

LEGAL AND REGULATORY FRAMEWORK RELATED TO UNSOLICITED PROPOSALS IN VARIOUS COUNTRIES: A SYSTEMATIC REVIEW FOR PROCUREMENT STAGE

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ABSTRACT

An Unsolicited Proposal (USP) is a privately initiated process that is an alternative to the solicited procurement method. Public Private Partnerships (PPPs) that are launched on an unsolicited basis, become popular among governments since they enable faster delivery of projects and avoid the time-consuming process of competitive tendering. If improperly managed, USPs may lead to numerous public rallies and protests, poor value for money, a failure to meet the nation's true sociological and economic necessities, and the satisfaction of only a handful of public and private officials. Most governments accept and recognise USPs by integrating various management systems into their procurement processes to mitigate the negative effects of it. Strengthening the existing legal and regulatory framework is one such management system. The authors conducted a detailed study of the existing legal and regulatory framework of countries that are having matured and developed PPP environments and a provision to entertain unsolicited PPPs. Based on the findings from the detailed study, a conceptual framework was developed for the procurement of USPs that can be utilised to reform existing legal and regulatory frameworks of host countries.

Key Words: *Legal and Regulatory Framework; Public Private Partnership; Unsolicited Proposal.*

1. INTRODUCTION

The most common way of the private sector participation in infrastructure delivery is through a public-planning process in which the government proposes a project idea, conducts required research, and then launches a competitive-tender process to select the most competent bidder (Public-Private Infrastructure Advisory Facility [PPIAF], 2017; United Nations Commission on International Trade Law, 2020; World Bank [WB], 2017). An Unsolicited Proposal (USP) is a privately initiated process without receiving

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an explicit demand from the government entity that is an alternative to the competitive-tender process: solicitation (Fernando, 2020; PPIAF, 2014 & 2017; WB, 2017).

Many governments believe that implementing Public Private Partnerships (PPPs) using USPs is beneficial and can provide a distinctive contribution to public infrastructure development (PPIAF, 2014 & 2017). Various research and academic studies highlighted that frequently associated with anti-competitive behavior such as favoritism, corruption, misappropriation of government resources, and incompetence discourage unsolicited PPPs (Delmon, 2015). Most of the regimes acknowledge unsolicited PPPs by adopting inbuilt various management systems into their procurement procedures to mitigate the detrimental impact of USPs (Osei-Kyei et al. 2018; PPIAF, 2017; WB, 2017). Adopting a strong legal and regulatory framework is one such strategy (PPIAF, 2017; WB, 2017). Accordingly, various countries around the world that used unsolicited PPPs, have strengthened their legal and regulatory framework to mitigate the inherent drawbacks of USPs (WB, 2017). An investigation of such legal and regulatory frameworks is imperative to reform the legal and regulatory framework of the other countries that are willing to accept unsolicited PPP.

Therefore, this paper aims to review the legal and regulatory frameworks adopted by various countries in the world to manage the procurement of unsolicited PPPs. Accordingly, the paper begins with a brief outline of the study, followed by the adopted research method. Then, the data collected from the literature are presented and analysed to visualise the various legal and regulatory frameworks adapted to the procurement of unsolicited PPPs. Based on the results, a conceptual framework is developed finally to reform other countries' legal and regulatory frameworks.

2. METHODOLOGY

An extensive review of the literature facilitates the researcher to reinforce the base of the study by gathering prevailing knowledge regarding the research area (Khallaf et al., 2018). Thus, a comprehensive literature analysis was brought to explore the existing legal and regulatory framework related to unsolicited PPPs in various countries. The deductive approach begins with a theory and then creates an empirical observation to support the theory, moving from a more general to a more specific level (Park et al., 2020). In doing so, the deductive approach was selected for this study and accordingly, the legal and regulatory framework related to the unsolicited PPPs, which is the broad theme of the study, was narrowed down to its procurement stage. Accordingly, a detailed investigation was executed with selected ten (10) countries by investigating various acts, statutes, regulations, and guidelines enacted by such countries. Figure 01 illustrates the steps that were followed to perform the literature review after identifying the research problem.

