PROCURING UNSOLICITED BIDS WITHOUT LOOSING THE INNOVATION INGREDIENT: IMPLEMENTATION LESSONS FOR PUBLIC PRIVATE PARTNERSHIPS FOR DEVELOPING COUNTRIES

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ABSTRACT

Over the years the unsolicited PPP proposals also known as contractor facilitated financing proposal are gaining momentum. The purpose of this paper was to explore the practice of procuring unsolicited bids for PPPs from an international perspective to inform best practices for adoption in developing countries that are witnessing increasing offers from USP proponents. Existing literature acknowledges that unsolicited proposals (USPs) are largely unacceptable in traditional procurement but are acceptable in the environment of PPPs. While USPs are acceptable they have remained under researched as guidance on procedure for their management, remains relatively absent and at times shallow in national PPP policy, legal and regulatory frameworks. Based on a systematic review of literature, the study provides guidance on how to manage USPs in developing countries that are experiencing a rise in PPPs and USPs.

Keywords *- Margin of preference, Public Private Partnerships, Unsolicited bids.*

INTRODUCTION

Private sector participation has become a standard approach for public administration reforms. Since the 1990's governments across the world have increased private participation in their development agendas (Osei-Kyei, Chan, Dansoh, Ofori-Kuragu & Opopong, 2018a). In ancient times, and before the collapse of Communism around 1945, governments were expected to solely deliver public services. The period after 1945 then ushered in the Industrial Revolution that brought the manifestation of capitalism and vibrant private sector. Due to the devastation caused by the World Wars I & II, governments were unable to provide sole delivery of public services. Osei-Kyei et al. (2018a) opines that this situation led to the need to engage the private sector in the provision of services. This

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situate has made private sector participation in service delivery as a respite to existing pressure by citizens requiring governments to do more.

Adopting public private partnerships (PPPs) has been traditionally through procurement that is regulated by public procurement policy, law, regulations, guidelines and in some instance administrative orders or ordinances (Zewawi, Kulatunga &Thayaparan, 2016). In public procurement, upon receiving budgets and indicative planning figures public entities undertake develop work plans, undertake procurement planning and reach out to the market with solicited offers in form of expressions of interests or proposals to which bidders respond with bids to provide works, services or works (Hlahla, 1999; Zewawi et al., 2016; Osei-Kyei et al. 2020). Arlbjørn & Freytag (2012) asserts that the engagement of private actors through public procurement is subject competition and transparency and thus competitive bidding is usually the most preferred sourcing method.

Overtime a dynamic concept “unsolicited proposal (USP)” has emerged. A USP a proposal is developed and submitted to an entity without any solicitation attempt by the public entity. USPs that are not popular with traditional procurement are now popular in the context of PPPs (Osei-Kyei, 2018a). The reasoning behind the complexity of USPs resonates with the need to reward innovation (Che, Iossa, & Rey, 2021) and the need to comply with the PPP principles of competition, and value for money.

In public management and governance, PPPs that relate to “cooperative institutional arrangements between public and private sector actors, have gained wide interest around the world” (Hodge & Greve, 2007, 545). There exists a large knowledge base on PPPs. Scholarly works on PPPs have largely focused attention on introduction and working of PPPs (Broadbent & Laughlin, 2003; Skelcher, 2005; Engel, Fisher & Galetovic, 2008; Wettenhall, 2003; Dewulf, Blanken & Bult-Spiering, 2012; Zhao, Liu, Sing, Jin &Ginige, 2021), privatisation and PPPs (Savas & Savas, 2000; Zhao et al., 2021). Another focus of studies on PPP has been governance matters (Stoker, 1998; Pongsiri, 2002; Börzel & Risse, 2005; Forrer, Kee, Newcomer & Boyer, 2010; Brinkerhoff & Brinkerhoff, 2011; Vining & Boardman, 2008; Hodge & Greve, 2010b; Nduhura et al., 2020). To improve the success of PPPs, Zhang (2005), Jamali (2004), Abdel Aziz (2007) and Barlow et al., (2013) provide lessons and critical success factors for PPPs to inform practice from specific country and international experience. Other studies on USPs illuminate the demerits USPs (Osei-Kyei, Dansoh, Ofori-Kuragu & Oppong, 2018). Other studies have extensively discussed appropriate models for operationalising PPPs (Zarco-Jasso, 2005; Mitchell, 2008; Siemiatycki, 2009; Acerete et al., 2011; Carbonara & Pellegrino, 2018; Nduhura et al., 2020).

Klijn & Teisman (2005) and Weihe (2008) opine that PPPs have been adopted as a mechanism to deliver co-production and are now adopted across sectors and countries (Reich, 2002; McKee et al., 2006; Nduhura, Lukamba & Nuwagaba, 2020; Ringera et al., 2021; Joudyian et al., 2021; Heron & Lie, 2006; Cherkos & Jha, 2021; Noorzai, 2021). Nduhura et al. (2020) champions the need for involving citizens as customers in the conceptualisation of the need for PPPs, design of PPP concessions and interventions as customers. While Nduhura et al. (2020) acknowledge that to some extent citizens are involved, their participation through elected leaders and representatives is subdued by the ills of representative democracy. Under the guise of involvement under representative democracy, the agent (representative) usually fronts their interests ahead of the principals (citizens) interests.

