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Government Notice

MINISTRY OF FINANCE AND PUBLIC ENTERPRISES

No. 151

2023

GUIDELINES FOR UNSOLICITED PROPOSALS FOR PUBLIC PRIVATE PARTNERSHIP PROJECTS: PUBLIC PRIVATE PARTNERSHIP ACT, 2017

Under section 40(2) of the Public Private Partnership Act, 2017 (Act No. 4 of 2017), I issue guidelines for unsolicited proposals for public private partnership projects as set out in the Schedule.

I. SHIMI
MINISTER OF FINANCE AND
PUBLIC ENTERPRISES

Windhoek, 28 April 2023

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PART 1

PRELIMINARY

List of acronyms

1. The following is the list of acronyms used in these guidelines:

GRN Government of the Republic of Namibia

IDD Integrity Due-Diligence

OPP Original Project Proponent

PE Public Entity

PPP Public Private Partnership

RFP Request for Proposal

TA Transaction Advisor

TA 1 Transaction Approval 1

TA 2A Transaction Approval 2A

TA 2B Transaction Approval 2B

TA 3 Transaction Approval 3

TA 4 Transaction Approval 4

USP Unsolicited Proposal

VAT Value Added Tax

Definitions

2. In these guidelines, a word or an expression to which a meaning has been assigned in the Act or Public Private Partnership Regulations has the same meaning, and unless the context otherwise indicates -

“OPP” means a private party that has submitted the proposed project to a PE under paragraph 4;

“private party” includes an individual, a company or a consortium;

“Public Private Partnership Regulations” means the Public Private Partnership Regulations published under Government Notice No. 353 of 18 December 2018; and

“the Act” means the Public Private Partnership Act, 2017 (Act No. 4 of 2017).

PART 2

SUBMISSION OF UNSOLICITED PROPOSALS

Identification of unsolicited proposals

3. A private party may identify a project that meets the requirements of these guidelines to be implemented under the Act as a PPP project.

Submission of unsolicited proposals

4. After a private party has identified a project that meets the requirements of these guidelines to be implemented under the Act as a PPP project, the private party must submit the proposed project to the relevant PE for consideration, assessment and evaluation.

Submission requirements for unsolicited proposals

5. A project proposal to be submitted under paragraph 4 must contain and meet the following submission requirements:

- (a) a concept note indicating the basic information of the USP including:
 - (i) the proponent's name, address, identification or registration number, VAT registration number or equivalent registration number in a foreign jurisdiction and the contact details of its authorised representative;
 - (ii) objectives, scale and scope of the proposed project;
 - (iii) indicative operational plan and implementation period of the proposed project;
 - (iv) the description of innovative approach, technology, design or method of the proposed project; and
 - (v) other relevant information;
- (b) an undertaking by the OPP to meet the IDD criteria set out in Annexure A;
- (c) a preliminary feasibility or feasibility assessment containing the scale, scope, technical, commercial, financial, legal, demand and market analysis of the proposed project;
- (d) an applicable legal and regulatory framework;
- (e) a proposed project site and its appreciation;
- (f) requirements for trunk infrastructure and connection to existing assets or services;
- (g) a description of the environmental and social features of the proposed project;
- (h) a preliminary assessment of economic feasibility or a cost-benefit analysis;
- (i) a preliminary funding and financing plan;
- (j) details of the OPP technical, commercial, managerial and financial capabilities with suitable evidence;
- (k) principles of the proposed PPP agreement including risk assessment and sharing, options analysis and commercial principles;
- (l) the nature of information which are proprietary and constitute intellectual property; and
- (m) the itemised genuine expenditure on the studies for USP preparation.

Requirements for proposals to be considered as unsolicited proposals

6. The project concept proposal of the project submitted under paragraph 4 must meet the following requirements for the proposal to be considered as a USP:

- (a) the proposed project is not listed as the PPP project maintained by the Unit or registered with the Committee in terms of section 16 of the Act;
- (b) the proposed project is in public interest;
- (c) the scale and scope of the project is in line with the requirements and strategic vision of the PE; and
- (d) the project is not entirely depends on GRN for funding or there is no direct GRN guarantee, subsidy or equity required in the USP.

