entities need to provide as part of their USP submission. Location and Timeframe: Specify to which public agency or agencies the USP proponent shall submit USPs. If necessary, specify the times of year during which a USP proponent may submit a USP. USP Review Fee: Determine whether the USP proponent is required to pay a fee as part of its USP submission.
Assess the USP Proponent	Integrity Due-Diligence Criteria:* Set the criteria that will be used to assess the reputation and integrity of the USP proponent. Request Qualifications: Determine whether the USP proponent is required to submit evidence of its qualifications and experience.
Define Policy on Proprietary Information	Intellectual Property: Determine how the government will address requests from the USP proponent to protect proprietary or confidential information in USP submissions.
Determine Approvals	Compliance Check: Specify what requirements must be met for a USP to be considered compliant and move on to the evaluation stage.

* Integrity due diligence (IDD) focuses on understanding the reputation and integrity of the USP proponent. A thorough independent assessment can yield issues such as presence on globally recognized blacklists; involvement in corruption- or fraud-related scandals; involvement in organized crime, etc.

2.1 DEFINE ROLES AND RESPONSIBILITIES

Delineate the roles and responsibilities of the public agency (or agencies) and USP proponent.

SAMPLE CLAUSE 4: STAGE ONE OF THE USP PROCESS

Stage One: Submission starts when the USP Proponent formally submits a USP to the Public Agency.

During this stage, the roles and responsibilities of the USP Proponent and Public Agency are as follows
The USP Proponent submits a well-developed proposal to the Public Agency within the timeframe specified. The USP must meet the Submission Requirements and align with the Evaluation Criteria.
The Public Agency receives the proposal and checks the USP for Compliance. The Public Agency communicates in written form with the USP Proponent.

2.2 ESTABLISH SUBMISSION PROCEDURES

In the submission stage, the USP policy should set out clear procedures and processes for the submission of USPs by private entities—including submission requirements, timeframes, and any review fees.

2.2.1 SUBMISSION REQUIREMENTS

Specify the documentation and information that private entities need to provide as part of their USP submissions.

Submission requirements bring transparency and accountability to the USP process, both for USP proponents and public agencies. Clear and standardized submission requirements allow USP proponents to know what information and documentation to submit. They help ensure that the public agency receives enough information to conduct a non-discretionary evaluation of the proposal. They also create a higher bar for submission, discouraging private entities from submitting poor-quality or incomplete proposals. Indicative submission requirements are provided in the sample clause below.

BOX 13: POLICY CONSIDERATIONS IN ESTABLISHING SUBMISSION REQUIREMENTS

Policy Considerations in Establishing Submission Requirements

The number and depth of studies requested from the USP proponent at the submission stage will have an impact on the number of proposals received and their quality. Governments are advised to consider their policy challenges and objectives when determining the level of detail and documentation to request from USP proponents. For example, a country that is particularly vulnerable to climate change may benefit from tailoring the submission requirements to resiliency-related features.

Requesting many documents, including highly detailed studies, will likely reduce the number of proposals received but enhance their quality. This may be an appropriate policy option for governments dealing with unmanageable numbers of USPs, or receiving USPs that are not of high quality. Requesting less documentation, or less detailed studies, may encourage a larger number of private entities to submit USPs. However, receiving larger numbers of USPs makes it difficult for the public agency to process and prioritize USPs or identify those that are of high quality.

Public agencies are advised to provide a structure or template for USP submissions to help standardize the content of USPs.[36]

SAMPLE CLAUSE 5: INDICATIVE SUBMISSION REQUIREMENTS

The USP Proponent shall submit the following information and documentation in the USP. Studies should be at the Pre-Feasibility level.*

Public-Interest Requirements:

- A description of the Proposed Project, including a high-level design, sketches, or alignment maps;
- A preliminary assessment of the public need for the Proposed Project, including a description of the benefits to society and alignment with the Government's infrastructure plan;
- A preliminary assessment of the Proposed Project's contribution towards the Nationally-Determined Contributions (NDCs) targets;
- A description of the environmental and social features of the Proposed Project, including the Proposed Project's resilience to climate change and contribution to reduction of greenhouse-gas emissions (GHGs); and
- Optional†: A preliminary assessment of Economic Feasibility or a Cost-Benefit Analysis.

Project Feasibility Requirements:

- A preliminary technical description of the Proposed Project, including a construction schedule and requirements for connections to existing assets or services;
- A preliminary assessment of Financial Feasibility including costs and revenues and a preliminary Funding and Financing Plan;** and
- A preliminary operating plan for the Proposed Project.

PPP Suitability Requirements:

- A preliminary assessment of project risks.
- Optional †: A preliminary assessment of PPP Suitability or of the most suitable Delivery Model.

Affordability Requirements:

- Confirmation that the Proposed Project does not require any Government support, or
- A description of the type and range of Government support that the Proposed Project is expected to require.

† These requirements are listed as optional, because the Public Agency may be in a better position to undertake these assessments than the USP Proponent.

* Public agencies are advised to provide detailed guidance regarding the detail expected for studies submitted at the pre-feasibility level; refer to Tool 1. Determining Submission Requirements in Part C of the Guidelines.

** Public agencies may also request a base-case financial model and/or a complete "open-book" cost estimate and revenue projection from the USP proponent. Public agencies should seek to obtain as much financial information from the USP proponent as possible. This information should be made available to potential bidders to create equal-bidding conditions. This is particularly important if the USP proponent has an existing PPP contract in the same geographical area or sector. When the USP proponent has privileged historical knowledge, this may eliminate competition, unless the historical financial information is disclosed.

[36] In Virginia (USA), for example, the 2015 PPTA Implementation Manual and Guidelines require USP proponents to organize their USP submission as per the structure provided in Appendix E.

2.2.2 SUBMISSION LOCATION AND TIMEFRAME

Specify to which public agency (or agencies) the USP must be submitted, and (if necessary) the time(s) of year during which private entities may submit USPs.

SAMPLE CLAUSE 6: SPECIFYING THE LOCATION FOR USP SUBMISSIONS

Private Entities shall present their USPs to the [Name of Public Agency].

OR:

Private Entities shall present their USPs to any Public Agency with the authority to accept USPs under the [Name of PPP Law].

Governments may decide to allow USP submissions throughout the year or restrict submissions to specific periods. Governments may also decide to announce a time window once (or more times) a year, in which case the USP policy should specify its frequency and length.[37]

SAMPLE CLAUSE 7: SETTING THE TIMEFRAME FOR USP SUBMISSIONS

A Private Entity may present a USP to the Public Agency at any time during the first [XX] days of a calendar year.

OR:

A Private Entity may present a USP to the Public Agency at any time during the month of [XX] of any given year.

OR:

The Public Agency shall establish and announce a dedicated time window during any calendar year for Private Entities to present USPs. Such a time window shall last at least [XX] days. The dedicated time window shall occur no more than [X times] in any calendar year. The Public Agency shall provide sufficient notice of the time window by publishing a notification in the [Name of Official Gazette / Bulletin].

Establishing a limited time window for USP submissions has advantages for the government: (1) It helps streamline USP processing, allowing all USPs to be evaluated during the same period and to be compared with one another (and prioritized),[38] and (2) the public agency may be able to procure additional staff and resources to process and evaluate USPs during that period, which may avoid distracting public-sector officials from their priority projects.[39] A limited time window for USP submissions can also be beneficial to private entities, because it provides them with certainty regarding when to submit USPs, and some assurance that their USPs will be considered and evaluated in a timely manner.

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[37] Jurisdictions that have established a limited time window for USP submissions include Peru and Pennsylvania (USA). For country evidence on limited time windows, refer to Chapter 3.3 of the Experience Review.

[38] In case a public agency receives two USPs for similar projects in a restricted timeframe, the Guidelines do not automatically recommend a "first come first serve" rule for accepting USPs. In general, the Guidelines recommend that public agencies prioritize the most appropriate proposal according to public interest, project feasibility, PPP suitability, and affordability considerations. Only if a proposal is truly innovative and the government wishes to provide the USP proponent with an incentive during the competitive tender may a "first come, first serve" approach be worth considering.

[39] Although a limited time window may offer advantages to a public agency, the agency may also find itself overwhelmed by the number of proposals that it receives within the short window.

Limited time windows may not be necessary, applicable or even beneficial in all jurisdictions. Restricting USP submissions to certain times of year may deter private entities from submitting USPs. Therefore, governments that typically receive few USPs and seek to encourage USP submissions may benefit from not being so restrictive.

2.2.3 USP REVIEW FEES

Stipulate whether the USP proponent is required to pay a fee as part of its USP submission, and to which extent the fee is refundable or not.

Governments may request that the USP proponent pay a fee in exchange for evaluating the USP.[40] A review fee offers some advantages to the government: (1) Review fees may discourage private entities from submitting poor-quality, incomplete or opportunistic USPs and may thus help ensure that public resources used to evaluate USPs are effectively allocated, and (2) evaluating a USP is time consuming and resource intensive, and a review fee allows the government to defray some of the costs of processing USPs.

The review fee amount can be either a flat fee that does not depend on the size of the project, or a tiered fee that is tied to the total project cost.[41] The public

SAMPLE CLAUSE 8: INSTITUTING A REVIEW FEE

Review Fee Requirements:

Private Entities shall pay the Review Fee of [XXX] at the time of presenting the USP. The USP will not be reviewed until the funds have been paid in full and cleared.

Payment of the Review Fee does not create any obligation on the part of the Public Agency toward the USP Proponent.

OR:

Private Entities shall pay a Review Fee at the time of presenting the USP. The Review Fee shall be determined as follows:

- Estimated cost of the Proposed Project is less than or equal to [XXX]: [XX percent of estimated project cost]
- Estimated cost of the Proposed Project is greater than [XXX] and less than or equal to [XXX]: [XX percent of estimated project cost]
- Estimated cost of the Proposed Project is greater than XXX: [XX percent of estimated project cost]

The USP will not be reviewed until the funds have been paid in full and cleared.

Payment of the Review Fee does not create any obligation on the part of the Public Agency toward the USP Proponent.

Reimbursement of the Review Fee:

If the Proposed Project enters the project development stage, the Public Agency shall refund the Review Fee to the USP Proponent.

OR:

Payment of the Review Fee is non-refundable.

[40] In the state of Virginia (USA), for example, USP proponents must submit a non-refundable and non-negotiable fee of $50,000 at the time of USP submission. For more information, refer to Virginia's November 2014 Implementation Manual and Guidelines For the Public-Private Transportation Act of 1995 (As Amended), the link to which is provided in Part D of the Guidelines.

[41] A tiered USP review fee is used in Arizona (USA), for example. Source: P3 Program Guidelines, Arizona Department of Transportation, Office of P3 Initiatives, ADOT, 2011.

agency may decide to refund the USP review fee after the project is approved to proceed to the project-development stage.[42]

2.3 DUE DILIGENCE CRITERIA AND REQUESTS FOR QUALIFICATIONS

The USP policy should set out which integrity due-diligence (IDD) criteria will be used to assess the USP proponent, and whether the USP proponent needs to submit evidence of experience and qualifications.

2.3.1 INTEGRITY DUE-DILIGENCE CRITERIA

Set the integrity due-diligence criteria that will be used to assess the USP proponent's reputation and integrity.

As part of the compliance check, the public agency will need to ensure that the USP proponent does not pose any integrity, corruption, or fraud-related risk to the government. Governments are advised to develop integrity due-diligence criteria in close collaboration with external advisors that can adapt criteria to existing laws and regulations. The sample clause below provides sample IDD criteria.[43]

SAMPLE CLAUSE 9: ESTABLISHING INTEGRITY DUE-DILIGENCE CRITERIA

The Public Agency shall undertake the required investigations to ensure that the USP Proponent meets the Integrity Due-Diligence (IDD criteria set out below.

1. **Ethical Standards:** The USP Proponent meets the ethical and other standards as per [insert name of relevant local law or regulation]. The USP Proponent does not appear on any globally recognized blacklists.*
2. **Insolvency:** The USP Proponent is not insolvent, in receivership, or bankrupt; its affairs are not being administered by a court or a judicial officer; its business activities have not been suspended; and it is not the subject of any legal proceedings.
3. **National Obligations:** The USP Proponent has fulfilled its obligations to pay taxes and social-security contributions in the jurisdiction.
4. **Criminal Behavior:** The USP Proponent has not, and its directors or officers have not, been convicted of any criminal offence related to professional conduct within a period of [X] years, or have not been otherwise disqualified pursuant to administrative suspension or debarment proceedings.

* The government is advised to develop a list of the globally recognized blacklists that will be used for the purposes of this clause.

2.3.2 REQUESTING QUALIFICATIONS AND EVIDENCE OF EXPERIENCE

Determine whether the USP proponent is required to submit evidence of its qualifications and experience.

If the USP proponent intends to also submit a bid to implement the project, the public agency will need to request information about the USP proponent's

[42] Further guidance for determining the review fee is provided in Tool 2: Determining the USP Review Fee.

[43] The criteria presented in the sample clause have been adapted from Article 9 of the United Nations Commission on International Trade Law's 2011 Model Law on Public Procurement.

qualifications and experience. Requesting evidence of qualifications and experience is particularly important in the following circumstances:

- **Role in project development:** If the USP proponent will have a role in project development, the public agency will need to request evidence of the USP proponent's experience and qualifications in project development.
- **Automatic short-listing:** If the public agency decides to automatically shortlist the USP proponent to the final bidding stage, the public agency will need to request evidence of the USP proponent's experience and qualifications in project implementation.
- **Direct negotiation:** If the USP policy allows for direct negotiation, the public agency should request evidence of the USP proponent's experience and qualifications in project implementation.

SAMPLE CLAUSE 10: SUBMISSION REQUIREMENTS FOR ENGAGEMENT OF USP PROPONENT IN PROJECT DEVELOPMENT

The USP Proponent shall submit information that enables the Public Agency to evaluate the USP Proponent's experience and qualifications with Project Development.

The USP Proponent shall provide evidence of projects (of a similar size and nature as the Proposed Project) for which the USP Proponent was responsible for developing:*

1. Designs and Technical Feasibility Studies
2. Financial Feasibility Studies
3. Economic Feasibility Studies
4. Social and Environmental Impact Studies
5. Legal Feasibility Studies, including procurement documentation

* The list of studies for which the USP proponent must provide evidence of experience will depend on the specific studies for which the public agency wishes to engage the USP proponent. The number of projects for which the USP proponent needs to provide evidence is also indicative and may be adapted by governments to fit the local context.

SAMPLE CLAUSE 11: SUBMISSION REQUIREMENTS FOR ENGAGEMENT OF USP PROPONENT IN PROJECT IMPLEMENTATION

The USP Proponent shall submit information that enables the Public Agency to evaluate the USP Proponent's experience with Project Implementation.

The USP Proponent has constructed, operated, financed and/or maintained at least [two (2)] projects of a similar size and nature as the Proposed Project, and delivered these projects on time and within budget. At least [one (1)] of the [two (2)] projects successfully reached substantial completion in the last [five (5)] years.

2.4 ESTABLISH INTELLECTUAL PROPERTY AND DISCLOSURE PROVISIONS

Indicate how the government will protect proprietary information in USPs.

Legal respect for proprietary information and intellectual-property rights encourages private entities to submit innovative USPs. However, governments must be careful not to allow USP proponents to claim confidentiality of (elements of) their USP submission too easily. Marking elements of the USP submission as confidential limits the public agency's ability to disclose project information. This limits transparency and is also likely to reduce interest from other potential bidders, compromising the public agency's ability to organize a competitive-tender process with equal bidding conditions.

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.

At times, USP proponents may present information that does not qualify as intellectual property but can be considered commercially sensitive or confidential. When governments choose not to disclose this information, stakeholders may perceive a risk of corruption. The Guidelines recommend that governments not establish any explicit provisions to protect confidential or commercially sensitive information. Instead, public agencies are advised to disclose all the information provided in the USP submission.[44] Disclosing all the information creates an incentive for USP proponents to exclude confidential information from their USP submissions, avoiding any further disclosure and confidentiality issues and maximizing both transparency and equal-bidding conditions.

SAMPLE CLAUSE 12: PROTECTION OF CONFIDENTIAL AND PROPRIETARY INFORMATION

If the USP Proponent wishes to request protection of proprietary information contained within its USP submission, it is required to submit one version of the USP including the proprietary information (clearly marking sections that contain proprietary information) and another version of the USP without the proprietary information.

To the extent that a public agency is required to make an exception to this approach, the USP policy should provide a definition of proprietary information, which may include unique technology or concepts and confidential business information. The USP policy should also describe the procedures that the USP proponent should follow to request protection of proprietary information.

In reviewing the USP proponent's request, a public agency is advised to confirm whether: (1) the protection requested by the USP proponent is compliant with the definition of proprietary information in the USP policy; and (2) challenge the

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

need for protection (with the support of external advisors, if possible). This may result in revisions of the USP submission(s).