Recently, PPPs have been and remain recognised as a key global mechanism to man-age pandemics and epidemics (Baxter & Casady, 2020). For instance, PPPs is targeting the relevance of PPPs in managing COVID 19 pandemic and its consequences on lives, economy, service and delivery (Park & Chung, 2021; Seddighi et al., 2021; Baxter & Casady, 2020; Casady & Baxter, 2020; Ibarra, Rivera, Fernandez-Ibarburu, Lorca-García & Garcia-Ruano, 2021; Vaslavsky, 2021). While such studies are important for the successful design and execution of PPPs, a gap exists in literature and in practice on how PPPs are acquired yet PPPs have and continue to manifest in form of USPs (World Bank,2017).

Existing studies (Nduhura,2019; Mulyani, 2021; Ngullie, Maturi, Kalamdhad & Laishram, 2021; Debela, 2022; Hai, Toan & Van Tam, 2022) indicate that the success rate of PPP USPs largely depends on how they were procured. While procuring solicited PPP bids is well elaborated in scholarly works, their legal and regulatory frameworks (to some extent), procedures and incentive for sustaining the remuneration of the innovative nature in the evaluation of USPs bids remain relatively opaque and in other cases insufficient.

Though some attempts have been made to define both solicited and USPs. Solicited bids have been defined as planned and orchestrated procurement processes by the government, while unsolicited bids refer to bids that arise without requests for expressions of interest neither proposal from a public entity (World Bank, 2017). While solicited proposals were the norm to acquire PPPs, USPs are on the rise in developing countries where competencies to handle PPPs remains deficient (World Bank, 2017). A survey of literature indicates that the adoption of USPs has been largely due to their innovative gesture/character(Baxter et al,2020). As procedures become relatively elaborate, incentive frameworks for innovation within USPs remain deficient. For example, the bonus scheme, Swiss challenge (counter match) and reimbursable cost approaches focus generally on giving a win and some sort of compensation for the original bid with-out directly focusing on criteria of ensuring that tests for enhanced innovation are carried out. Additionally, USPs tend to be fronted by actors in markets that exhibit high market growth potential. It is revealed that such markets were synonymous with the Brazil Russia, India, China and South Africa (BRICS) but now include generally Africa but more importantly East Africa that resonates with high forecasted Gross Domestic Product (GDP) growth rates and huge infrastructural deficits (World Bank,2021, African Development Bank AfDB,2021). The defiency of expertise to deliver PPPs for escalating infrastructure and service delivery gaps remains, causing information assysmetry, a situation where the private actor uses its privelage of having more information and expertise to subdue the public actors interests in PPP arrangement (Parker & Hartley, 2003; Xiong, Zhao & Wang, , 2018; Nduhura, 2019; Rene, 2019).To avoid the challenge of information asymmetry and reoccurrence of USP problems while making Africa ready for USPs driven PPPs, the paper contributes to knowledge by providing s systematic review of the understanding of USPs. In addition, it focuses on their practice and an incentive framework that would result into the selection of a highly innovative USP bid for further development and implementation for USP originators.

While the application of solicited bids for PPPs is largely known, the application of unsolicited bids seems to be relatively new and, in some cases, only highlights are provided in national PPP policy and regulations in countries like Uganda, Rwanda, Tanzania, Burundi, South Sudan. While some countries like Brazil, Russia, China, India and South Africa have made attempts the still face challenges in implementation of USPs. Notwithstanding attempts in literature to define and highlight procedural stages. The use of USPs has been made but most publications have made in subscription journals that continue to limit access to scholars in Africa. Adding to knowledge base with the practice of USPs in Africa's PPP environment is important since statistics reveal that as GDP growth rates shrink in the developed world, the developing world that largely resides in Africa posits with the highest growth potential despite deficits in infrastructure (World Bank, 2021).

This situation is likely to attract more USP proponents to Africa than any other continent. In addition, existing studies by Marques (2018) indicate that USPs continue to be adopted largely in developing countries. There is therefore need to generate more re-search to the PPP knowledge base to inform the acceptance, working and incentivisation of PPPs for sub–Saharan Africa. In fact, existing studies (World Bank, 2017; Marques, 2018) reveal that there exists the general lack of expertise to deliver PPPs in escalating infrastructure and service delivery gaps (World Bank, 2014). To avoid the challenge of information asymmetry and reoccurrence of USP problems while making Africa ready for USPs driven PPPs, the paper contributes to knowledge by providing s systematic review of the understanding of USPs, their practice and incentive frameworks for USP originators. In addition, existing PPP incentive frameworks. Procuring innovation through innovation through USPs presents a special challenge.

LITERATURE REVIEW

Unsolicited bids have been traditionally a domain in the private sector operations. There has been significant attempt to define USPs. The World Bank (2017) defines a USP as "a private entity reaches out to a Public Agency with a proposal for an infra-structure project, without having received an explicit request or invitation from the government to do so." A USP is also defined as privately initiated bid or proposal submitted to the public sector, without an explicit request from the government to do so or without any open invitation (Abdel Aziz & Nabavi 2014; Zewawi et al., 2016; World Bank, 2017). In this paper, we define a USP as privately initiated bids or proposals submitted to the public sector. It is therefore a supply market induced bid with a range of innovations presented to a government entity to consider for improving ser-vice delivery without an invitation to treat in form of request for expression of interest or proposal.

