



Republic of Namibia

Draft Guidelines on Unsolicited Proposals for PPP Projects

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The PPP Unit, Ministry of Finance, Namibia

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List of Acronyms

GRN	Government of Namibia
HPP	Harambee Prosperity Plan
IDD	Integrity Due-Diligence
NDP	National Development Plan
OPP	Original Project Proponent
PE	Public Entity
PPP	Public Private Partnership
PSF	Project Screening Framework
RFP	Request for Proposal
RFQ	Request for Qualification
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 Proposals
VAT	Value Added Tax

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1. Introduction

In 2013, the Government of Namibia (GRN) launched an initiative towards attracting private investments in the areas of economic, social, municipal and industrial assets following the creation of a national Public Private Partnership (PPP) Policy. The Namibia PPP Policy proposed the establishment of a PPP Committee and a central PPP Unit under the Ministry of Finance, bodies which were subsequently established under the PPP Act, Act 4 of 2017 (hereinafter the PPP Act). These entities are empowered with the capacity and knowledge to determine whether the PPP route is the appropriate procurement option available to government for a particular project and, if this is determined to be the case, to assist Public Entities and Line Ministries to transact a given project through the PPP.

The PPP Policy and Manual provide some guidance on Unsolicited Proposals (USP). The Manual, which provides guidelines to Public Entities for implementing PPP projects in Namibia, was drafted in 2013 prior to the enactment of the PPP Act in 2017 and has not been formally issued under the Act. The PPP Act generally outlines a process for Public Entities to deliver solicited PPP projects, granting additional discretion to Public Entities (section 4 of the PPP Regulations) to also consider USPs. Since the inception of the PPP Act, Public Entities have been presented with a number of USPs by the private sector to consider for PPP implementation, however in absence of a legal framework, Public Entities and Government in general are at odds processing and implementing these projects.

The Namibia PPP Manual is a structured guideline containing instructions on processes and procedures to be followed during various stages of the PPP process for the PPP Committee and the PPP Unit, specifically guiding the PPP Unit in carrying out its defined core function as a technical secretariat. The guidance note in Annexure 15 Manual provides an overview of a process that could be undertaken by Public Entities to consider USPs, however the guidance is not legally binding nor updated with international best practices since the Policy and Manual were produced in 2013.

It is against this background that the PPP Unit seeks to revise Annexure 15 of the PPP Manual to provide a comprehensive and updated Unsolicited Proposal Framework for Namibia, to be issued as Guidelines to give effect to practical implementation of section 4 of the PPP Regulations. These Guidelines provide a clear direction to all USP stakeholders which will be legally binding to all projects considered as USPs under the PPP framework in Namibia. The Unsolicited Proposal Framework sets out a clear and fair process to procure and implement USPs in a manner, which is transparent and competitive. In addition, the USP Guidelines are based on international best practices and are aligned with the PPP Policy, the PPP Act and PPP Regulations as well as the PPP Manual. Henceforth these Guidelines will be applicable to all USPs in Namibia.