The public agency is strongly advised to reach an agreement with the USP proponent on non-disclosure of USP elements prior to entering the evaluation stage. This agreement should be confirmed in writing. The Guidelines recommend formally agreeing on having two versions of the USP submission (as referred to in the sample clause above), allowing the public agency to disclose the USP submission without the confidential information. Alternatively, the public agency can develop a non-disclosure agreement (NDA) with the USP proponent to protect the proprietary information, which would require the involvement of external (legal) advisors.

At times, a USP proponent may submit an innovative idea without the intention to bid for the implementation of the project. If the USP proponent does not wish to participate in the tender, the USP proponent should be required to explicitly state this in the USP submission. If the public agency is interested in further pursuing the innovative project concept, it may consider reimbursing the costs incurred in developing the idea and/or any intellectual-property rights.

Specify what information the public agency needs to disclose during the submission stage.

Public disclosure of relevant project information can start upon receipt of a USP submission, or else after the compliance check. Public agencies may consider publishing basic information about the USP, including a brief description of the proposed project; the proposed location; the estimated capital cost, and the name of the USP proponent. The USP policy should describe which information public agencies need to disclose during the submission stage, and whether the disclosure requirements apply to all USP submissions or only to compliant USPs.

SAMPLE CLAUSE 13: CONFIRMING COMPLIANCE OF THE USP

During the Submission stage, the Public Agency shall confirm compliance of the USP.

The Public Agency shall deem a USP compliant if the USP meets the three Compliance Criteria:

1. The USP complies with the definition of USP in Clause [X];
2. The USP meets the Submission Requirements in Clause [X]; and
3. The USP Proponent meets the Integrity Due-Diligence Criteria in Clause [X].

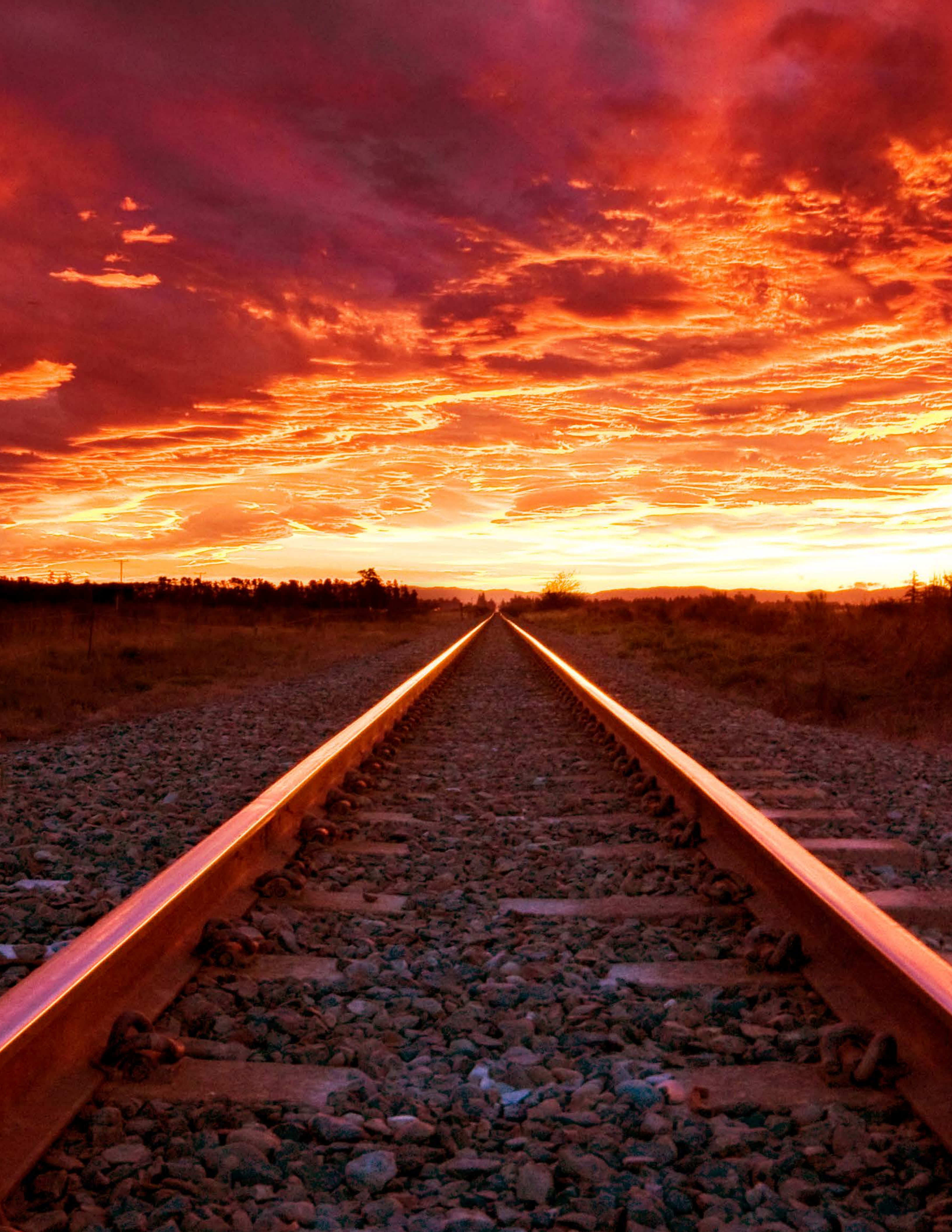
The Public Agency shall confirm compliance of the USP within [10 to 30 Business Days] after receipt of the USP.

The Public Agency shall reject any USP that does not comply with the three Compliance Criteria. If the Public Agency rejects a USP for non-compliance, it must notify the USP Proponent in writing; provide reasons for non-compliance; and return all submission documentation. The USP Proponent may resubmit a USP that was rejected for non-compliance after addressing the reasons for non-compliance. However, the same project can only be resubmitted once, unless otherwise agreed upon in writing with the Public Agency.

If the USP is compliant, the Public Agency shall notify the USP Proponent that the USP is compliant. Compliance of the USP does not create any obligation on the part of the Public Agency.

SAMPLE CLAUSE 14: CONCLUDING STAGE ONE OF THE USP PROCESS

The submission stage ends once the public agency has informed the USP proponent in writing about whether or not the USP is compliant. Compliant USPs move on to the evaluation stage.



3. STAGE II: EVALUATION

2.5 ESTABLISH A COMPLIANCE CHECK[45]

Specify requirements to be met for a USP to be considered compliant.

TABLE 3: KEY POLICY DECISIONS DURING THE EVALUATION STAGE

POLICY DECISION	KEY COMPONENTS
Define Roles and Responsibilities	Delineate the roles and responsibilities of the public agency (or agencies) and USP proponent.
Define Evaluation Procedures	Evaluation Criteria: Set the evaluation criteria that the public agency will use to evaluate USP projects. Benchmarking and Market Testing: Determine the extent to which benchmarking and market testing will be used in project evaluation. Timelines: Specify the timeframe for evaluation by the public agency.
Determine Project Development and Procurement Methods	Project Development: Specify which project-development method(s) is/are allowed. If multiple methods are allowed, establish criteria for determining which project-development methods to follow. Procurement Method: Specify which procurement method(s) will be allowed. If multiple procurement methods are allowed, specify the role of benchmarking and market testing in determining the most appropriate procurement method.
Outline Approvals and Disclosure Requirements	Disclosure: Specify which documentation the public agency must disclose during the evaluation stage. Approvals: Determine the approvals that are required to enter the third stage of the USP process.

[45] Tool 3: Compliance Check Form provides an indicative template for the compliance check that must be undertaken by the public agency prior to entering the evaluation stage.

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).

SAMPLE CLAUSE 15: STAGE TWO OF THE USP PROCESS

Stage Two: Evaluation starts when the Public Agency has deemed the USP compliant.

During this stage, the roles and responsibilities of the USP Proponent and Public Agency are as follows

The USP Proponent is not required to submit another proposal. If requested by the Public Agency, the USP Proponent shall provide clarifications about the USP in written form.
The Public Agency, in consultation with relevant departments, shall evaluate the USP against the Evaluation Criteria. The Public Agency shall complete the Evaluation Process within [90 Business Days] of having declared the USP submission compliant. The evaluation will take place at the level of Pre-Feasibility.* The Public Agency shall hire External Advisors when necessary, to verify aspects of the proposal or to provide additional guidance in decision making.** The Public Agency shall also evaluate the USP Proponent against the Integrity Due-Diligence Criteria The Public Agency may contact the USP Proponent with requests for clarification or additional information. Communication shall take place in written form. The Public Agency shall assess and recommend whether the USP should proceed to the third stage (Project Development). The Public Agency shall also provide a recommendation regarding the role of the USP Proponent in Project Development, and the most appropriate Procurement method. Before entering the Project-Development stage, the Public Agency shall seek approval from the [Decision Making Authority].

* During the second stage, the project is evaluated at the level of preliminary feasibility. During the third stage, the proposed project will be studied and evaluated in greater detail.

** Hiring strong external advisors is particularly important for technically complex projects.

3.1 DEFINE ROLES AND RESPONSIBILITIES

Delineate the roles and responsibilities of the public agency (or agencies) and USP proponent during the evaluation stage.

3.2 DEFINE EVALUATION PROCEDURES

The USP policy should clearly outline the evaluation criteria, the timeframe for evaluation, and the extent to which benchmarking and market testing will be used in the evaluation process.

3.2.1 EVALUATION CRITERIA

Define the criteria that the public agency will use to evaluate the proposed USP project.

Well-developed evaluation criteria ensure that the government only accepts USPs that meet public-interest and basic feasibility requirements.[46] The criteria for evaluating privately initiated PPPs should be aligned with the criteria used to evaluate publicly initiated PPPs.[47]

Evaluation criteria generally fall into the following categories:

1. **Public interest:** Determines if the USP project advances the public interest and is aligned with the government's infrastructure priorities and NDCs, wherever relevant.
2. **Project feasibility:** Evaluates the proposed project's technical, financial, economic, environmental and social feasibility at a preliminary level.
3. **PPP suitability:** Assesses whether the proposed project is expected to be suitable for PPP delivery, based on factors such as the proposed risk allocation.
4. **Affordability:** Assesses the proposed project's implications for government support, including direct and contingent liabilities.

These criteria are further elaborated below.

SAMPLE CLAUSE 16: EVALUATION CRITERIA

Public-Interest Criteria	The Public Agency shall ensure that the Proposed Project meets the Public Interest using the following two sub-criteria: 1. The Public Agency shall confirm that the Proposed Project aligns with the stated infrastructure needs, policy objectives and priorities of the Government. 2. The Public Agency shall evaluate the societal need for the Proposed Project. The Public Agency may conduct a Needs Analysis or Options Analysis to confirm the benefit to society. 3. The Public Agency shall evaluate the extent to which the Proposed Project contributes to the country's Nationally-Determined Contributions (NDCs) targets.
Project Feasibility Criteria	The Public Agency shall evaluate the Proposed Project's feasibility using the following sub-criteria: 1. The Public Agency shall confirm the Technical Feasibility of the Proposed Project at a preliminary level. 2. The Public Agency shall confirm the Financial Feasibility of the Proposed Project at a preliminary level. 3. The Public Agency shall evaluate the expected Social and Environmental Impact and/or the Economic Feasibility of the Proposed Project.
PPP Suitability Criteria	The Public Agency shall evaluate whether the Proposed Project has the potential to generate Value for Money through PPP delivery.* This includes an assessment of the proposed risk allocation.
Affordability Criteria	The Public Agency shall evaluate whether the Proposed Project is expected to be either Affordable to the Government, by examining expected Direct and Contingent Liabilities, or Affordable to the end user, if a user-pays model is being proposed.

* To assess PPP suitability, the public agency may use a qualitative value-for-money assessment, or an assessment of the advantages and disadvantages of PPP delivery. Typically, the public agency will not have sufficient project information at this stage to undertake an effective quantitative value-for-money assessment.

[46] A number of issues can arise from poorly defined evaluation criteria. The government may accept USPs that are not in the public interest, or spend significant resources evaluating projects that do not meet critical criteria. Poorly defined procedures and timelines may create uncertainty regarding how to process and evaluate USPs, which can lead to delays in evaluating and implementing the project.

[47] For detailed guidance on developing Evaluation Criteria, refer to Tool 4: Detailed Evaluation Criteria.

3.2.2 BENCHMARKING AND MARKET TESTING IN PROJECT EVALUATION

Determine how benchmarking and market testing will be used in the evaluation process.

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.[48] The level of detail for benchmarking will depend on the data available for comparable projects. Where benchmarking yields insufficient information, market testing can also help to inform project evaluation. The scope of market testing should be narrow and precise, specifying the questions to which the public agency seeks answers.[49]

SAMPLE CLAUSE 17: BENCHMARKING AND MARKET TESTING DURING PROJECT EVALUATION

The Public Agency shall undertake Benchmarking to inform the evaluation of the Proposed Project. If Benchmarking is not able to provide the required information, the Public Agency may use Market Testing to inform the evaluation of the Proposed Project.

3.2.3 EVALUATION TIMELINE

Specify the timeframe for evaluation by the public agency.

Specifying clear timelines ensures that the USP is processed and evaluated in a timely manner. It also provides certainty for the USP proponent. A three-month timeframe is typically appropriate for evaluating a USP. Governments may consider additional time for more complex projects or those that require government support. Timeframes should be realistic and in line with the government's available resources. Establishing timeframes that the public agency is not able to realistically meet will likely discourage private-sector interest and reflect poorly on the jurisdiction's USP and PPP program.

3.3 DETERMINE PROJECT DEVELOPMENT AND PROCUREMENT METHODS

Determine which project development and procurement methods are allowed under the USP policy.

The USP policy should clearly specify which project-development and procurement approaches are allowed.[50][51] If the USP policy allows more than one proj-

[48] Elements that may be examined during benchmarking may include, inter alia: cost components; revenue assumptions; technical solutions; proposed contractual terms and conditions and risk allocation; and proposed public support.

[49] For detailed guidance regarding benchmarking and market testing, refer to Tool 9: Benchmarking in the USP Process and Tool 10: Market Testing in the USP Process.

[50] As described in Chapter 2.5, governments may consider two main project-development methods: (1) project development by the public agency (with support from external advisors), and (2) joint project development by the public agency and USP proponent (with support from external advisors). For further guidance regarding selecting a project-development approach, refer to Chapter 3.3.4 of Part A.

[51] Governments may consider either: (1) exclusively procuring USPs through competitive tender processes (with or without incentives for the USP proponent), or (2) competitively procuring most USPs while allowing direct negotiation in specific circumstances. For further guidance regarding the selection of a procurement method, refer to Box 17: Selecting a Procurement Method.

ect-development and procurement method, it should specify which criteria the public agency shall use to select the most appropriate method.

3.3.1 USING BENCHMARKING AND MARKET TESTING

If the USP policy allows both competitive procurement and direct negotiation, determine how benchmarking and market testing will be used to select the procurement method.

If the USP policy allows both competitive procurement and direct negotiation, it should specify how benchmarking and market testing should be used to inform the decision about which procurement method to choose. If benchmarking and market testing suggest that the project is likely to attract interest from other bidders, the public agency is advised to follow a competitive procurement process. Alternatively, if benchmarking and market testing clearly demonstrate that the public agency should expect limited or no interest from other bidders, this could justify a directly negotiated process.

SAMPLE CLAUSE 18: BENCHMARKING AND MARKET TESTING DURING SELECTION OF THE PROCUREMENT METHOD

The Public Agency shall use Benchmarking to inform the selection of the Procurement method. Where Benchmarking is insufficient to support a procurement decision, the Public Agency shall undertake Market Testing before recommending a Direct Negotiation.

3.4 OUTLINE APPROVALS AND DISCLOSURE REQUIREMENTS

Specify what documentation public agencies need to disclose during evaluation stage.

Disclosure of relevant project information at the end of this stage has several advantages:

1. It helps mitigate any stakeholder concerns about equal bidding conditions and transparency in decision making. Disclosure to allay stakeholder concerns is particularly relevant when a public agency has chosen to pursue a direct negotiation.
2. Disclosure of all relevant information is likely to increase market interest during the competitive procurement process and reduce transaction costs for bidders. It also shows the commitment of the public agency to further develop the project.
3. Disclosure can help prevent poorly structured projects from advancing through the USP process, by allowing stakeholders to examine (and potentially comment on) the proposed project.[52]

[52] Tool 8: Disclosure Throughout the USP Process provides further guidance on disclosure.

While disclosing information, the public agency must respect any agreements with the USP proponent related to the protection of proprietary or confidential information.[53]

The disclosed information can include: (1) (material elements of) the USP submission; (2) the process and findings of the evaluation process undertaken by the public agency; and (3) a description of the proposed project-development and procurement process, including special conditions and advantages, if any, provided to the USP proponent.

Determine the approvals that are required to enter the project-development stage.

The end of the second stage is a key moment in the USP process. The public agency is advised to seek formal evaluation and approval from an appropriate decision-making authority prior to entering the third stage. In some cases, further approval may also be needed from relevant ministries. To the extent possible and appropriate, this decision-making process should be equivalent to that used for publicly initiated PPPs.