Unsolicited bids have existed in sourcing and disposal of assets. For instance, Kazee (2007) opines that unsolicited bids have been adopted in disposal of immovable assets. While Nathan and Sobel (1980) argue that unsolicited bids have been common in mergers, acquisitions and generally, the sale and disposal of equity stakes (Heron & Lei, 2006). In most cases they have been rated hostile resulting into what is termed as "hostile take-overs". In this context hostile bids have come to be defined as offers from the market that seemingly appear to be better than market value of assets and are offered for a limited time, with a term “you take or leave it”. USPs may be accepted or rejected (World Bank, 2017).

The criteria for selecting USPs has largely been dependent on whether the solution fronted by the USPs serves either immediate or future needs of government (World Bank, 2017; Heron et al., 2006). From this perspective USPs should provide solutions that are aligned with national development agenda and visions. Countries that are considered to have implemented a significant number of USPs has been Brazil. By 2015. it is revealed that Brazil had implemented over 50% of PPPs using USP models, commonly referred to as “Manifestacao de Interesse Privado” (Marques, 2018, 435). There exists attempt to provide incentivisation frameworks for USPs. What lacks however, are systematic process for acquiring USPs.

SOLICITED VERSUS UNSOLICITED PPP BIDS

A range of works have been developed on solicited and unsolicited bids. Solicited bids are bids solicited from the supply market based on the outcome of a rigorous internal planning process in government entities. Usually, solicited bids take into the short term and long-term economic and societal interests. While USPs, may not cater for such interests, proponents of USPs suggest that USPs provide innovative solutions that may not originate from public service. In this context, it is argued that public officials may in some cases have lesser knowledge on challenges, solutions to challenges and opportunities in their contexts.

By lacking such knowledge, public officials may not be able to match the pace of ser-vice delivery desirable by elected governments since they have to deliver their manifestos as their core mandate. Sebola (2014) reiterates an analogy of the mandate of public officials by echoing that public administration is the activity of delivering political manifestos. WB (2017) further guides that USPs may support government in identifying and prioritizing projects in their PPP pipeline and in some cases enable governments overcome problems related with initial stages of project assessments. In support of USPs, it is opined that project assessments require significant technical, institutional and financial resources that lack among governments especially in the developing world (World Bank,2017) Thus, by adopting USPs, governments can close technical, institutional and financial resource gaps. Since government may not need to hire a consultant to identify project ideas (common practice) and establish the viability of PPP projects.

Therefore, it is depicted that there is need to ensure that USPs align objectives with strategic national interests (World Bank, 2017). Notwithstanding, several scholars have provided guidance on the adoption of USPs (Baxter, 2020; Osei-Kei et al., 2020; Abel-Aziz & Nabavi, 2014; Angus, 2017). However, literature on unsolicited proposals in the context of PPPs remained remains limited compared to the solicited proposals (Osei Kyei & Chan,2021). Based on this background, this paper seeks to holistically explore the working and management of unsolicited proposals. Specifically, the paper seeks to identify the innovation ingredient that USPs provide, incentive framework for USPs and approaches that seek to make USPs competitive.

MATERIALS AND METHODS

The study adopted a systematic review of literature. Rother (2007) defines a posits that a systematic review is a methodological study that seeks to utilise database searches to aid an existing study. This is done to support the theoretical discussion of specific topic. Smith, Devane, Begley, & Clarke (2011), indicate that a systematic review of literature allows investigators to describe the quality of base of evidence, summarize, analyse and undertake comparison on conclusions while discussing conclusions made by other studies. Applied in this study, we adopted a systematic literature review of PPPs and procurement of PPPs using solicited and unsolicited mechanisms. We also reviewed incentive frameworks for PPPs while delving further to examine whether the innovation value from USP is considered during the design and application of wide-ranging incentive frameworks. This systematic review has been performed in accordance with the Preferred Reporting Items for Systematic Reviews and Meta-Analyses guidelines.

Moreover, the Campbell and Cochrane Economics Methods Group guidelines have been followed including search criteria, data extraction, synthesis and critical analysis. Web search engines such as Google Scholar, archives namely; research gate, and Elsevier were explored. While mots authors recommend websites such as Scopus, Emerald and EBSCO Hosts, the search on these specific websites was limited due to their sub-scription policies. In order to extent the search we search archives of research gate and academia due to their open access policy that allows free share of articles without sub-scription. searches on Google Scholar, research gate and academia.edu provide additional alerts and recommendations to other articles in the domain of our search.

The outcome of these searches was that over 250 articles were identified. An exclusion and inclusion criteria was applied with the review of abstracts. The review of abstracts involved search for key words such as unsolicited bids, methodology, findings and conclusion and recommendation. Based on the review of abstracts, a total of eighty one (81) articles are fully read to form the analysis. Were selected for full reads. Based on the full reads of selected articles, our synthesis and analysis is applied from which our findings, discussion, conclusion and recommendations are drawn. A systematic review has been adopted for similar studies. Siemiatycki (2009) adopted systematic reviews to study PPPs in transport. Nduhura, Lukamba, Molokwane, Settumba & Nuwagaba (2020) reviewed models for improving healthcare using a systematic literature review. Generally, other widely cited scholars with citations from 1,000 to currently highest citation figure of 2000 and on PPPs (Osei Kyei, Osborne, Hodge & Greve, 2007b; Savas & Savas, 2000; Grimsey & Lewis, 2007b; Yescombe, 2011; Hart, 2003) have used a systematic literature reviews.