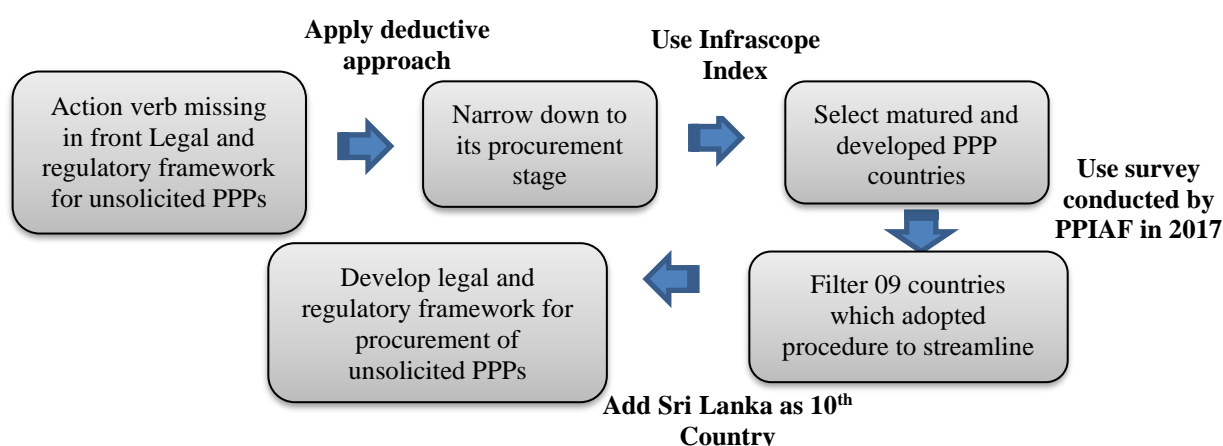


Figure 1: Flow diagram of study selection

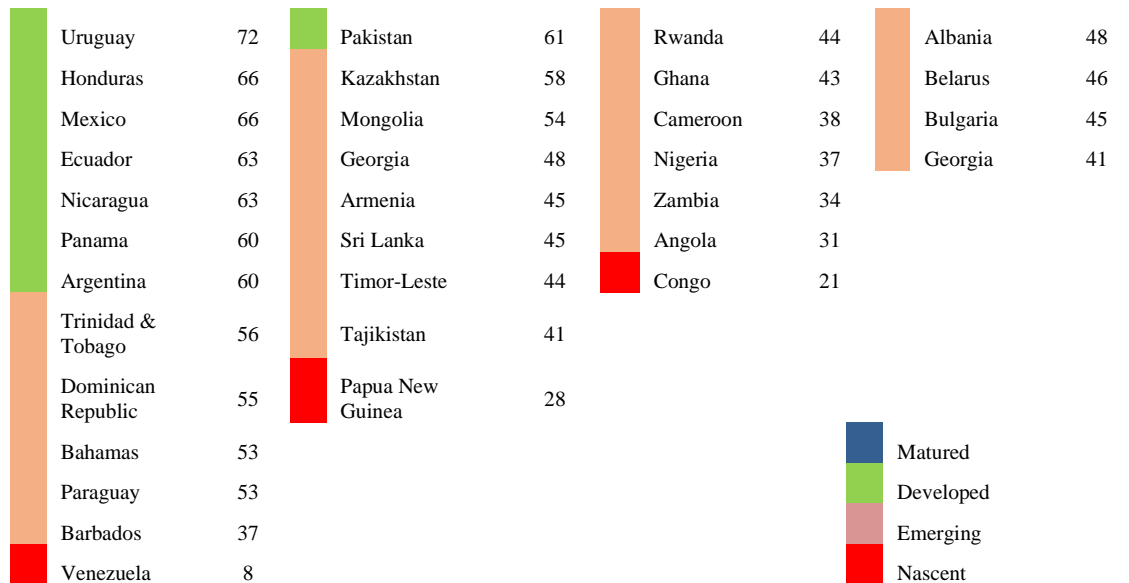
Finally, based on a synthesis of the literature a conceptual framework was developed to draft the legal and regulatory framework or modify existing legal and regulatory framework for the procurement of unsolicited PPPs to suit for the host country.

