

Unsolicited Proposals (Privately Initiated Infrastructure Proposals) in Emerging Economies: new challenges

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Part 2

Unsolicited proposals (USPs): why we interested in them?



- ☐ Ukraine has huge needs in infrastructure (roads, railroads, heating and water supply systems, waste and wastewater treatment et.)
- ☐ Budget resources are strictly limited. It is impossible to eliminate existing infrastructure problems at the expense of state and local budgets
- ☐ Investing in Ukraine is attractable for a private business (good location, high quality professional people, big demands in infrastructure, perfect PPP regulation)
- ☐ Public authorities are not ready for PPP proposals preparation and append money for attracting advisors



| | |
|---------------------|------|
| Population, million | 42.0 |
|---------------------|------|

| | |
|-------------------------|-------|
| GDP, current \$ billion | 153.2 |
|-------------------------|-------|

| | |
|----------------------------|-------|
| GDP per capita, current \$ | 3,649 |
|----------------------------|-------|

| | |
|---|------|
| Life Expectancy at Birth, years ⁽²⁰¹⁵⁾ | 71.2 |
|---|------|

History of PPP legislation development

Starting from 1999 – the Law on concessions and several laws on peculiarities of concessions in different fields
Starting 2010 – the PPP Law and sub-laws



Starting May 2018 – the new redaction of PPP Law is in force

Starting October 2019:
The new Law “On concession”
Changes in the PPP Law and into other laws of Ukraine

A lot of government regulations on PPP issues

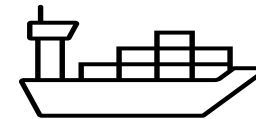
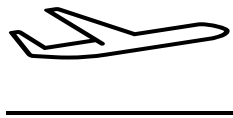


PPP / concessions in practice

UNTIL MAY 2018

A lot of concessions (near 200), but:

- ☐ no new assets have been created
- ☐ no international or foreign investors participated
- ☐ no evidence of success
- ☐ mostly look like leasing contracts



AFTER MAY 2018

On the governmental level (state assets):

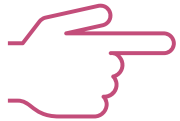
- ☐ Two solicited proposals for seaports that have been prepared by the Ministry of infrastructure with assistance of EBRD and IFC as concessions
- ☐ 6 unsolicited proposals (1 – in port, 3 – in airports, 1 – in energy sector, 1 – educational campus)

Problems with the USPs in Ukraine

I. Absence of clarity for private business regarding intentions of the government in infrastructure development

- ❑ no clear strategies and infrastructure plans on the state and local levels
- ❑ before October 2019 there was no clear procedure which allow preventi the preparation of several proposals in relation to the same assets

*Unsolicited proposal on modernization of Kherson and Skadovsk ports had been submitted just before IFC & EBRD started preparation of the feasibility study for Kherson port on the request of the Ministry of infrastructure. **As result the Ministry refused to implement USP.***



Two USPs had been submitted during one month with proposal to implement a project on Fuel and refueling complex at Boryspil International Airport with different technical approach. As a result both had received the positive conclusions and none of projects started



Problems with the USPs in Ukraine

II. Public authorities are not happy to consider USPs and not ready for this professionally. So, process of consideration of unsolicited proposal is extremely slow

- ❑ In accordance with the Law, any PPP proposal (solicited and unsolicited) should be evaluated and the decision on their implementation (or not) should be adopted not later than in 3 months
- ❑ In practice, USPs are considered from 6 months until 3 years
- ❑ And the process becomes extremely slow when public authorities start to establish tender commission and preparation of tender documentation



2 solicited proposals already have winners of tender, one of them (Kherson port) has already signed concession contract.

Only one (out of 6) USPs has the winner and is still in negation of PPP agreement starting from August last year. One has been refused, one – still evaluated, 3 – have positive conclusion on the Ministry of Infrastructure adopted by the Ministry of Economy before February 2019 and are waiting for next steps ...



Public authorities had very suspicious and even negative attitude to USPs

In August 2018 “**Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects**” - World Bank Group, PPIAF” has been published

It consists of:

Volume 1: Main Findings & Recommendations

Volume 2: Guidelines for the Development of a Policy for Managing Unsolicited Proposals in Infrastructure Projects

Volume 3: Review of Experiences with Unsolicited Proposals in Infrastructure Projects

Most of the recommendations proposed in this Guideline was very important, but some of them, in our opinion, were disputable.