RESULTS

Unsolicited Bids: Meaning, Practice and options

Most countries across the world recognise and have passed legislation for the adoption of unsolicited proposal in a PPP environment. According to World Bank (2017), unsolicited proposals refer to “an alternative to the traditional project initiation meth-od 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. Government has three options (Felsinger, 2008), when dealing with unsolicited bids namely:

- To negotiate directly with the original proposer;
- To obtain the legal right to the project and organising a competitive procurement process; or
- Transform the unsolicited proposal into a competitive procurement process with a mechanism for pre-defined advantage to the original proposer.

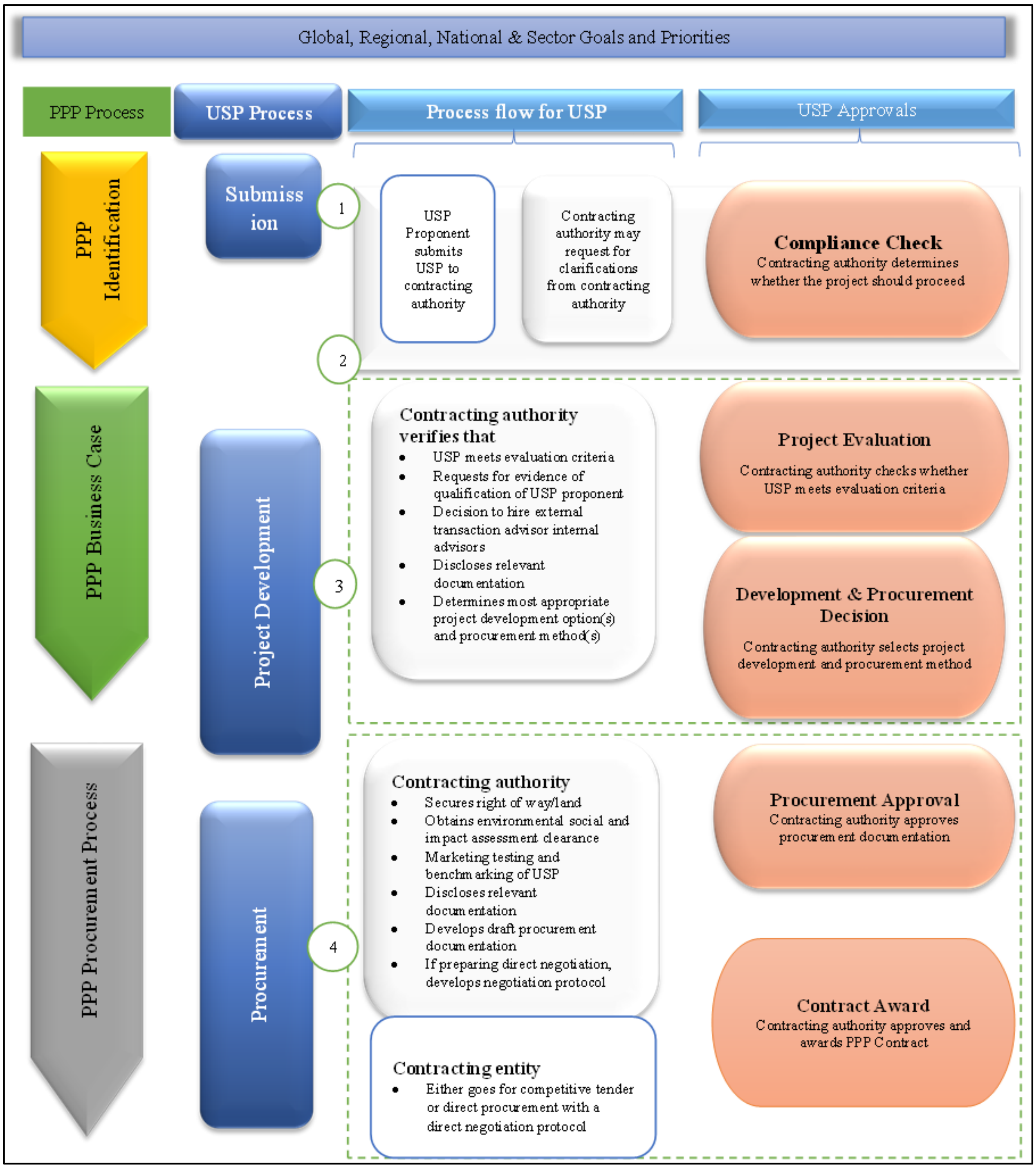
While such options are available, the option of direct negotiation in most cases has nor derived value for money. Secondly, the option of obtaining the legal right to the project and intellectual property and reverting ownership to government to commence a competitive process have not received much attention. The option of transforming an unsolicited proposal into a competitive process albeit solicited bid with some predetermined advantage to the original proposer seems to have attracted traction in the developed and developing world.

Process for administering USP

Existing literature by Marques (2018) and the World Bank (2017) indicates that a range of stages must be in place for managing USPs. While most countries like Uganda and Tanzania acknowledge that PPPs can be procured by USPs, attempts to develop regulations for operationalising USPs has been slow and in some countries not started. Notwithstanding countries like South Africa, Nigeria, Chile and Korea have developed regulations to guide the working of USPs. The design of USP procedure has largely been benchmarked on United Nations Commission on International Trade Law (UN-CITRAL) and World Bank USP guidelines. Perhaps the choice of such benchmark could be justified by the view that PPPs and mechanisms through which they are ap-plied involve international financiers, investors and thus mirroring international USP guidelines or regulations would instil confidence among investors and financiers of PPP procured through USPs.

