

A CASE STUDY OF TAIWAN'S FRAMEWORK TO EVALUATE UNSOLICITED PUBLIC/PRIVATE PARTNERSHIP PROPOSALS

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Abstract

The acceptance of unsolicited proposals (a private-initiated process) has been viewed by several governments as a means of encouraging innovative initiatives. However, the ramifications of this mechanism are still poorly understood. This paper analyzes a framework used by the Taiwanese government to evaluate unsolicited proposals. Taiwan's experience demonstrates the need for an improved framework in which key issues such as building consensus, maintaining a transparent procurement process, ensuring sufficient competition, and protecting intellectual property rights shall be addressed. In addition, the case study suggests that the roles of participants, the relationships and interfaces of activities, information flows, and decision making points should all be well defined. Some fundamental differences between solicited and unsolicited proposals are also discussed.

Keywords: Public-Private Partnership; Private-initiated; Public-initiated; Unsolicited Proposals; Solicited Proposals; Framework; Taiwan

1. Introduction

The past decade has seen a dramatic increase in public-private partnership (PPP) in infrastructure developments. The public sector generally initiates PPP projects by soliciting proposals. However, the private sector can sometimes take the initiative by submitting unsolicited proposals. While unsolicited proposals have been accepted by several governments, the suitability and management of such proposals are still being debated.

In theory, the acceptance of unsolicited proposals benefits the public sector by encouraging innovative initiatives [1]. The private sector can propose ideas about projects which might otherwise be overlooked, or problems which appear insoluble, such as Paris's A86 Tunnel Project [2]. It also provides authorities, who might lack sufficient budgets or capabilities to conduct project preparation work, another option to attract private investments. In reality, though, some private-initiated infrastructure projects are controversial, due to the process by which projects are awarded. India's Dabhol Power Plant Project is such an example [1][3].

Given the limited utilization of the unsolicited setting, the process is still poorly understood. Taiwan is one government which accepts unsolicited proposals and has established a

formal framework to evaluate them. Lessons derived from a case study of Taiwan’s framework can be useful for other governments and for private sectors that are interested in this unique investment opportunity. This paper begins by describing fundamental differences between solicited and unsolicited proposals. The framework adopted by Taiwan to manage unsolicited proposals is then presented and discussed. To ensure a robust analysis, this research is based on information collected from multiple sources, including: 1) legislation which enables unsolicited proposals; 2) unsolicited proposals submitted by proponents, and related reports made available by the companies and government departments; and 3) newspaper articles and academic papers.

2. Comparison of public-initiated and private-initiated procedures

2.2 Responsibility boundary of the public sector

In a public-initiated PPP project, the responsibilities of the public sector include identifying infrastructure needs, conducting feasibility studies, preparing bidding documents, evaluating proposals, and negotiating agreements (Figure 1). In a private-initiated process, the responsibilities of the public sector are reduced to the evaluation of proposals and negotiation of agreements only (Figure 2).