My opinion on this issue has been published in the article “Unsolicited Proposals for PPPs in Developing Economies” - European Procurement & Public Private Partnership Law Review 2/2019 : pp. 118 -128



Disputable recommendations



- ❑ **PPP proposals prepared by public authorities correspond to the public interest and follow the strategic priorities of the country (territory) development while the USPs do not**

Indeed, there are many cases when USPs don't meet the public interest and don't take into account strategic priorities (a lot of such examples could be found in the Guidelines). But for the sake of justice, it shall be said that in the developing countries this disadvantage could often be inherent also to PPP proposals prepared by public authorities. One of the reasons for this is the lack of long-term strategic documents of infrastructure development at the governmental and local levels. In such a situation, not only private business, but also public authorities unwittingly act situationally



Disputable recommendations



- ❑ It is believed that **PPP** proposals prepared by the public authorities are always socially attractive and provide for the implementation of projects that have positive impact on the **SDGs**. On the contrary, **USPs** are primarily commercial in nature and are focused exceptionally on the interests of the business offering them for implementation

In our opinion, business does not deserve such an attitude. Of course, the commercial component of a project is very important for business and it will not undertake non-recoupable projects with high risks. At the same time, business understands that PPP projects that are not perceived by the population or have a negative impact on its life are very risky for implementation. Therefore, the analysis of their social component is a very important part of USPs.

Both USPs and proposals prepared by public authorities can be:

- socially oriented or not*
- have a positive impact on the achievement of the SDGs or not*
- meet the public interest or not*



Disputable recommendations



❑ **Absence of competition and potential engaging in corrupt practices in the case of unsolicited proposals**

The fact that the initiator of USP has competitive advantages over the rest of the bidders is considered as one of its negative characteristics. This statement could be relevant to the situation when the project submitted as a USP is awarded as a result of direct negotiations. However, we can agree that for cases when a private partner is selected as a result of an open competition, this is also true. Initiators of USPs are more prepared for the competition than others. But, in our opinion, nothing is wrong with that. After all, it was a USP initiator who took the initiative and risks to invest in the preparation of PPP proposal. Therefore, he has a right for certain advantages. The other thing is that these advantages should not have as a consequence that the project proposed in USP will be implemented by him on worse conditions than other participants of the competition can offer.

And, in our opinion, the potential for corruption risks for USPs in the case when a private partners for PPP projects are selected at an open competition is not higher than for PPP proposals prepared by public authority. At least for the developing countries



Disputable recommendations



- ❑ **Absence of Transparency and Accountability in case of USPs.**
Transparency and accountability are extremely important issues that should be addressed in the process of preparing and implementing PPPs.
“Governments should disclose all relevant project information to allay stakeholder concern”

Completely agree. But in our opinion, such a recommendation is important in relation to all PPP proposals, regardless of whether they are prepared by public authorities or private business.



What strategies has been proposed in Guidelines for USPs

I. «Governments decide not to allow USPs (some experts believe, however, that this would result in a limited number of projects in low-capacity jurisdictions»

Our opinion -The lack of qualifications in the field of PPP among public authorities should be a reason to think about how to improve the current situation (to attract qualified specialists for work in the relevant public institutions, to introduce measures to improve the institutional capacity of staff, etc.), and not a reason to prohibit the USP

Introducing fee for consideration of USPs

In our view, consideration of USPs is the obligation of the public authority. National governments should ensure the society with modern infrastructure and high-quality services. If they can't do at the expense of budget funds, borrowings, or based on PPP solicited proposals, why private business has to pay for the consideration of its proposal to assist in resolving existing infrastructure problems? After all, when preparing USPs business actually takes the obligations of public authority. It invests own financial resources in USPs and spends the time. Based on this, the proposal to introduce a fee for considering USPs could be acceptable only for economically developed countries, where public authorities are able to cope with overcoming infrastructure problems and ensure the population with an adequate quality of life, and business – with attractive conditions for functioning.