According to WB (2017), USP process 4 staged processes should be followed, namely; submission, evaluation, project development and procurement. In this context as shown in Figure 1.

Figure 1: USP Process



Source: World Bank (2017).

From figure 1, it can be deduced from studies by Marques (2018) that the stages provided by World Bank (2017) with the general norm but with some limited variances. For ex-ample, Marques (2018) indicates that once the USP has been received, its merits are identified. If the merits exist, then the USP is improved and developed to attract competitive bids. If the USP does not provide merit, then it is disbanded. From development, an oversight board reviews the USPs before it is put up to the market for competitive offers. Existing data (World Bank, 2017) indicates that while such approach is implemented for USPs, whether generated internally before PPP offers are put to the market, national legislation require that feasibility studies with the support of Transactional Advisors and PPP

Units are undertaken and reports submitted for approval ap-proved usually by the central PPP Committee (GoU, 2010a; 2015b).

The implication suggests that strategic oversight governance is required before USPs are accepted. By having such controls can be aligned to strategic priorities and interests of the country. The failure for Leki expressway to provide alterative mobility routes for citizens is argued to have resulted into resentment of road toll PPP in Nigeria. Generally, when USPs do not meet national priorities, they are rejected. Once ap-proved by an oversight body usually known as a PPP Committee in countries like Uganda, Nigeria and Chile, then USP can proceed to the procurement stage. Once a procurement contract has been awarded, the winning bidder is given a period of time to conclude on financial closure.

Criteria for determining the admissibility of unsolicited proposals

Findings from literature indicate unsolicited bids are increasingly becoming one of the ways through which private investors engage in the delivery of public projects such as roads, airports, bridges, tunnels (Dugan, 2010; Osei Kyei et al., 2020). It is argued that Brazil rated as one of the emerging economies in the world has implemented most of its world PPPs through USPs (Marques, 2018). It is further acknowledged that most developing countries are adopting more USPs than ever before (Marques, 2018). Nwangwu (2019) resonates with similar view noting that in countries like Ghana, affordability, value for money, ability to deliver substantial technical, operational and financial capacity and efficient risk location alongside a demonstrated efficient risk allocation and alignment of USP objectives the national development agenda and serve the public interest and the needs and priorities of the public sector are viewed as key ingredients for granting a no objection to a USP.

Accordingly, a USP proposal is developed by any member of the public that is technically referred to as a "private party" (Takano, 2021; Osei Kyei & Chan, 2021). Upon receipt of the proposal, it is reviewed in order to determine its need. To determine the need, the public entity usually reflects on its strategic plan, national development plan, national or regional vision for instance EU, African Union Agenda 2063. If the need is justified, the private party is informed in writing of the decision to consider the proposal for further development. If this is considered, unsolicited proposal is then re-fined to meet the exact interests of the public entity. Upon completion, a transaction advisor is sourced through a competitive process. Once the transactional adviser (TA) is sourced, they will participate in undertaking a feasibility study against which bidders are invited to express interest to deliver a service under PPP. The shortlisted bidders are then required to provide a full proposal that is evaluated and tender awarded.

The World Bank (2017) consistently acknowledges that it has become common practice for governments to accept unsolicited proposals arising from the market in the context of scaling up infrastructure projects and service delivery. Unsolicited bids have been popular in developing countries (World Bank, 2017; Public–Private Infra-structure Advisory Facility (PPIAF, 2014). Notably, several PPP projects have been implemented through USPs. For instance, projects such as Crown Sydney Resort at Barangaroo, NorthConnex, the partial lease of Ausgrid, Sydney Metro Martin Place Station, West Gate Tunnel project, Port Philip Ferries, Adelaide Creative Industries Precinc (Angus, 2017), Cranbourne Pakenham sub urban rail line and Citylink Tullma-rine have been implemented using USPs (Chew, 2015).

While the practice of procuring of unsolicited bids was unpopular with traditional procurement, in the last two decades USPs have become popular and more so in developing economies (Hodge, 2003). In national policy, USPs have been largely accommodated in the market of PPPs (GoU, 2015; Osei Kyei et al., 2021; Marques, 2017). The acceptance of unsolicited proposals has been largely due to the innovative character that unsolicited bids provide (World Bank, 2017; Osei Kyei et al., 2021). In chorus, Baxter and Casady (2020) posit that unsolicited proposals tend to provide innovative ideas that would have otherwise not been considered or unknown to the public entity. This view was earlier illuminated by Erasmus (2015) that argues that at times public administrators may not be innovative enough in the delivery of public services. In order to improve the challenge USPs are largely adopted in the context of service delivery.

In infrastructure projects, unsolicited proposals (USPs) serve as: “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 (World Bank, 2017, v). A review of works by the World Bank Group (2018) reveals that 4% of PPP projects in the developing world have been initiated by the private sector and not by request from public organisations. A study by Neves & Kims (2017) on a review of PPI database suggested that 30% of projects recorded were acquired and implemented through unsolicited proposals.

Osei Kyei (2018a) reveals that unsolicited proposal have been adopted worldwide due to their innovative ability as they contribute to the overall infrastructure goals of countries, particularly where governments have limited technical and financial capacity to develop PPP projects (Hodge & Dellacha, 2007).