SAMPLE CLAUSE 19: APPROVALS DURING THE EVALUATION STAGE

The Public Agency shall provide its assessment based on the Evaluation Criteria and the recommendation to the [Name of Decision-Making Authority] within [X] Business Days of the USP being declared Compliant.

The Decision-Making Authority shall determine whether the Proposed Project will enter the Project-Development stage. It shall also determine which Project-Development and Procurement method will be followed. The Decision-Making Authority shall issue its decision within [30] Business Days* of receiving the assessment and recommendation from the Public Agency.

As a basis for its decision, the Decision-Making Authority shall use the recommendation and assessment provided by the Public Agency, and the results of the Benchmarking and Market Testing. The Decision-Making Authority may also undertake additional due diligence and solicit independent advice from External Advisors or Multilateral Institutions.

Approval of the USP during the Evaluation stage does not create an obligation on the part of the Public Agency or Government toward the USP Proponent.

* The timeframe provided in the sample clause is indicative. Governments should ensure that timeframes are realistic and can be met with available resources. Timeframes that cannot be met will discourage private-sector interest.

SAMPLE CLAUSE 20: CONCLUDING THE EVALUATION STAGE

The evaluation stage ends when the decision-making authority has approved the proposed project for entry to the third stage—project development.

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

4. STAGE III: PROJECT DEVELOPMENT

During the project-development stage, the public agency determines whether the proposed project is feasible; whether it 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. At the end of this stage, the public agency reassesses the project against the same evaluation criteria used during the evaluation stage. Based on the assessment, the public agency determines whether the project should enter the fourth stage (procurement).

TABLE 4: KEY POLICY DECISIONS DURING THE PROJECT DEVELOPMENT STAGE

POLICY DECISION	KEY COMPONENTS
Define Roles and Responsibilities	Define the roles and responsibilities of the public agency (or agencies), the USP proponent, and the external advisors.
Determine Project-Development Procedures	Project-Development Activities: Specify which feasibility studies must be completed as part of project development. Timeframe: Specify a timeframe for the project-development process. Benchmarking and Market Testing: Articulate how benchmarking and market testing will be used to inform project development. Project-Development Agreement: Outline the key components of the project-development agreement, including an appropriate reimbursement scheme for studies developed by the USP proponent (if applicable).
Determine Approvals and Disclosure Requirements	Disclosure: Specify which documents will need to be disclosed at the end of the project-development stage. Approvals: Determine which approvals are required to enter the fourth (procurement) stage, and which criteria will be used to assess the project at the end of the third (project-development) stage.

4.1 DEFINE ROLES AND RESPONSIBILITIES

Delineate the roles and responsibilities of the public agency (or agencies) and USP proponent.

The USP policy should clearly delineate the roles and responsibilities of the public agency and USP proponent during the project-development process.

4.1.1 APPROACH 1: PROJECT DEVELOPMENT BY THE PUBLIC AGENCY

The public agency is responsible for the project-development process and limits the role of the USP proponent to providing clarifications. Limiting the USP proponent's involvement helps establish equal bidding conditions during procurement. Under this approach, the role of the USP proponent concludes at the end of the second stage (evaluation). The public agency will need to hire external advisors to develop feasibility studies and procurement documentation, and to structure the transaction. The public agency may also choose to undertake some of the project-development activities itself if suitable internal capacity is available. Box 14 shows the benefits of hiring external advisors and how to prevent conflicts of interest.

BOX 14: HIRING ADVISORS AND AVOIDING CONFLICTS OF INTEREST

Benefits to Hiring External Advisors During USP Project Development

Range of expertise: Public agencies are unlikely to have the required range of expertise in-house. Experienced external advisors can offer experience in a wide range of disciplines, including legal, procurement, economic, financial, engineering, social and environmental, and public relations.

Market interest: Hiring external advisors with significant PPP experience sends a positive signal to the market. It provides confidence that the project is well structured.

Resources and capacity: Project development and procurement require an intensive and sometimes fluctuating workload. External advisors can provide additional capacity and flexibility, complementing permanent government staff.

ENSURE THAT EXTERNAL ADVISORS DO NOT HAVE CONFLICTS OF INTEREST THAT TIE THEM TO THE USP PROPONENT OR ANY OTHER COMPETING BIDDERS

Request disclosures: Public agencies should request that external advisors disclose any existing and potential conflicts of interest.

Establish a clear policy: The USP policy should state the public agency's commitment to avoiding conflicts of interest.

4.1.2 APPROACH 2: JOINT PROJECT DEVELOPMENT BY THE PUBLIC AGENCY AND USP PROPONENT

The public agency leads the project-development process but asks the USP proponent to develop specific feasibility studies. The studies developed by the USP proponent should be limited to those that the USP proponent can develop more efficiently or to a higher level of quality. Typically, this will include studies related to technical or financial feasibility. The project-development stage is governed by a project-development agreement between the public agency and the USP proponent. The public agency will need to adopt a strong oversight role to protect the public interest. The public agency can strengthen this oversight role by hiring external advisors to independently review the USP proponent's work, and developing any studies that are related to protecting the public interest (together with external advisors). The public agency may also appoint a "steward" whose role includes shadowing the USP proponent's activities to ensure that the project's public interest is protected.

SAMPLE CLAUSE 21: RULES AND RESPONSIBILITIES IN THE PROJECT DEVELOPMENT STAGE

APPROACH 1: PROJECT DEVELOPMENT BY THE PUBLIC AGENCY	APPROACH 2: PROJECT DEVELOPMENT BY THE PUBLIC AGENCY AND USP PROPONENT
The USP Proponent shall not be involved in Project Development. The role of the USP Proponent ends once the Decision-Making Authority has determined that the Proposed Project shall enter the Project-Development Stage.	The USP Proponent shall undertake specific Project-Development Activities requested by the Public Agency.
If requested by the Public Agency, the USP Proponent shall provide clarifications about the USP in written form.	The Project-Development process shall be governed by a Project-Development Agreement between the USP Proponent and the Public Agency.
The Public Agency, in consultation with relevant departments and External Advisors, shall undertake Project Development.	The Public Agency, in consultation with relevant departments and External Advisors. The Public Agency shall oversee any studies developed by the USP Proponent. The Public Agency share hire External Advisors to independently assess the studies developed by the USP Proponent.
The Public Agency may contact the USP Proponent with requests for clarification or additional information. Communication shall take place in writing.	The Public Agency shall enter into a Project-Development Agreement with the USP Proponent for the development of specific studies.
The Public Agency shall evaluate the USP against the Evaluation Criteria and determine whether the Proposed Project should proceed to the Procurement stage.	
Before entering the Procurement stage, the Public Agency shall seek approval from the Decision-Making Authority.	

The following guidelines can be used to determine which studies the USP proponent may develop.

BOX 15: GUIDELINES TO DETERMINE WHICH STUDIES THE USP PROPONENT MAY DEVELOP

STUDIES AND DOCUMENTATION	RECOMMENDED ROLES AND RESPONSIBILITIES
Definition of the Project Scope Technical Feasibility Study Financial Feasibility Study	These studies may be developed by the USP proponent, provided the USP proponent has the required experience and abilities. The public agency takes on a review role, supported by its external advisors.
Legal Feasibility Study Social and Environmental Impact Assessment Economic Feasibility Study	Because these studies are closely linked to protecting the public interest, they should be developed by the public agency and its external advisors. In exceptional circumstances, these studies may be developed by the USP proponent, provided the USP proponent has the required experience and abilities. Appropriate supporting information will be required from the public agency.
PPP Structure and Contract Procurement Strategy PPP Suitability Assessment Fiscal Impact Assessment	The public agency shall always lead the development of these documents (supported by its external advisors), because they are key to safeguarding the public interest.

4.2 DETERMINE PROJECT-DEVELOPMENT PROCEDURES

The USP policy should clearly specify the requirements of the project-development process, including the activities to be carried out; the timeframe; the extent to which benchmarking and market testing will be used to inform decision-making; and the use of project-development agreements.

4.2.1 SPECIFY PROJECT-DEVELOPMENT ACTIVITIES

Determine which studies will be developed during the project-development stage.

The USP policy should specify which project-development activities must be undertaken to facilitate decision-making at the end of the third stage. If the government's PPP policy (or equivalent) provides a detailed outline of project-development activities, these may be referenced in the USP policy.

SAMPLE CLAUSE 22: PROJECT-DEVELOPMENT ACTIVITIES

The Project-Development stage shall consist of the activities necessary to enable the Public Agency and Decision-Making Authority to undertake a detailed evaluation of the Proposed Project.

This stage consists of the following activities:*

1. Development of a detailed geographical, temporal and functional scope of the Proposed Project,** as well as a description of its alignment with government priorities;
2. Development of a Technical Feasibility Study, including a preliminary technical design and technical specifications;
3. Development of a Financial Feasibility Study, including a detailed Risk Assessment and Funding and Financing Plan;
4. Development of a Legal Feasibility Study, including an assessment of legal risks and uncertainties;
5. Development of a Social and Environmental Impact Assessment;
6. Development of an Economic Feasibility Study or Cost-Benefit Analysis;
7. Development of a Fiscal Impact Assessment or Affordability Assessment;
8. Development of an assessment of PPP Suitability;
9. Development of a Procurement Strategy for the Procurement stage;
10. Development of a preliminary PPP structure and high-level Risk Matrix, and
11. Stakeholder outreach to ensure support for the Proposed Project.

OR:

The Public Agency shall undertake the Project-Development stage as per the requirements of [Section XX] of the [PPP Policy / Procurement Law].

* Public agencies are advised to provide detailed guidance regarding the level of detail expected for studies submitted at the feasibility level. For guidance on this, refer to Tool 1: Determining Submission Requirements in Part C of the Guidelines.
** This should include a description of the alignment as well as any land (and land-acquisition) requirements.

4.2.2 ESTABLISH A TIMEFRAME

Specify the timelines that will govern the project-development stage.

A timeframe of six to 12 months is typically appropriate for undertaking project development. Public agencies may consider additional time for complex projects or those that require significant government support.

SAMPLE CLAUSE 23: TIMELINE FOR USP EVALUATION AND APPROVALS

The Public Agency shall complete Project Development within a period of [6 to 12 months] after the Proposed Project enters the Project-Development stage.

If the Public Agency requires additional time to complete Project Development, it shall submit a request in writing to the Decision-Making Authority, provide a rationale for requiring additional time, and propose a new timeframe.

4.2.3 BENCHMARKING AND MARKET TESTING

Specify how benchmarking and market testing will be used in project development and decision-making.

When the USP proponent undertakes some of the feasibility studies, the public agency (and its external advisors) can undertake benchmarking to mitigate information asymmetries and inform the project approvals at the end of the third stage. If benchmarking does not yield the necessary project-level information, a public agency can use market testing to secure feedback on project terms and determine market interest before reconfirming the procurement method.

Market testing is typically more challenging than benchmarking, because the public agency must develop and follow a clear communication strategy with regards to the market. The public agency will need to determine the extent to which it will disclose project information and avoid requests for additional information from bidders that may compromise equal bidding conditions.[54]

SAMPLE CLAUSE 24: THE USE OF BENCHMARKING AND MARKET TESTING DURING THE PROJECT-DEVELOPMENT STAGE

The Public Agency may use Benchmarking in cases where it requires additional information to support decision-making during the Project-Development stage. If this information cannot be sourced through Benchmarking, the Public Agency may undertake Market Testing.

[54] For detailed guidance on benchmarking and market testing, refer to Tool 9: Benchmarking in the USP Process and Tool 10: Market Testing in the USP Process.

4.2.4 SPECIFY PROJECT-DEVELOPMENT AGREEMENT REQUIREMENTS

Specify that the USP proponent's involvement in project development will be governed by a project-development agreement, and define a reimbursement scheme.

If the public agency allows the USP proponent to develop specific feasibility studies during the third stage, this arrangement will need to be governed by a project-development agreement, outlined in the sample clause below.[55]

SAMPLE CLAUSE 25: PROJECT-DEVELOPMENT AGREEMENT WITH THE USP PROPONENT

The Public Agency shall enter into a Project-Development Agreement with the USP Proponent that outlines the terms under which the USP Proponent will undertake Project Development. The Project-Development Agreement shall, at minimum, outline:

1. Objectives of the Project and of the Project-Development Agreement;
2. Responsibilities of the Public Agency and the USP Proponent;
3. Compensation structure for the USP Proponent;
4. Modalities for coordination and communication between the Public Agency and the USP Proponent;
5. Timelines for Project Development;
6. Provisions for termination of the Project-Development Agreement;
7. Any legal or regulatory obligations; and
8. Policies related to transparency, accountability, confidentiality, and conflicts of interest.

One of the key terms of the project-development agreement is the compensation scheme for costs incurred by the USP proponent. The Guidelines provide two approaches to reimburse these costs:

1. **Direct Reimbursement:** The public agency reimburses the costs incurred by the USP proponent during or at the end of the third stage.
2. **Delayed Reimbursement:** The public agency delays reimbursing project-development costs until the PPP contract has been awarded. If the USP proponent wins the tender, it does not receive reimbursement for costs incurred during project development. If the USP proponent does not win the tender, its costs are reimbursed by the public agency or winning bidder.[56]

[55] Tool 6: Project-Development Agreement provides additional guidance on drafting a project-development agreement.

[56] In cases in which the winning bidder is required to compensate the project-development costs, the sum is typically still transferred to the public agency, which then passes it on to the USP proponent. It is worth noting that determining the appropriate reimbursement scheme for costs incurred by the USP proponent is challenging; public agencies may wish to consult external advisors in order to establish consistent and appropriate policies on this matter. For more information on countries' experiences in reimbursement project-development costs, refer to Chapter 5 of the Experience Review.

SAMPLE CLAUSE 26: INDEPENDENT EVALUATION BY THE PUBLIC AGENCY

The Public Agency shall thoroughly and independently evaluate the documentation and studies prepared by the USP Proponent. It shall use the Evaluation Criteria as the framework for evaluating the studies developed by the USP Proponent. The Public Agency shall hire External Advisors to review and provide an independent opinion regarding the studies developed by the USP Proponent.

Involvement of the USP Proponent in the Project-Development stage does not imply that the USP Proponent will receive more benefits than competing bidders during the Procurement stage.

4.3 SPECIFY DISCLOSURE REQUIREMENTS AND APPROVALS

The USP policy should specify the documentation that will need to be disclosed, as well as the key approvals required to move on to the fourth stage.

4.3.1 SPECIFY DISCLOSURE REQUIREMENTS

Specify what documentation public agencies need to disclose during the project-development stage.

Ensuring transparency and accountability during project development is critical to ensuring public support for the project and the USP process. Publishing information about the project allows stakeholders to hold public agencies accountable to public-interest concerns and to specified timelines. It also allows potential bidders to familiarize themselves with the project. Ideally, public stakeholders should be provided with opportunities to provide comments, particularly related to the economic, environmental or social impact of the project.

SAMPLE CLAUSE 27: DISCLOSURE DURING THE PROJECT-DEVELOPMENT STAGE

At the end of the Project-Development stage, the Public Agency shall publish the Feasibility Studies and project documentation used to evaluate the Proposed Project. The Public Agency shall only be required to publish this information once the Decision-Making Authority has approved the Proposed Project to continue to the Procurement stage.

Disclosure requirements during USP project development should be as high as (or higher than) those for publicly initiated PPPs. The USP policy should reference the disclosure requirements for publicly initiated PPP projects and require that public agencies apply at least the same standards for USPs. Creating even higher disclosure requirements for USPs has advantages, as described in the box below.

BOX 16: ADVANTAGES OF HIGHER DISCLOSURE REQUIREMENTS FOR USPS

The project-development stage is a critical phase for ensuring stakeholder support because of the following factors:

1. Project development is a resource-intensive process for the public agency. The public agency must spend significant resources to develop documentation and hire external advisors and/or to reimburse the USP proponent for developing studies. Stakeholders will want to verify that these resources are spent effectively.
2. The project-development process is critical for ensuring that the project is structured so as to maximize public interest, ensure affordability, and generate value for money. Although changes may still be made to the project structure during the fourth stage, it is during project development that most key project decisions are made. Stakeholders will want to verify these project decisions.
3. Higher disclosure requirements are likely to reduce criticism or accusations of bias in favor of the USP proponent.

4.3.2 SPECIFY APPROVALS

Determine the approvals required to enter the fourth stage, and the evaluation criteria that will be used in the decision-making process.

At the end of the third stage, the public agency will determine whether the project should move on to the procurement stage. The project should only move on if it: (1) meets the public interest; (2) is expected to be feasible (according to technical, legal, financial, economic, social and environment perspectives); (3) is suitable for PPP delivery; and (4) is expected to be affordable. These are the same evaluation criteria that were used during the evaluation stage, but they are now assessed in significantly greater depth.

