



WORLD BANK GROUP
Infrastructure, PPPs & Guarantees

Unsolicited Proposals: Cure or Curse?

A Workshop on Managing USPs in
Infrastructure Projects

Seoul, Korea, Nov 7, 2018

PPIAF
Enabling Infrastructure Investment

 **THE WORLD BANK**
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Session I: The Challenges and Opportunities of USPs

What was the rationale and purpose for the Policy Guidelines?
What are USPs and how do they differ from publicly-initiated PPPs? What are the challenges and opportunities of USPs?

The Rationale and Purpose for the USP Policy Guidelines

- The Policy Guidelines aim to provide guidance and recommendations for governments that are considering developing or reviewing a USP policy framework based on international best practices.
- The Guidelines consist of three documents:

VOLUME I

Main Findings &
Recommendations

VOLUME II

Guidelines for the
Development of a Policy
for Managing
Unsolicited Proposals

VOLUME III

A Review of
Experiences with
Unsolicited Proposals

What are USPs?

Simple Definition of a USP

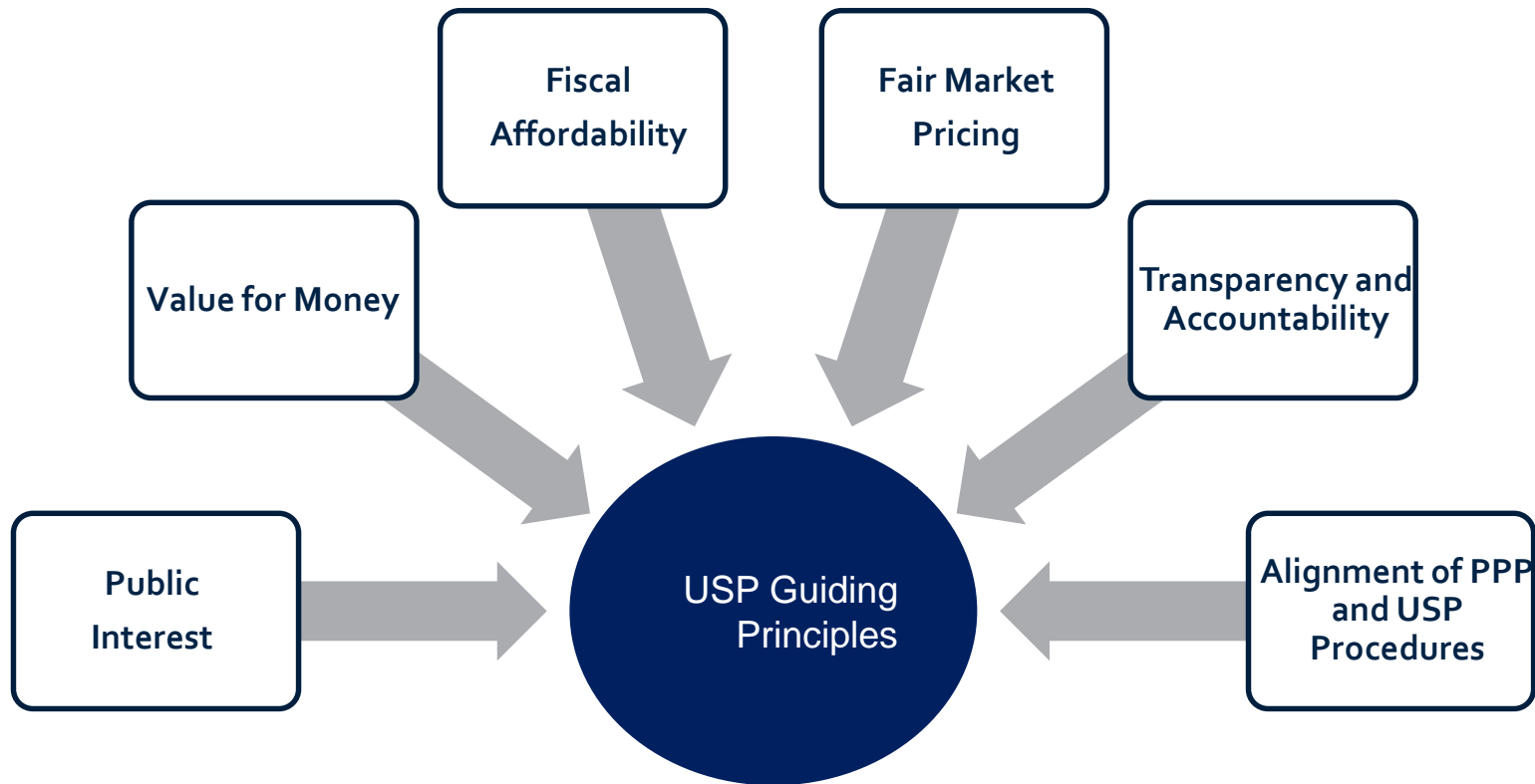
A USP is a proposal for a Project submitted by a Private Entity to the Public Agency without an explicit request by the Public Agency.

Other Definitions of a USP

A USP is a proposal for a Project Concept submitted by a Private Entity to the Public Agency without an explicit request or solicitation by the Public Agency, that is either:

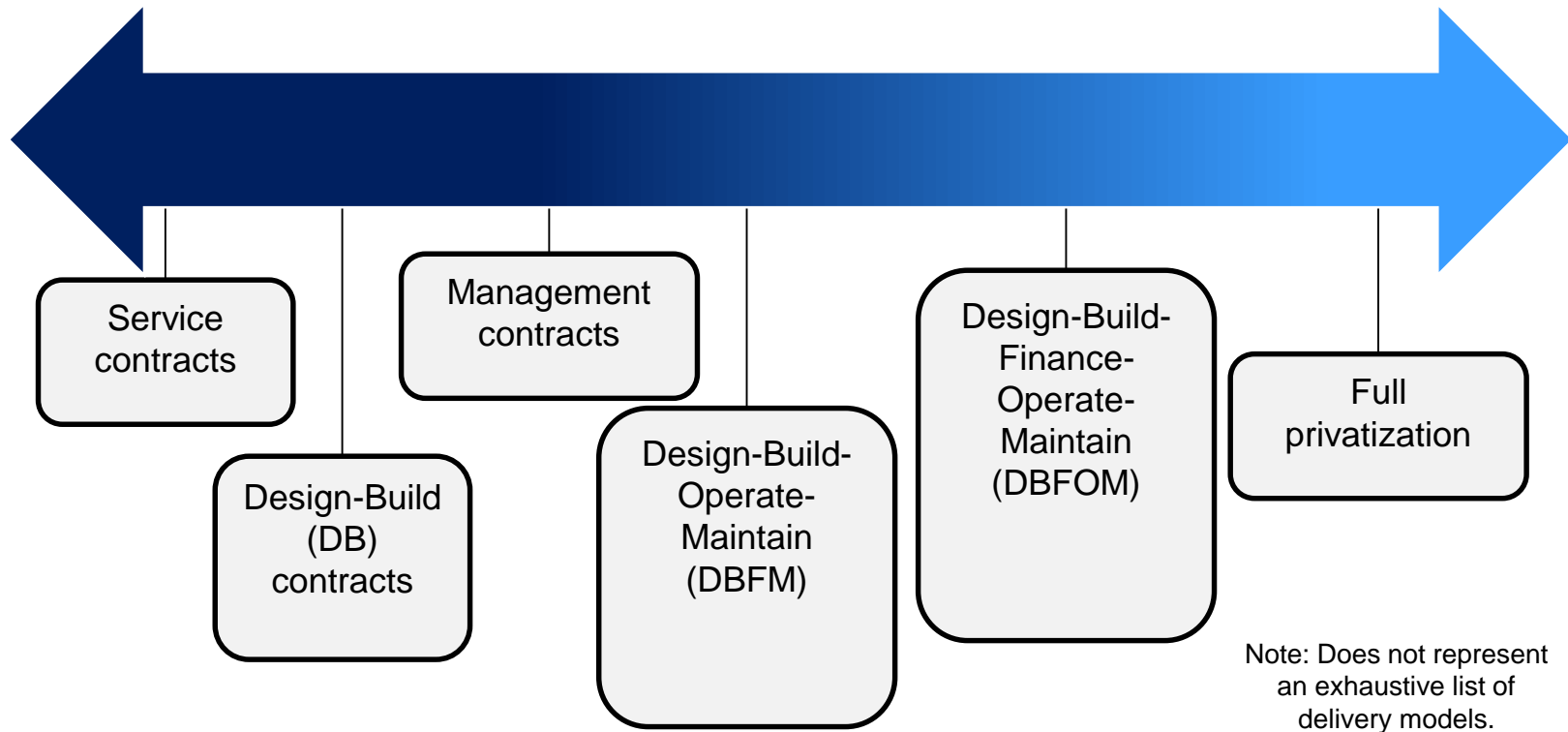
- i. Not listed in the Government's Project or PPP Pipeline, or
- ii. Proposes an innovative solution to a project listed in the Government's Project Pipeline.