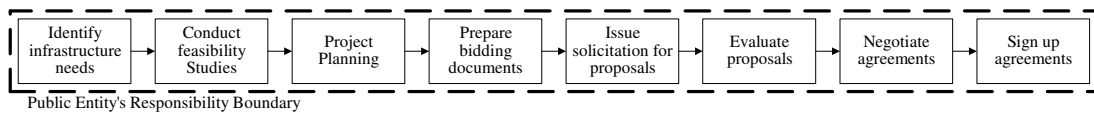


Figure 1: Public entity’s responsibility boundary in a public-initiated process

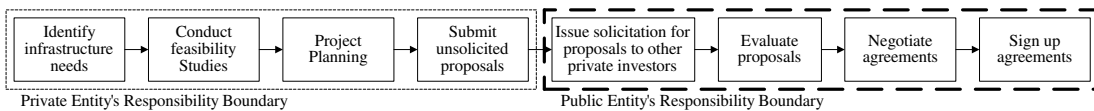


Figure 2: Public entity’s responsibility boundary in a private-initiated process

The reduction in responsibility benefits the public sector by decreasing the probability that a PPP project will fail, and reducing the cost to the public sector if it does. Public-initiated projects can fail due to an inability to attract private bidders, who are often discouraged by the unreasonable expectations of the public sector and/or the low expected economic returns of the project [4][5]. This can be avoided in a private-initiated process because the private sector will only propose projects which are profitable. Moreover, the public sector will not face a capital loss on its investment in project preparation works when an unsolicited proposal is rejected. For governments which lack the capabilities or budgets to conduct project preparation works, a private-initiated process is another option for encouraging private investments. However, these benefits can only be achieved if the procurement process is properly formulated and managed.

2.3 Capability to discover new infrastructure needs and encourage innovative ideas

Figure 3 shows a process for managing ideas in a public-initiated setting. The solid lines show the government’s boundary. Ideas flow into the government, and after passing the

filter criteria, flow out to the user market. In a public-initiated process, the public sector begins by studying various alternatives, and solicits proposals based on the results of these studies. Concepts submitted by the private investors can sometimes expand the government's boundary slightly, but typically fall within it. Overlooking projects outside of the boundary is thus a shortcoming of this mechanism. However, in a private-initiated process, the government's boundary is expanded (Figure 4) by allowing the private sector to identify new infrastructure needs and innovative ideas [1].