SAMPLE CLAUSE 28: APPROVALS DURING THE PROJECT-DEVELOPMENT STAGE

The Public Agency shall evaluate the Project-Development documentation per the Evaluation Criteria.

The Public Agency shall provide an assessment and recommendation to the Decision-Making Authority within [20 Business Days] of completing Project Development.

Based on the recommendation of the Public Agency, the Decision-Making Authority may make one of three decisions:

1. The Project meets Public-Interest, Project-Feasibility, PPP-Suitability, and Affordability criteria. The Decision-Making Authority recommends that the Project move on to the Procurement stage and be procured under PPP Delivery.
2. The Project meets Public-Interest, Project-Feasibility, and Affordability criteria but does not meet PPP-Suitability criteria. The Decision-Making Authority recommends that the Project move on to the Procurement stage and be procured under Conventional Delivery.
3. The Project does not meet Public-Interest, Project-Feasibility, and/or Affordability criteria. The Decision-Making Authority shall determine whether the Project should be abandoned or whether it can be restructured to meet the Evaluation Criteria.

The Decision-Making Authority shall endeavor to make its decision and inform the Public Agency within [20 Business Days]. The Decision-Making Authority may also provide recommendations for undertaking the Procurement stage.

The third stage (project development) ends when the decision-making authority has approved the project for entry into the fourth stage (procurement).

5. 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. A transparent and accountable procurement process also ensures stakeholder support and minimizes the potential for legal or political challenges.

TABLE 5: KEY POLICY DECISIONS DURING THE PROCUREMENT STAGE

POLICY DECISION	KEY COMPONENTS
Define Roles and Responsibilities	Delineate the roles and responsibilities of the public agency (or agencies), USP proponent, and external advisors.
Define Procurement Preparation	Procurement Preparation: Determine which activities must be undertaken to prepare for procurement. Benchmarking and Market Testing: Determine how benchmarking and market testing will be used to prepare for procurement.
Define Procurement Procedures	Tender Procedures: Specify which tender procedures will apply during procurement. Timeframe: Determine the timeframe for procurement.
Determine Approvals and Disclosure Requirements	Disclosure: Determine which documents will need to be disclosed during and after procurement. Benchmarking: Determine how benchmarking will be used to support decision-making regarding the PPP contract. Approvals: Determine the approvals that are required to sign the PPP contract.

5.1 DEFINE ROLES AND RESPONSIBILITIES

Delineate the roles and responsibilities of the public agency (or agencies) and USP proponent during the procurement stage.

Box 17 provides guidance regarding the three procurement approaches, when they should be used, and their advantages and disadvantages.

SAMPLE CLAUSE 29: ROLES AND RESPONSIBILITIES DURING THE PROCUREMENT STAGE

COMPETITIVE TENDER (WITH OR WITHOUT INCENTIVES)	DIRECT NEGOTIATION
The USP Proponent has no obligation to participate in the Tender. Should it decide to participate in the tender process, it will have no advantages over Competing Bidders. The USP Proponent will have the same rights and obligations as any other Competing Bidder, as outlined in the Tender documentation. OR: Should the USP Proponent decide to participate in the tender process, it will receive an incentive providing an advantage over Competing Bidders. Except for the incentive, the USP Proponent will have the same rights and obligations as any other Competing Bidder, as outlined in the Tender documentation.	The USP Proponent shall engage in a Direct Negotiation with the Public Agency regarding the PPP Contract. If the USP Proponent will continue to undertake Project-Development activities, these will be governed by an extension of the Project-Development Agreement. Other rights and obligations of the USP Proponent shall be defined in the Direct-Negotiation Protocol.
The Public Agency and its External Advisors shall follow the Procurement-Management Plan and the Procurement Strategy developed during the Project-Development stage. The Public Agency and its External Advisors shall prepare for a competitive Tender by developing the Procurement Documentation. Prior to obtaining approval from the Decision-Making Authority to launch the Tender, the Public Agency shall secure the right of way and/or necessary land acquisition, and obtain environmental and social clearance. The Decision-Making Authority shall approve the Procurement Documentation, including the PPP Contract, prior to launching the Tender. The Public Agency and its External Advisors shall organize a competitive Tender process that strives to maximize competition and Value for Money.	The Public Agency and its External Advisors shall draft the PPP Contract and undertake Benchmarking regarding the terms of the PPP Contract. Prior to obtaining approval from the Decision-Making Authority to enter the direct negotiation, the Public Agency shall secure the right of way and/or necessary land acquisition, and obtain environmental and social clearance. The Decision-Making Authority shall approve the PPP Contract prior to entering the direct negotiation. The Public Agency and its External Advisors shall negotiate the terms of the PPP Contract with the USP Proponent to maximize Value for Money.

5.2 DEFINE PROCUREMENT-PREPARATION REQUIREMENTS

The USP policy should clearly define the procurement-preparation requirements prior to either launching a competitive tender or directly negotiating with the USP proponent.

5.2.1 DEFINE PROCUREMENT-PREPARATION ACTIVITIES

Specify the documentation that will need to be prepared prior to launching the competitive tender.

The USP policy should specify the documentation required prior to the tender. The procurement-preparation activities help ensure that the public agency is well prepared before launching the process. This helps increase the confidence of potential bidders and the likelihood of receiving competitive bids.

BOX 17: SELECTING A PROCUREMENT METHOD

METHOD	COMPETITIVE TENDER (WITHOUT INCENTIVES)	COMPETITIVE TENDER (WITH INCENTIVES)	DIRECT NEGOTIATION
Description	The proposed project is submitted to competitive-tender procedures in accordance with the government's PPP and procurement regulations.	The proposed project is submitted to competitive-tender procedures in accordance with the government's PPP and procurement regulations. An incentive is provided to the USP proponent during the tender process.	The PPP contract will be directly negotiated between the USP proponent and the public agency.
When to Use	The proposed project is expected to generate market interest under a competitive procurement.	The proposed project is expected to generate market interest under a competitive procurement.	If the public agency has determined (through bench-marking and market testing) that the proposed project is unlikely to generate market interest under a competitive procurement, it may undertake a direct negotiation. There may be lack of market interest because, for example, the proposed project includes innovative components that other private entities are less able to execute.
Advantages	This procurement approach is most likely to achieve a fair market price and value for money and for society.	A competitive procurement approach with incentives may still be more likely to achieve a fair market price and value for money than a direct negotiation.	If no other bidders are interested in bidding for the project, a direct negotiation with the USP proponent may be the only way to still implement the project.
Disadvantages	USP proponents may consider it less attractive to submit a USP if they are not provided with an incentive during the tender.	Providing an advantage to the USP proponent over other bidders may reduce market interest, compared to a competitive tender without incentives.	It is challenging to ensure a fair market price and value for money in a direct negotiation.

The sample clause below outlines procurement-preparation activities for a competitive-tender process.

SAMPLE CLAUSE 30: PROCUREMENT-PREPARATION ACTIVITIES (COMPETITIVE TENDER)

The Public Agency and its External Advisors shall prepare for a competitive Tender by undertaking the following activities:

1. Undertaking Market Testing;
2. Developing a Final PPP Structure and Risk Allocation;
3. Finalizing the Procurement Strategy;
4. Developing a PPP Contract; and
5. Developing Procurement Documentation, including a Request for Proposals (RFP) and Bid-Evaluation Criteria.

In the case of a delay between the end of the Project-Development stage and the Procurement stage, the Public Agency and its External Advisors shall also reconfirm the Project-Development documentation.

Specify the documentation that will need to be prepared prior to launching the direct negotiation.

For a direct negotiation, the procurement-preparation activities strengthen the negotiating position of the public agency. Procurement preparation will involve:

(1) extending the project-development agreement between the public agency and the USP proponent (to continue some of the project-development activities); (2) developing a protocol to govern direct negotiations (the direct-negotiation protocol), and (3) drafting a PPP contract. The Guidelines strongly advise the public agency (and its external advisors) to draft the PPP contract.

This allows the public agency to exercise greater control over the terms during the negotiation process.[57]

SAMPLE CLAUSE 31: PROCUREMENT-PREPARATION ACTIVITIES (DIRECT NEGOTIATION)

The Public Agency and its External Advisors shall prepare for Direct Negotiation with the USP Proponent by undertaking the following activities:

1. Developing a Final PPP Structure;
2. Developing a Direct-Negotiation Protocol; and
3. Developing a PPP Contract.

The Public Agency shall also extend the Project-Development Agreement with the USP Proponent for the continuation of Project-Development activities during the Procurement stage.

The USP Proponent shall not be involved in drafting the PPP Contract. Whenever possible, the Public Agency shall adhere to standardized PPP Contract terms in drafting the PPP Contract.

In the case of delays between stages three and four, the Public Agency and its External Advisors shall also reconfirm the Project-Development documentation.

Specify how benchmarking and market testing will be used during procurement preparation.

Prior to launching a competitive tender or direct negotiation, the public agency will need to decide whether it has sufficient information to confirm the PPP structure, tender documentation, and draft PPP contract. Benchmarking can be used to inform project-structuring decisions by allowing the public agency to analyze comparable PPP structures and bidding results. Benchmarking is particularly relevant when the public agency has limited experience drafting procurement documentation.

SAMPLE CLAUSE 32: THE USE OF BENCHMARKING AND MARKET TESTING DURING THE PROCUREMENT STAGE

The Public Agency shall use Benchmarking to help inform the design of the PPP structure, Procurement Strategy, and draft PPP Contract. In cases where the Public Agency requires further information to validate the proposed structure or promote the Project, it may undertake Market Testing with potential Competing Bidders.

Market testing can also be used during the procurement stage. Market testing can help the public agency confirm the bankability of the PPP structure and confirm the level of market interest. It can also be used to promote the project to private entities, which can help generate market appetite and allow private entities to start preparing to participate in the tender. Market testing can also

[57] The public agency may establish standard PPP contracts for PPP projects in a particular sector to avoid drafting a new contract for each project.

be used to enhance the public agency's understanding of private-sector capabilities and interests.[58]

5.2.2 DEFINE REQUIRED CLEARANCES AND APPROVALS

Specify the clearances and approvals required prior to launching the competitive tender.

The USP policy should specify clearances and approvals that will need to be acquired prior to launching a competitive tender. The key clearances and approvals are:

- Right of way and/or necessary land acquisition;
- Environmental and social clearances; and
- Approval of the procurement documentation (including the PPP contract).

Securing these approvals will reduce the project's risk profile. This will increase the confidence of potential bidders and thereby also the likelihood of receiving competitive bids.

5.3 SPECIFY PROCUREMENT PROCEDURES

For both a competitive tender and a direct-negotiation process, the USP policy should specify which procurement regulations the public agency will be required to follow.

5.3.1 DEFINE A TIMEFRAME

Determine the timelines that the public agency will need to meet during the procurement stage.

The USP policy should outline the timelines relevant to the procurement stage. Because competitive tenders often experience delays (and direct negotiations may experience even longer delays), the public agency should ensure that these timeframes are realistic and match the complexity of the project and the public agency's resources and experience. Meeting the timelines outlined in the

SAMPLE CLAUSE 33: ESTABLISHING TIMELINES (COMPETITIVE PROCUREMENT)

The Public Agency shall establish clear and realistic timelines for Procurement preparation and the Tender process. The Public Agency shall strive to undertake Procurement preparation in a timeframe of [6] to [18] months,* and the Tender process in a timeframe of [12] to [24] months.**

Should the Public Agency require additional time for Procurement, it shall submit a request to the Decision-Making Authority in writing, requesting an extension of the Procurement stage and providing reasons.

* Chapter 5 of the PPP Guide of the PPP Certification program, indicates that procurement preparation takes between six and 18 months.
** More information on the various timelines in a tender process can be found in Chapter 6 of the PPP Guide of the PPP Certification program.

[58] Detailed guidance on benchmarking and market testing can be found in Tool 9 and Tool 10 in Part C.

SAMPLE CLAUSE 34: ESTABLISHING TIMELINES (DIRECT NEGOTIATION)

The Public Agency shall establish clear and realistic timelines for preparing and undertaking the Direct Negotiation. The Public Agency shall strive to complete the preparation for the Direct Negotiation in a timeframe of [6] to [12] months, and the Direct Negotiation process in a timeframe of [6] to [12] months.

Should the Public Agency require additional time for Procurement, it shall submit a request to the Decision-Making Authority in writing, requesting an extension of the Procurement stage and providing reasons.

USP policy is critical to securing public support for the USP process and market interest. Delays and uncertainty during the tender process can be costly for private bidders and may ultimately increase the price of the bid that is offered, thereby reducing value for money.

5.3.2 SPECIFY COMPETITIVE TENDER PROCEDURES

Specify the applicable tender procedures and whether the USP proponent will receive any incentives.

For jurisdictions with well-developed competitive tender procedures, the Guidelines recommend that the USP policy refer to existing PPP procurement procedures. In jurisdictions in which the existing PPP procurement process is insufficiently transparent or does not stimulate equal bidding conditions, governments are advised to define USP-specific tender procedures to guarantee transparency and competition.[59] The USP policy should clearly specify whether the USP proponent will receive any incentives over competing bidders.[60]

SAMPLE CLAUSE 35: PROCEDURES FOR A COMPETITIVE TENDER PROCESS

Without Incentives for the USP Proponent:

The Public Agency shall organize a competitive Tender. To ensure equal bidding conditions, no advantages shall be provided to the USP Proponent over other bidders. The Public Agency shall strive to maximize competition in the Tender.

OR:

The Public Agency shall follow the same Tender procedures as for Publicly Initiated PPP projects, as specified in [Procurement Law / PPP Policy].

With Incentives for the USP Proponent:

Bonus: The Public Agency shall organize a competitive Tender to procure the Project. The Public Agency shall strive to maximize competition in the Tender. The Public Agency shall provide a Bonus to the USP Proponent of no more than [XX] percent of the [Financial Bid].

OR:

Automatic Shortlisting: The Public Agency shall organize a competitive Tender to procure the Project. The Public Agency shall strive to maximize competition in the Tender. If the USP Proponent has the required experience in project Implementation, it may be automatically shortlisted in the Tender. To ensure equal bidding conditions, no additional advantages shall be provided to the USP Proponent over Competing Bidders.

[59] Governments may also wish to bring their procurement regulations in line with the procurement requirements of the International Financial Institutions (IFIs), including the World Bank Group, also referred to as international competitive bidding (ICB).

[60] An introduction to incentive mechanisms was provided in Chapter 3.3.5 of Part A of the Guidelines. Additional guidance on incentives is provided in Tool 7 of Part C.

Provide sufficient bid-preparation time and access to equal information for competing bidders.

To ensure market interest in a competitive tender, competing bidders must be given sufficient time to prepare a competitive bid. Private entities typically require from three to six months (depending on the complexity of the project) to develop a high-quality bid. The public agency may consult with potential bidders to ensure that the time provided is sufficient and proportionate to the complexity of the project.

SAMPLE CLAUSE 36: PREPARATION TIME FOR COMPETING BIDDERS

The Public Agency shall provide all bidders with a reasonable amount of time for preparation and submission of Bids. The time provided for preparation of Bids in response to USPs shall be no less than [3] months.

To determine a reasonable amount of time for preparation of Bids, the Public Agency may hold open discussions with private entities that may be interested in submitting Bids.

The time provided for bidders to prepare and submit bids in response to the Tender may be extended in cases where the Public Agency deems the Project complex enough to justify a longer time.

Competing bidders must have timely and equal access to all relevant information about the project. Typically, this information includes all the feasibility studies developed during the project-development stage and the draft tender documentation developed during the procurement stage. These documents should be made available to all bidders.

SAMPLE CLAUSE 37: ACCESS TO INFORMATION IN A COMPETITIVE TENDER

The Public Agency shall ensure that Competing Bidders have timely and equal access to the same information about the Project as the USP Proponent. Relevant documentation about the Project will be published in the [Official Gazette or Public Agency's website] and shall include all relevant studies undertaken during the Project-Development stage, as well as the Tender documentation, draft PPP Contract and proposed risk allocation developed during the Procurement stage.

5.3.3 SPECIFY DIRECT-NEGOTIATION PROCEDURES

Specify the applicable procurement procedures for a direct negotiation.

If the USP policy allows PPP contracts to be directly negotiated, it should clearly specify the processes that the public agency should follow. The direct-negotiation procedures should be outlined in a direct-negotiation protocol, the contents of which are described in the sample clause below. The direct-negotiation protocol should also specify whether the USP proponent is required to select the major subcontracts on a competitive basis.[61]

[61] Introducing competition in the major project subcontracts includes requesting several offers from different design-build contractors; operations and maintenance contractors; and financiers prior to awarding the subcontracts.

SAMPLE CLAUSE 38: APPLICABLE PROCEDURES FOR A DIRECT NEGOTIATION

Prior to beginning the Direct Negotiation, the Public Agency and USP Proponent will be required to sign the Direct-Negotiation Protocol.