Protection of intellectual property

7. (1) If the OPP wishes to request that the PE protects its intellectual property contained within the USP, the OPP must submit two versions of the USP to the PE.

(2) In one version of the USP, the OPP must clearly mark the parts that contain the intellectual property and the other version of the USP must be submitted by the OPP without the intellectual property.

Responsibilities of original project proponent during submission of unsolicited proposal

8. The responsibilities of OPP during the submission of the USP are as follows:
- (a) the OPP must submit a well-developed USP to the PE and must provide the Unit with a copy of the USP;
 - (b) the OPP must ensure that the USP meets the minimum criteria and submission requirements set out in these guidelines; and
 - (c) if requested by the PE, the OPP must provide additional document and clarification on the USP in a written form and within a period specified by the PE.

Responsibilities of public entities during submission of unsolicited proposals

9. The responsibilities of a PE during the submission of a USP are as follows:
- (a) the PE must receive the USP and after consultation with the Unit determine whether the USP complies with the requirements for the proposal to be considered as a USP and the submission requirements of a USP;
 - (b) the PE must undertake further investigation to ensure that the OPP meets the IDD criteria set out in Annexure A; and
 - (c) the PE must communicate, in writing, with the OPP -
 - (i) on the outcome of the investigation made in terms of subparagraph (b); and

- (ii) whether the USP is rejected or recommended for further assessment and evaluation.

PART 3

ASSESSMENT AND EVALUATION OF UNSOLICITED PROPOSALS

Minimum criteria for assessment and evaluation of unsolicited proposals

- 10.** The followings are the assessment and minimum evaluation criteria for a USP:
 - (a) the proposed project provides an element of innovation, either in terms of design or approach in project development and management, leading to a unique and new method of service delivery;
 - (b) the OPP meets the IDD criteria set out in Annexure A;
 - (c) the OPP's proposal of risk-sharing is optimal and the USP may be reviewed if any variation to risk-sharing is required;
 - (d) the cost of the proposed project exceeds a threshold project value of N\$10 million;
 - (e) the USP is financially viable and has the potential for securing private financing; and
 - (f) a preliminary feasibility assessment is not older than three years from the date of the submission of the USP.

Assessment and evaluation process of unsolicited proposals

11. To maintain a fair and transparent process in assessing and evaluating a USP, a PE must follow the assessment and evaluation process set out in Annexure B.

Preliminary assessment of unsolicited proposals

- 12.** (1) A PE with the assistance of the Unit may -
 - (a) conduct a preliminary assessment of a USP to determine whether a USP meets the minimum criteria for assessment and evaluation of the USP; and
 - (b) undertake a PPP suitability assessment based on the information provided by OPP in the USP.
- (2) A PE may ask for the additional information or clarification from the OPP in order to assess and check the suitability of the USP.
- (3) A PE reserves the right to further consider, or not consider, the USP beyond this stage.
- (4) Following a positive outcome of the preliminary assessment, a PE must seek approval from the Committee to proceed to a detailed evaluation of the USP.

Detailed evaluation of unsolicited proposals

13. (1) If the Committee has approved the USP to proceed to a detailed evaluation and after the PE has notified the OPP of the approval, the OPP must -

- (a) pay to the Ministry the USP review fee, set out in Annexure C; and
- (b) submit proof of payment to the PE.

(2) The PE may not proceed to a detailed evaluation of the USP unless the applicable USP review fee has been paid in full and cleared by the Ministry.

(3) The payment of the USP review fee is non-refundable and does not create any obligation on the part of the PE and the Unit towards the OPP.

(4) On receipt of proof of payment for the USP review fee, the PE, with the assistance of the Unit, must conduct a detailed evaluation of the USP.