2.1 SELECTION OF COUNTRIES

The Infrascopes Index is a measure for assessing a country's ability to execute efficient and sustainable PPPs (Economist Intelligence Unit [EIU], 2019). According to the EIU (2019), the Infrascopes Index assesses the PPP environments of 65 countries under 05 areas: enabling laws and regulations, institutional structure, maturity, investment and business climate, and financing. Accordingly, EIU has released its reports regional-wise: (i) Asia, (ii) Latin America and the Caribbean, (iii) Africa, and (iv) Eastern Europe, Central Asia, and the Southern and Eastern Mediterranean. Table 1 structures the countries, regional-wise, and the descending order of the assigned Infrascopes Index to them. As per Infrascopes Index, there are 3 countries with a matured PPP environment, 25 countries with a developing PPP environment, 34 countries with an emerging PPP environment, and 3 countries with a nascent PPP environment. Accordingly, 28 countries have matured and developed PPP environments. Further, table 1 shows that the majority of regions, including Sri Lanka, fall into the category of the countries having a growing PPP environment.

Table 1: Infrascopes index of various countries in regional-wise (Source missing)

Latin America and the Caribbean		Asia		Africa		Eastern Europe, Central Asia, Southern & Eastern Mediterranean	
Country	Index	Country	Index	Country	Index	Country	Index
Chile	79	Thailand	83	South Africa	71	Slovakia	64
Colombia	77	Philippines	81	Morocco	52	Jordan	63
Peru	77	China	80	Kenya	51	Turkey	61
Jamaica	76	India	77	Egypt	51	Serbia	60
Guatemala	74	Bangladesh	66	Tanzania	49	Morocco	59
El Salvador	73	Vietnam	66	Ivory Coast	46	Egypt	55
Brazil	72	Indonesia	61	Tunisia	45	Ukraine	50
Costa Rica	72	South Korea	61	Uganda	45	Romania	48



The PPIAF aids the governments of developing countries in enhancing the structures, laws, and regulations that permit the creation of viable infrastructure with the participation of the private sector (PPIAF, 2017). Volume III of Policy Guidelines for Managing USPs in Infrastructure Projects by PPIAF in 2017 had been reviewed the experience of selected countries that practice USPs. It was highlighted that 16 countries (Argentina, Australia, Chile, Colombia, Indonesia, Italy, Jamaica, Jordan, Gana, Kenya, Mexico, Peru, Philippines, Senegal, South Africa, South Korea, and Tanzania) are using the Swiss challenge method, bonus system, best and final offer method, direct negotiation, full competition or merged method to entertain unsolicited PPPs.

This study selected countries that are reported as a country having matured and developed PPP environments as per Infrascop Index and as a country practicing unsolicited PPPs as per the PPIAF report in 2017. Accordingly, 09 countries (Argentina, Chile, Indonesia, Jordan, Mexico, Peru, Philippines, South Africa, and South Korea) were shortlisted. Out of 16 countries reported in PPIAF, Gahana, and Australia were disregarded since they entertain full competition and Kenya was eliminated since it follows direct negotiation, and Italy, Senegal, and Tanzania were removed in the absence of Infrascop Index while Colombia and Jamaica are excluded due to fewer sources to review their legislative framework for unsolicited PPP. In addition, Sri Lanka was added as the tenth country, as the authors intend to analyse USPs in Sri Lanka as further research. Therefore, the existing legal and regulatory framework of selected ten (10) countries was discussed hereinafter.

3. LEGAL AND REGULATORY FRAMEWORK FOR PROCUREMENT OF UNSOLICITED PPPS

3.1 ARGENTINA

Argentina is a civil country with a greater influence of Spanish legal tradition on its civil code (Corrá & Carbó, 2021). The criteria for managing USPs are laid out in PPP contract law (2016), which states that the private proponent must first submit a preliminary project description to the appropriate agency or ministry to screen whether the project serves the public interest and is part of the strategy plan. EIU (2019) stated that once the original

proponent submits a thorough proposal, it is modified and negotiated between the proponent and the appropriate agency to solidify project characteristics and agree on the proposal's reimbursement cost. Then, to compete with the original bid, competitive proposals are requested from third parties (Corrá & Carbó, 2021). The original proponent's bid is selected if the difference between the best bid and the original proponent's bid is less than five percent (5%) and unless the best bidder and the original proponent are forced to re-submit their best and final proposals (EIU, 2019). In addition, PPP contract law (2016) highlighted that if no competitive offers are received, USP can be launched with direct negotiation. Therefore in Argentina, USP for PPP is adopted by the best and final offer method with slight modification and there is space for direct negotiation if no competitive offers.