The Direct-Negotiation Protocol shall include, at a minimum, the following elements:

1. The criteria the Public Agency will use to evaluate and approve the final terms of the PPP Contract;
2. Timeframe for completion of the Direct Negotiation (and modalities for extending the timeframe if necessary);
3. Compensation schemes for delays or additional requests by the Public Agency;
4. Modalities for communication between the Public Agency and the USP Proponent during the Direct Negotiation;
5. Rights and obligations of the Public Agency and the USP Proponent;
6. The potential outcomes of the Direct Negotiation;
7. Management of potential conflicts of interest;
8. Requirements related to selecting and awarding the major subcontracts on a competitive basis; and
9. Requirements related to confidentiality, intellectual property, or disclosure (including of the PPP Contract).

The Public Agency and its External Advisors shall directly negotiate the PPP Contract with the USP Proponent, as per the Direct-Negotiation Protocol. The Public Agency shall seek independent advice from External Advisors prior to approving the PPP Contract. The External Advisors shall undertake Benchmarking on the key terms and conditions of the PPP Contract.

BOX 18: COMPETITIVE PROCUREMENT OF SUBCONTRACTS WITH PROJECT DEVELOPERS

Even in a directly negotiated contract, public agencies may require the major subcontracts—the design-build contract; the operations and maintenance contract; and the financing—to be competitively procured to ensure fair market pricing. This model is often deployed by project developers who focus on the identification, development, structuring and procurement of projects. These project developers not only undertake the required feasibility studies, but also structure and procure the sub-components of the PPP contract and help secure financing for the project. Some project developers remain involved after financial close by maintaining a minority stake in the project. Two of the more established project developers include InfraCo* and IFC InfraVentures** (an initiative of the International Finance Corporation).

* For more information, visit the websites of InfraCo Africa or InfraCo Asia.
** For more information, visit the IFC Infraventures website.

Specify how benchmarking will be used during the direct negotiation.

The Guidelines strongly advise that the public agency undertake benchmarking during the direct negotiation.[62] During the procurement stage, the public agency will need to decide whether to commit to long-term obligations and validate the proposed terms of the PPP contract. Validating the terms will be a fundamental feature of any direct negotiation in order to ensure that the contract is fair, consistent with similar contracts, and provides value for money.

5.4 APPROVALS AND DISCLOSURE REQUIREMENTS

Determine disclosure requirements during the procurement stage.

[62] Detailed guidance on benchmarking can be found in Tool 9: Benchmarking in the USP Process.

For a competitive tender process, disclosure of all relevant project information ensures market interest during the tender and secures public support for the PPP project. Disclosure of project information and the PPP contract is even more important for a directly negotiated process, given the perceptions surrounding lack of transparency and fairness of the terms and conditions.

SAMPLE CLAUSE 39: DISCLOSURE DURING PROCUREMENT STAGE (COMPETITIVE TENDER)

Competitive Tender

During the Procurement stage, the Public Agency shall publish the Tender Documentation, making it available to all interested parties, including Competing Bidders and the public. At the end of the Procurement stage, the Public Agency shall publish the PPP Contract and its associated Annexes.

OR:

During the Procurement stage, the Public Agency shall publish the Tender Documentation, making it available to all interested parties, including Competing Bidders and the public. At the end of the Procurement stage, the Public Agency shall publish a version of the PPP Contract and its associated Annexes that has been adjusted to remove any confidential information.

Direct Negotiation

At the end of the Procurement stage, the Public Agency shall publish the PPP Contract and its associated Annexes.

OR:

At the end of the Procurement stage, the Public Agency shall publish a version of the PPP Contract and its associated Annexes that has been adjusted to remove any confidential information.

Specify which approvals are required throughout the fourth stage, including prior to launching the procurement process and prior to signing the PPP contract.

SAMPLE CLAUSE 40: APPROVALS AT THE END OF THE PROCUREMENT STAGE

Competitive Tender

The Decision-Making Authority shall approve the Procurement Documentation prior to launching the competitive Tender.

The Public Agency shall evaluate the final PPP Contract per the Evaluation Criteria to ensure that it meets Affordability, Public-Interest, Project-Feasibility, and Value-for-Money criteria. The Public Agency may seek independent advice from External Advisors prior to approving the PPP Contract.

Direct Negotiation

The Decision-Making Authority shall approve the draft PPP Contract and the Direct-Negotiation Protocol prior to launching the Direct Negotiation. The Decision-Making Authority shall seek independent advice from External Advisors.

The Public Agency shall evaluate the final PPP Contract per the Evaluation Criteria to ensure that it meets Affordability, Public-Interest, Project-Feasibility, and Value-for-Money criteria.

The procurement stage ends when the project has reached commercial and financial close.

C

TOOLKIT

OPERATIONALIZING & INSTITUTIONALIZING THE USP POLICY

PURPOSE OF THE TOOLKIT

The purpose of this toolkit is to provide additional guidance and considerations for the policy decisions presented in Part B of the Guidelines. The tools presented in Part C are intended to assist in the drafting of the USP Policy and the management of USPs (USP policy implementation).

STRUCTURE OF THE TOOLKIT

The tools are organized according to the phases of the USP process. The final three tools (Tools 8 through 10) apply throughout the USP process.

FIGURE 5: OVERVIEW OF TOOLKIT

Submission	1	Determining Submission Requirements
	2	Determining the USP Review Fee
	3	Compliance Check Form
Evaluation	4	Detailed Evaluation Criteria
	5	Evaluation Form
Project Development	6	The Project Development Agreement
Procurement	7	Incentives during the Competitive Tender
Throughout the USP Process	8	Disclosure: Throughout the USP Process
	9	Benchmarking during the USP Process
	10	Market Testing during the USP Process

1. DETERMINING SUBMISSION REQUIREMENTS

Clear and standardized submission requirements bring transparency and accountability to the USP process. They help facilitate the evaluation process, while also discouraging poor-quality proposals. This tool provides guidance regarding the elements that governments should consider when determining minimum submission requirements.

1. REFER TO EXISTING REQUIREMENTS

If available, refer to studies and assessments required during the PPP identification and screening stage for publicly initiated PPPs. If not available, review the indicative minimum submission requirements suggested by the Guidelines.

2. REVIEW THE EVALUATION CRITERIA

Create a detailed list of information needed to adequately assess the USP from the four perspectives of the evaluation criteria: public interest, project feasibility, PPP suitability, and affordability.

3. SPECIFY LEVEL OF DETAIL

Ensure that minimum submission requirements are reflective of an early-stage design level, as shown below.

4. CONFIRM THAT MINIMUM SUBMISSION REQUIREMENTS ALIGN WITH THE OBJECTIVES AND GUIDING PRINCIPLES OF THE USP POLICY

- Do the submission requirements encourage the submission of USPs that are in line with the objectives and guiding principles of the USP policy? (e.g. do the submission requirements encourage the submission of innovative proposals?)

- Are the submission requirements sufficiently detailed to discourage poor or incomplete submissions?
- Does the public agency have sufficient technical capacity (with the support of external advisors) to review USPs that will be submitted based on these requirements?
- Do the submission requirements result in acceptable transaction costs for USP proponents and acceptable public costs for reviewing them?
- Are the submission requirements sufficiently strict to encourage quality submissions?

Minimum submission requirements should reflect 10-30% design

Project Scoping & Planning
10-20% design

Preliminary Design/ Engineering
10-30% design

Advanced Design/ Engineering
30=60% design

Final Design
60-90% design

Construction

Operations & Maintenance

2. DETERMINING THE USP REVIEW FEE

In order to determine a review fee that is appropriate to the local context, the public agency is advised to estimate the cost of evaluating the USP. Two approaches to this are provided in the tool below.

USP REVIEW FEE STRUCTURE	CONSIDERATIONS	EXAMPLE
Flat or fixed fee	May help recover the costs of reviewing the USPs while also discouraging the submission of opportunistic USPs. A review fee that is too high may discourage USPs that may be beneficial to the government.	In Virginia, USA, USP proponents are required to submit a non-refundable, non-negotiable proposal review fee of $50,000 at the time of USP submission.*
Tiered fee structure based on estimated capital cost of proposed project	May help recover the costs of reviewing the USP while also discouraging the submission of opportunistic USPs. The time and resources required for the public agency to evaluate a USP are often related to the size and complexity of the proposed project.	In Arizona (USA), the costs are tiered as follows**: • <$50 Million: $20,000 • $50 Million to $100 Million: $35,000 • $100 Million to $250 Million: $60,000 • $250 Million to $500 Million: $85,000 • $500 Million to $1 Billion: $110,000 • >$1 Billion: $135,000

* Refer to Virginia's November 2014 Implementation Manual and Guidelines For the Public-Private Transportation Act of 1995.
** P3 Program Guidelines, Arizona Department of Transportation, Office of P3 Initiatives, ADOT, 2011.

3. COMPLIANCE CHECK FORM

This tool provides an indicative template for the compliance check that must be undertaken by the public agency prior to entering the evaluation stage. The template can be adapted to specific requirements.

	USP Submission Documents
	Public-Interest and Market-Appetite Requirements
☐	A description of the proposed project, including a high-level design, sketches, or alignment maps.
☐	A preliminary assessment of the public need for the proposed project, including a description of the benefits to society and how the proposed project aligns with the government's infrastructure plans.
☐	*Optional: A preliminary assessment of economic feasibility or a cost-benefit analysis*
	Project feasibility and Fair-Market Price Requirements
☐	A preliminary technical description of the proposed project
☐	A preliminary assessment of financial feasibility
☐	A preliminary operating plan
	PPP-Suitability and Procurement Method Requirements
☐	A preliminary assessment of project risks
☐	Optional: A preliminary assessment of PPP suitability of the most suitable delivery model
	Optional: Government Support
☐	Confirmation that the proposed project does not require any government support, or
☐	A preliminary description of the type and amount of support that the proposed project requires from the government

Compliance Check Criteria		Justification
USP Definition		
Does the USP submission meet the definition of a USP set out in Clause [X] of the USP policy	☐ Yes	
	☐ No	
Submission Requirements		
Does the USP meet the submission requirements in Clause [X] of the USP policy?	☐ Yes	
	☐ No	
Integrity Due Diligence Criteria		
Does the USP meet the integrity due-diligence criteria in Clause [X] of the USP policy?	☐ Yes	
	☐ No	
Overall assessment		
Does the USP meet the three compliance-check criteria?	☐ Yes	USP is Compliant: USP moves on to the evaluation stage. Public agency informs the USP proponent that the USP submission is compliant.
	☐ No	USP is NOT Compliant: Public agency informs the USP proponent that the USP submission is not compliant, providing reasons.

4. DETAILED EVALUATION CRITERIA

Providing clear and detailed evaluation criteria ensures transparency and accountability in the USP process. The purpose of this tool is to provide indicative questions to guide the development of detailed evaluation criteria for the USP policy.

PUBLIC INTEREST	Does the USP project advance the public interest?
Evaluation Criteria	The following are indicative public-interest evaluation criteria for USPs. • The USP should be consistent with national priorities and objectives and the national-development agenda • The USP should be aligned with the policy priorities of the sectorial ministry or agency and other long-term sector plans • The USP should address a demonstrated infrastructure need that has been articulated in relevant infrastructure plans. • The USP should propose an innovating and/or cost-effective service-delivery mechanism for an important public service • The USP should not create a monopoly in terms of service provision without protecting the public interest.
PROJECT FEASIBILITY	Is the project technically feasible?
Evaluation Criteria	The following are indicative project-feasibility evaluation criteria for USPs. • Project site/project site options and land should either be available or not be too difficult to acquire. • Technical scope of the project should be feasible, and specifications and standards proposed should meet project and industry requirements. • Preliminary design, including any innovative technological solutions proposed, should be feasible and practical. • Operations and maintenance plans should be technically feasible an practical. • Major environmental or permitting clearances needed should be clearly described, along with reasonable plans for obtaining the clearances, and incorporated in the project schedule. • Proposed project schedules should be practical, attainable and manageable. • Major technical and operational risks of the project should be identified along with an appropriate plan for managing risks. • Major dependencies with existing infrastructure and resources—such as fuel supply, power, external infrastructure, etc—should be identified along with an appropriate plan for addressing the dependencies. • Preliminary assessment of environmental and social impacts should be acceptable. • Preliminary assessment of climate change and sustainability impacts.

PROJECT FEASIBILITY	Is the project economically and financially feasible?
Evaluation Criteria	The following are indicative project-feasibility evaluation criteria for USPs. • All assumptions for major cost components included in the preliminary assessment of financial feasibility should be reasonable and in line with current market conditions. • Assumptions about tariffs/prices included in the preliminary market-demand analysis should be justifiable and in line with the market an comparable projects. • Assumptions regarding operations and maintenance costs of the project should be reasonable. • If a preliminary financial model is submitted, all assumptions and projections over the project horizon period should be reasonable. • Major sources of funding and financing for the project should be identified and reasonable. • Important financial ratios should be realistic, including internal rate of return (IRR) and net present value (NPV). • If expected economic benefits generated by the project are included in the cost-benefit analysis, they should be reasonable.
PPP SUITABILITY	Is PPP a suitable solution for this project?
Evaluation Criteria	The following are indicative PPP-suitability evaluation criteria for USPs. • PPP delivery for this USP should be allowed under existing legal frameworks. • The USP project must be of a sufficient scale and complexity to warrant PPP delivery. • The proposed roles of the public and private sectors should be appropriate and reasonable. • The proposed risk allocation should be appropriate and reasonable. • On the basis of comparable projects, there should be a realistic expectation that PPP delivery for the USP offers value for money.
AFFORDABILITY	Is the project affordable for the government and users?
Evaluation Criteria	The following are indicative project affordability evaluation criteria for USPs. • Any direct and indirect contingent liabilities of the project to be borne by the government should be acceptable from a government perspective. • The level of government support, if requested, should be affordable to the government from a fiscal perspective. • Any user fees or charges should be realistic and in line with willingness to pay.

5. EVALUATION FORM

This tool provides guidance regarding which elements of the USP submission inform the evaluation during evaluation stage of the USP process. It also provides an indicative template for the evaluation of USPs that can be adapted by governments.

USP Submission Documents	Evaluation Criteria	Scoring	Justification
☐ Executive summary.	Public Interest		
☐ Preliminary assessment of public need including benefits to society	**Does the USP project advance the public interest**	☐ High	
☐ Description of proposed project including alignment with existing government plans		☐ Med	
☐ *Preliminary economic feasibility study or cost-benefit analysis*		☐ Low	
	Project Feasibility		
☐ Preliminary technical description including construction schedule and connections to existing infrastructure	**Is the project technically, financially and economically feasible?**	☐ High	
☐ Preliminary financial feasibility study		☐ Med	
☐ Preliminary operating plan		☐ Low	
☐ *Preliminary assessment of project risks*	PPP Suitability		
☐ *Preliminary assessment of PPP suitability*	**Is PPP a suitable solution for this project?**	☐ High	
☐ *Evidence of the USP proponent's experience in undertaking project development*		☐ Med	
☐ *Evidence of the USP proponent's experience in undertaking project implementation*		☐ Low	
	Affordability		
☐ Assessment of financial feasibility	**Is the project affordable for the government and users?**	☐ High	
☐ Preliminary assessment of project risks		☐ Med	
☐ Preliminary economic-feasibility study or cost-benefit analysis		☐ Low	

6. PROJECT DEVELOPMENT AGREEMENT

Any involvement by the USP proponent during project development should be governed by a project-development agreement between the public agency and the USP proponent. This tool highlights the benefits of standardizing project-development agreements, and provides considerations related to compensating the USP proponent for its involvement in project development.

BENEFITS OF STANDARDIZING THE PROJECT DEVELOPMENT AGREEMENT

TRANSACTION COSTS

Standardizing the project-development agreement is likely to reduce transaction costs for both the public agency and the USP proponent, as it avoids the need to negotiate terms for every USP. The public agency will need to hire external advisors to prepare the standard project development agreement.

PUBLIC AGENCY NEGOTIATING POSITION

Using a standardized agreement may also improve the public agency's bargaining position. It increases the likelihood that the USP proponent will accept the public agency's terms. Negotiating terms for each project-development agreement may risk public agencies agreeing to unfavorable terms.

MARKET INTEREST

Developing a standardized project-development agreement has advantages for the private sector. It provides USP proponents with certainty about the terms of arrangement. It also ensures fairness by ensuring that equal terms are offered to all USP proponents.

ADVANTAGES OF COMPENSATING THE USP PROPONENT FOR PROJECT DEVELOPMENT ACTIVITIES

Compensation of the USP proponent for its involvement during the project-development phase allows the public agency to enforce its own terms for project structuring. Tis strengthens the public agency's bargaining position and makes it easier for the public agency to ensure that the project is structured to maximize public interest, affordability, transparency, and value for money.

DISADVANTAGES OF COMPENSATING THE USP PROPONENT FOR PROJECT DEVELOPMENT ACTIVITIES

Not compensating the USP proponent for project-development activities may reduce the upfront cost for the public agency. However, it is also likely to lead to a higher bid price as the USP proponent will seek to recover its project-development costs through a higher bid. This will ultimately increase overall costs and reduce value-for-money.