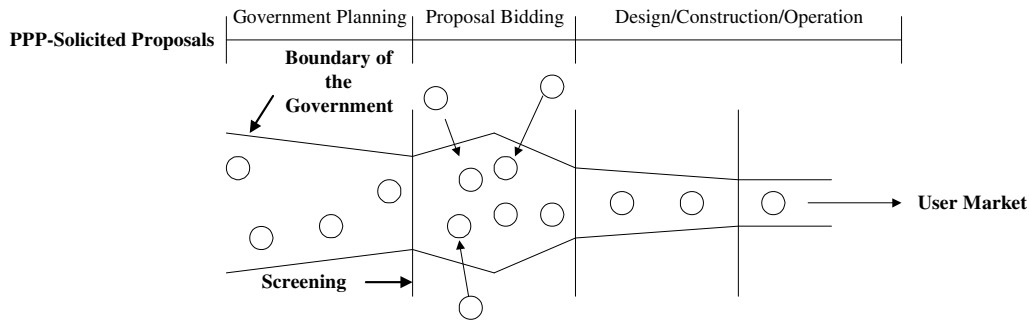


Figure 3: A process for managing ideas in a public-initiated setting

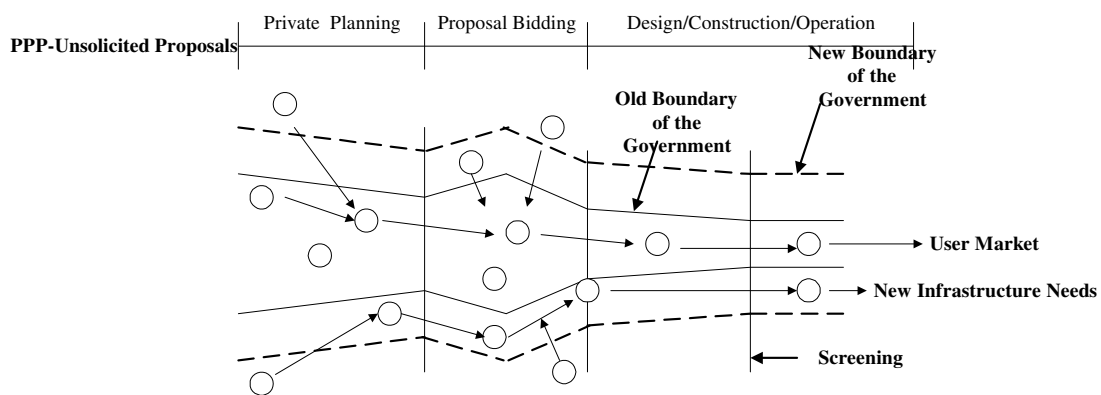


Figure 4: A process for managing ideas in a private-initiated setting

2.4 Complexities of procurement processes

Complexities of the procurement processes for solicited and unsolicited proposals also vary significantly. For example, because a solicited proposal is usually based on a clearly-defined infrastructure need, its procurement process can focus on evaluating the proposed concepts. However, an unsolicited proposal is often submitted without a consensus having been achieved with regard to the proposed infrastructure need. In this case, the public entity which receives the proposals should also try to build a consensus for the specific infrastructure need. Second, with solicited proposals, all bidders compete on the same basis and time frame. In contrast, the government may offer original proponents of unsolicited proposals some predefined advantages in exchange for their investing in initial feasibility studies and developments. Determining how to reward the original proponent while still allowing a truly competitive process then becomes another challenge to the public sector. Because of competitive disadvantages and restricted time allotments, some private sectors may be unwilling to compete in an unsolicited setting. Lack of competition is thus another risk of unsolicited proposals. Once there is no efficient procurement process in place,

corruption and disputes accompanying unsolicited proposals may become a barrier to a successful PPP project [5]. For these reasons, it is more challenging for the public sector to establish a framework to manage unsolicited proposals. In the next section, a framework used by the Taiwanese government is presented.

3. Case study of Taiwan’s framework to evaluate unsolicited proposals

Promulgated by the Executive Yuan Public Construction Commission in 2002, “The Directions for Evaluation of Unsolicited Proposals by the Arranging Authority (the Directions)” is the procedural framework for the authority in charge (Arranging Authority) to evaluate unsolicited proposals. Key issues covered in the Directions are presented below.

3.1 Scope of application

Under Taiwan’s framework, infrastructure sectors in which the private sector can participate by way of unsolicited proposals include: transportation facilities and common conduit; environmental pollution prevention facilities; sewage, water supply and water conservancy facilities; sanitation and medical facilities; social and labor welfare facilities; cultural and educational facilities; major facilities for tour sites; power facilities and public gas and fuel supply facilities; sports facilities; parks facilities; major industrial, commercial and hi-tech facilities; development of new towns; and agricultural facilities. [6][7]

3.2 Tendering procedure

Unsolicited proposals are divided into two classes: those in which the Proponent provides land (Type A), and those in which the government provides land and/or facilities (Type B). The tendering procedures for these classes are shown in Figures 5 and 6, respectively. [7]

3.3 Evaluation team and evaluation criteria

The Arranging Authority can perform proposal evaluation work either individually or in conjunction with an Evaluation Committee, depending on the project characteristics and evaluation phase [7]. An Evaluation Committee is required to consist of seven to seventeen members, at least half of whom shall be experts or scholars from outside the Arranging Authority [8]. These members are appointed by the head of the Arranging Authority from personnel with professional experience in fields related to the proposals submitted. If needed, the Arranging Authority may also form a Working Group to assist the Evaluation Committee. The members of this Working Group, on the other hand, are mainly drawn from the staff of the Arranging Authority. Furthermore, if submitted proposals involve complex technical or professional issues, the Arranging Authority may also engage a professional consultant to assist with related evaluation procedures. Main evaluation criteria are listed in Table 1.

Table 1: Evaluation Criteria

	Type A	Type B
The Initial Evaluation Phase	<ul style="list-style-type: none"> ▪ Is the proposed project compliant with the policy objectives of the Arranging Authority? ▪ Do relevant regulations impose any prohibitions? ▪ Do the submitted documents meet the requirements of relevant regulations? ▪ May assistance or coordination be provided by the government? ▪ What is the overall feasibility of the proposal? 	<ul style="list-style-type: none"> ▪ Is the project outline compliant with the policy objectives of the Arranging Authority? ▪ What are the benefits of the proposed use of government land and/or facilities? ▪ Which items require government assistance? ▪ Do relevant regulations impose any prohibitions? ▪ Does the Proponent agree to the publication of subsequent proposal content?
The Secondary Evaluation Phase	—	Comprehensive review of the following documents: <ul style="list-style-type: none"> ▪ Construction plans ▪ Operating plans ▪ Financial plans ▪ Other relevant documents

Source: Developed from [7].