(5) The PE must consider the potential benefit of the USP to the PE and end-users and must be guided by the key principles that guide the assessment and evaluation of the USP set out in Annexure D.

(6) Following a positive outcome from the detailed evaluation of the USP, the PE must prepare and submit an evaluation report to the Committee for review and approval to proceed to feasibility assessment of the USP.

(7) Approval of the USP during the detailed evaluation does not create any obligation on the part of the PE or Unit towards the OPP.

Responsibilities of original project proponent during detailed evaluation of unsolicited proposal

14. During the detailed evaluation of a USP, the OPP is responsible for responding, in writing, to any request for further information regarding the USP.

Responsibilities of public entities during detailed evaluation of unsolicited proposals

15. During the detailed evaluation of a USP, the PE is responsible for the following:

- (a) requesting, in writing, any further information from the OPP, including holding meetings with the OPP or Unit to clarify matters relating to the USP and such clarification must be properly minuted and recorded by the PE; and
- (b) notifying the OPP of the detailed evaluation outcome of the USP after it has been approved by the Committee.

Feasibility assessment of unsolicited proposals

16. (1) After the approval of the USP to proceed to the feasibility assessment of the USP, the PE and TA, if appointed, must conduct the feasibility assessment in accordance with section 17 of the Act and must determine -

- (a) whether the USP is feasible and in line with the requirements of the Act;

- (b) whether the USP is expected to generate value for money through the PPP delivery; and
- (c) how the USP must be structured to maximise value for money.

(2) The PE may appoint a TA that has the appropriate skills and expertise to assist the PE in conducting the feasibility assessment if the PE does not have internal capacity.

(3) The PE must conduct the feasibility assessment of the USP irrespective of whether or not the OPP has already submitted a feasibility study report together with the USP.

(4) The PE must submit to the Committee the feasibility assessment undertaken in terms of section 17 of the Act for the Committee's approval as contemplated in section 18 of the Act.

Responsibilities of original project proponent during feasibility assessment

17. During feasibility assessment in accordance with section 17 of the Act, the OPP may not be involved in feasibility assessment of the USP, but the PE may consult the OPP to provide, in writing, any information or clarification on the USP which may be required.

Responsibilities of public entities during feasibility assessment

18. The PE must notify the OPP of the outcome of the feasibility assessment and whether the Committee has approved the feasibility assessment and obtained the TA1.

PART 4

COMPETITIVE BIDDING PROCESS

Competitive bidding process

19. (1) Upon obtaining the TA1 from the Committee for the feasibility assessment of the USP, the PE must undertake a competitive bidding in accordance with the procurement process contemplated in Part 5 of the Act.

(2) The PE may appoint a TA to assist in conducting the procurement process if the PE does not have internal capacity.

(3) The PE must seek TA 2A, TA 2B, TA 3 and TA 4 from the Committee at various stages of the PPP procurement process as outlined in the Act.

(4) The PE must ensure that competing bidders have timely and equal access to all the relevant documents relating to the project as the OPP.

(5) The documents referred to in subparagraph (4) must include all relevant studies undertaken during the feasibility assessment, tender documents, draft PPP contract and proposed risk allocation developed during the procurement stage.

(6) The PE must strive to maximize competition in the tender and the PE, with the approval of the Committee, must provide the OPP with an additional 10 percent bonus points in addition to the bid evaluation score obtained by the OPP during the RFP stage.

(7) Except for the additional 10 percent bonus points referred to in subparagraph (6), the OPP has the same rights and obligations as any other competing bidder as outlined in the tender document, and the USP procurement process must be dealt with as the publicly initiated project procurement process in accordance with the Act.

(8) Where the USP has secured TA1 and the PE decides not to proceed with the USP, the PE, with the approval of the Committee, must reimburse the OPP for the genuine expenditure on the studies prepared by the OPP in the preparation of the USP as proposed and submitted with the USP.