The Guidelines help governments operationalize key guiding principles in their USP frameworks



Are USPs only used for PPPs or also for conventional delivery models?

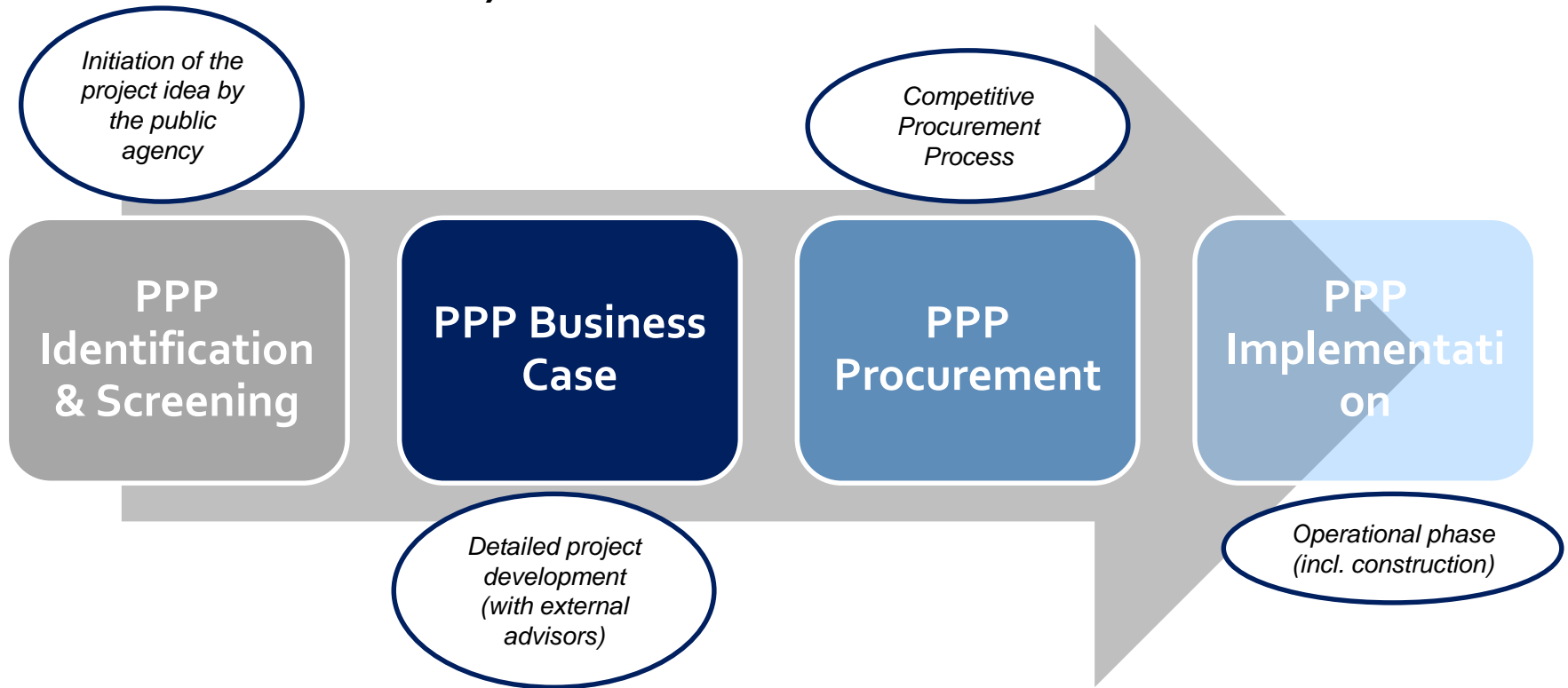
USPs may be submitted for PPP delivery models but also for conventional delivery models.



Note: Does not represent an exhaustive list of delivery models.

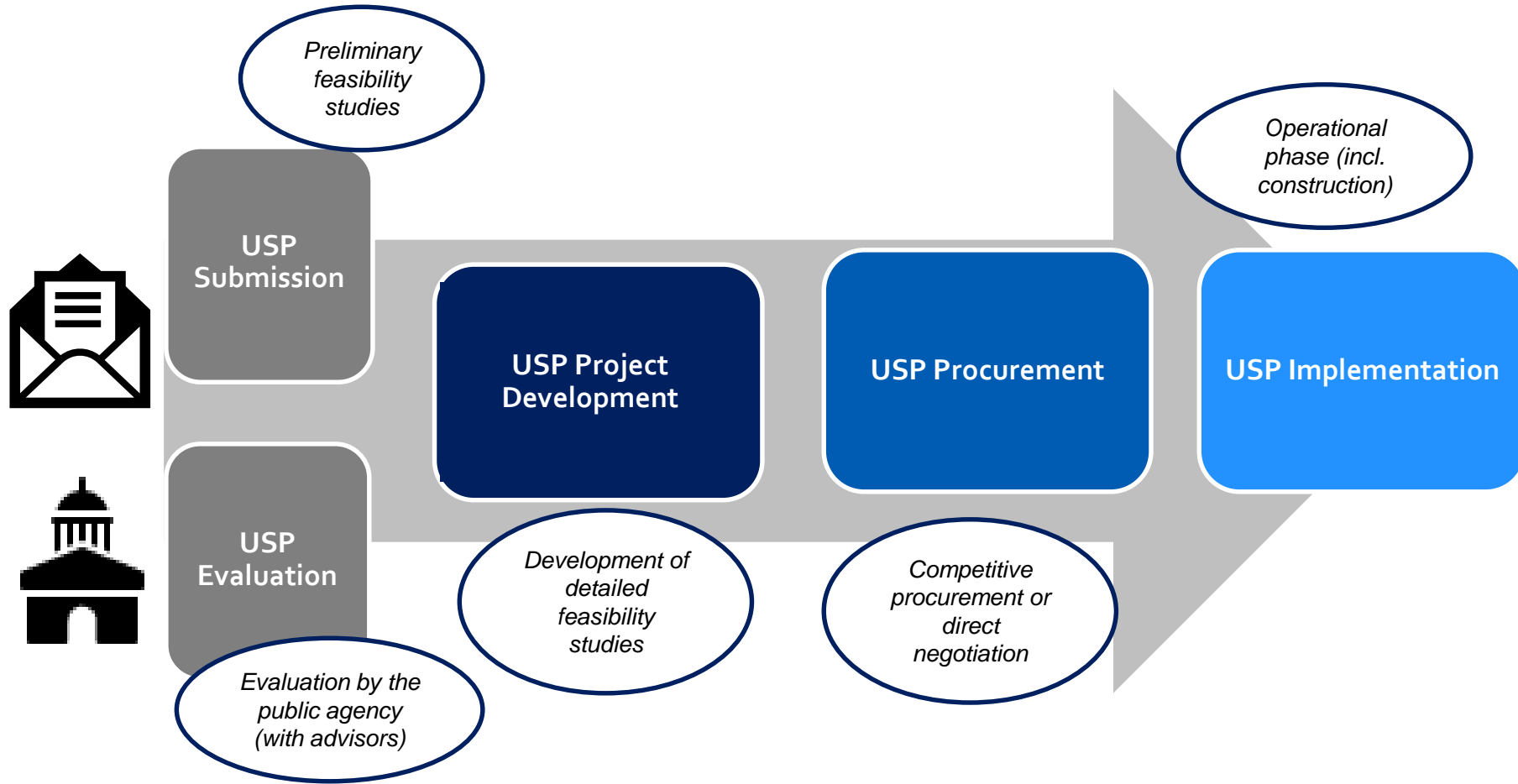
How do USPs differ from publicly-initiated PPP projects?