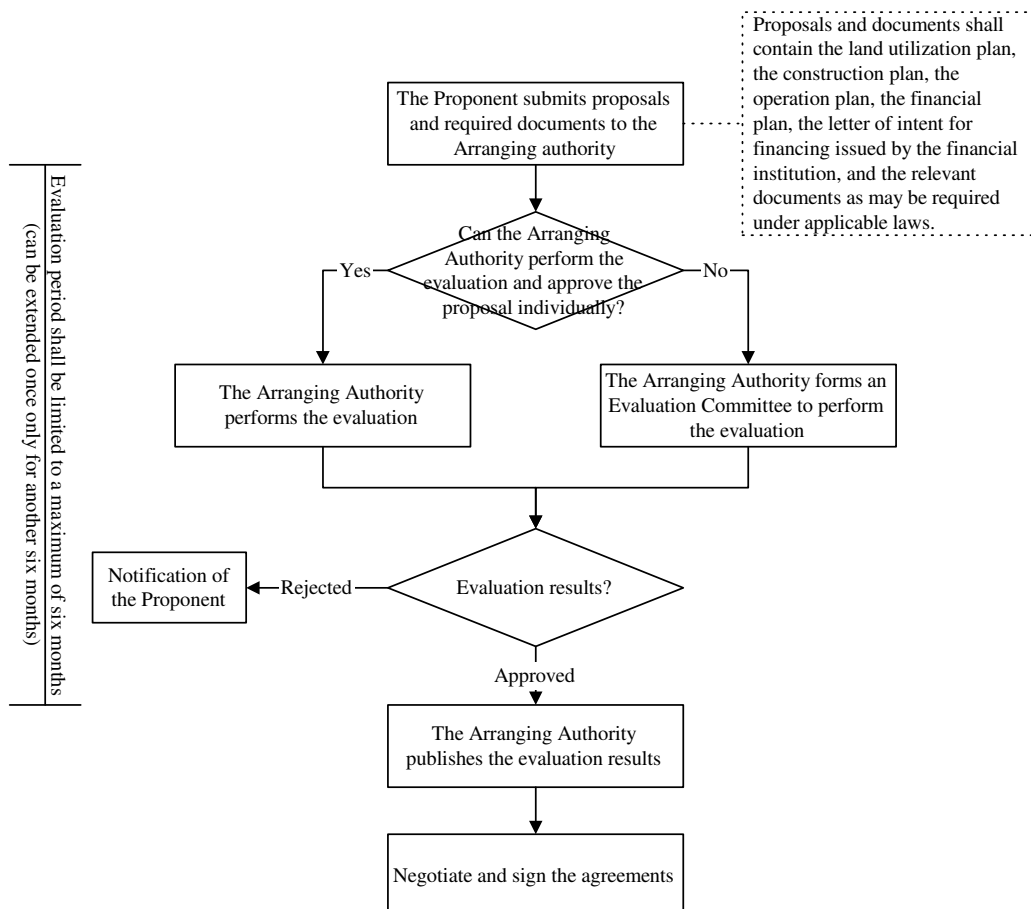


Figure 5: Tendering procedure for Type A projects; Source: Developed from [7]