3.2 CHILE

Chile is a civil country with a greater effect of Spanish legal tradition on its civil code (EIU, 2019). As per Article 02 of the Concessions Law in 2017, a preliminary description of USP should be first submitted to the appropriate agency or ministry by the private proponent. The initial proposals are then screened to verify whether the project is government goals and development plans, and if accepted, the private party is required to perform detailed studies and produce a full proposal. According to Article 12 of Concessions Law in 2017, the government subsequently puts the project out for competitive tender, and revived offers are assessed and ranked, granting a predetermined bonus to the original proponent (between 3% and 8% depending on the project). If the original proponent is not the winner, the winner should pay for the proposal's development costs. In addition, the Concessions Law in 2017 emphasised that USP can be initiated by direct negotiation if no competing proposals are received. Accordingly, Chile implemented the bonus method to incorporate USPs into PP and there is space for direct negotiation if no competitive offers.

3.3 INDONESIA

Indonesian law is founded on a civil law system, intermixed with local customary law and Roman-Dutch law (Asian Development Bank, 2016). According to PPP regulation No. 38 of 2015, a private proponent may initiate USP upon the submission of a proposal to the line ministry or appropriate government agency. Further, PPP regulation states that the proposal is screened under criteria of technically integrated with the infrastructure delivery master plan, the project is economically and financially feasible, and the financial capability of the private proponent. According to Article 2(a) of the Regulation, the procuring entity calls for a competitive tender to compete received USP. According to article 14 (5) of the Regulation, while evaluating competitive tenders, the original proponent is given a 10% bonus to the procurement score and the opportunity to match the lowest bidder's offer. It reveals that Indonesia has implemented a system to embrace USPs in PPP by merging the bonus approach and the Swiss challenge method.

3.4 JORDAN

Jordan's legal system is mostly based on the French Civil Code and the Ottoman Majalla, with Islamic law applied to family law (EIU, 2017). As per Article 11 of the PPP Law in 2020, any private entity can submit a USP directly to any government authority. Furthermore, under Article 11 of the said PPP Law, a private party making a USP is

required to prepare a feasibility assessment and a sustainability report. According to Article 35(c) of the said PPP law, a USP must go through a bidding process by allowing a decided discount to the original proponent. In addition, Article 35(c) of the PPP law (2020) states that if the winning bidder does not win, the original proponent should be compensated for the cost of preparing the USP. It demonstrates that Jordan incorporated the bonus approach in PPP Law to accept USPs.

3.5 MEXICO

Mexico's legal system is based on civil law, including elements of the Roman and French legal systems (EIU, 2019). Article 26 of the PPP regulation in 2018 states that anyone interested in implementing an unsolicited PPP may submit a proposal to the appropriate federal agency or entity. According to Article 29 of the PPP Law, during the evaluation of USPs, it is considered, whether the project is of public interest and whether it provides social returns consistent with the national development plan. Articles 30 and 31 of the said PPP Law provide that if the procuring entity considers the project suitable, it should follow the public tendering process to call counter proposals and in the evaluation, the promoting party of a USP is entitled to a decided incentive which is not more than 10%. Besides, Article 31 of PPP Law states if the promoting party does not win the bid, it is entitled to reimbursement for the costs of conducting the studies. Accordingly, Mexico integrated the bonus system into PPP Law to entertain USPs.

3.6 PERU

Peru is a Latin American country that operates under a system of civil law (EIU, 2019). Once USP is accepted from preliminary investigation, as per Article 88 of the PPP Regulations in 2018, expressions of interest are called from third parties to verify the market interest. If no third parties express an interest, the project is awarded straight to the original proponent with direct negotiation, as outline in Article 89 of the PPP Regulations. If there is a market interest and proposals are called from third parties and the original proponent's offer exceeds the lowest third-party offer, the original proponent is given the option to match with the lowest third-party offer under Article 93 of the PPP regulation. If the original proponent can match the lowest offer or if the original proponent's offer does not exceed the lowest offer, the project is awarded to the original proponent, unless the third party's lowest offeror is selected. Therefore, to consider unsolicited PPPs, Peru adopted the Swiss Challenge approach and the direct negotiation method is possible if the absence of market interest for USP.