“Although unsolicited PPPs are often criticized, their application has been on the rise in the recent past, particularly in developing countries.” (Osei Kyei et al., 2019). As a mechanism within PPPs, USPs have been associated with corruption and missed value for money have made USPs to some extent unattractive despite the value that USPS provide (Marques, 2018). While most development agencies have associated USPs with uncompetitive behaviour, USPs are also associated with creation of ambience for corruption and perceived not to serve the public interest (World Bank, 2017). This trend is argued to have provoked high level of suspicion. This has been escalated by oversight agencies such as Office of Auditor Generals whose reporting on PPPs tend to escalate the hatred for PPPs (Papajohn, Cui & Bayraktar, 2011). This situation tends to worsen when USPs are involved. This is largely due to perceived loss of competition and complexity that surrounds the incentivisation framework for USPs when choice is made to adopt USPs. To change this trend, a range of actions have been proposed.

For instance, Zapatrina (2020) posits that USPs should be accepted if they meet a set criterion. For example, USPs should be adopted based on analysis to assess whether they meet strategic priorities, exhibit social attractiveness, alignment with sustainability development goals. Other factors for acceptance have been devoid of non-corrupt tendencies, low transactions costs, ability to derive fiscal accountability, transparency and accountability. In extension of the USP admissibility criteria, other studies have provided contributions to the USP body of knowledge. For instance, Osei-Kyei et al., (2018) concur with Zapatrina (2020) on the need to ensure that the USP champions priorities of the country. While the analysis of Zapatrina (2020) is elaborate, the analysis of Osei Kyei et al (2018) provides quite an extensive criterion, calling for the need for affordable fees, risk sharing, degree of local content, ease of proposal implementation.

Other issues for review of the USP proposal are cited as cohesion of consortium, efficiency of the service mechanism and generally environmental concerns. While environmental concerns are noted, we add to this criterion by recommending for the need to include social, health and safety maters into the criteria. This is based on the wide range of literature and experience that requires that environmental social impact assessments are undertaken before PPP projects (Nduhura et al., 2020). In Denmark, it is argued that the award criteria are based on quality and functionality, financial stability and less on organisation, cooperation and architecture (Werneck & Saadi, 2015). A notification period of ten (10) calendar days are given to bidders to express their dis-satisfaction if they believe that competition rules have been breached (Werneck et al., 2015).

Interpreting the Application of incentive frameworks for unsolicited proposals

The term “incentive” is a popular concept used for USPs in the market of public private partnerships (Abdel Aziz et al., 2014; Osei Kyei et al., 2021). traces its origin from broader discipline of organisational behaviour and now specialisations of economic psychology and recently in human resources management field (Pepper et al., 2013; Pepper, Gore & Crossman, 2015b). Zewawi et al., (2016, 4) defines an unsolicited proposal as “a proposal initiated by the private sector pursuing business prospects and submitted to the relevant authority”. According to Locke (1968), incentives are given on the basic idea that “individual's conscious ideas regulate his actions”. Among managers, earlier studies indicate that behavioural intentions can be incentivised by money and non-monetary measures as incentives. While in the study of PPPs, the term has been popularly used with limits in definitions.

Despite the absence of a universal meaning for the term “incentivise” in the theory and practice of PPPs, attempts have been made to describe approaches commonly used to incentivise performance in the context of PPPs deployment in service delivery. De-signing the most incentive approach is much quite complex but with the guidance pro-vided as an outcome of the study, we hope that an appropriate approach can be identified. In essence we argue that while incentive mechanisms are identified alongside guidance for their adoption provided, public managers should only consider options that maximise gains in public interest. The idea of providing for incentives or premiums, is to reward the private sector for their innovativeness (UNICTRAL, 2001).

While incentives are encouraged to motivate original bidders in the context of USPs, it is recommended that margins of preference applied should not be too high to deter competition from the PPP market (UNICTRAL, 2001). Baxter (2019) notes that a USP is one with an idea that is not already planned for in government's development plan and that government should only consider whether the idea promoted by the USP aligns with national development agenda. Where incentives in form of reimbursement is to be given to the original USPs, it is important that the USP promoter does not proceed to develop the proposal before securing an agreement on the cost (Baxter, 2019) and perhaps deliverables that should be contained in the USP.

Incentive Mechanisms for Unsolicited Proposals (USPs)

Findings from extended review of literature indicate that the arrival of unsolicited proposals from the market has been dominated by controversies (Takano,2021; Osei-Kyei et al., 2018) and limited frequency. According to Takano (2021) a range of frameworks exist for incentivising originators of USPs.

The automatic shortlisting approach

Usually commonly in South Africa. Under this system, the USP proponent is only granted an advantage of automatically competing in the final tendering round. This generates the most competitive tension of all the discussed procedures but is also most unlikely to encourage innovation. The discussion of the systems above shows that the more incentive that is granted the USP proponent under a particular system, the less the process is likely to generate competitive tension, and vice versa.

Bonus Framework

According to Hodges and Dallacha (2007) under a bonus framework, merit points are given in advance to the original proposal at evaluation of bids during a competitive tendering process. The objective of the advance merit points is aimed at giving a winning edge to the bidder that originated the unsolicited bid. In a bonus framework advance, merit points are awarded to bidders provided they have ranged between 5 to 10 per cent (Nwangwu, 2019). The practice is acknowledged to be used in Chile and South Korea (Zewawi et al., 2014; Osei Kyei, 2020). Other countries that have largely adopt-ed the bonus scheme have included Chile, Korea, Argentina and subnational governments in India. In the bonus challenge, the initiator of the USP is given predetermined top up advantage in form of points or percentages after the evaluation. Such points are however predetermined before the tendering and evaluation processes (Zewawi et al., 2016; Marques, 2018; Hodges et al., 2007).