2. Definition of an Unsolicited Proposal

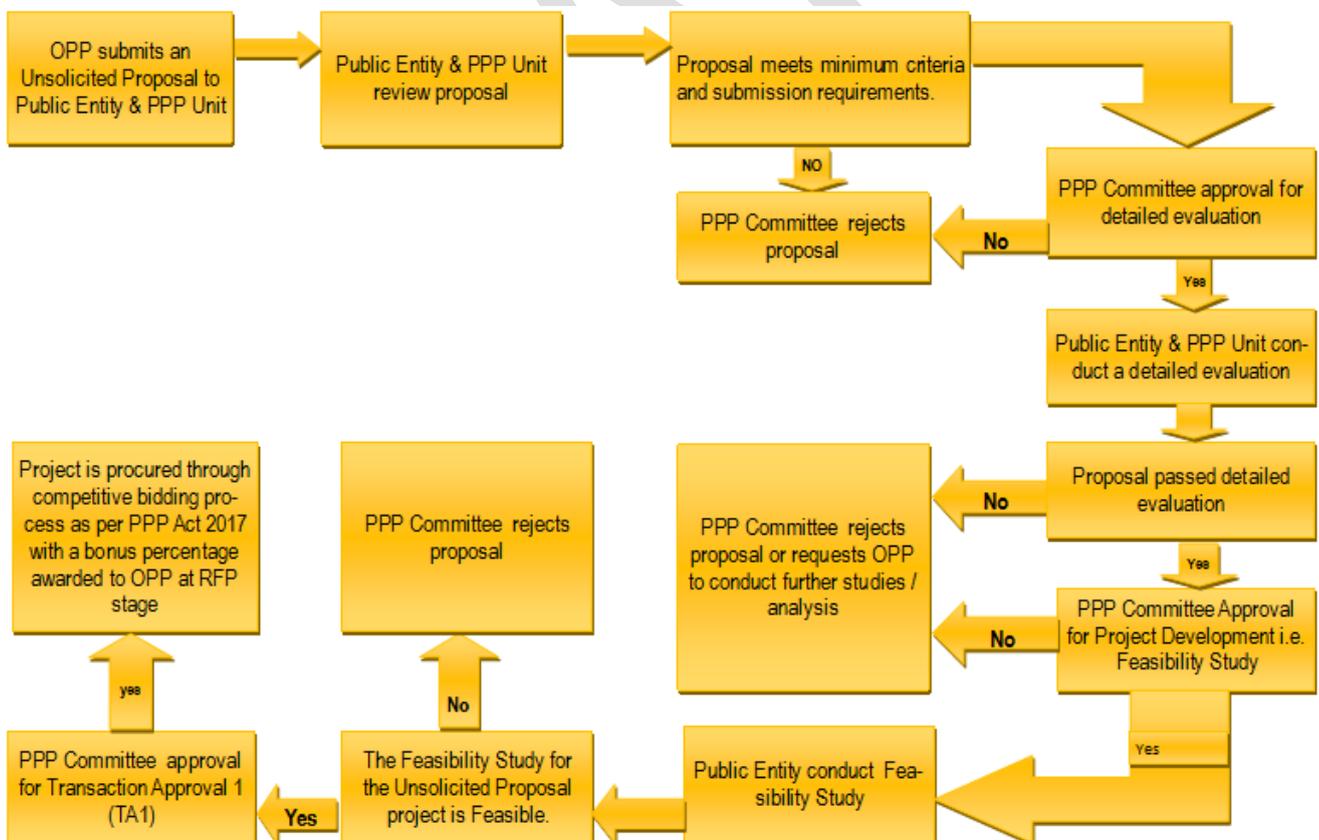
An Unsolicited Proposal is a proposal made by a Private Party to undertake a Public-Private Partnership project submitted at the initiative of the Private Party. The project concept proposal should meet the following requirements:

- I. The proposed project is not listed in the Government’s Projects (in PE’s Strategic Plan, NDP, HPP or any such similar applicable plan) or PPP Pipeline.
- II. The proposed project is in public interest, and the scale and scope of the project is in line with the strategic vision and requirements of the Public Entity, and no direct government guarantee, subsidy, or equity is required in the unsolicited proposal.
- III. The proposal must contain 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

The Private Party (including individuals, companies and consortiums) may submit an unsolicited proposal and will be referred to as an Original Project Proponent (OPP).

2.1 Process Flow for the Evaluation of Unsolicited Proposals

To maintain a fair and transparent process, the Public Entity shall follow the evaluation process below to assess an unsolicited proposal;



Notes to the Flowchart:

- i. The Public Entity in consultation with the PPP Unit determines whether the submission constitutes an unsolicited proposal in line with the minimum criteria and meets the submission requirements.
- ii. Based on a successful outcome of the review of the proposal against the minimum criteria and submission requirements, the Public Entity shall seek approval from the PPP Committee for the proposal to be considered for a further detailed assessment.
- iii. The Public Entity in consultation with the PPP Unit conducts a detailed evaluation of the proposal. Following a successful outcome of the detailed evaluation, the Public Entity shall seek approval from the PPP Committee to commence Project Preparation i.e. Feasibility Studies.
- iv. The Public Entity will undertake or cause to be undertaken a feasibility study. Depending on a positive outcome from the Feasibility Study, along with other related assessments as instructed by the Committee from time to time, the Public Entity shall seek TA 1 approval from the PPP Committee.
- v. Once the PPP Committee has provided TA 1 approval, the Public Entity will commence with a competitive bidding process as outlined in the PPP Act 2017 apart from an incentive (advantage) provided to the OPP in the form of bonus points in the financial proposal during RFP stage.