3.7 PHILIPPINES

Customary law, Roman civil law, Anglo-American common law, and Islamic law, make up the Philippine legal system (Werneck & Saadi, 2015). USPs are codified in the Build Operate Transfer Law and amended by Implementing Rules and Regulations in 2014, which spell out the process for submitting unsolicited proposals for a PPP and also investment incentives for project developers (Werneck & Saadi, 2015). According to the resolution, once the original proponent's USP has been accepted in the preliminary investigation, the implementing agency or local government unit invites competitive offers. As per Regulations in 2012, the original proponent has the opportunity to match the lowest third-party offer if their offer is higher than that of the lowest third-party offer. If the original proponent can match the lowest offer or if the original proponent's offer

does not exceed the lowest offer, the project is awarded to the original proponent, unless the third party's lowest offeror is selected. Accordingly, the Philippines implemented the Swiss Challenge approach into PPP Legislation in bringing USPs into consideration.

3.8 SOUTH AFRICA

South Africa's legal system is a mixture of Roman-Dutch civil law, English common law, customary law, and religious personal law (EIU, 2015). In 2008, the National Treasury of the Republic of South Africa published a practice note on USP for use with PPPs (PPP legal resource center, 2021). According to Section 2.1 of the practice note, once USP is received by a government entity, preliminary examination was executed and in compliance with Section 5.1 of the practice note, if such USP is accepted from a preliminary screening, an Expression of Interest (EOI) is issued to verify market interest for the USP. If there is no response, the project will be implemented through direct negotiation with the original proponent. If there is a market interest for USP, the accounting authority invites bids in a competitive setting and the two most beneficial bids are chosen in the first round and they are invited to give the best and final offer together with the original proponent (Baillie & Faber, 2021). Further, Baillie and Faber (2021) stated the winner is also expected to compensate the initial proponent for project development costs if the original proposal is not successful. Accordingly, South Africa integrated the best and final offer approach and direct negotiation method into the existing legislative framework to entertain unsolicited PPPs.

3.9 SOUTH KOREA

South Korea's legal system is based on the Republic of Korea's Constitution, which is a civil law system (Asian Development Bank, 2016). Once USP is received by a government institution, the Public and Private Infrastructure Investment Management Center examines it to ensure whether it is in line with the government's infrastructure investment plans and priorities and includes a value-for-money study (EIU, 2018). Then, competitive offers are called and an extra point of 10% is awarded to the original proponent at the bid evaluation (EIU, 2018). Further, EIU (2018) stated that if the promoting party does not win the bid, it is entitled to reimbursement for the costs of conducting the studies for and preparation of USP. In addition, Asian Development Bank (2020) stated that the negotiation is conducted directly with the original proponent if no other alternate proposals are presented. Accordingly, South Korea incorporated direct negotiation strategies and the bonus method into the country's current legislative framework in order to entertain USPs for PPPs.

3.10 SRI LANKA

Sri Lanka's legal system is a mix of English common law, Roman-Dutch civil law, and customary law (PPIAF, 2017). Line ministries and state agencies were instructed in reference 237 (a) of Part II Guideline in 1998 to process received USPs in the manner prescribed for solicited proposals, and only in urgent and exceptional circumstances such USPs are allowed to be considered directly with cabinet approval. In Supplement 23 to Part II Guideline Reference: 237, it allowed direct negotiation methods to deal with USPs without going through the normal procurement procedure from the year 2011. Later, Supplement 30 to Part II Guideline Reference: 237 superseded the said Supplement 23, the Swiss Challenge procurement option should be used to launch USPs. In September

2019, by circular No. PFD/PPP/Guidelines/2019, Ministry of Finance declared that the Swiss Challenge procurement method was abolished owing to its inherent deficiencies and instructed to adopt the methodology recommended in Part II Guideline in 1998 again. As a result, although Sri Lanka used a variety of strategies, including full competition, direct negotiation, and the Swiss Challenge option, to entertain USPs over a period, all USPs for PPPs are currently entertained on the basis of full competition.