Countries like Chile provide some variant in the execution of the bonus points scheme. According to Hodges et al. (2007), the originator of the USP is allowed to sale off their bonus points to any other bidder participating in the process, the winning bidder is required to compensate to the USP initiator (Zewawi et al., 2016). Another modality involves providing the USP originator some form of compensation should they choose to drop out of the competition. In Korea, the government usually takes over the "reimbursement of project development costs and the protection of intellectual property rights"

(Marques, 2018). According to Nwangwu (2019), the bonus points provided usually range from 5 to 10. While bonus points are awarded to the originator of the USP, attracting competition requires that such points are scaled in such a way that they do not scare away competition from the tendering process.

Swiss Challenge System (Counter Match)

In practice, like other approaches the Swiss challenge that originated from Switzerland. Once the evaluation process is complete, the original promoter of USP (original unsolicited bidder) is given chance to counter match the best evaluated bid (BEB). While the Swiss challenge is adopted by most countries like Brazil, Philippines, Italy, Sri Lanka, Taiwan and Malaysia, the challenge is applied with variants. For instance, in Philippines the original unsolicited bidder is given up to 40 days to respond to the request to counter match it. While in India, 20 days are provided for the USP initiator to counter match it or provide a better offer. Similarly, in Australia and Philippines, an average of 30days are respectively provided to counter match the best offer (Marques, 2018).

Unlike the bonus scheme, the application of the Swiss challenge does not provide for predetermined bonus points or percentages for the originator of the USP (Marques, 2018). If the original proponent does not match the better price, the project is awarded to the third party (bidder that emerges as the best in tender process). In the Philippines, the project is immediately awarded to the original proponent if it matches the price. For instance, Nwangwu (2019) reveals that Ikere George a 6MW dam project has been awarded based on Swiss Challenge in Nigeria. Potential participants in Swiss Challenge competitive tendering may perceive their chances of winning the bid as rather limited. The first reason is the time limitations on bidders in the exercise to challenge a well-prepared proposal from the original proposer. Another reason is that a close relationship between the original proposer and the authority may have been developed during the proposal development phase (Hodges et al., 2007; Verma, 2010). The Swiss Challenge is used in the Philippines, Italy, Guam, India (sub-national), Australia (sub-national) and Taiwan.

Best and Final Offer System

There exists effort to improve the Bonus System and Swiss Challenge or to combine the two approaches. A common feature of these innovations is the multiple tendering stages, giving an advantage to the original proposer who automatically qualifies for the last round of tendering, against the shortlisted bidders from the earlier rounds (Hodges et al., 2007; Verma, 2010). The bidders will now need to submit their Best and Final Offer to the authority for consideration. In the best and final offer system, the key element is multiple rounds of tendering, in which the original proponent is given the advantage of automatically participating in the final round. In South Africa, the two most advantageous bids are selected for a final bidding round. If the original proponent is not one of these two, it will still automatically be allowed to compete in the final round. In Argentina, if the original proponent’s offer is within 5% (percent) of the best offer, the original proponent will immediately win. But if the difference between the best bid and the original proponent’s offer is more than 5 percent but less than 20 percent, the two bidders will be invited to submit their best and final offers in a second round. In all cases, the final round is an open competition during which the preferred bid will be selected with no bonuses or advantages given.

Countries currently using the Best and Final Offer include South Africa, Argentina, and Costa Rica, although they apply different rules and other details in the process. In South Africa, the original proposer needs to enter the early stage of tendering. In practice, two of the best bids from this early stage will proceed to the final round, but if the original proposer is not one of the best bidders, they can still proceed to compete in the final round.

In Argentina, the original proposer is automatically awarded with the concession if the original offer is within 5 percent of the best offer. However, a Best and Final Offer round will be conducted if the original offer is more than five percent of the best offer, and the final round will be a competition on a level playing field with no advantage or bonus given to any party (Hodge et al., 2007). Another common feature is that the winning bidder needs to compensate the original proposer for the development cost. In light of the above discussion, it is clear that there are variations in unsolicited proposal practices worldwide, ranging from strictly refusing to accept unsolicited proposal, to creatively introducing an element of competition in the practice. Therefore, it is interesting to explore the Malaysian experience in dealing with unsolicited proposal. This could especially be from its unique perspective of a mid-ranking emerging economy and a developing country that has a protective economic policy for the indigenous group. At the same time such a country may be desiring to achieve greater economic growth through investment and co-operation with the private sector by promoting PPPs.

Reimbursing Project Development Costs

A reimbursement is a form of refund for a cost already incurred. In the context of PPPs, a reimbursement of costs involved in putting up the proposal by the original bidder may be considered as part of incentives for unsolicited proposal. If unsuccessful in the bidding process, the original proponent might expect reimbursement of its development costs from the government, the winning bidder, or both. Proponents invest time and money in the projects and expect to be compensated for their efforts (Zawawi, 2016). However, determining the true value of the unsolicited project proposal can be challenging. It is therefore important that the contracting authority (government) considers a fixed amount of budget that shall be reimbursed if the reimbursement strategy is to be used an incentive strategy for the unsolicited bid. When such incentive is used, other incentives such as matching up and bonus points may not apply. According to Marques (2018) the approach has been implemented in Korea. The reimbursement of costs by government is constraining and alternative policy option for ensuring that the public entities do not deep into their constrained budgets should be considered.