3. Key Considerations in the implementation of Unsolicited Proposals

The key principles that guide the USP evaluation process are as follows:

1. **Public interest**- Design and implement projects to serve public interest and ensure that the projects continue to serve the public interest.
2. **Value for money** -A function of service outcome, risk transfer and financial implications so as to ensure greater value for money to the Government
3. **Transparency**- Ensuring that the procurement of private partners is transparent by disclosing relevant project information, policies, and formal approvals to allay stakeholders concerns.
4. **Risk Allocation**-Optimal risks sharing of project risks through allocating risks to the party best able to manage particular risks.
5. **Affordability**-The resource demands of the project should not put pressure on the financial and technical capacity of the relevant institution and or government 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.
6. **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.
7. **Competitive Pressure** - Select private partners through competitive bidding procedures using varieties of selection criteria focused on technical and financial consideration.
8. **Accountability**- Public Entities continue to be accountable for service delivery including service delivery via PPPs.
9. **Uniqueness of the project** - Innovative ideas, design, method, approach, financial and technical solutions, alternative ways of providing service or processes, products or methods
10. **Capability of the OPP** - The Private Party must demonstrate financial,technical and management capability to implement the PPP project.

4. Evaluation of Unsolicited Proposals in Namibia

4.1 Submission and Preliminary Assessment of an Unsolicited Proposal

- a) The OPP may identify a project to be implemented under a PPP model and submit a project concept to the relevant Public Entity and the PPP Unit providing a description thereof and related documents including any preliminary feasibility or feasibility studies or an estimated cost of the feasibility study of the project. Ensure that information required for PPP Suitability and Screening are duly furnished by the OPP in order to carry further analysis by the PE. The proposal shall contain the following in order to meet the submission requirements:
 - i. Concept note indicating the basic information of the unsolicited proposal including:
 - The proponents's name, address, identification or registration number (if company), VAT registration number and the contact details of its authorised representative
 - Objectives, scale and scope of the project.
 - Indicative Operational Plan and Implementation period
 - Description of Innovative Approach / Technology/ Design / Method
 - The OPP will provide an undertaking on meeting the Integrity Due-

- Diligence (IDD criteria) as set out in Clause 4.1.(e) (ii)
- Other relevant information
- ii. A preliminary feasibility study containing scale, scope, technical, commercial, financial, demand and market analysis of the project;
 - iii. Applicable Legal and Regulatory Framework
 - iv. Proposed Project Site and its appreciation
 - v. Requirements for trunk infrastructure and connections to existing assets or services
 - vi. A description of the environmental and social features of the Proposed Project
 - vii. A preliminary assessment of Economic Feasibility or a Cost-Benefit Analysis
 - viii. A preliminary Funding and Financing Plan
 - ix. Details of the OPP technical, commercial, managerial and financial capabilities with suitable evidence;
 - x. Principles of the PPP contract including risk assessment and sharing, options analysis and commercial principles;
 - xi. The nature of information which is proprietary.
 - xii. Itemised genuine expenditure on the Studies for USP preparation
 - xiii. OPP shall pay review fee in the favour of PPP Directorate, Ministry of Finance at the time of presenting the USP. The review fee shall be determined as follows:

USP Review Fee

Estimated Capital Cost of the Proposed Project	Review Fee (%age 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%

The USP will not be reviewed until the funds have been paid in full and cleared. Payment of the Review Fee is non-refundable and does not create any obligation on the part of the Public Entity and the PPP Unit toward the OPP.

Minimum Evaluation Criteria for an Unsolicited Proposal

No.	Minimum Evaluation Criteria
1	The project is not already listed and/or registered in the list of priority projects identified by the Public Entity and/or the PPP Pipeline maintained by the PPP Directorate.
2	No direct government guarantee, subsidy, or equity is required in the unsolicited proposal. <i>(While projects that do not require government guarantee, subsidy or equity are usually preferred, it does not imply that an unsolicited proposal is liable for rejection only because of any form of government support is required. Other factors may also be considered.)</i>
3	The project provides 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
4	The OPP meets the Integrity Due-Diligence Criteria
4	The project is in public interest, and the scale and scope of the project is in line with the strategic vision and requirements of the Public Entity.
5	The OPP’s proposal of risk-sharing is optimal. Should any variations to risk-sharing be required, proposals shall be reviewed on a case to case basis.
6	The cost of the project exceeds a pre-decided threshold project value of N\$10 million
7	The proposal is financially viable and it has the potential for securing private financing.
8.	Preliminary feasibility and / or assessment should not be older than 3 years.