4. ANALYSIS

It was discovered that counties having the civil legal tradition, the common legal tradition, or a mixture of legal tradition with customary and religious law, make space for unsolicited PPPs. A thorough examination of the legislative and regulatory frameworks pertaining to USPs in the selected 10 counties reveals that there is space for USPs within all of these frameworks. Accordingly, table 2 summarises the legislative and regulatory environment in USP procurement in selected countries.

Table 2: Summary of the legislative and regulatory environment related to USP procurement of selected countries

Country	Legal tradition	Institute to submit USP	Criteria of preliminary evaluation	Requirement of secondary submission	Call EOI to verify market interest	Provision to convert USPs to competition	Special requirement for negotiation	Provision to reimbursement of cost of proposal to original proponent
Argentina	Spanish legal tradition on its civil code	Line ministry/ government agency	Project serves public interest and is a part of strategy plan	Yes	No	Yes	When no bids are received once competitive proposals are called, negotiate with original proponent	Yes
Chile	Spanish legal tradition on its civil code	Line ministry/ government agency	Project is within government goals and development plan	Yes	No	Yes	When no bids are received once competitive proposals are called, negotiate with original proponent	Yes
Indonesia	Civil law tradition with local customary law and Roman Dutch law	Line ministry/ government agency	Project is integrated with master plan economic and financial feasibility and financial capability of proponent	No	No	Yes	No	No
Jordan	French Civil Code and the Ottoman Majalla, with Islamic law	Line ministry/ government agency	Project is feasible and sustainable	No	No	Yes	No	Yes
Mexico	Civil law tradition with elements of the Roman and French legal systems	Federal agency/ government entity	Project is in the public interest, provides social returns and is in national priority	No	No	Yes	No	Yes
Peru	Civil law tradition	Implementing agency/ local government agency	No specific criteria	No	Yes	Yes	When no EOIs are received, negotiate with original proponent	No
Philippine	Customary law, Roman civil law, and Anglo-American common law, and Islamic law	Implementing agency/ local government agency	No specific criteria	No	No	Yes	No	No

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South Africa	mixture of Roman Dutch civil law, English common law, customary law, and religious personal law	Accounting authority	No specific criteria	No	Yes	Yes	No market interest after calling EOIs, negotiate with original proponent	Yes
South Korea	Civil law tradition	Line ministry/ government agency	Project is the government's infrastructure investment plans and conduct value for money study	No	No	Yes	When no bids are received once competitive proposals are called, negotiate with original proponent	Yes
Sri Lanka	Mix of English common law, Roman-Dutch civil law, and customary law	Line ministry/ government agency		No	No	No	In urgent and exceptional circumstances, direct negotiation method is possible with cabinet approval	No

As shown in table 2, USP may be received by line ministry or government agency or PPP unit and then preliminary screening is executed to verify the project is feasible and acceptable to the government according to own criteria to their counties. If a USP is deemed to be a non-feasible proposal or fails to meet other initial requirements, it is rejected. It was noted that the criteria for the preliminary screening are whether the project is in the public interest, in line with government objectives and development plans, economically and financially possible, delivers social benefits, becomes a national priority, and the proponent is financially capable. Afterward, only acceptable proposals are taken into detailed evaluation based on specified criteria as per counties' legal and regulatory framework. Argentina and Chile, request the original proponent to present a secondary submission in order to solicit negotiated or modified project characteristics. As shown in table 2, all nations other than Sri Lanka have provided a space to compete with USPs. In South Africa and Peru, EOIs are called to determine market interest for unsolicited PPPs, and if there is interest, only competitive offers from third parties are solicited unless the direct negotiations method is utilised to accept the unsolicited PPP. The strategies adopted by various regimes to turn USPs into competition are outlined in table 3.

Table 3: Mechanisms used by various regimes to convert USP to competition

Country	Way of Converting USPs to Competition				Remark
	Swiss challenge	Bonus system	Best and final offer	Merged system	
Argentina				x	If price deference between best offer and original bid is more than 5%, final offers are called from both. Unless project is awarded to original proponent. Merged system based on of bonus and best & final offer method. If no competitive offers are received, direct negotiation method can be adopted.
Chile		x			Allow 3-8% discount to original proponent. If no competitive offers are received, direct negotiation method can be adopted.
Indonesia				x	Allow 10% bonus to original proponent when competitive bids are called and request to match with lowest offer in original proponent is not the lowest at the evaluation. Merged system based on of bonus and Swiss challenge system
Jordan		x			Decided % of discount is applied to original proponent at the evaluation
Mexico		x			Decided % of discount is applied to original proponent at the evaluation
Peru	x				If there is market interest for USP Swiss challenge method is used unless direct negotiation method is used.
Philippine	x				Only USP Swiss challenge method is used.
South Africa			x		Select two most advantageous bids from competitive offers to give best and final offer with original proponent. If no competitive EOIs are received, direct negotiation method can be adopted.