What strategies has been proposed in Guidelines for USPs

2. «Governments allow USPs but hire external advisors to develop and structure projects (hiring advisors brings confidence to the market and contributes to equal bidding conditions)»

In our view, if such a Strategy is used, the likelihood of a negative result in PPP competition will considerably increase. Public authority, which does not possess the necessary qualification, can “destroy” a good and useful business idea. The project proposal prepared by it could have no interest for a business that submitted the corresponding idea. Involvement of external consultants could improve the situation. In this case, transaction costs will significantly increase. And besides, the involvement of consultants by public authorities with low level of qualification in the field of PPP creates favorable conditions for corruption.

3. “Governments allow private developers to develop USPs, who structure the transaction, competitively procure the major subcontracts, and take an equity stake in the project»



Our conclusions (2019)



1. The policy in relation to USPs and proposals prepared by public authorities as well as the legal regulation in this area should be based on the same principles

2. Among the main problems related to consideration of USPs and implementation of projects initiated in their framework in the developing economies are:

- ☐ low qualification of public authority (both central and local)
- ☐ lack of strategies and plans for the development of infrastructure at the state and municipal levels;
- ☐ the suspicious attitude of public authorities to private business and, as a result, the lack of dialogue between them in the process of discussing USPs
- ☐ lack of interest of civil servants in infrastructure development

3. Almost all problems, that USPs could potentially have, could be avoided if a public partner (authority) has the necessary qualification in the field of infrastructure development and PPP, and is responsible to the society for the results of its management decisions. That is why we started our training courses on PPPs for public authorities and business



You can read about all these in more details in the article

I. Zapatrina “**Unsolicited Proposals for PPPs in Developing Economies**” - **European Procurement & Public Private Partnership Law Review 2/2019** - pp. 118-128



But times change - we have new realities for USPs in COVID-time

Two publications were published in July 2020:

- ❑ **“A Call for Infrastructure Development through Unsolicited Proposals: Tapping into private-sector innovation to improve infrastructure delivery”** prepared by the Global Future Council on Infrastructure’s Unsolicited Proposals Working Group (UPWG) and Global Future Council on Infrastructure in the framework of the World Economic Forum COVID Action Platform (http://www3.weforum.org/docs/WEF_UPs_Note_2020.pdf)
- ❑ **“Want to build back better? Let innovators come to you”** prepared by Anita Marangoly George, Pierre Guislain, Rashad-Rudolf Kaldany, Usha Rao-Monari, Richard Threlfall, Joseph Losavio, Alain Ebobisse, Jean Innes, Jean-Patrick Marquet, Paul Newfield and Clemente del Valle (<https://www.weforum.org/agenda/2020/07/want-sustainable-infrastructure-fast-let-the-private-sector-come-to-you/>)



What are the new messages in these publications?

- ❑ USPs could be an effective instrument for developing “***more, better-quality projects with less time, money and efforts***” that is extremely important now when all governments are looking for the infrastructure development to boost their economics
- ❑ USPs have been recognized as “***powerful tool that allows the private sector to lead on initiating and developing a project and, when used alongside other procurement methods, can rapidly mobilize investment, build stronger project pipelines, improve efficiency and increase innovation***”
- ❑ USPs could be more effective than solicited proposals which are “***often expensive to administer, time consuming and require significant amounts of preparatory resources (e.g. pre- and full-feasibility studies) that require a high level of sophistication from policy-makers, regulators and administrators to implement. Additionally, they tend to limit innovation***”



It is a good news, because we see a tendency of improving attitude of international institutions and PPP experts to unsolicited proposals that hope for the future changes

BUT, to attract private business for infrastructure development, including through USPs, it is important to analyze other factors that “kill” interest of private business to initiation of infrastructure projects in those countries where unsolicited proposals are possible and the legislation provides for comfortable conditions for their initiators, as it is in Ukraine.

I have already submitted the article on this issues and my recommendations – how to do USPs safe and useful for society and improving the quality of life ASAP - to the European Procurement & Public Private Partnership Law Review. It will be published soon



We will talk about this topic in details, including case studies, at the next training courses of the Academy

You can receive news about them on our site <https://appp.com.ua/en/> and on the training portal of the PPP Academy <https://academy-ppp.com/>