The 'Regular' PPP Process (Publicly-Initiated or Solicited Process)



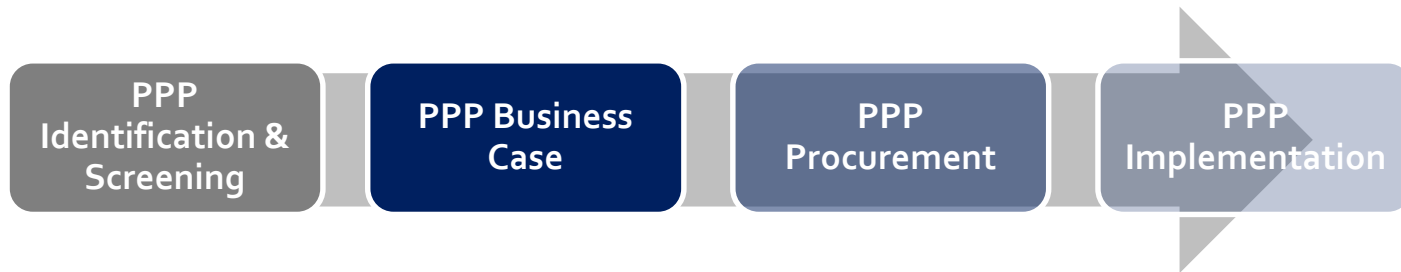
How do USPs differ from publicly-initiated PPP projects?

The USP Process (Privately-Initiated or Unsolicited)

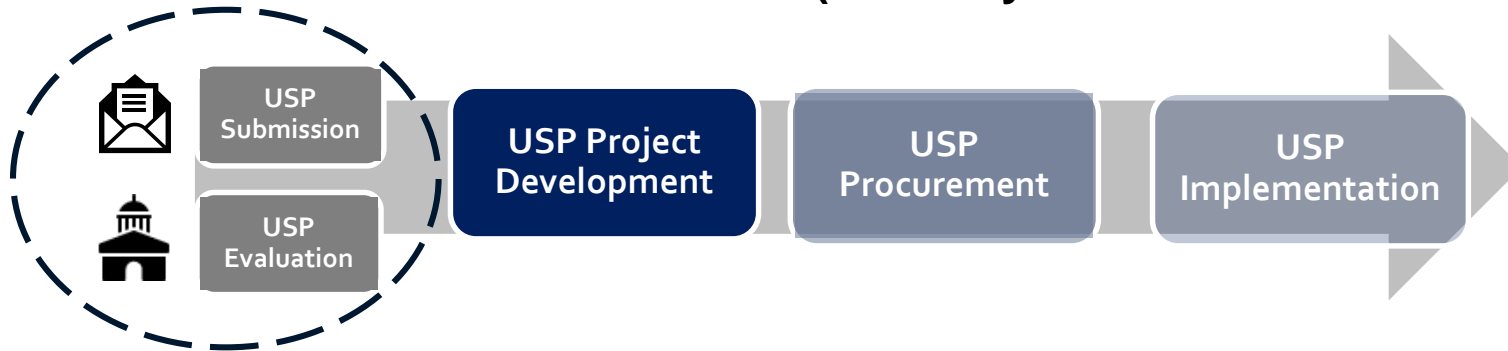


How do USPs differ from publicly-initiated PPP projects?

The PPP Process (Publicly-Initiated or Solicited)



The USP Process (Privately-Initiated or Unsolicited)



The only “by definition” difference between public PPPs and USPs is at project inception – the other phases can be managed identically.

Why do governments struggle with USPs?

Public-Sector Capacity

- USPs often exacerbate a lack of technical capacity to evaluate, prepare, procure and implement PPPs

Institutional Capacity

- USPs often exacerbate institutional challenges related to managing USP submissions (see next slide)

Competition

- Governments often struggle to attract market interest in a competitive procurement for a USP

Corruption

- USPs are often associated or perceived to be associated with corruption

Examples of the institutional challenges of USPs



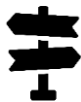
Large and unmanageable flows of USP submissions

USP submissions are low-quality or difficult to evaluate



Lack of public-sector resources to evaluate the USP submissions – USPs lay stagnant in the system

USPs distract public sector officials from their stated priorities



USPs submitted to the wrong departments, or to multiple departments

Unclear procedures and responsibilities among public officials and institutions



*Based on feedback from interviews with public officials in 2015

USPs can appear to present opportunities for early-stage planning gaps

Opportunities of USPs

- ✓ **PPP Pipeline:** USPs may help governments identify and prioritize projects for the government planning process.
- ✓ **Innovation:** USPs may expand the range of potential solutions to address infrastructure gaps.
- ✓ **Early-Stage Project Assessment:** USPs may help the government assess the preliminary feasibility of a proposed project.
- ✓ **Preliminary Indication of Market Interest:** USPs may allow the government to assess market interest in specific projects and engage with the private sector regarding potential risks and opportunities.

USPs, however, are not the only solution

Governments can use other solutions to expand the PPP pipeline, encourage innovation in projects, and test market interest.



Idea Competition: The public agency specifies a broad infrastructure challenge and invites private entities to submit ideas for specific projects.

Request for Information: Allows the government to gather information about potential bidders and solicit feedback from potential bidders on project structuring



Output Specifications: Provide scope for innovation by allowing bidders to develop creative solutions to meet the outputs.

Multi-Stage Procurement Process: Allows interaction between the public agency and bidders, and can help ensure that solutions are aligned to needs.



An idea competition takes advantage of private-sector innovation in project solutions

Rebuild by Design “Hurricane Sandy Design Competition”



See: <http://www.rebuildbydesign.org/>

Summary & Questions

- The only key difference between publicly and private initiated PPPs occurs at the **project initiation stage** – who identifies the project?
- For the remaining stages of the project cycle, USPs can be managed and treated either similarly or even identically to publicly-initiated projects.
- USPs can clearly be controversial, and complicated to manage—as shown by the challenges enumerated by public officials around the world.
- Although USPs appear to present opportunities for governments, these can also be achieved through **alternative solutions**. This implies that accepting USPs is never the only option for governments.

Session II: Dispelling USP Myths

What are the reasons for governments to consider USPs? Do they live up to their expectations?

Why do governments consider USPs?



Statement 1: “Implementing a USP will be **easier and faster** than implementing a publicly initiated PPP project.”



Statement 2: “USPs are more likely to provide **access to finance** than publicly initiated projects.”



Statement 3: “USPs help governments overcome a **lack of technical capacity** to prepare, procure and implement PPPs.”



Statement 4: “USPs allow governments to take advantage of private-sector **innovation**, resulting in efficiencies in infrastructure delivery.”



Statement 5: “USPs enable **corrupt or nepotistic** practices.”

**Note: These statements originate from qualitative interviews conducted with public-sector officials in over 15 countries during 2014 and 2015.*

Statement 1: “Implementing a USP is easier and faster than a publicly initiated PPP project”



There is no evidence that USPs are easier or faster to implement.

Evidence

- ✓ USPs are not necessarily easier and more convenient for governments, nor is there any evidence that they result in the faster implementation of projects.
- ✓ When USPs bypass procurement regulations or are directly negotiated, public controversies often further delay projects.
- ✓ Negotiating and implementing a project with the USP proponent is typically more challenging and takes more time due to information asymmetries and a weaker public agency negotiating position.