- b) The Public Entity and the PPP Unit may undertake to conduct a preliminary assessment of an unsolicited proposal to determine if the submission constitutes an unsolicited proposal in line with the minimum criteria specified in the table 1 above. Besides, undertake a PPP Suitability assessment based on the above information provided by OPP.
- c) The Public Entity may ask for the additional information and/or clarifications from the OPP in order to check the suitability of the project.
- d) The Public Entity reserves the right to further consider, or not consider, unsolicited proposals beyond this stage at its absolute discretion.

- e) Following a successful outcome of the preliminary assessment, the Public Entity shall seek approval from the PPP Committee to progress to a detailed evaluation of the proposal. Responsibilities during USP submission
- i. Original Project Proponent (OPP) responsibilities during USP submission
 - The OPP submits a well-developed proposal to the Public Entity and a copy to the PPP Unit at any time during the year.
 - The Unsolicited Proposal must meet the minimum criteria and submission requirements.
 - OPP, If requested by the Public Entity, shall provide additional documents and clarifications about the USP in written form in time bound manner.
 - ii. Government responsibilities (Public Entity and the PPP Unit) during USP submission
 - The Public Entity receives the proposal and checks the proposal for compliance i.e. evaluates the unsolicited proposal as per the minimum criteria and submission requirements.
 - The Public Entity communicates in written form with the OPP on the outcome of the assessment, whether the proposal is rejected or recommended for further evaluation.
 - The Public Entity shall undertake the required investigations to ensure that the OPP meets the Integrity Due-Diligence (IDD criteria) set out as follows:
 - Ethical Standards: The OPP does not appear on any national or globally recognized blacklists.
 - Insolvency: The OPP 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 adverse decision against OPP in any legal proceedings.
 - National Obligations: The OPP has fulfilled its obligations to pay taxes and statutory social-security contributions in the jurisdiction if applicable.
 - Criminal Behaviour: The OPP has not, and its directors or officers have not, been convicted of any criminal offence related to professional conduct 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.
- f) **Intellectual property**
- If the OPP wishes to request protection of proprietary information contained within its proposal, 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 proposal without the proprietary information. The proposal including the proprietary information must be accompanied with a registration of intellectual property from the Intellectual Property (IP) Department in the Business and Intellectual Property Authority (BIPA) of Namibia.

g) Disclosure

- Following the approval of the preliminary assessment by the PPP Committee, key information on all unsolicited proposals during submission, evaluation, project preparation and procurement will be published on the respective Public Entity's website. PPP Unit may also publish the same on its website. The information shall include details of the proponent and proposal, the result of the assessment of the proposal, the project advisor appointed and reasons why the proposal has progressed through the stages.
- The Public Entity will consult with the OPP before any information is disclosed to ensure that commercially sensitive information remains confidential. Generally, the Public Entity and PPP Unit would endeavour to publish the key information of all the unsolicited proposals that are successful in the preliminary assessment and subsequent stages. The PPP Committee considers each request on its merit and may agree not to disclose a proposal.

4.2 Evaluation of an Unsolicited Proposal

- a) Following the approval by the PPP Committee for the unsolicited proposal to proceed to a detailed evaluation, the Public Entity undertakes a detailed assessment of the proposal at a pre-feasibility level using the Project Screening Framework (PSF) in consultation with the PPP Unit.
- b) The Public Entity evaluates the potential benefit to the Public Entity and end-users using the assessment criterion based on the guiding principles specified in point 4 of this guideline.
- c) Following a positive outcome from the detailed Stage 2 screening and the proposal meeting the assessment criterion, the Public Entity submits the assessment report and recommendations to the PPP Committee for approval to progress to Project Preparation.
- d) Approval of the USP during the Evaluation stage does not create an obligation on the part of the Public Entity or PPP Unit toward the OPP.
- e) **Responsibilities during evaluation of an Unsolicited Proposal**
 - i. Original Project Proponent (OPP) responsibilities during evaluation of an Unsolicited Proposal
 - The OPP is responsible for responding in writing to requests for further information. The information to be provided will depend on the size and complexity of the proposed project.
 - ii. Government responsibilities during evaluation of an Unsolicited Proposal

The Public Entity and the PPP Unit are responsible for:

- Requesting further information from the OPP, if required, in written form. This may involve Public Entity's requirements for clarification through meetings with the OPP, which are properly minuted and communicated in

writing.

- The Public Entity, in consultation with the PPP Unit, shall evaluate the unsolicited proposal in more detail at a pre-feasibility level as a minimum and assess the proposal against the assessment criterion based on the guiding principles.
- The Public Entity may hire Transaction or External Advisors, when necessary, to verify aspects of the proposal or to provide additional guidance in decision making.
- Before entering the Project-Preparation, the Public Entity shall prepare an Assessment Report for review and approval by the PPP Committee.
- The Public Entity shall notify the OPP of the evaluation outcome, once it is approved by the PPP Committee.