The USP proponents could also seek a reward for project-development activities either through a direct negotiation or an incentive during the competitive tender, which hampers equal bidding conditions.

THE TOOL

The purpose of this tool is to provide guidance regarding the key components of the project-development agreement (PDA). This table should not be considered legal advice. Standardized project-development agreements should be prepared by legal advisors familiar with the local context.

Contents of the PDA	Guidance
Objectives of the project and of the project-development agreement	This section will include the main objectives and the scope of the agreement, including the scope and main objectives of the project.
Responsibilities of the public agency and the USP proponent	The agreement shall clearly delineate the responsibilities of the public agency and the USP proponent, including any agreed-upon cost sharing. The agreement shall define the deliverables that the USP proponent will develop, the requirements for these deliverables, and the review responsibilities of the public agency. The agreement will also specify liabilities and potential indemnification for (third-party) claims, as well as any caps on such liabilities and indemnification.
Compensation structure for the USP proponent	The agreement shall describe how and when the USP proponent will be compensated for its project-development activities, as well as the (maximum) budget available for compensation.
Modalities for coordination and communication between the public agency and the USP proponent	The agreement shall detail how coordination and communication between the parties will be conducted, including recurring meetings, communication formats, and procedures for escalating issues as necessary. The agreement shall also define how coordination and communication with internal and external stakeholders and the general public will take place.
Timelines for project development	The agreement shall detail and clearly define the project-development timeline, including milestones, an end date, and timelines for review and approval.
Provisions for termination of the project-development agreement	The agreement shall define various grounds for termination of the project-development agreement, including termination for convenience and termination for contractor default. The agreement shall also indicate which procedure will be followed, as well as the compensation the USP proponent will be entitled to in those circumstances.
Any legal or regulatory obligations	The agreement should also identify any applicable laws and acts governing the project, and any regulatory obligations that all parties will be expected to meet. The courts with jurisdiction to adjudicate any disputes relating to the agreement (subject to applicable law) shall also be identified.
Policies related to transparency, accountability, confidentiality, and conflicts of interest	The agreement shall specify the principles and procedures regarding transparency, accountability, confidentiality, and conflicts of interest, and shall define the consequences for either party not following them.

7. INCENTIVES DURING THE COMPETITIVE TENDER

The purpose of this tool is to provide guidance regarding the extent to which the four incentive mechanisms affect equal-bidding conditions during the competitive tender.

Most competitive/Equal bidding conditions → Least competitive/Highest distortion

NO INCENTIVE	AUTOMATIC SHORT-LISTING	BONUS MECHANISM	RIGHT TO MATCH
The USP proponent receives no incentive during the tender	The USP proponent is automatically shortlisted into the final bidding stage	The USP proponent receives a bonus (usually expressed as percentage points) during bid evaluation	The USP proponent has the right to match a competing bid to win the contract
Providing no incentives for the USP proponent during the tender encourages equal bidding conditions. Even without incentives, the USP proponent may already have an advantage over its competitors because it initiated the project idea. This approach does not preclude direct financial reimbursement for the USP proponent's project-initiation efforts.	Automatic short-listing may not necessarily limit competition. The public agency should confirm whether the USP proponent meets pre-qualification criteria if a two-stage procurement process is used. Automatic short-listing may not be applicable to USP proponents that are not willing or able to execute the project.	Bonus mechanisms may not necessarily limit competitive pressure. As long as bonuses constitute a sufficiently small percentage of points available in the bid-evaluation criteria, this mechanism may still encourage competition. Finding a balance between providing adequate incentives an not limiting competitive pressure is challenging.	Right to match significantly limits competitive pressure and represents the highest distortion of a competitive tender. Most procurements that allow right to match receive few or no competing bids. Competing bidders have little incentive to expend resources developing a bid when their bid can always be matched by the USP proponent.

8. DISCLOSURE THROUGHOUT THE USP PROCESS

Ensuring transparency and accountability throughout the USP process is critical to ensuring public support for the USP project. The purpose of this tool is to provide guidance regarding the documentation that should be disclosed at each stage of the USP process.[1]

USP Process		Recommended Disclosure
1	**USP Submission**	**Upon receipt of the USP:** Disclose basic information, including the relevant sector, services to be provided, proposed project locations, estimated capital cost, and name of the USP proponent
2	**Evaluation**	**Following the public agency's decision to accept the USP:** Disclose (critical elements of) the USP submission, the process and results of the evaluation stage, and a description of the proposed project-development and procurement process, including any special conditions and advantages that will be provided to the USP proponent.
3	**Project Development**	**Following the public agency's decision to proceed to procurement:** Disclose the same (if not more) documentation as for publicly initiated PPP projects, including all feasibility studies. Include details on the subsequent procurement and bidding process, including any incentives or advantages to be provided to the USP proponent.
4	**Procurement** **PPP Contract Award**	**During the procurement process and after PPP contract award:** If the public agency plans to organize a competitive tender, the same documentation should be disclosed as for publicly initiated projects, including updated feasibility studies and procurement documentation. If the public agency plans to directly negotiate, some governments choose to disclose all of the information only after contract award. It is advantageous, however, for the public agency to disclose information during the direct negotiation process to increase transparency, such as details on any government support, revenue earned by government, user charges, etc.

1 For detailed information regarding disclosure in PPPs, refer to A Framework for Disclosure in Public-Private Partnerships, World Bank, 2015.

9. BENCHMARKING IN THE USP PROCESS

Benchmarking refers to qualitatively and/or quantitatively analyzing projects in similar sectors and market settings to inform the assessment and structuring of the USP project. The tool below provides guidance on using benchmarking throughout the USP process, providing key questions at each stage, as well as best practices.

<table>
<tr><th colspan="4">EVALUATION</th></tr>
<tr><th>What is being tested</th><th>Key questions</th><th>Methodology</th><th>Key Decision</th></tr>
<tr><td>Public interest</td><td>Have similar projects solved a relevant societal problem?
Have similar projects proven to be the best solution for the underlying societal problem?</td><td rowspan="4">High level and non-quantitative comparison of similar projects preferably in the same sector (or sectors with similar characteristics) and preferably in the same country or region.</td><td rowspan="2">Approval for the project to proceed to project development stage.</td></tr>
<tr><td>Project feasibility</td><td>Have similar projects been technically and financially feasible?
Have similar projects shown a positive project NPV and an acceptable project IRR?</td></tr>
<tr><td>PPP Suitability</td><td>Have similar projects been successfully implemented as PPPs?
Has the presented PPP structure been successfully applied for similar projects?
Is the proposed risk allocation similar to the risk allocation in comparable PPP projects?</td><td>Approval to develop this project as a PPP</td></tr>
<tr><td>Market interest</td><td>Have PPPs for similar projects generated sufficient market appetite?
Are there any similar projects for which there was no, or very limited, market appetite?
Have PPPs for similar projects been implemented through a competitive procurement?
What investment and financing requirements can be expected, based on experience with similar projects?</td><td>Decision on procurement model (competitive procurement or direct negotiation)</td></tr>
</table>

PROJECT DEVELOPMENT			
What is being tested	Key questions	Methodology	Key Decision
Project feasibility	Has the proposed technical solution proven to be sound in similar projects? How do the capital expenditure (CAPEX) and operational expenditure (OPEX) estimates relate to those in similar projects? How do the revenue projections compare to those of similar projects? Have similar projects resulted in acceptable returns for investors? Have similar projects met the requirements of financiers and investors (including debt-service coverage ratio (DSCR) and Equity IRR)?	(Detailed) quantitative comparison of similar projects.	Approval for the project to proceed to procurement stage
PPP Suitability	Have similar projects been successfully implemented as PPPs? Has the presented PPP structure been successfully applied in similar projects? What scope, risk allocation, tenure and payment mechanism were used for similar projects implemented as PPPs?	Non-quantitative comparison of similar projects	Approval to develop this project as a PPP
Market interest	Were similar projects able to generate sufficient market appetite and competition? Are there any similar projects for which there was no, or very limited, market appetite? Which conditions have made PPP procurements for similar projects competitive?		

PROCUREMENT			
What is being tested	Key questions	Methodology	Key Decision
Fair Market Conditions	How does the risk allocation in the proposed PPP contract compare to similar projects? How do the CAPEX and OPEX unit costs in the bid compare to those of similar projects? How do the user fees and projected revenues in the bid compare with those in similar projects? How do the key financing conditions—including return on equity, DSCR, interest rates and gearing/leverage—of the bid compare to those of similar projects?	Detailed quantitative comparison of bids	Approval to select the preferred bidder / award the PPP contract

BENCHMARKING CHALLENGES

- **Identifying comparable projects.** Often, projects are not directly comparable, because of differences among countries, sectors, specific project characteristics, and risk profiles.
- **Identifying and accessing detailed data.** It can be challenging to access detailed data about comparable projects, either due to confidentiality reasons or lack of (or insufficiently detailed) government databases.

BENCHMARKING BEST PRACTICES

- **Use benchmarking throughout the USP process.** Benchmarking should be conducted throughout the USP process. It should be used to evaluate the feasibility of the project (during the evaluation and project-development stages); to determine the expected market interest in the project (during the evaluation and project-development stages); and to ensure that the terms of the PPP contract maximize value for money (during the procurement stage).
- **Develop a database.** If a government expects to use benchmarking on a regular basis, it is advised to develop a database of infrastructure projects, in which information about the various elements of project business cases can be found.
- **Hire external advisors**. Experienced transaction advisors typically have access to detailed information about PPP projects in similar countries and sectors, or with similar project characteristics.
- **Benchmark elements of the project.** The scope of a benchmarking effort is not automatically the entirety of the project. Often, it will be easier to benchmark specific elements, such as construction-cost elements, labor costs, unit prices, financing conditions, required interest rates, and returns.

10. MARKET TESTING IN THE USP PROCESS

Market testing refers to interactions between the public agency and potential private-sector bidders to solicit feedback on the USP project. Market testing should only be used when benchmarking is not able to provide the required information. The tool below provides guidance regarding the use of market testing throughout the USP process, with key questions at each stage, as well as best practices.

<table>
<tr><th colspan="4">EVALUATION</th></tr>
<tr><th>What is being tested</th><th>Key questions</th><th>Methodology</th><th>Key Decision</th></tr>
<tr><td>Public interest</td><td>Does this project solve a relevant societal problem or infrastructure challenge?
Is the proposed project the best solution for the underlying infra-structure challenge?</td><td rowspan="4">Requests for information (RFI)

Requests for expression of interest (RFEOI)

Questionnaires and surveys (structured, documented market sounding)</td><td rowspan="2">Approval for the project to proceed to project development stage.</td></tr>
<tr><td>Project feasibility</td><td>Are you expecting that the project as proposed will be feasible (finan-cially, technically, etc.)?
Do you expect the project to have a positive NPV and an acceptable IRR?
Have you been involved in similar projects that have been technically and financially feasible?</td></tr>
<tr><td>PPP Suitability</td><td>How would you prefer the procurement and contracts to be struc-tured?
Does the PPP structure represent an appropriate delivery model for this project?
Can you rank risk-allocation schemes in order of preference?</td><td>Approval to develop this project as a PPP</td></tr>
<tr><td>Market interest</td><td>Would you be interested in bidding for this project?
What conditions would have to be met for you to participate in a competitive tender for this project?
What conditions would need to be met for lenders to finance (pro-vide debt to) the project?</td><td>Decision on procure-ment model (com-petitive procurement or direct negotiation)</td></tr>
</table>

PROJECT DEVELOPMENT			
What is being tested	Key questions	Methodology	Key Decision
Project feasibility	Is the proposed technical solution sound? Are the CAPEX and OPEX estimates realistic? Are the revenue projections realistic? Will the project business case result in an acceptable return? Will the project business case be able to meet the financiers' and investors' requirements (including DSCR and equity IRR)?	Requests for information (RFI) Requests for expression of interest (RFEOI) Questionnaires and surveys (structured, documented market sounding) Industry forum / pre-tender conference Road show One-on-one consultation meetings	Approval for the project to proceed to procurement stage Approval to develop this project as a PPP
PPP Suitability	Does the PPP structure represent an appropriate delivery model for this project? Do you have suggestions regarding the scope, risk allocation, tenure, and payment mechanism?		
Market interest	Would you be interested in bidding for this project? What conditions would need to be met for you to participate in a competitive tender for this project? What conditions would need to be met for lenders to finance (provide debt to) the project?		

MARKET TESTING CHALLENGES

- **Managing the process:** Public agencies will need to manage the process of consulting the market within the legislative framework and procurement regulations of the country in question.
- **Getting responses:** Potential bidders will only invest their time and effort if they believe it is worth it. If potential bidders believe that it is highly unlikely that a public agency will implement the project, or that the procurement process is likely to heavily favor the USP proponent, they may decide not to respond. In the context of a USP, it will be important to demonstrate that the public agency is serious about its intent to organize a competitive tender process.
- **Receiving committed responses:** It can be relatively easy for potential bidders to provide non-committed information. The public agency will need to assess the value and reliability of such information.
- **Processing feedback:** Feedback obtained from market testing can come in different forms, ranging from loose statements to lists of conditions, alternative proposed solutions, etc. It can be challenging for the public agency to process the information systematically.
- **Public capacity:** Public agencies must possess the technical capacity to conduct market testing. They must have experience and skills in managing the market-testing process; organizing meetings; drafting and sending out information; placing advertisements; recording feedback; analyzing results; and communicating results internally and externally.
- **Private capacity:** The private sector is typically not familiar with these procedures and does not always understand how to respond to market-testing initiatives. The public agency must, therefore, provide guidance regarding the procedures and feedback that it expects to receive.

MARKET TESTING BEST PRACTICES

- **Show intent:** The public agency must convincingly demonstrate that it is serious about organizing a competitive tender (if there is sufficient market interest).
- **Narrow the scope:** The public agency must scope the market testing narrowly and precisely, specifying the questions to which it wants to receive answers.
- **Define decision-making:** The public agency must define how the results of the market testing will be used to guide decision-making throughout various stages of the USP process.
- **Develop a strategy:** Market testing should be used with caution. Private-sector entities will use outreach from the government to not only obtain information about the project, but also to assess the government's ability to professionally develop, procure and implement the project. Therefore, the public agency should be well prepared and follow a clear and well-defined strategy prior to communicating with the private sector.
- **Hire advisors:** If the public agency does not have the experience or technical capacity to manage the market-testing process, it is advised to hire external advisors.
- **Broaden the outreach:** The public agency is advised to test the market with a wide variety and number of private entities, to increase the chances for competition and prevent collusion between a small pool of favored service providers.
- **Ensure consistency with PPPs:** All of the typical best practices for market testing during publicly initiated PPP projects apply to privately initiated PPP projects as well.[1] The public agency is therefore advised to consult international best practices regarding market testing for publicly initiated PPP projects.

1 For more information, see PPP Certification: How to Conduct Market Sounding

D

USP REFERENCES

OPERATIONALIZING & INSTITUTIONALIZING THE USP POLICY

PURPOSE OF THE USP REFERENCES

The purpose of the USP References is to provide additional resources, including existing literature and USP policies, to assist governments with understanding USPs, drafting USP policies, and managing USPs.

STRUCTURE OF THE USP REFERENCES

The USP References comprises three sections: (1) an overview of the USP policies examined as part of the development of the Guidelines, including links to the USP policies; (2) an overview of jurisdictions' USP policies, organized by the five key policy decisions presented in Part A of the Guidelines; and (3) an overview of existing literature regarding USPs.

1. USP POLICIES, LAWS AND GUIDELINES

The table below summarizes the USP policies of jurisdictions whose USP policies and experiences were studied in detail for the Experience Review.[1] This table provides links to the policy documents, whereas the subsequent table presents further details regarding the policies. Please note that t documents are available by searching for the name or ID # in the PPP Knowledge Lab library at www.pppknowledgelab.org.

JURISDICTION	NAME OF USP POLICY, LAW OR GUIDELINE (link)	DESCRIPTION OF DOCUMENT	ID #
Australia (NSW)	Unsolicited Proposals: Guide for Submission and Assessment February 2014	Provides guidelines regarding the submission, assessment, development and procurement of USP projects.	5352
Australia (Victoria)	Market-led Proposals Guideline November 2015	Provides guidelines regarding the submission, assessment, development and procurement of USP projects.	5353
Chile	Concession Law, 1996 (latest modification in 2010, Law 20.410)	Sets out the regulations for both publicly and privately initiated PPP projects	2413
Colombia	PPP Law, 2012 (Law 1508)	Sets out the regulations for both publicly and privately initiated PPP projects.	2415
Ghana	The Public Procurement Act, 2003 and Public Procurement Manual, 2003 regulate the procurement framework. The National Policy on Public Private Partnerships (2011 National PPP Policy) is the current policy framework for PPPs	The 2011 National PPP Policy sets out the policies for both publicly and privately initiated PPP projects	5354
Italy	2006 Public Works Code (Codice dei contratti pubblici 163/2006)	The Public Works Code sets out the regulations for both publicly and privately initiated PPP projects.	4283

1 The Experience Review provides further details regarding the criteria used to select the jurisdictions; these included a combination of experience with both publicly and privately initiated PPPs, and geographical diversity.