USP Speed in Case Studies (As of Feb 2016)-1

PROJECT	INITIAL EVALUATION DURATION	PROJECT-DEVELOPMENT DURATION	PROJECT-PROCUREMENT DURATION UNTIL COMMERCIAL CLOSE	DURATION FROM COMMERCIAL CLOSE TO FINANCIAL CLOSE	TOTAL TIME FROM USP SUBMISSION TO COMMERCIAL CLOSE	TOTAL TIME FROM USP SUBMISSION TO PROJECT OPERATION	YEARS TO COMMERCIAL CLOSE (APPROX.)	YEARS TO OPERATION (APPROX.)
Manila Metro Rail Transit Line 7	1999-2004	2004-2007	2007-2008	2008-TBD	1999-2008	2003-TBD (pending financial close)	9 years	>16 years (still pending)
Terminal 3 of Ninoy Aquino International Airport	1994-1996	Project procurement was undertaken immediately after approval.	1996-1997. Amendments made to the concession agreement in 1998.	N.A.	1994-1998	1994-2014	3 years	20 years
Jafrabad LNG Terminal and FSRU	2011-2013	2011-2012	2012-2013	2013	2012-2013	2012-TBD (Letter of intent was issued in 2013. Signing of concession agreement is pending.)	2 years	6 years (expected)
Chirajara-Villavicencio	2012-2014	N.A.	N.A.	N.A.	2012 to April 2015	Construction was expected to start in early 2016 and end in early 2021.	3 years	8-9 years (expected)

USP Speed in Case Studies (As of Feb 2016)-2

PROJECT	INITIAL EVALUATION DURATION	PROJECT-DEVELOPMENT DURATION	PROJECT-PROCUREMENT DURATION UNTIL COMMERCIAL CLOSE	DURATION FROM COMMERCIAL CLOSE TO FINANCIAL CLOSE	TOTAL TIME FROM USP SUBMISSION TO COMMERCIAL CLOSE	TOTAL TIME FROM USP SUBMISSION TO PROJECT OPERATION	YEARS TO COMMERCIAL CLOSE (APPROX.)	YEARS TO OPERATION (APPROX.)
Planta de Tratamiento de Aguas Residuales (PTAR) Taboada	2006-2007	2008-2009	2008-2009	N.A.	2006-2009	2006-2013. Operation began in February 2013.	3-4 years	7 years
Mombasa-Nairobi Standard Gauge Railway (SGR)	N.A. Project declared strategic in 2008.	CRBR proposed to undertake feasibility study in 2011. Unclear how long project development lasted.	N.A. No procurement process.	N.A. Financing provided by China ExIm Bank.	USP submitted about 2011. Unclear exactly when it was accepted and contract signed.	Approx. 5 years (2011 to 2017). Construction expected to be completed by June 2017.	N.A.	5 years (expected)
Doraleh Container Terminal	Since early 2000.	2000-2006	In 2006, DP World signed BOT concession for container terminal.	2006-2007	USP Submitted about 2000 and BOT contract signed in 2006.	Construction of Phase I completed in June 2009.	6 years (2000-2006)	9 years (2000-2009)

Statement 2: “USPs are more likely to provide access to finance than publicly-initiated projects”



Better project preparation is what enhances a project’s bankability and financeability (regardless of whether or not it is a USP).

Evidence

- ✓ There is no evidence to suggest that USPs provide access to finance that would not be available under a well-structured publicly initiated process.
- ✓ Challenges in securing financing are usually due to poor project structuring (design, revenues, government support, or credit support).
- ✓ USPs do not solve financing challenges; rather, better project preparation enhances a project’s bankability.
- ✓ The real, long-term solution is for governments to enhance their technical capacity in project preparation or to hire external advisors to assist them in developing bankable projects.

Statement 2: “USPs are more likely to provide access to finance than publicly-initiated projects”



North-South Link of Highway 2000 (Jamaica)



Nairobi Station

Located at Syokimau, Nairobi. Found just south of the capital city. Built as two trains with a bridge on top.



Mombasa Terminus

Located in Miritini, Mombasa. Built as concentric circles and a central tower, representing a ripple in the ocean.

Nairobi-Mombasa SGR

Statement 3: “USPs help governments overcome a lack of technical capacity to implement PPPs”



Ensuring a “good deal” from a USP requires even more capacity than for a publicly-initiated PPP project.

Evidence

- ✓ USPs are not an effective solution for overcoming capacity constraints.
- ✓ Negotiating and implementing a USP is more challenging than implementing a publicly-initiated PPP due to information asymmetries and a weak public agency negotiating position.
- ✓ Governments that lack capacity are unlikely to be able to negotiate a PPP agreement that guarantees the public interest and value for money, increasing the chances that USPs become “bad deals” for society.

Statement 3: “USPs help governments overcome a lack of technical capacity to implement PPPs”



Virginia, U.S.: Public officials found themselves in a weak negotiating position for the I-495 HOT Lanes project, feeling like they needed to continually “catch up” with the USP proponent (Fluor).

Statement 4: “USPs allow governments to take advantage of private-sector innovation”



Most USPs submitted and accepted by governments are not real innovations!

Evidence

- ✓ Most USPs projects are not real innovations:
 - Very few USPs studied contained new technologies or unique concepts;
 - Most ‘innovative’ USPs were simply highway or railway projects that had not been identified by public agencies (or had been identified but not yet implemented).
- ✓ Unsubstantiated claims of innovation or intellectual property by USP proponents leads to lack of transparency and makes it more difficult to level the playing field in a competitive procurement.
- ✓ Innovation can be achieved through other means, such as idea competitions, multi-stage procurement processes, output-based specifications, etc.

Statement 4: “USPs allow governments to take advantage of private-sector innovation”



India’s experience with the Liquefied Natural Gas (LNG) port terminal with a Floating Storage and Regasification Unit (FSRU) is one of the few examples of an innovative USP.

State of Gujarat, India receives innovative USP for LNG terminal

In 2012, SWAN Energy Limited (SEL) approached the Gujarat Maritime Board (GMB) to develop a liquefied natural gas (LNG) terminal with a floating storage and re-gasification unit (FSRU) in Jafrabad. FSRUs are floating systems that receive LNG delivered in bulk by LNG carriers, and subsequently store, pressurize and re-gasify the LNG before supplying it to on-shore gas grids.

Compared to traditional on-shore LNG terminals, FSRUs offer cost, time and environmental benefits. FSRUs are cheaper to develop. The gestation period is also shorter, because FSRUs are prefabricated in distant shipyards, allowing various approvals and permitting procedures to take place simultaneously with their fabrication. FSRUs also have limited environmental impact on shorelines, because they are remotely located.¹ FSRUs were not used in India until SEL's proposal to GMB. (They also represented a new technology on a global level, with the first FSRU having being deployed in 2005 in the Gulf of Mexico,² and only 10 FSRUs estimated to have been in use in 2012.³)

Lacking prior experience with the technology, the Gujarat Maritime Board (GMB) faced challenges in determining the technical feasibility of the USP project. GMB therefore restricted itself to the safety- and security-related aspects of the proposal.

Statement 5: “USPs allow for corrupt or nepotistic practices”



Perceptions of corruption in USPs emphasize the importance of transparency, accountability, and competitive processes.

Evidence

- ✓ Directly-negotiated USPs may favor corrupt or nepotistic practices, in part because they make it easier to conceal corruption and nepotism.
- ✓ Due to lack of transparency or failure to competitively procure, USPs are prone to the perception of corruption by stakeholders, even when corruption allegations may be unproven.
- ✓ Perceptions of corruption often lead to legal and political challenges, delaying projects.
- ✓ Corruption is a concern in both more developed and less developed countries.

The key question: What policy solutions might allow governments to overcome the perception of corruption associated with USPs?

Statement 5: “USPs allow for corrupt or nepotistic practices”



- In **Mexico**, a study found that 44% of USP proponents had admitted to giving a “piece of the pie” to public authorities.
- In **Italy**, officials noted that USPs at lower levels of government especially susceptible to corruption—Mestre’s Angel Hospital, for example, is facing corruption allegations.
- The **United Kingdom** does not accept USPs, citing that they lend themselves more easily to corrupt practices.
- In **Jamaica**, the Office of the Contractor General described USPs as “corruption enabling” devices, in relation to the North-South Link of Highway 2000.