(9) In the event that the Committee has given TA1 for the feasibility assessment of the USP and the OPP participates in the procurement process, but is not the preferred bidder of the project, the preferred bidder must reimburse the OPP for the genuine expenditure on the studies prepared by the OPP in the preparation of the USP as -

- (a) duly recommended by the PE and approved by the Committee; and
- (b) proposed and submitted with the USP.

(10) The OPP is not entitled to any reimbursement if the USP is not found to be feasible or the OPP decides not to participate in the bidding process.

PART 5

GENERAL PROVISIONS

Publication of certain information

20. (1) Following the approval of the preliminary assessment of the USP by the Committee, a PE must, on its website, publish key information of the USP during submission, evaluation, feasibility assessment and procurement, and the Unit may also publish the same information on its website.

(2) The information referred to in subparagraph (1) must include details of the OPP and the USP, the result of the assessment of the USP, the designated project officer and reason why the USP has progressed through the stages.

(3) The PE must consult with the OPP before any information is published to ensure that commercially sensitive information remain confidential.

ANNEXURE A

INTEGRITY DUE-DILIGENCE CRITERIA

(Paragraphs 5, 9 and 10)

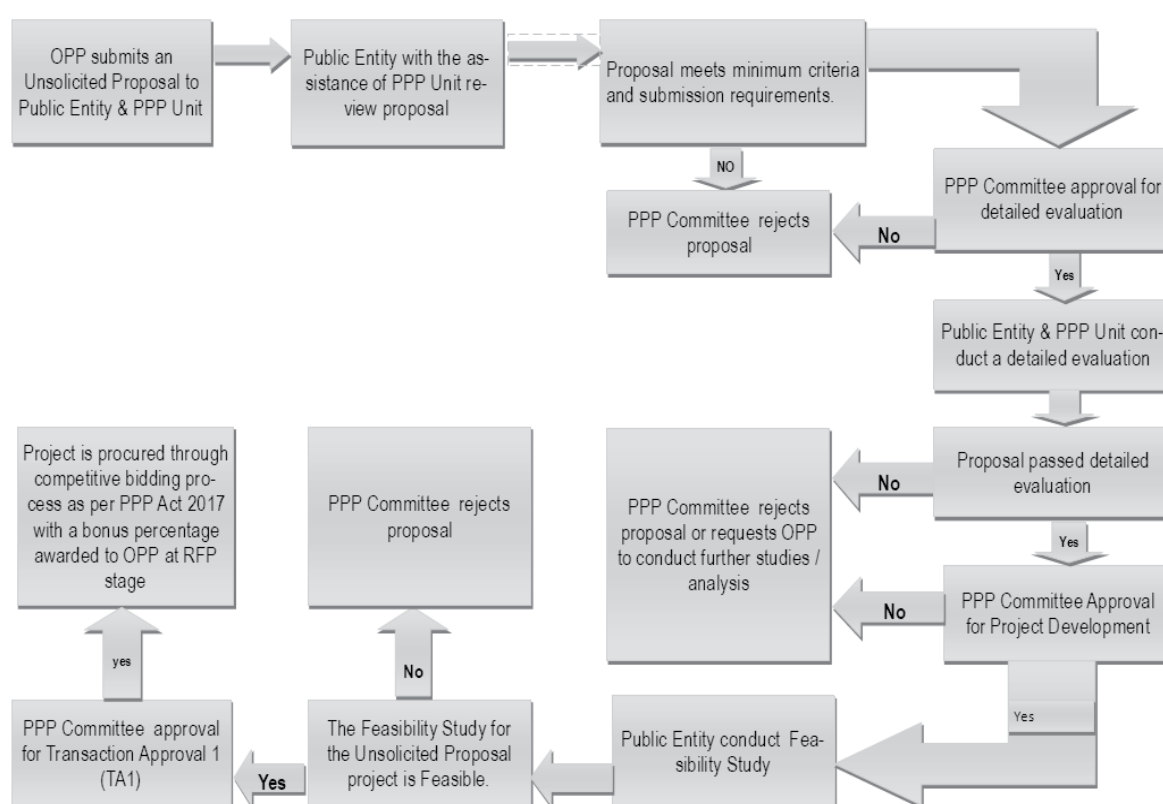
Ethical standards	OPP does not appear on any national or globally recognised blacklists.
Insolvency	OPP is not insolvent, bankrupt or in receivership. OPP's affairs are not being administered by a court or a judicial officer. OPP's business activities have not been suspended. OPP is not the subject of any adverse decision in any legal proceedings.