JURISDICTION	NAME OF USP POLICY, LAW OR GUIDELINE (link)	DESCRIPTION OF DOCUMENT	ID #
Jamaica	Three frameworks may govern USPs: (1) Policy and Institutional Framework for the Implementation of a Public-Private Partnership Programme for the Government of Jamaica: The PPP Policy (PPP Policy), 2012; (2) The Privatisation Policy; or (3) the Handbook of Public Sector Procurement Procedures.	The PPP Policy sets out the procedures for both publicly and privately initiated PPP projects. The Privatization Policy sets out regulations for USPs in the context of the privatization of government assets (non-PPPs). The Handbook of Public Sector Procurement Procedures sets out procedures for conventionally delivered USPs.	2425
Kenya	PPP Policy statements (2011 and 2012); the Public Private Partnerships Act of 2013 (PPP Act); and the PPP Regulations (2014)	Sets out the regulations for both publicly and privately initiated PPPs.	2443
Peru	PPP regulatory framework, including Legislative Decrees N°1012 (2008), N° 1224 (2015), N° 1251 (2016), and various Supreme Decrees.	Sets out the regulations for both publicly and privately initiated PPP projects.	5355
Philippines	Three legal frameworks may govern USPs: (1) BOT law (RA. 7718); (2) 2013 NEDA Joint Venture (JV) Guidelines; or (3) RA 7160 of 1991 (known as Local Government Code).	The BOT law governs both publicly and privately initiated PPPs. The JV Law applies to publicly or privately initiated projects. The Local Government Code applies to USPs at the local-government level.	2270 5356
USA (Virginia)	Implementation Manual and Guidelines: For the Public-Private Transportation Act of 1995 (As Amended), 2014	Sets out guidelines for the implementation of both publicly and privately initiated PPP projects.	5338
South Africa	The National Treasury Practice Note No 11 of 2008/2009.	A subsidiary legislation to the PPP framework that was specifically drafted for USPs, it applies to privately initiated projects that may be delivered conventionally or as PPPs.	5340
South Korea	Three legal frameworks may govern USPs: (1) PPP Act; (2) Enforcement Decree of PPP Act; and (3) Basic Plan for PPP	Sets out the regulations for both publicly and privately initiated PPP projects.	1559 4578
Tanzania	PPPs and USPs are primarily governed by the PPP Act, 2010; the PPP (Amendment) Act, 2014; and the PPP Regulations of 2015.	Sets out the regulations for both publicly and privately initiated PPPs.	1073 5357 4217

2. USP KEY POLICY DECISIONS

The table below summarizes the USP policies of jurisdictions whose USP policies and experiences were studied in detail for the Experience Review. The table has been organized according to the five high-level policy decisions presented in Part A of the Guidelines.

POLICY DECISION 1 Does the government accept USPs?	POLICY DECISION 2 To what extent does the policy define the parameters of USPs?	POLICY DECISION 3 How is the USP Policy incorporated into the legal framework?	POLICY DECISION 4 Which project development method(s) is/are allowed?	POLICY DECISION 5 Which procurement method(s) is/are allowed?
Australia (NSW)				
The government accepts USPs but emphasizes that they should not replace publicly initiated PPPs. USP proponents are urged to arrange pre-submission meetings.	Submissions are considered USPs if they have "unique attributes" that justify a departure from the publicly initiated PPP process. Submissions that do not have "unique attributes" are prepared and tendered per the publicly initiated PPP process.	The USP policy is contained within a standalone document that provides guidelines regarding the submission, assessment, development and procurement of USP projects.	A participation agreement between the USP proponent and public agency covers project development.	Proposals that meet the definition of USP are directly negotiated. The direct-negotiation process is governed by a phase-three (negotiation) agreement. All submissions that do not meet the definition of USP are competitively procured as per the publicly initiated PPP process.
Australia (Victoria)				
The government accepts USPs (or "market-led proposals"). USP proponents have the option to only submit ideas and not further develop them into "commercial proposals.	USPs must meet the definition of "uniqueness" (in addition to other evaluation criteria).	The USP policy is contained within a standalone document that provides guidelines regarding the submission, assessment, development and procurement of USP projects.	The USP proponent and the public agency agree on an approach for project development. The "investment case" may be prepared by the USP proponent with oversight and due diligence by the public agency.	Three procurement methods are allowed: (1) a tailored competitive approach; (2) exclusive negotiation; and (3) a standard competitive process. Proposals that are unique and for which there is market interest are competitively procured. Only proposals for which there is no market interest are directly negotiated. In the case of a direct negotiation, the Guidelines encourage subcontracts to be competitively procured.

POLICY DECISION 1 Does the government accept USPs?	POLICY DECISION 2 To what extent does the policy define the parameters of USPs?	POLICY DECISION 3 How is the USP Policy incorporated into the legal framework?	POLICY DECISION 4 Which project development method(s) is/are allowed?	POLICY DECISION 5 Which procurement method(s) is/are allowed?
Chile				
The centralized Ministry of Public Works may accept USPs.	USPs may not refer to projects currently being studied by the Ministry of Public Works. The USP policy does not distinguish between USPs requiring and not requiring government support. USPs must meet a public-interest test prior to being formally evaluated.	USP policy provisions are incorporated as part of the concessions law, which sets out procedures for both publicly and privately initiated projects.	During project development, studies are undertaken by the USP proponent at the request of the Ministry of Public Works (the single point of contact for USPs). Project-development costs are reimbursed (either in part or in full) by the Ministry of Public Works.	USPs are competitively tendered. The USP proponent is provided with a bonus on the financial bid; this varies from three to eight percent, depending on the size of the project.
Colombia				
The government accepts USPs if they do not: (1) modify existing contracts; (2) require government support exceeding 20 percent of project costs; and (3) refer to projects already being developed and structured by public agencies.	The USP definition distinguishes between projects that require government support and those that do not. USPs are accepted and considered on a "first come, first served" basis.	USP policy provisions are contained within the PPP Law, which sets out procedures for both publicly and privately initiated PPP projects.	The USP proponent undertakes project development at the request of the public agency. The costs incurred are reimbursed by the public agency, unless the USP is competitively tendered and the USP proponent is not successful, in which case the winning bidder is responsible for reimbursement.	USPs that require government support are competitively tendered, and the USP proponent receives a bonus of three to 10 percent. Projects that do not require government support are published (for one to six months) and directly negotiated with a USP proponent, unless a third party has expressed interest, in which case they are competitively tendered and the USP proponent has the right to match.
Ghana				
The government accepts USPs.	USPs may not refer to projects in the PPP pipeline and must contain "substantial innovation." A USP is not restricted from receiving government support.	The USP policy is contained within the PPP policy, which applies to both publicly and privately initiated PPPs.	Although the USP proponent is expected to develop feasibility studies, the public agency also hires a transaction advisor to develop and independently verify the studies. The USP proponent receives no reimbursement for costs incurred.	USPs are competitively tendered.
Italy				
The government accepts USPs at the national and sub-national levels.	USPs must be in the public interest and aligned with the country's national infrastructure plan.	The USP policy is contained within the PPP framework, which applies to both publicly and privately initiated PPPs.	The public agency undertakes project development, encompassing a public-sector comparator, technical studies, and a business case.	USPs are competitively tendered. If the USP proponent is not successful, it may either exercise the right to match or be reimbursed for costs incurred in developing the proposal (in which case the contract is awarded to another private entity).

POLICY DECISION 1 Does the government accept USPs?	POLICY DECISION 2 To what extent does the policy define the parameters of USPs?	POLICY DECISION 3 How is the USP Policy incorporated into the legal framework?	POLICY DECISION 4 Which project development method(s) is/are allowed?	POLICY DECISION 5 Which procurement method(s) is/are allowed?
Jamaica				
The government accepts USPs both for PPP and non-PPP delivery, as well as for privatization of government assets. All USPs must be submitted to the Privatization and PPP Unit.	USPs may not be listed on the "PPP List" (although the government may re-prioritize the list after receiving a USP for a listed project). There are no restrictions on government support for USPs.	The USP policy is contained within the PPP policy.	The USP proponent is expected to develop all necessary feasibility studies.	The USP is competitively tendered, and competing bidders have three months to submit a bid. The USP proponent may exercise the right to match (Swiss challenge). If the USP proponent is not successful, the winning bidder will reimburse the costs incurred by the USP proponent.
Kenya				
The government accepts USPs, or privately initiated investment proposals (PIIPs)	USPs must refer to projects in the public agency's development program. Additionally, they must meet one of three criteria: (1) There is an urgent need for continuity in services; (2) there are high costs of intellectual property; or (3) there is only one possible supplier. There is no restriction on government support for USPs.	The USP policy is contained within the PPP framework.	Project development is undertaken by the USP proponent. The public agency prepares the risk assessment, which is submitted to decision-making bodies for review.	USPs may be competitively tendered or directly negotiated. If negotiations fail, the USP proponent does not receive reimbursement for costs incurred.
Peru				
The government accepts USPs from USP proponents that meet basic technical and financial requirements.	The USP definition distinguishes between projects that require government support ("cofinanced") and those that do not ("self-sustaining"). USPs for cofinanced projects must have a minimum contract length and project size. USPs are not required to refer to projects in the PPP pipeline.	USP policy provisions are contained within PPP regulations, which set out procedures for both publicly and privately initiated projects.	The USP proponent undertakes feasibility studies at the request of the public agency. Fiscal impact studies are undertaken and approved by the Ministry of Finance in case projects require government support. The USP proponent is eligible to receive reimbursement of costs incurred in developing the proposal and the feasibility studies requested by the public agency (subject to a cap expressed as a percentage of investment costs).	USPs are published (for 90 days) and directly negotiated with the USP proponent, unless a third party has expressed interest, in which case they are competitively tendered and the USP proponent receives the right to match.
Philippines				
Any government agency or local government unit may accept USPs.	Under the BOT Law, USPs: (1) must involve a new concept or technology, and (2) may not require direct government support.	The USP policy is contained within the relevant PPP laws and regulations.	Feasibility studies are developed by the USP proponent as part of the initial submission.	After negotiation with the public agency, USPs are competitively tendered, and the USP proponent has the right to match competing bids.

POLICY DECISION 1 Does the government accept USPs?	POLICY DECISION 2 To what extent does the policy define the parameters of USPs?	POLICY DECISION 3 How is the USP Policy incorporated into the legal framework?	POLICY DECISION 4 Which project development method(s) is/are allowed?	POLICY DECISION 5 Which procurement method(s) is/are allowed?
USA (Virginia)				
The government accepts USPs at any time. USPs must be forwarded to the relevant agency (VAP3).	USPs are accepted for all modes of transportation, except for seaports or ports. USPs may not refer to a project currently on the list of publicly initiated projects.	The USP policy is contained within overall guidelines for the implementation of publicly and privately initiated PPP projects.	Project development is undertaken by the public agency. The public agency may establish an interim agreement with the USP proponent to develop certain studies. The public agency is responsible for public engagement, value-for-money analysis, and a public-interest study.	USPs are published for 120 days to solicit interest from other private entities. USPs are procured in a competitive tender without any incentives or rewards for the USP proponent.
South Africa				
Agencies at the local, provincial and national level may accept USPs. All USPs must be registered with the National Treasury.	USPs must contain an element of innovation, either in terms of design, project management, or cost effectiveness of service delivery.	The USP policy is contained within a subsidiary legislation to the PPP framework. The USP policy applies to projects delivered conventionally or as PPPs.	The public agency negotiates a USP agreement with the USP proponent that specifies the costs to be reimbursed, the procedure for further developing the project, and how to deal with intellectual-property rights.	USPs are competitively tendered with no mention of incentives or rewards for the USP proponent. If the USP proponent is not successful, it may be reimbursed for costs incurred to develop the USP.
South Korea	.			
USPs must be submitted to competent authorities such as sector ministries, as well as provincial and local governments.	The private sector may propose a USP that is not included in the solicited-projects list. USPs must conform to the laws and infrastructure policies of the competent authority.	The USP policy is contained within the relevant PPP laws and regulations.	Feasibility studies are developed by the USP proponent as part of the initial submission.	USPs are competitively tendered. The competent authority may grant extra points (up to 10 percent of the total evaluation score) to the initial proponent.
Tanzania				
The government may accept USPs.	USPs must be innovative or unique and comply with the government's infrastructure plans. USPs are prohibited from requiring government support.	The USP policy is contained within the PPP framework.	The USP proponent is responsible for undertaking feasibility studies. The USP proponent submits a draft PPP agreement, which is subsequently submitted to various decision-making bodies for review and approval.	USPs must be competitively tendered; they may not be directly negotiated (without a cabinet decision overruling the existing law). In the case of a competitive tender, the USP proponent receives an advantage in the form of additional points (bonus mechanism).

3. USP LITERATURE

The table below provides an overview of literature related to USPs, including countries and key topics covered. Note: These documents are available by searching for the ID # in the PPP Knowledge Lab library at www.pppknowledgelab.org.

ID #	Literature	Description	Countries covered	Key USP topics
5358	Abdel Aziz, A. and Nabavi, H. (2014) Unsolicited Proposals for PPP Projects: Private Sector Perceptions in the USA. Construction Research Congress 2014: pp. 1349-1358.	Presents the results of a survey of 18 major national and international PPP firms working in the United States about their perceptions of USPs.	USA	The private-sector perspective on USPs
--	Abdel Aziz, A. M, (2011). "Unsolicited Proposals in Public-Private Partnerships Projects – Analysis of State Regulations in the USA." Construction Specialty Conference, Canadian Society of Civil Engineers, CSCE, Ottawa, Canada.	Provides an analysis of state PPP and USP regulations, with listings of: states that allow USPs, states that have USP legislation; and types of USP procurement methods that are used.	USA	U.S. state legislations covering USPs
3094	Hodges, John T and Dellacha, Georgina, "Unsolicited Infrastructure Proposals: How Some Countries Introduce Competition and Transparency," World Bank PPIAF Working Paper, 2007.	Provides a global analysis of laws and regulations covering USPs, and USP projects.	Argentina Australia (NSW, Queensland, Victoria) Canada (British Columbia, Ontario) Chile Costa Rica India (Andhra Pradesh, Gujarat) Italy Republic of Korea Philippines, South Africa, Taiwan (China), USA (Guam, Virginia)	Global USP regulations and case studies of USP projects
4273	Hodges, John (2003) Unsolicited Proposals Competitive Solutions for Private Infrastructure. The World Bank Group Private Sector and Infrastructure Network, 2003.	Provides an analysis of USP policies in several countries.	Chile Republic of Korea Philippines South Africa	USP policy provisions in different countries

ID #	Literature	Description	Countries covered	Key USP topics
2371	Hodges, John (2003). "Unsolicited Proposals: The Issues for Private Infrastructure Projects". The World Bank Group Private Sector and Infrastructure Network, Washington DC, USA	Discusses issues that arise from USPs and that concern both the private sector and the government. Also discusses the benefits and threats that stem from allowing USPs.	Chile Republic of Korea Philippines South Africa	The benefits and challenges of USPs
5359	Kim Jay-Hyung (2013). "Public–Private Partnerships: Lessons from Korea on Institutional Arrangements and Performance". Korea Development Institute (KDI), Ministry of Strategy and Finance, Republic of Korea	Analyzes trends related to PPPs in South Korea, including USPs.	South Korea	The challenges associated with USPs in South Korea
5360	Llanto, G. (2008), 'Build-Operate-Transfer for Infrastructure Development: Lessons from the Philippine Experience', in Kumar, N. (ed.), International Infrastructure Development in East Asia – Towards Balanced Regional Development and Integration, ERIA Research Project Report 2007-2, Chiba: IDE-JETRO, pp.319-359.	Analyzes USPs in the Philippines.	Philippines	Understanding motivations and perceptions regarding USP mechanisms and regulations/laws in the Philippines
1917	Mandri-Perrott, Cledan (2010) Private Sector Participation in Light Rail-Light Metro Transit (LRMT) Initiatives, The International Bank for Reconstruction and Development/ The World Bank	Analyzes the role of PPP-delivery models in the light-rail sector, with some examples of USPs.	Canada, Malaysia Philippines South Africa Thailand United Kingdom	Examples of USPs in the light-rail sector
5361	Paul Noumba, Severine Dinghem (2005) Private Participation in Infrastructure Projects in the Republic of Korea. World Bank Policy Research Working Paper 3689, September 2005.	Analyzes the procurements of PPP projects in South Korea, and benchmarks procedures to international best practices. Provides reasons for the increased use of USPs in South Korea.	South Korea	Understanding the motivations behind the increased use of USPs in South Korea
5362	Sandeep Verma (2010) Government Obligations in Public-Private Partnership Contracts. Journal of Public Procurement. Volume 10. Issue 4.2010	Provides a comparative analysis of various international frameworks and recommendations for guidelines and legal frameworks for USPs.	India, USA	Recommendations regarding ensuring transparency in USPs
5363	Sandeep Verma (2009) Competitive award of unsolicited infrastructure proposals. H.C.M Rajasthan Institute of Public Administration Jaipur, Rajasthan. 2009	Reviews the guidelines provided by the Supreme Court of India and Indian state government frameworks to identify issues in USPs related to transparency and competition, in order to formulate recommendations for reform.	India	Experiences related to USPs in India

GLOSSARY

(Fiscal) affordability	The project's impact on public finances, including whether the resulting direct and contingent liabilities and project risks are sufficiently manageable. To the extent that users are charged a fee or tariff in a project, affordability also refers to the user's ability to pay for tariffs.
Automatic short-listing	An incentive mechanism under which the USP proponent has the right to be shortlisted to either the bidding stage (automatic pre-qualification) or the final bidding stage (in the case of several bidding stages).
Bid(s)	The price (financial bid) and technical solution (technical bid) that a bidder proposes during a competitive procurement.
Benchmarking	The process of 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.
Bonus	The benefit that the public agency may provide to the USP proponent during the competitive procurement of a project that was initiated as a USP. It is typically determined by adding additional percentage points to the USP proponent's financial bid.
Competing bid(s)	Proposals submitted by competing bidders during a tender for the procurement of a project that was initiated as a USP.
Competing bidder(s)	Private-sector firms that did not submit the USP but participate in the competitive procurement for a project that was initiated as a USP.
Competitive tender	An open-bidding situation in which many bidders are encouraged to submit offers for a project.
Compliance check	After the submission of the USP by the private entity, the public agency confirms compliance of the USP with a number of compliance criteria. If the USP meets the compliance criteria, it is considered compliant and can move on to the evaluation stage.
Compliance criteria	Criteria that the public agency uses to assess whether a USP submitted by a private entity should be considered compliant. Compliance criteria typically include whether the USP meets the definition of a USP; the submission requirements; and the (integrity) due-diligence criteria.
Contingent liability:	A government liability that is uncertain in size and timing. For example, it may include a government guarantee; early termination payments; or the allocation of substantial risks to the government that may impact the government's finances unexpectedly as the trigger materializes.