Poor public disclosure results in controversies and delays

Office of Contractor General Questions North-South Link of Highway 2000 in Jamaica

In November 2011, the Office of Contractor General (OCG) of Jamaica raised concerns about the direct negotiation of a USP submitted by China Harbor Engineering Company (CHEC) for the completion of the stalled North-South Link of Highway 2000. The absence of proper disclosure of information, combined with direct negotiations between the Government of Jamaica (GoJ) and CHEC, created a concern in OCG about the potential for the abuse of contracting powers by public officials. Consequently, the OCG asked the GoJ to cease all direct negotiations with CHEC or conduct a competitive tender.

Although the incumbent administration ceased negotiations with CHEC in November 2011, after the general election the following month, the new administration resumed negotiations. As a result, in May 2012, OCG expressed “grave and serious concerns” regarding the use of USPs by GoJ. The OCG described USPs as “corruption enabling” devices that could be used by influential and corrupt public officials to award public contracts to undeserving parties. OCG questioned why GoJ was not subjecting the procurement of the project to a competitive tender. In a further twist, CHEC informed GoJ that it would not participate in a competitive tender. Given these issues surrounding CHEC’s USP, OCG labeled it a “suspicious” and “highly irregular” investment, which would be exposed if subjected to a competitive tender.¹

What are some different trends in USP programs?

Australia (states of Victoria, New South Wales)

Only accept USPs under unique and exceptional circumstances; deal flow from USPs is very limited.



- ✓ Only projects that meet very strict criteria of “innovation” and “uniqueness” are considered USPs.
- ✓ Since 2012, New South Wales has received 6 USPs, 3 of which were completed, and 2 of which are still in process.

- ✓ These USPs are developed by the USP proponent in close collaboration with the public agency under a “Participation Agreement.” Subsequently, they are directly negotiated, with an option to competitively procure subcontracts.
- ✓ If USPs do not meet the strict definition of “uniqueness”, they are competitively procured under the regular PPP processes, with no benefit for the USP proponent.

What are some different trends in USP programs?

South Africa (National Treasury)

Although National Treasury's PPP framework makes provisions for USPs, in practice they are not encouraged.



- ✓ Public agencies may accept USPs, but they must represent an innovative design or a new and more cost-effective approach.

- ✓ The National Treasury PPP Unit receives between 2 to 4 USPs per year.
- ✓ Public officials are generally adverse to USPs and discourage them.
- ✓ All USPs are to be competitively procured in accordance with all relevant procurement regulations.
- ✓ The USP proponent receives no incentives, beyond reimbursement of project development costs if it does not win the bid.

What are some different trends in USP programs?

Senegal, Ghana, Kenya

Governments in Africa tend to rely on the USP proponent to develop the project. Many governments believe USPs will help execute priority projects.



- ✓ **Senegal:** A new framework was adopted in 2014, but no USPs have been approved to date. The USP proponent is expected to fully develop the project if the USP is approved. Direct negotiations are possible under limited circumstances; under most circumstances USPs are to be competitively procured.



- ✓ **Kenya:** “Privately Initiated Investment Proposals” are directly negotiated. Although the government receives many USPs, few have been accepted. The Lake Turkana Wind Power (LTWP) project is one of the few to have closed.

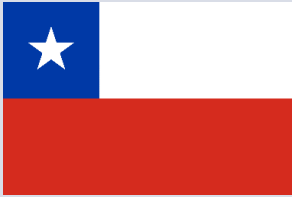


- ✓ **Ghana:** USPs may not refer to projects in the pipeline. If a USP is accepted, the USP proponent conducts a full feasibility study, although the contracting authority also appoints a transaction advisor. USPs are competitively procured. Currently, there are numerous USPs in various stages of study, with several water and IPP USPs having been closed.

What are some different trends in USP programs?

Chile

One of the few countries that succeeds in creating significant competitive tension in competitive procurements for USPs



- ✓ Chile has a mature PPP market: it has had a concessions program since 1992 and awarded its first USP in 1995.
- ✓ Between 1992 and 2014, 423 USPs were received; only 4.5% were awarded.

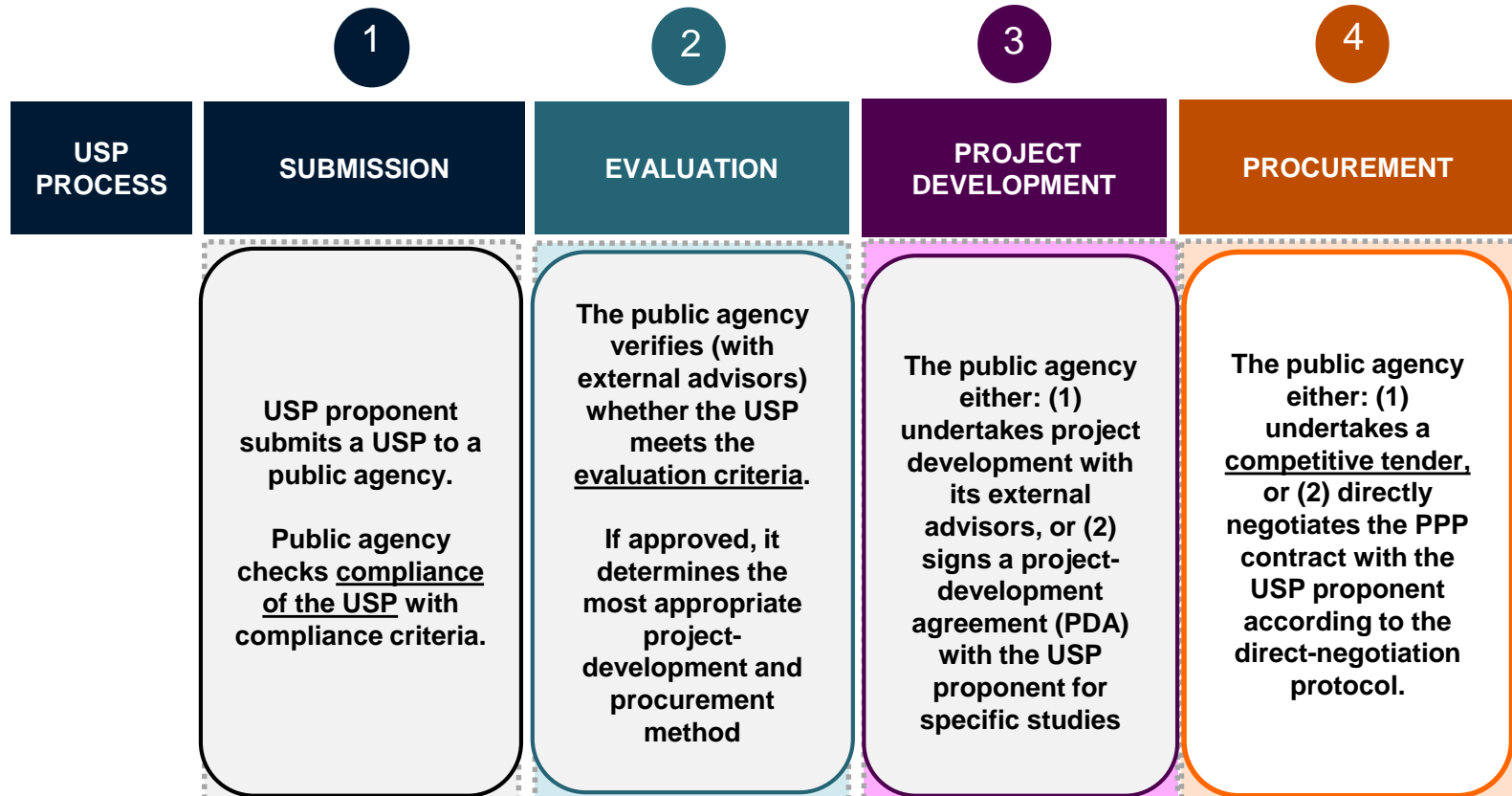
- ✓ Chile has competitively procured USPs since the beginning, providing a bonus for the USP proponent that was reduced from an initial 20% to the current 3-8% to maintain sufficient competition.
- ✓ The Ministry of Public Works is the focal point for all USPs and plays an active role in project development.
- ✓ Since 1995, 19 USPs have been awarded and closed, the majority of which (12 projects) were awarded to third party bidders in competitive procurements with on average 3.4 bidders.

