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# Procurement under the PPP Bill - Unsolicited Procurement



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In our last article, we discussed solicited procurement as one of the three types of procurement proposed under the PPP Bill. In this article, we discuss unsolicited procurement and how private entities can initiate PPP Projects by submitting unsolicited bids to contracting authorities.

### **Submission and initial screening of unsolicited project proposal**

A private entity may at any time make an unsolicited proposal to a contracting authority for the development of a PPP Project. Upon receipt of the unsolicited proposal, a contracting authority is required to conduct a preliminary examination of the proposal within fourteen (14) days. The unsolicited proposal is assessed on the following factors:

- (a) innovation, originality and public benefit;
- (b) commercial feasibility and recoument of investment;
- (c) technical specifications and scope of work;
- (d) social, economic and environmental impact of the proposed project;
- (e) cost-effectiveness and value for money;
- (f) financial model and key financial indicators;
- (g) land and site requirements; and
- (h) the proposed PPP model from the variations contained in the PPP Bill or a hybrid of the variations, such as build and transfer, build operate and transfer, build transfer and operate, and so on.

When submitting an unsolicited proposal, a non-refundable fee should be paid to cover the cost of processing and evaluating the project. Unsolicited bids will be considered on a first come first served basis and a record of all bids will be kept to identify the initial bidder for a

proposed project.

### **Preliminary approval of Unsolicited Project**

If a contracting authority is satisfied an unsolicited proposal has met the evaluation criteria, it is required to submit the evaluated proposal to the PPP Office within seven days, together with a recommendation and a report of the preliminary evaluation.

The PPP Bill proposes that before evaluating an unsolicited proposal received from a contracting authority, the PPP Office should inspect the proposed project site, and then assess within fourteen (14) days, whether the unsolicited proposed project is suitable for further development as a project.

An unsolicited proposed project deemed to be suitable for further development is submitted for further consideration to the PPP Technical Committee and thereafter to the PPP Council for preliminary approval. The PPP Office and contracting authority conduct a due diligence on a project that received preliminary approval by the PPP Council.

### **Negotiation and Procurement of Unsolicited Project**

If the PPP Council is satisfied with the due diligence report on the unsolicited project, it approves the project and directs the contracting authority to commence negotiations with the bidder, without subjecting the proposal to competition from other bidders. This is a departure from the existing legal framework that makes it mandatory for unsolicited proposal to be subjected to a competitive process where other bidders are invited to submit comparable or better proposals.

However, the PPP Bill still retains the requirement to subject unsolicited proposals to a competitive process in circumstances where the PPP Council is of the view that a particular project is best suited to be procured subject to a competitive process. In such a case, a contracting authority issues an advertisement

for competing bids outlining the following:

- (a) the general nature and scope of the unsolicited proposal;
- (b) the project location and scope of work; and
- (c) the bid submission instructions.

Competing bids are evaluated against the initial unsolicited proposal using the following criteria:

- (a) novelty and proposed approach to implementing the project;
- (b) scientific, financial, technical and socio-economic merits of the competing proposal;
- (c) potential to contribute to the contracting authority's mission;
- (d) capacity and experience of the competing bidder and the qualifications and experience of the key personnel of the competing bidder;
- (e) benefit to the public; and
- (f) any other factors applicable to that particular project.

After evaluating the unsolicited proposal and competing proposal, a contracting authority may:

- (a) accept the unsolicited proposal and reject the competing proposal;
- (b) accept a competing proposal and reject the unsolicited proposal;
- (c) reject both the unsolicited and competing

proposal; or

- (d) accept both the unsolicited and a competing proposal if accepting both proposals is beneficial to the Government. The PPP Bill is silent on how this option would work in relation to the PPP contract and whether the two bidders would collaborate in implementing the PPP project.

A technical and financial due diligence is conducted on the preferred bidder by the PPP Office and the contracting authority. The evaluation and due diligence reports are submitted to the PPP Technical Committee for consideration and submission to the PPP Council for approval to commence negotiations for the PPP contract.

### **Conversion of Unsolicited Procurement to Restricted Solicited Procurement**

The PPP Bill anticipates the possibility of a contracting authority receiving more than one unsolicited proposal for the same project. If the project has high interest from the market and the proposals have competent but alternative technologies that could both deliver value for money to the Government, a contracting authority may use restricted tendering procedures that limit competitive bidding to the bidders that submitted the unsolicited proposals, subject to approval by the PPP Office.

In the next article, we consider direct procurement and the circumstances in which contracting authorities may resort to this non-competitive procurement method and negotiate a PPP agreement without using the solicited or unsolicited procurement procedures.

# CONTACT



**BRENDA MUTALE CHANDA**  
Co-Managing Partner

M: +260 972 565 540

E: [brenda.chanda@moiramukuka.com](mailto:brenda.chanda@moiramukuka.com)



**MUMBI MULENGA**  
Senior Associate

M: + 260 968 511 535

E: [mumbi.mulenga@moiramukuka.com](mailto:mumbi.mulenga@moiramukuka.com)



[business@moiramukuka.com](mailto:business@moiramukuka.com) | +260 211 410 055 | [www.moiramukuka.com](http://www.moiramukuka.com)

## Our Offices

Moira Mukuka Legal Practitioners  
Block A, First Floor, LA Complex Plot 4987, Los Angeles Boulevard,  
Longacres, Lusaka. P. O. Box 320152, Lusaka, Zambia.

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