4.3 Project Preparation (Feasibility Study) for an Unsolicited Proposal

- a) Following the approval by the PPP Committee for the unsolicited proposal to proceed to the project development stage, the Public Entity shall conduct a feasibility study to determine whether the proposed project is feasible in line with the requirements of the PPP Act 2017, whether the project is expected to generate value for money through PPP delivery, and how the project should be structured to maximize value for money. Public Entity may appoint Transaction Advisor to assist it in conducting the procurement process if they do not have internal capacity.
 - b) At the end of Project Preparation, the Public Entity reassesses the project, and if found feasible as a result of the appraisal criteria based on guiding principles, the Public Entity determines whether the project should proceed to procurement and seeks TA1 approval from the PPP Committee.
- a) Responsibilities during project preparation;
 - i. Original Project Proponent (OPP) responsibilities during project preparation
 - The OPP shall not be involved in Project Preparation, however the OPP may be consulted to provide any information required.
 - If requested by the Public Entity, the OPP shall provide clarifications about the proposal in written form.
 - ii. Government responsibilities during project preparation
 - The Public Entity and Transaction Advisors in consultation with the PPP Unit shall undertake Project Preparation i.e. Feasibility Study, as per the requirements of the PPP Act, 2017.
 - The Public Entity shall seek Transaction Approval 1 (TA1) from the PPP Committee once the Feasibility Study is successfully completed
 - The Public Entity shall notify the OPP of the outcome once the feasibility study is approved by the PPP Committee as Transaction Approval 1 (TA1).

4.4 Procurement of Private Partner

- a) Upon Transaction Approval 1 (TA1) from the PPP Committee for the feasibility study of the unsolicited proposal, the Public Entity shall prepare to undertake a competitive procurement process in line with the 2-stage procurement process as outlined in the Public-Private Partnerships Act, 2017. Public Entity may appoint Transaction Advisor to assist in conducting the procurement process if they do not have internal capacity.
- b) The Public Entity shall seek approvals (i.e. Transaction Approval 2A, 2B, 3 and 4) from the PPP Committee at various stages of the procurement process as defined in the Public-Private Partnerships Act, 2017.
- c) The Public Entity shall ensure that Competing Bidders have timely and equal access to all the relevant documentation about the Project as the OPP. It shall include all relevant studies undertaken during the Project-Preparation stage, as well as the tender documentation, draft PPP Contract and proposed risk allocation developed during the Procurement stage.
- d) The Public Entity shall strive to maximize competition in the Tender. The Public Entity with approval of PPP Committee, shall provide to the OPP a 10 percent Bonus to the Financial Bid evaluation score during the RFP stage. Except for this incentive, the OPP will have the same rights and obligations as any other Competing Bidder, as outlined in the Tender documentation.
- e) Except for the incorporation of an incentive (bonus points) for the OPP, the USP procurement process shall be aligned with the publicly initiated proposals procurement process as per the PPP Act of 2017.
- f) In the event that the OPP participates in the procurement process and is not the successful bidder of the project, the winning bidder shall reimburse the OPP for the genuine expenditure on the studies prepared by OPP in the preparation of the unsolicited proposal duly recommended by the Public Entity and approved by the PPP Committee. There will be no such refund, If OPP decides not to participate in the bidding process.

Annexures

Annexure A: Unsolicited Proposal Submission Requirements Checklist

No.	Item	Yes	No	Remarks
1	<p>Concept note indicating the basic information of the unsolicited proposal including:</p> <p>Objectives, scale and scope of the project.</p> <p>Implementation period</p> <p>General description of new technology/new concept (if applicable)</p> <p>Other relevant information</p>			
2	A preliminary feasibility study containing scale, scope, technical and commercial details of the project;			
3	<p>Genuine Expenditure on the Studies for USP preparation (For reimbursement purpose, if OPP is not the successful bidder)</p> <p><i>*No change or amendment in this figure allowed, once submitted.</i></p>			
4	Details of the OPP's technical, commercial, managerial and financial capabilities;			
5	Proprietary information and documents of proprietary nature shall be submitted in a sealed envelope.			
6.	An Undertaking to the effect that the OPP meets the IDD Criteria			
7.	Receipt of USP Review Fee			