Commercial close	The signing of the PPP contract by the public agency and the preferred bidder. Also known as contract close, commercial close takes place before financial close and project implementation.
Conventional delivery (model)	The non-PPP delivery of an infrastructure project. It includes delivery methods in which significant project risks are retained by the government, such as when governments implement the project themselves through traditional public procurement.
Cost-benefit analysis (CBA)	Also known as economic cost-benefit analysis (E-CBA) or economic feasibility study. Assesses whether society will be better off if the project is implemented versus pursuing an alternative project solution. Considers and (to the extent possible and useful) monetizes the social, environmental and economic advantages and disadvantages of the proposed project.
Decision-making authority	A high-level public authority that is required to approve whether a project that was initiated as a USP may proceed to the next stage of the USP process.
Delivery model	The contractual method used to procure and implement an infrastructure project. May include a PPP or non-PPP delivery model.
Direct negotiation	A procurement approach under which the public agency negotiates the PPP contract one-on-one with the USP proponent. This negotiation may result from a USP or may follow a competitive tender in which a sole bidder pre-qualified or submitted a bid. The direct negotiation is governed by a direct-negotiation protocol between the USP proponent and the public agency.
Direct-negotiation protocol	The document that governs the interaction between the public agency and the USP proponent during a direct negotiation. Outlines elements including: the criteria that the public agency will use to evaluate and approve the final terms of the PPP contract; timeframes for completion of the direct negotiation; compensation schemes for delays or additional requests by the public agency; modalities for communication between the public agency and the USP proponent during the direct negotiation; rights and obligations of the public agency and the USP proponent; the potential outcomes of the direct negotiation; management of potential conflicts of interest; and requirements related to confidentiality or disclosure.
Direct liability	A fixed government liability that is the result of a PPP contract. A direct liability may include a subsidy, grant, or availability payment.
Integrity due-diligence criteria	The criteria that will be used to assess the integrity and reputation of the USP proponent as part of the compliance check.
Economic feasibility	An assessment of whether the social and environmental benefits of the proposed project outweigh the social and environmental costs. It assesses whether society will be better off if the project is implemented rather than pursuing an alternate course of action. See cost-benefit analysis (CBA).
Evaluation criteria	The criteria adopted by a public agency as part of the USP policy, to assess whether the proposed project should enter the project-development stage and the procurement stage. The criteria include public interest, project feasibility, and PPP suitability.
Evaluation process	The process for assessing whether the proposed project successfully meets the evaluation criteria and should enter the project-development stage and the procurement stage.
External advisors	Experienced advisors that governments hire to assist them in developing, preparing and procuring projects (both privately and publicly initiated).
Fair market pricing	The principle that PPP assets or services should be delivered at a price that does not exceed market rates and avoids excessive private-sector returns, and with a risk allocation that is appropriate for the government.
Financial close	The signing of all project and financing agreements for the project. Drawdowns become permissible after this point, when conditions precedent to initial drawing of debt have been satisfied or waived. Financial close, which takes place after commercial close, allows the private entity to begin to implement the project.
Feasibility study	The detailed assessment of the proposed project during the project-development stage in order to prepare it for the procurement stage. It may include assessments of economic feasibility, financial feasibility, technical feasibility, legal feasibility, and social and environmental feasibility.
Financial feasibility	The extent to which the proposed project's revenues are sufficient to cover expected capital and operating expenditures, considering key project risks, and the project is able to provide acceptable returns to equity holders

	and to service its debt on time and in full. Outputs may include the net-present value (NPV) and internal rate of return (IRR). Financial feasibility is typically assessed in conjunction with the funding and financing plan.
(Preliminary) financial feasibility study	The assessment of a proposed project's expected revenues, capital expenditures, and operating expenditures. A preliminary financial feasibility study is developed by the USP proponent and submitted to the public agency during the submission stage. A detailed financial feasibility study is developed either by the public agency (with external advisors) or the USP proponent during the project-development stage. See financial feasibility.
Fiscal impact	The direct and contingent liabilities associated with the project. The public agency evaluates the proposed project's expected fiscal impact during the evaluation stage and then in greater detail during the procurement stage.
Funding and financing plan	The proposal for how the project will be funded and financed, including any required government support and expected levels of debt and equity.
(Official) gazette/bulletin	The official journal or platform that the government uses to announce projects for procurement and solicit bids.
Government	The public officials and institutions governing the country.
Guiding principles	The overarching objectives and ambitions that guide the implementation of PPPs and USPs. These include transparency, accountability, affordability, public interest, and value for money. Typically outlined in the government's PPP policy and referenced in the USP policy.
Idea competition	A competition organized by a public agency, in which the public agency defines an overall infrastructure challenge or need and allows private entities to propose specific project concepts in exchange for some level of compensation and a prize for the best idea(s).
Implementation (phase)	The phase of the USP process after the project has reached financial close. Also known as the construction and operating phases.
Legal feasibility	An assessment of whether the proposed project meets legal requirements or is expected to involve any legal uncertainties or risks, such as the risk that a party to a contract will not be able to: enforce its rights and obligations; enforce its security arrangements; have a choice of law enforced; or refer disputes to arbitration.
Market testing	Interactions between the public agency and private entities to solicit feedback on the proposed project. Market testing can focus on the type of solution proposed, the cost components, the proposed timelines, the proposed risk allocation, and the extent of market appetite for a proposed project.
Multilateral partners/institutions	Multilateral financial institutions such as the World Bank Group, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank, etc.
(Intended) nationally-determined contributions (NDCs or INDCs)	Reflect the post-2020 climate actions that countries intend to take as part of the U.N. Framework Convention on Climate Change (UNFCCC)'s Conference of the Parties (COP21) in Paris in December 2015. The climate actions included in these NDCs largely determine whether the objectives of the Paris Agreement will be met.[1]
Needs analysis	An assessment of the societal and economic needs for the project. Often developed in conjunction with the options analysis. Developed by the public agency during the evaluation stage.
Net present value (NPV)	One of the key results of the financial feasibility study and the cost-benefit analysis: The financial NPV represents the discounted value of an investment's cash inflows (revenues) minus the discounted value of its cash outflows (costs). To be financially viable, an investment should have a financial NPV greater than zero. The economic NPV represents the discounted value of a project's benefits and costs compared to the situation without the project. To be economically viable, an investment should have an economic NPV greater than zero.
Options analysis	An assessment that enables the public agency to compare and contrast different project alternatives (potentially in combination with delivery models) for the proposed project.

1 For more information, refer to the website of the World Resources Institute (WRI),

Output specifications	The functions that the asset or service must be capable of performing. To allow for innovative solutions, output specifications state only the outputs required of the services, and not the way in which the contractors will achieve them.
PPP business case	The third stage of the PPP process, in which the public agency (with the support of external advisors) develops detailed feasibility studies for the proposed project, as well as the required procurement and bidding documentation.
PPP contract	Defines the relationship between the public and private parties. It outlines the rights and responsibilities of the public and private parties—including the payment mechanism and the performance obligations—and the risk allocation between the respective parties. It also provides mechanisms for dealing with dispute resolution, contract changes, and contract termination.
PPP enabling environment	The institutional, legal, regulatory, political, economic and social environment of the country, and the extent to which it is suitable for the implementation of PPPs.[2]
PPP identification and screening	The first stage of the PPP process, during which the public agency identifies infrastructure needs and projects to meet these needs. The public agency also screens the projects for PPP suitability using a qualitative value-for-money assessment or its equivalent.
PPP law:	A law designed to support and regulate PPP transactions and programs. May refer to a standalone law or a section of a public-procurement law.
PPP pipeline	The government's published list of priority infrastructure projects that it believes may be suitable for PPP delivery.
PPP policy	The government's policy regarding the implementation of PPPs.
PPP process	The PPP project cycle, whose stages are PPP Identification and screening, PPP business case, PPP procurement, and PPP Implementation.
PPP suitability	An assessment conducted during the evaluation and project-development stages that enables a public agency to determine whether a proposed project is suitable for PPP delivery.
PPP unit	A government unit or agency dedicated to supporting PPP implementation. Often located in a central agency (e.g., a planning or finance ministry) able to enforce the PPP policy and provide the support needed to implement PPP transactions.
Preliminary feasibility (pre-feasibility)	A feasibility study undertaken at the preliminary level to assess the viability of the proposed project. The evaluation stage involves an assessment of preliminary feasibility, whereas the project-development stage involves a more detailed assessment of feasibility.
Preferred bidder(s)	The private-sector firm(s) that the public agency decided has/have presented the most advantageous bid(s) and is/are therefore shortlisted to participate in the next phase of the competitive tender.
Private entity	A private-sector firm that has not presented a USP to a public agency (but may be interested in doing so). Once a private entity has presented a USP to the public agency, it is referred to as the USP proponent.
Procurement	The phase of the USP process during which the public agency prepares and implements a tender for the project that was initiated as a USP. The procurement stage follows the project-development stage.
Procurement strategy	The strategy that the public agency develops for the procurement stage of the USP or PPP process. Typically includes elements such as which procurement documentation needs to be developed and which procurement regulations will be followed.
Procurement documentation	The documentation that the public agency and its external advisors develop during the procurement stage and prior to the launch of the tender. Typically includes the request for qualifications (RFQ), the request for proposals (RFP), and the draft PPP contract, including output specifications.
Procurement laws and regulations	The government's laws and regulations for purchases of goods, works or services by public-sector bodies.
(Proposed) project	The project that is the subject of a USP, submitted by the USP proponent to the public agency.

2 For more information regarding the PPP enabling environment, refer to the World Bank's Due Diligence Checklist for Legal and Institutional Enabling Environment for PPP.

(Major) project contracts	The main contracts other than the PPP contract. Often includes the design-build (DB), engineering, procurement, construction (EPC), and operations and maintenance (O&M) contracts.
Project concept	A high-level description of a project idea. In the case of a USP, the project concept is developed by the USP proponent and submitted to the public agency during the submission stage. The project concept is sufficient for the public agency to evaluate whether the proposed project meets the public interest during the evaluation stage.
Project development	The third stage of the USP process, during which the public agency develops a feasibility study (or PPP business case) as well as the documentation required for the procurement stage. See feasibility study.
Project-development agreement	The agreement between the public agency and USP proponent that governs the involvement of the USP proponent in project development. Includes elements such as the responsibilities of the public agency and the USP proponent; the compensation structure for the USP proponent; modalities for coordination and communication; timelines for project development; and provisions for termination of the project-development agreement.
Project feasibility	The evaluation criteria that the public agency uses to assess a proposed project during the evaluation and project-development stages. May include assessments of technical feasibility, economic feasibility, financial feasibility, legal feasibility, and social and environmental feasibility.
Project pipeline	The government's published list of priority infrastructure projects.
Project risks	Events with negative (financial) impacts and a probability of occurrence throughout the life of a solicited or unsolicited PPP project. Appropriate allocation of project risks between the government and the private entity is key to achieving value for money from a solicited or unsolicited PPP project.
Public agency	The government entity (ministry, state-owned enterprise, or local government) that may accept a USP from a private entity / USP proponent. In some jurisdictions, the public agency may correspond to the PPP unit or its equivalent.
Public interest	The evaluation criteria that the public agency uses to assess whether the proposed project is in the best interests of the government and society. Includes two sub-criteria: conformity with government infrastructure objectives and priorities, and ability to meet a societal infrastructure need.
Public-private partnership (PPP)	"A public-private partnership (PPP) is a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance." A PPP, as defined above, encompasses a range of contract types. Because there is no standard, internationally accepted definition of a PPP, a government should use the definition that appears in its PPP policy—refer to the PPP Knowledge Lab's "What is a PPP" section.
Qualitative value-for-money assessment	A qualitative assessment of a project's expected value for money (VfM). Examines whether the proposed project exhibits characteristics that enable the value drivers of PPPs to be realized. The public agency may conduct a qualitative value-for-money assessment during the evaluation and project-development stages to confirm the appropriate delivery model for the proposed project.
Quantitative value-for-money assessment	A quantitative assessment of a project's expected value for money. The public agency may conduct a quantitative value-for-money assessment during the project-development stage to ensure that the structuring and procurement of the project will maximize value for money.
Request for information (RfI)	The process whereby the public agency requests specific information from private entities regarding the proposed project.
Risk matrix	The document in the form of a matrix that outlines the proposed risk allocation between the public agency and the private entity.
Review fee	Also referred to as a USP review fee, this is the fee that the USP proponent pays in exchange for evaluation of its USP by the public agency. The review fee may be refundable or non-refundable. The USP review fee allows the public agency to cover some or all of the administrative costs associated with evaluating the USP. It also discourages the submission of poor-quality USPs.
Right to match	Also known as Swiss challenge, an incentive mechanism whereby the USP proponent has the right to match the bid submitted by the preferred bidder. These Guidelines strongly discourage the use of this mechanism.
Social and environmental impact assessment	A qualitative or quantitative assessment of the intended and unintended social and environmental consequences of the project, both positive and negative. May be combined with the cost-benefit analysis or economic feasibility study.

Social and environmental feasibility	See social and environmental impact assessment.
Solicited project	Refers to a project that is listed in the public agency's project pipeline and/or is being considered for project development and procurement.
Special-purpose vehicle (SPV)	The legal entity created to undertake the PPP project activities. The SPV's sole purpose is to carry out the project activities. It signs the PPP contract with the government and the project contracts with the subcontractors.
Submission requirements	The documents and certifications that the USP proponent must provide to the public agency as part of its USP submission.
Technical feasibility	The feasibility of the technical and engineering elements of the proposed project. May include assessments of the project site; the proposed technology; the procurement of equipment; the sourcing of raw materials and fuel; supporting infrastructure; construction activities and schedule; physical outputs; performance standards; service levels; operations and maintenance standards; and major technical and operational risks.
Tender	The process whereby the government solicits competing bids to competitively procure a project that was initiated as a USP, typically involving a public and unrestricted solicitation providing a common basis on which bidders are to prepare their bids; full disclosure of the criteria to be used in the evaluation of bids; and the public opening of bids.
Unsolicited proposal (USP)	A proposal for a project idea submitted by a USP proponent to the public agency without an explicit request by the public agency.
USP enabling environment	The institutional, legal, regulatory and political environment of the country, and the extent to which it is appropriate for the implementation of USPs.
USP policy	The government's policy regarding the management of unsolicited proposals. May be contained within a PPP law or PPP policy, or developed as a standalone document.
USP process	The four phases of USP implementation: submission (stage one), evaluation (stage two), project development (stage three), and procurement (stage four).
USP proponent	The private entity that has presented a USP submission to the public agency.
Value for money (VfM)	The optimum combination of whole-of-life costs and ability of the good or service to meet the user's requirements, instead of the choice of goods and services based on lowest cost.

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