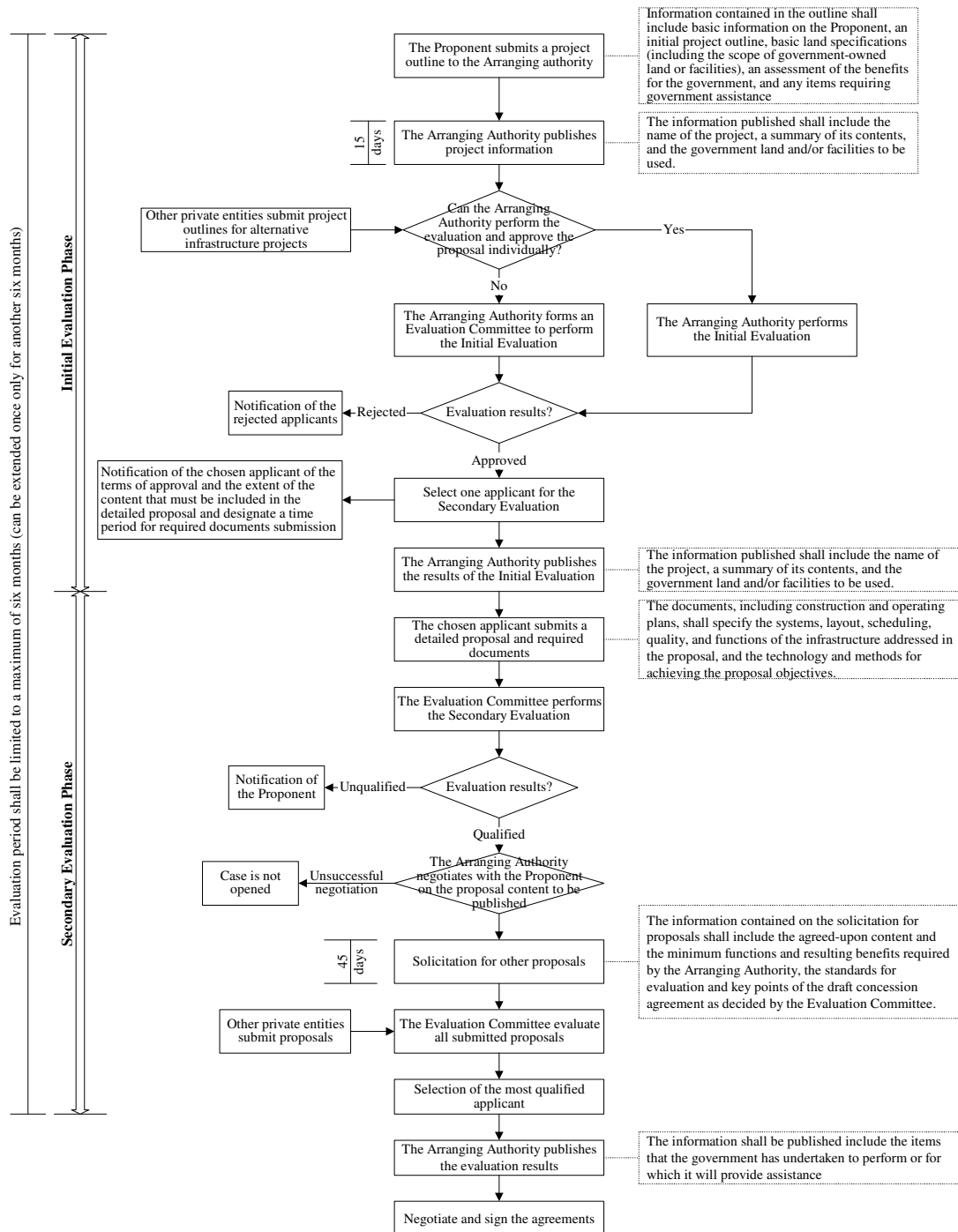


Figure 6: Tendering procedure for Type B projects; Source: Developed from [7]

3.4 The protection of the proponent

To provide some incentive or compensation to the proponent for its investment in project preparation work, Taiwan's framework allows the proponent to enjoy some pre-approved preferential terms, or the right to offer a matching bid during the competitive bidding

process. In addition, it also requires that intellectual property rights issues concerning documents submitted by the proponent be handled according to applicable laws and regulations. These preferential terms and intellectual rights protection measures shall all be published along with the solicitation for other proposals. [7]