South Korea	x	Allow 10% bonus to original proponent when competitive bids are called. If no competitive offers are received, direct negotiation method can be adopted.
Sri Lanka	Not applicable	Call competitive bids and request to original proponent to participate competition. No additional advantage is given to original proponent. Only in exceptional circumstances such USPs are allowed to be considered directly with cabinet approval

As shown in table 3, the Swiss challenge method, bonus system, best and final offer method, or a mix of the said methods are used to convert USPs to a competitive basis. Peru and the Philippines utilise the Swiss Challenge method, Chile, Jordan, Mexico, and South Korea use the Bonus system while South Africa adopts the Best and Final Offer methodology. In addition, Indonesia uses a hybrid system that included the Swiss Challenge and Bonus systems and Argentina uses a merged system of bonus and best and final offer method. In Sri Lanka, unsolicited PPPs were initially solely considered by calling competitive bids and later by direct negotiation and the Swiss challenge technique. In the year 2019, the Swiss challenge method was abolished after a short period of its introduction, and government entities were instructed to continue with the competitive procedure without providing any further benefits to the initial proponent. However, Sri Lanka provides a space for direct negotiation only in exceptional and urgent circumstances with cabinet approval.

According to the detailed analysis of the legal and regulatory framework for procurement of USPs in selected 10 countries, a conceptual framework was developed, as shown in Figure 02, by considering different processes followed by various countries in order to visualise an ideal approach for procurement of unsolicited PPP that is suitable for host countries.