Direct Negotiations

Under this option, the government entity will usually seek to undertake direct negotiations with the original proposer (Felsinger et al., 2008). The idea behind this is to secure rights to own the project proposal and proceed to refine and adopt the proposal to attract competition through a tendering exercise. Zawawi (2016) suggests that when direct negotiations are used, the government entity will usually agree to compensate the proposer for their creativity and innovation. Perhaps this could explain why World Bank (2017) advises for the need for extreme caution when considering an unsolicited proposal. While the approach is used to some extent there, exist no clear standard framework that is used to arrive at the compensable amount. The absence of such framework may expose government entities to critique for non-transparency and thus corruption.

CONCLUSIONS AND RECOMMENDATIONS

USPs are seen as a panacea for creativity and innovation that is required for structuring the provision of public services. We conclude by joining echoes of existing studies by the World Bank (2017) and Marques (2018) acknowledge that USPs may be dangerous if governments lack standard procedures are not mainstreamed in existing PPP policies and regulations for handling USPs. While handling of USPs has three options, we observe that the option of transforming the unsolicited proposal into a competitive procurement process with a mechanism for pre-defined advantage to the original proposer provides more advantage over direct negotiation and compensation. This is be-cause in most cases, competition s leads to better value for money in the delivery of public services. Similarly, we provide for incentivization of the original PPP proposer. In this regard, a range of USP incentivisation options are provided; Swiss challenge system (counter match), best and final offer system, bonus framework, reimbursing project development costs, direct negotiations.

This study recommends the use of bonus framework since it provides a much clearer and transparent approach in incentivising the effort of the USP proposer. However, we recommend that if bonus approach is to be used, there is need to indicate the bonus points that in bidding documents that provide a foundation to attract competitive bids from the market. If the USP proposer fails to win despite the bonus points advantage, they should not receive any other advantage. We note that USP proposals may come along with intellectual property in form of patents. In the letter of acceptance for adoption of USP to attract competitive bids, there should be requirement that by accepting to bid, the USP proposer relinquishes its ownership of any intellectual rights helden in the original USP proposal in favour of the applicable government entity whatsoever if applicable. The absence of such clause may risk government that adopt USPs to damages if IPRs are not relinquished.

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While options have been provided for reimbursement of costs by the state is unfavourable. This paper recommends that winner of the competitive bid round should be able to reimburse the original USP proponent of the cost expended in developing the USP project. A policy option should be developed in country's USPs procedure to cause a valuation of USP bid costs with average market price that may need to be considered. This is vital since ultimately the winning bidders will factor the reimbursed costs in the fee paid by user of the PPP service procured through a USP. We add to the knowledge of incentive frameworks for PPPs by recommending the use of margin of preference schemes. In a margin of preference scheme, after a review of the technical bids, the bids that are successful are taken to the financial stage for review. Once the financial bids have been reviewed, we could add a margin of preference onto the financial bid to create an incentive bonus for the original USP.

The application would follow the various steps such as: evaluate technical bids competitively and apply margin of preference to technical bid only. Since USPs are adopt-ed for innovation purpose, this method is recommended since the non-original USP may provide better innovation than original bid. by allowing greater competition on the technical bid assessment stage. In this approach, a margin of preference of 5 to 10 points would then be applied to the financial bid only similar to a margin of preference in traditional procurement. For example, if the original bidder (unsolicited proposal) provides a bid at a price USD 102 and the best evaluated bidder provides a price of USD 100. in case the margin of preference of 10% is applied, the unsolicited proposal price shall be USD100 x 1.1%=USD110. In such a scenario, while the unsolicited proposals price was higher than the best evaluated bidders' price by USD1, when the margin of preference is applied, the best evaluated bidders' price in a competitive tendering process becomes more expensive when the margin of preference is applied.

From the experience of Lekki Express by road, we recommend that there is need for resource documents for approval of USPs whose ingredients would include criteria for admissibility. timelines, revision modalities for USPs and the need for the original USP bid and others to align propositions with national priorities. Citizen involvement is important in the design, and implementation of PPPs. During the involvement, representative democracy usually prevails but due to its ills there is need to reduce such ills by organising events like road shows and talk shows where the citizens as customs can directly engage. Osei Kyei et al. (2018) proposes the need to consider environmental concerns to the criteria for selection for admissibility of USPs. While such criteria align with sustainability of the USP service, we recommend for the need to enhance such criteria to include social, health and safety matters into the criteria. By including such as part of the criteria we reduce a potential for increasing the responsive of bids at the environmental social and impact assessment (ESIA) stage and associated delays that are realised when PPP proposals do not match the criteria for ESIA.

The cost reimbursable approach does not provide an approach for valuation and due diligence for alleged costs incurred. The absence of such framework may expose government entities to critique for non-transparency and thus corruption. We therefore recommend that countries should establish frameworks for valuation and due diligence on costs. This practice is recommended as costs by the USP originator may not reflect market value and thus inflated. In addition, we argue that, the costs incurred need to be incorporated into the fees or charges that the citizens must pay for the service.

Future research

While the paper has attempted to provide to the knowledge of USPs as a procurement mechanism for PPPs, future research should focus on:

- Factors for choice of USP incentivisation methods;
- The impact of USP regulation framework on the value for money proposition of PPPs procured through USPs.

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