Summary & Questions

- There is no evidence that USPs would provide any benefits in terms of financing, speed, or convenience over well-structured publicly initiated projects.
- USPs present a paradox: the main reason for many governments to consider USPs is an overall lack of capacity—however, the successful implementation of USPs requires even greater capacity than publicly initiated projects.
- Global experience with USPs is mixed—countries with positive experiences tend to accept very few USPs.
- **So: what is the solution? Knowing the challenges of USPs and how they live up to the evidence, should governments even consider USPs?**

Session III: Key Policy Decisions in Drafting a USP Policy

A review of the USP project cycle



Key policy decisions **prior to** establishing a USP framework



Policy Decision 1: Will the government allow or not allow USPs?



Policy Decision 2: What is the objective and scope of the USP program?



Policy Decision 3: How will the government incorporate the USP policy into existing PPP and non-PPP regulations?

Policy Decision 1: Should a government allow USPs?



Some argue that allowing USPs is critical to enhancing infrastructure delivery in less developed countries.

- ✓ Less mature markets such as **Senegal, Kenya, Ghana**, and the **Philippines** accept USPs believing they will help accelerate infrastructure delivery.
- ✓ In countries that are unable to guarantee the public interest, however, USPs result in many “bad deals.”
- ✓ Seeking ways to build capacity in publicly-initiated PPPs may be a more effective strategy.

Others argue that USPs favor corruption, lack of transparency, and lack of competition.

- ✓ The **UK** and most **EU** countries do not allow USPs for reasons of potential corruption and lack of equal bidding conditions.
- ✓ In **Australia**, jurisdictions allow USPs only under exceptional and narrow circumstances—USPs comprise a very minor percentage of deal flow.
- ✓ USPs comprise a very minor percentage of deal flow in the **US** and **South Africa**.

Policy Decision 1: Should a government allow USPs?



Policy Recommendations:

- Governments should carefully weight the advantages and disadvantages of USPs and consider country-specific factors in determining whether to accept USPs.
- Governments should only consider accepting USPs if they are able to:
 1. **protect the public interest** during the evaluation, development and procurement of a USP project; and
 2. ensure **transparency and accountability** throughout the USP process.
- A government's position on USPs should be consistent and well-publicized.
- A government's position on USPs need not be permanent; it can change over time as capacities evolve, as long as the position is clear to the private sector.

Policy Decision 2: What should be the objective of the USP program?



Some governments attempt to use USPs for priority projects.

- ✓ Governments can limit USP submissions to specific sectors, technologies, geographies, or infrastructure challenges.
- ✓ Many Latin American governments and some African governments allow or even require USP submissions to refer to projects in the pipeline.
- ✓ **South Africa's SANRAL** specifically encourages USPs for priority road projects.

Other governments restrict USPs to projects outside the pipeline.

- ✓ In **Australia**, most jurisdictions only accept highly innovative and unique USPs.
- ✓ In **South Africa** (National Treasury), USPs must represent an innovative design or approach.
- ✓ In these countries, deal flow from USPs is very limited.

Policy Decision 2: What should be the objective of the USP program?



Policy Recommendations

- By defining specific parameters, the government may receive narrower USP submissions that correspond more closely with the government's objectives.
- The public agency can either:
 - Define a project concept, allowing private entities to submit proposals for its implementation;
 - Define a broad infrastructure need or sectoral priority, allowing specific proposals to respond to that need; or
 - Consider any type of privately initiated proposals.

Policy Decision 3: How should the USP policy be incorporated in existing regulations?



Many governments integrate the USP policy into PPP regulations.

Others create a standalone USP framework that applies to all delivery models.

- ✓ Most countries incorporate USP frameworks into PPP policies—such as **Tanzania, Kenya, Senegal, Ghana, and Jamaica**, and most Latin American governments.
- ✓ However, if USP submissions are received for non-PPP delivery models, they would require a separate USP framework.

- ✓ In **Australia**, most jurisdictions have standalone USP policies and manuals.
- ✓ **South Africa's** USP framework applies to both PPP and non-PPP delivery models.

Policy Decision 3: How should the USP policy be incorporated in existing regulations?



Policy Recommendations

- Governments should ensure consistency between PPP and USP frameworks and procedures—incorporating USP procedures in the PPP policy document may be the most effective way to do so.
- Integrating the two policies requires a robust PPP policy—jurisdictions that do not possess a robust PPP policy are advised to develop a stand-alone USP policy in the interim.
- USP frameworks should be consistent for PPP and non-PPP delivery models, to avoid regulatory arbitrage.
- A USP framework that applies to both PPP and non-PPP delivery models could be considered to address this concern.

Harmonizing the USP policy and PPP policy/framework

PPP Process	PPP Objectives	PPP Identification & Screening		Business Case	Procurement
USP Process	USP Objectives	Submission	Evaluation	Proj. Development	Procurement
Areas to Harmonize	The objectives and guiding principles of the PPP and USP policies	Pre-feasibility requirements used during PPP identification and screening, with pre-feasibility requirements that are part of the USP-submission requirements	Criteria used to assess and prioritize a PPP project during PPP identification and screening, and USP evaluation Criteria used for screening the capability and experience of the USP proponent, and those used to screen bidders for PPP projects	Feasibility studies required as part of the PPP business case, with those required during USP project development	Procurement processes, including required documentation and disclosure PPP structure and contracts
	Stages of the PPP and USP processes				
	Institutional roles and responsibilities, including approvals by decision-making bodies				
	Stakeholder engagement processes				
	Disclosure and transparency requirements				

Policy Decision 4: Which project-development methods will the USP policy allow?

The Guidelines provide two options regarding the public agency's and USP proponent's roles in project development

Project development by the public agency	The public agency takes over project development with the support of external advisors. This maximizes competition and retains government control over project development and structuring. This option is most likely to maximize value for money and public-interest considerations and is the option recommended by the Guidelines.
Project development by the public agency and USP proponent	The public agency may engage the USP proponent to carry out specific feasibility studies.* By involving the USP proponent, the public agency will likely struggle to stimulate market interest during the competitive tender. Private entities may decide not to bid, perceiving that the USP proponent has an undue advantage due to its involvement in project development.

Policy Decision 5: which procurement methods will the USP policy allow

Procurement methods in the USP policy

* Although the Guidelines provide two procurement approaches, it is strongly recommended to use competitive tendering whenever possible

Only Allow Competitive Tender	Under this approach, all USP projects must be competitively procured. USP projects would follow the same tender procedures as publicly initiated PPPs, in order to ensure consistency and transparency in procedures.
Allow Competitive Tender and Direct Negotiation	Under this approach, most USP projects would be competitively procured, with direct negotiation allowed in exceptional circumstances. These (and their associated criteria) should be clearly specified in the USP policy. Direct negotiations should only be pursued if suitable safeguards for value for money, transparency, accountability, and public interest have been established and operationalized.

Use of incentives during procurement

The three most common incentive mechanisms used to reward the USP proponent during a competitive tender include:

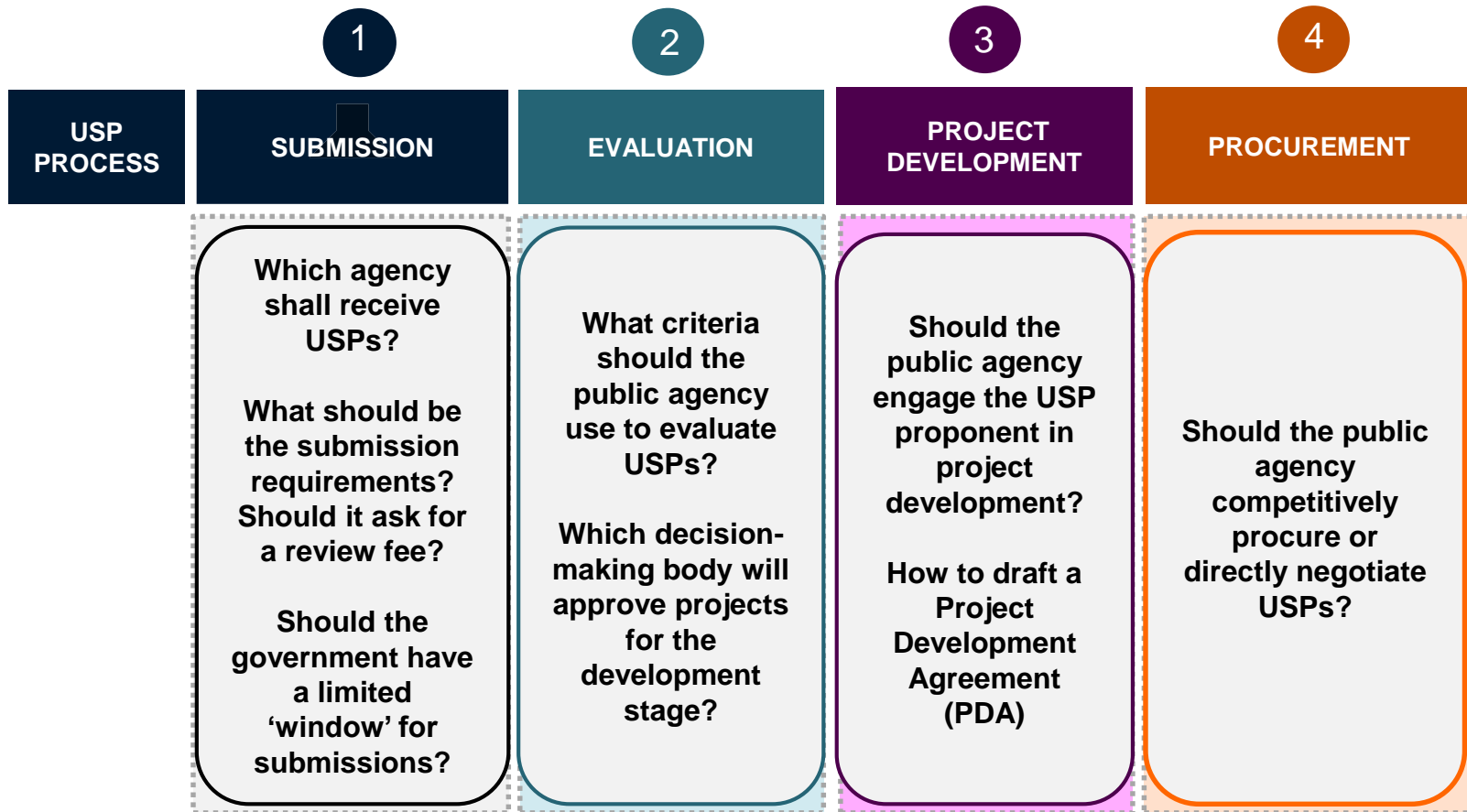
Bonus Mechanisms	The public agency may provide a bonus (usually expressed as several percentage points) to the USP proponent during the evaluation of bids. The Guidelines recommend that the bonus remain small, to encourage equal bidding conditions and maximize value for money from a competitive tender.*
Automatic Short Listing	This allows the USP proponent to be automatically included in either the bidding stage (automatic pre-qualification) or the final bidding stage (in the case of several bidding stages). Under this mechanism, the USP proponent must still clearly demonstrate its capacity to implement the project. This mechanism is less commonly used, but it has the benefit of not directly impacting competitive tension (and therefore value for money).
Right to Match	This allows the USP proponent to match a more competitive bid to win the contract (also known as Swiss Challenge). The right to match significantly limits competitive pressure. Competing bidders have little incentive to spend resources developing a bid when they know it can be matched by the USP proponent. Most procurements that allow the right to match receive few or no competing bids.**

The first two incentive mechanisms (bonus mechanism and automatic short listing) may still allow for equal bidding conditions. Because the right-to-match mechanism significantly limits competitive tension, the Guidelines strongly discourage the use of this mechanism.

* The Experience Review found that the bonus mechanism does not necessarily limit competitive tension as long as bonuses constitute a small percentage of bid evaluation points. For country evidence related to the bonus mechanism, refer to Chapter 6 of the Experience Review.

** For country evidence related to the right to match, refer to Chapter 6 of the Experience Review.

Key policy decisions in the USP project cycle



1

How should the public agency define submission requirements?

4

PROCUREMENT

Public-Interest and Market-Appetite Requirements

- A description of the proposed project, including a high-level design, sketches, or alignment maps
- A preliminary assessment of the public need for the proposed project, including benefits to society and alignment with the infrastructure plan

3

PROJECT DEVELOPMENT

- OPTIONAL: A preliminary assessment of economic feasibility or a cost-benefit analysis*

Project-Feasibility and Fair-Market Price Requirements

- A preliminary technical description of the proposed project
- A preliminary assessment of financial feasibility
- A preliminary operating plan

2

EVALUATION

PPP-Suitability and Procurement-Method Requirements

- A preliminary assessment of project risks
- OPTIONAL: A preliminary assessment of PPP suitability or of the most suitable delivery model*

1

SUBMISSION

Government Support

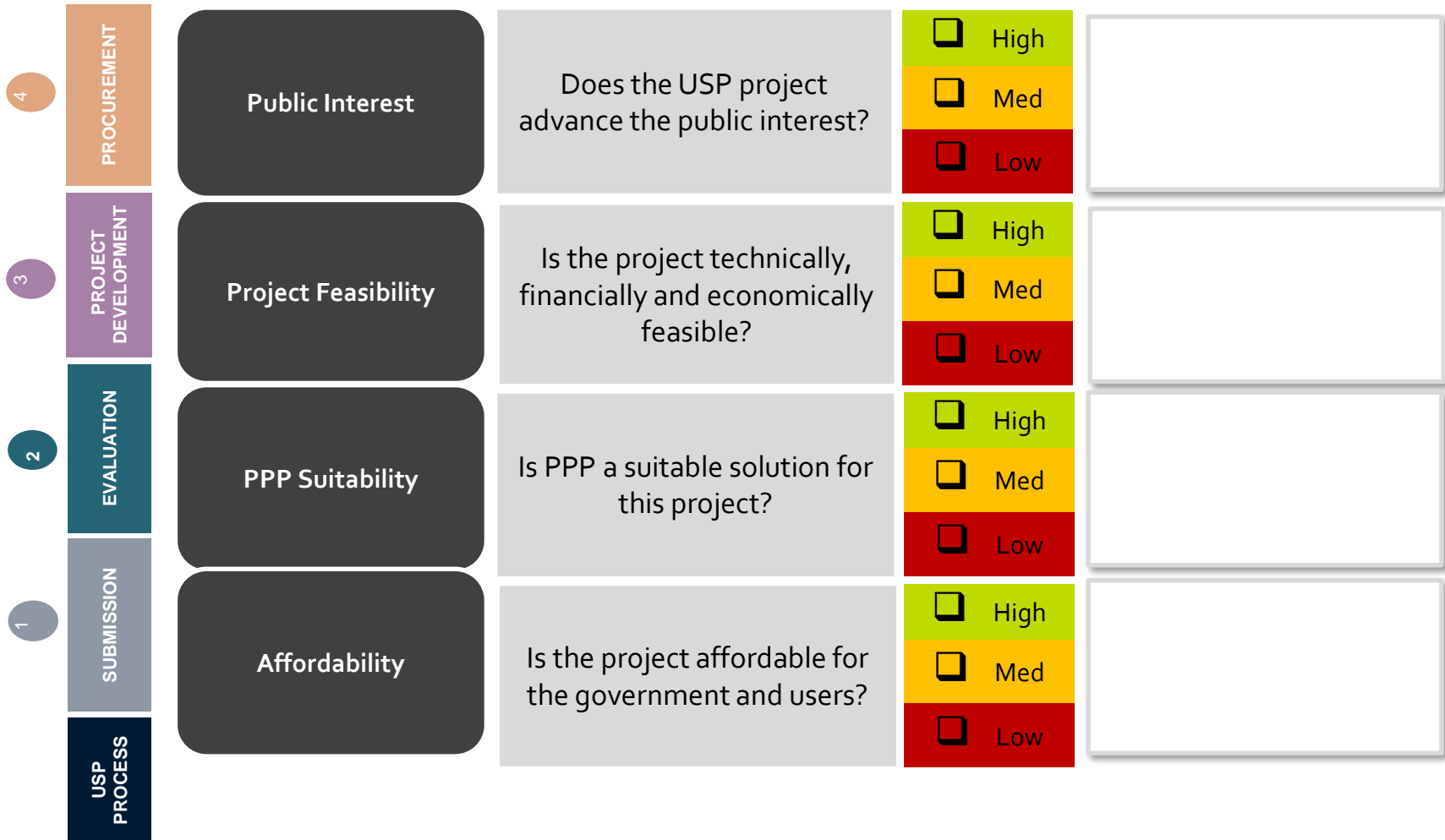
- Confirmation that the proposed project does not require any government support, or
- A preliminary description of the type/amount of government support required