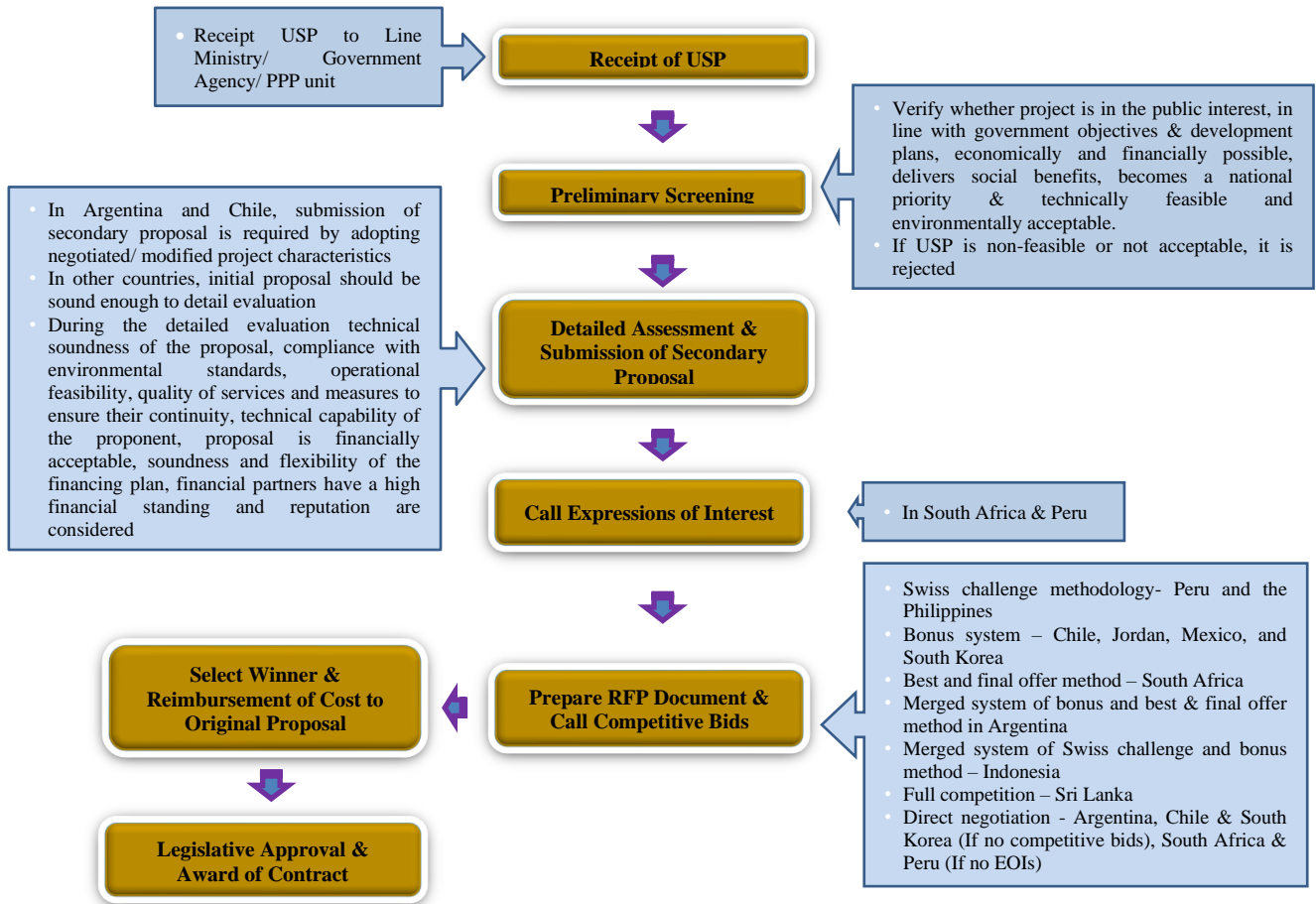


Figure 2: Conceptual framework to develop an ideal approach for procurement of unsolicited PPP

The first stage of an unsolicited PPP procurement begins when a private entity approaches a public body or line ministry or PPP unit with a proposal for a service or infrastructure project without getting a formal invitation from the government body. Secondly, every unsolicited PPP proposal undergoes a preliminary evaluation and detailed assessment. A USP is disregarded if it is found to be a non-feasible proposal or if it does not satisfy other initial requirements of the country. Afterwards, some countries called secondary proposals in order to solicit negotiated or modified project characteristics. Then USPs are forwarded to competition by adopting the Swiss challenge method, bonus system, best and final offer method, or combined method of them. Some countries called EOIs to verify the market interest for USPs before calling counter offers. If there is no response for EOIs or no counter offers are submitted from third parties, USPs are implanted by adopting a direct negotiation method. There is a provision in most legal regulatory frameworks, to reimburse the original proponent for project development costs if the original proponent does not become the winner.

5. CONCLUSION

This study presents the findings of a systematic review of existing legal and regulatory frameworks related to unsolicited PPP procurement of selected ten countries. According to table 1, 28 nations have matured and developed PPP environments, while the majority of regions including Sri Lanka fall into the category of countries with growing PPP

environments. This study reveals that countries with various legal traditions have provided a space to entertain unsolicited PPPs in their legal and regulatory framework. USP is initiated with receipt of such proposal to line ministry, government department, or PPP unit. Subsequently, it is followed by preliminary screening and detailed assessment. Various countries have adopted different criteria owned to them for preliminary screening and detailed assessment of the USP. As summarised in table 2, some countries negotiate and modify the received USP to match with the country's PPP policy and government goals and objectives, and the original proponent is required to submit a secondary proposal by addressing such changes. According to this study, the key highlight is that USPs compete using the Swiss challenge methodology, the bonus system, the best and final offer method, or a combination of the aforementioned methods as summarised in table 3. Further, it was revealed that some countries adopt a practice to call EOIs to verify the market interest to submit counter proposals. However, there is space for the direct negotiation method if no offers are received from the competition or no EOIs are received. However, though Sri Lanka has entertained USPs using a number of approaches over time, including full competition, direct negotiation, and the Swiss Challenge option, all USPs for PPPs are presently accepted on the basis of full competition.

According to a detailed investigation of the legal and regulatory framework for procurement of USPs in 10 selected countries, it was revealed that such countries developed their own system to entertain unsolicited PPPs and such systems include both common and unique steps to them. Based on that, the developed conceptual framework, shown in figure 2, can be used to visualise an ideal approach for procurement of unsolicited PPP suitable for host countries that are willing to embrace USPs.

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