National obligations	OPP has fulfilled its obligations to pay taxes and statutory social-security contributions in the relevant jurisdiction, if applicable.
Criminal behaviour	OPP has not, or its directors or officers have not, been convicted of any criminal offence relating to professional misconduct within a period of last 10 years from the date of USP submission, or have not been otherwise disqualified pursuant to administrative suspension or debarment proceedings.

ANNEXURE B

ASSESSMENT AND EVALUATION PROCESS FOR UNSOLICITED PROPOSALS

(Paragraph 11)



The followings are notes to the above flowchart:

- The PE, after consultation with the Unit, determines whether the submission constitutes a USP in line with the minimum criteria and meets the submission requirements.
- Based on a successful outcome of the review of the USP against the minimum criteria and submission requirements, the PE must seek approval from the Committee for the USP to be considered for a further detailed assessment.
- The PE, with the assistance of the Unit, conducts a detailed evaluation of the USP, and following a successful outcome of the detailed evaluation, the PE must seek approval from the Committee to commence feasibility assessment.

- (d) The PE must undertake or cause to be undertaken a feasibility assessment and depending on a positive outcome from the feasibility assessment, along with other related assessments as instructed by the Committee, the PE must seek TA 1 approval from the Committee.
- (e) Once the Committee has provided TA 1 approval, the PE will commence with a competitive bidding process as outlined in the Act.

ANNEXURE C

UNSOLICITED REVIEW FEES

(Paragraph 13)

Estimated capital cost of proposed project	Review fee (% of estimated project cost)
Less than or equal to N\$50 Million	0.040%
Greater than N\$50 Million and less than or equal to N\$100 Million	0.035%
Greater than N\$100 Million and less than or equal to N\$250 Million	0.030%
Greater than N\$250 Million and less than or equal to N\$500 Million	0.025%
Greater than N\$500 Million and less than or equal to N\$1 Billion	0.020%
Greater than N\$1 Billion	0.015%

ANNEXURE D

KEY PRINCIPLES THAT GUIDE UNSOLICITED ASSESSMENT AND EVALUATION PROCESS

(Paragraph 13)

- (a) **Public interest** - Design and implement projects to serve public interest and ensure that the projects continue to serve the public interest.
- (b) **Value for money** - A function of service outcome, risk transfer and financial implications so as to ensure greater value for money to the GRN.
- (c) **Transparency** - Ensuring that the procurement of a private partner is transparent by disclosing relevant project information, policies, and formal approvals to allay stakeholders concerns.
- (d) **Risk allocation** - Optimal risks sharing of project risks through allocating risks to the party best able to manage particular risks.
- (e) **Affordability** - The resource demands of the project should not put pressure on the financial and technical capacity of the relevant institution or GRN over the entire PPP project life. The user fees should be tested for affordability by the end user and also reflective of fair market prices.
- (f) **Output oriented** - Focus on the specification and key result areas of services that are to be delivered rather than the delivery of services in order to maximize the opportunities for innovation.

- (g) **Competitive pressure** - Select a private partner through competitive bidding procedures using varieties of selection criteria focused on technical and financial consideration.
 - (h) **Accountability** - PEs continue to be accountable for service delivery including service delivery via PPPs.
 - (i) **Uniqueness of project** - Innovative ideas, design, method, approach, financial and technical solutions, alternative ways of providing service or processes, products or methods.
 - (j) **Capability of OPP** - The Private Party must demonstrate financial, technical and management capability to implement the PPP project.
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