USP PROCESS

1 What does the public agency confirm at the compliance check?

4	PROCUREMENT	USP Definition		
		Does the USP submission meet the definition of a USP?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3	PROJECT DEVELOPMENT	Submission Requirements		
		Does the USP meet the submission requirements?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2	EVALUATION	Integrity Due Diligence Criteria		
		Does the USP meet the integrity due-diligence criteria?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1	SUBMISSION	OVERALL ASSESSMENT		
		Does the USP meet the three compliance-check criteria?	<input type="checkbox"/> Yes <input type="checkbox"/> No	USP is Compliant: USP is NOT Compliant:
	USP PROCESS			

2 What key criteria should be used to evaluate the project?



3

Should the USP proponent undertake project development?



The USP proponent should undertake project development—it knows the project best.

The public agency should develop the project to ensure public interest and competition.

- ✓ Most African and Asian governments (including **Philippines, Kenya, Tanzania** and **Senegal**) require the USP proponent to develop the project.
- ✓ Full development by the USP proponent often means the public agency loses control over project structuring.

- ✓ Most high-capacity governments (including **Chile, South Africa,** and **Virginia, U.S.**) take significant ownership over project development, only involving the USP proponent for specific technical studies, or not at all.
- ✓ The USP proponent is typically also reimbursed for its project-development work.

4

PROCUREMENT

3

PROJECT DEVELOPMENT

2

EVALUATION

1

SUBMISSION

USP PROCESS

Should the USP proponent undertake project development?



Policy Recommendations

- The Guidelines recommend that the public agency lead project development with the support of external advisors
- This maximizes competition and retains government control over project structuring, maximizing value for money (VfM) and public-interest considerations.
- Public agencies may consider engaging the USP proponent to carry out specific technical feasibility studies, subject to review by external advisors.
- If the USP proponent carries out some feasibility studies, it should be governed by a Project Development Agreement (PDA).



3

Which studies may the USP proponent develop?



Studies	Recommended Roles
<ul style="list-style-type: none"> ✓ Definition of Project Scope ✓ Technical Feasibility ✓ Financial Feasibility 	<p>These studies may be developed by the USP proponent (if it has the required experience).</p> <p>The public agency takes on a review role, supported by external advisors.</p>
<ul style="list-style-type: none"> ✓ Legal Feasibility ✓ Social and Environmental Impact ✓ Economic Feasibility 	<p>These studies should be developed by the public agency and its external advisors. In exceptional circumstances, these studies may be developed by the USP proponent (if it has the required experience).</p>
<ul style="list-style-type: none"> ✓ PPP Structure and Contract ✓ Procurement Strategy ✓ PPP Suitability / Value for Money ✓ Fiscal Impact Assessment 	<p>The public agency should always lead the development of these documents (supported by its external advisors).</p>

4

PROCUREMENT

3

PROJECT DEVELOPMENT

2

EVALUATION

1

SUBMISSION

USP PROCESS

What should be the contents of the Project Development Agreement?

3 Agreement?



Contents of the PDA

Objectives of the project and of the project-development agreement

Responsibilities of the public agency and the USP proponent: Which studies will the USP proponent develop, and which will it not develop?

Compensation structure for the USP proponent

Modalities for coordination and communication between the public agency and the USP proponent

Timelines for project development

Provisions for termination of the project-development agreement

Any **legal or regulatory obligations**

Policies related to **transparency, accountability, confidentiality, and conflicts of interest**



3 Should the USP proponent undertake project development?

- A warning: Engaging the USP proponent in project development (even if only for specific studies) may reduce market interest in a competitive procurement.
- Potential third-party bidders may perceive that the USP proponent has a strategic advantage (bias) in terms of knowledge of the project.
- Less involvement of the USP proponent during project development is a key strategy for increasing market interest.

The key takeaway: How a government manages the project development stage has a significant impact on the procurement stage. A successful procurement is highly dependent on a careful management of project development!



4 Should USPs be directly negotiated or competitively procured?



4

PROCUREMENT

Most countries competitively procure USPs to ensure a fair market price and Value for Money.

Some jurisdictions directly negotiate USPs when market interest is limited.

3

PROJECT DEVELOPMENT

- ✓ Competitive procurement (ideally with at least 2 bidders) is the best way to ensure that a PPP contract represents a fair market price and delivers Value for Money.

- ✓ Where market interest has been tested and proven to be limited, direct negotiation may be the only option.

2

EVALUATION

- ✓ Competitive procurement provides transparency and accountability.

- ✓ In **Australia**, most jurisdictions only directly negotiate USPs—however, the definition of a USP is very narrow and only a small percentage of projects originate as USPs.

1

SUBMISSION

- ✓ Most countries around the world competitively procure USPs.

USP PROCESS

4 Which incentives are least likely to distort competition?



The USP Proponent receives no incentive during the tender

The USP Proponent is automatically shortlisted into the final bidding stage

The USP Proponent receives a bonus during bid evaluation

The USP Proponent has the right to match a competing bid to win the contract

4 Which countries use incentive mechanisms?



No Incentives	Bonus Mechanism	Right to Match
<ul style="list-style-type: none"> ✓ South Africa and Virginia (United States), do not offer the USP proponent any incentive over competing bidders. ✓ Not providing any incentives discourages opportunistic bids. 	<ul style="list-style-type: none"> ✓ Chile, Colombia, and South Korea use a bonus mechanism. ✓ In Chile, the bonus is typically 3%. ✓ If bonuses are small, they need not significantly distort competition. 	<ul style="list-style-type: none"> ✓ India, the Philippines, Peru, Colombia, Jamaica and Italy use the 'right-to-match'. ✓ Most procurements that use right to match receive few or no competing bidders. ✓ The PPP contract is typically awarded to the USP proponent.



4 Should USPs be directly negotiated or competitively procured?

Policy Recommendations

- Governments should competitively tender USPs in most, if not all situations.
- Providing a (small) bonus or automatically short-listing the USP proponent may not limit competitive tension.
- Some governments may decide to directly negotiate with the USP proponent for exceptional circumstances—for example, when project characteristics limit market interest.
 - In these circumstances, governments should undertake benchmarking and/or market testing, in addition to creating additional safeguards to protect public interest (see next slides).

4

PROCUREMENT

3

PROJECT
DEVELOPMENT

2

EVALUATION

1

SUBMISSION

USP
PROCESS

Benchmarking through the USP process can help ensure value for money

What is Benchmarking?



- Identifying and qualitatively and/or quantitatively analyzing projects in similar sectors and market settings.
- Allows the public agency (and its external advisors) to draw comparisons with the USP project.
- The comparison can focus on the type of solution being proposed, the cost components, the proposed timelines, the proposed risk allocation, and the extent of market interest.
- Benchmarking can be used throughout the USP project cycle. For ex: when evaluating the USP; when determining the most appropriate project development and procurement method; during project approvals at the end of project development; and to make sure the terms of a PPP contract are fair and in line with market practice.

Market testing can allow the government to solicit feedback from the market

What is Market Testing?



- Market testing refers to interactions between the public agency and private entities to solicit feedback on the USP project.
- Market testing can focus on the type of solution proposed; the cost components; the timelines; the proposed risk allocation; and the extent to which private entities would be interested in bidding.
- Market testing should be part of a formalized and carefully managed process; the government should have a communication strategy.
- The Policy Guidelines recommend that market testing only be used in cases where benchmarking is not able to provide the required information.