4. Discussions

4.1 Scope of application

The suitability of applying the same framework to infrastructure sectors which vary significantly in character, magnitude, and complexity is questionable. For example, a transportation project usually requires greater coordination efforts among different agencies, and more public input in the project developing process, than some other infrastructure sectors such as cultural facilities. A proper process to evaluate unsolicited proposals for transportation projects should therefore take these features into account. Moreover, it may require more time (several months or even years) to build a consensus for a transportation project among related public agencies. The evaluation period specified in current framework of Taiwan -- a maximum of six months, which may be extended once for another six months -- may therefore not be applicable to such a complex transportation project. Simply put, Taiwan's framework does not properly address the unique characteristics of different infrastructure sectors.

4.2 Consensus building issues

Often, when an unsolicited proposal is submitted, a consensus has not yet been achieved with regard to the addressed infrastructure need. In this case, if the public sector fails to build a consensus, there would be a risk that the acceptance of unsolicited proposals will turn the infrastructure development into a "first come, first serve" process. Consider a situation where a private entity, A, submits an unsolicited project outline to propose a roadway which would solve the traffic problem between cities X and Y. After the project information is published, another private entity, B, believes that building a light railway on another route is a better solution. Under the current process, however, private entity B cannot submit its project outline to compete with private entity A's because, according to the Directions, other private entities can only submit project outlines for "*a different kind of infrastructure using the same government-owned land and/or facilities* [7]." In this situation, if the proposal submitted by private entity A passes all evaluation criteria, the project will be implemented even though it may not be the best solution to the addressed problem. Moreover, if another private entity, C, wishes to propose to build a hospital using a public-owned land covered in the proposal of private entity A, it may not have sufficient time (only 15 days according to the Directions) to prepare its project outline. Even if private entity C does complete and submit its project outline, other issues will be raised with regard to evaluating these outlines which involve transportation and hospital projects.

4.3 Proposal evaluation issues

4.3.1 Competition

As discussed earlier in this paper, lack of competition is one risk of an unsolicited bid [1][9]. The experience of Taiwan is illustrative. In Taiwan, several infrastructure projects originating as unsolicited proposals have reached their agreement sign-up phases [10]. Notably, most, if not all, of these projects have no bidders competing against the original proponent. Although there might be some other reasons for not having interested bidders, the current procurement process plays a role in this lack of competition. For example, Taiwan's framework allows the proponent to enjoy pre-approved preferential terms during the selection process [7]. This predefined advantage, if defined inappropriately, undermines the willingness of other private entities to participate in a bid. In addition, even if other private entities do participate, they have only 45 days to prepare their proposals, regardless of the magnitudes and complexities of the projects [7]. This restricted time period further decreases their willingness to participate in an unsolicited bid.

When awarding an unsolicited project, one objective of the public sector should be to maximize competition, because this allows the public sector to secure cost-effective gains while avoiding the potential corruption and disputes which can arise in an unsolicited setting [9][11]. However, Taiwan's framework is not only unable to satisfy this objective, but may actually result in the increased hesitancy of private entities to submit unsolicited bids for the largest and most complex projects.

4.3.2 Evaluation criteria

To ensure equitable access to public-owned lands, Taiwan's framework allows other private investors to submit alternative project outlines, using the same public-owned land and/or facilities, to compete with the proponent's outline in the Initial Evaluation phase [7]. In this case, determining how to evaluate project outlines for various infrastructure sectors becomes an issue. Some criteria used in Taiwan's framework may lead to a biased result. Take the criterion of "assistance required from the government" as an example. Consider a private entity, A, which submits a project outline to build a school using a public-owned land X. After the information has been published, a private investor, B, submits another project outline to build an environmental pollution prevention facility utilizing the same land. Assume that both proposed projects are compliant with the Arranging Authority's objectives, create positive benefits, and are not prohibited by any relevant laws. In addition, both proponents agree to publish the proposal contents. The projects vary only in the degree of assistance required. To deal with potential public opposition issues, the proponent of the environmental pollution prevention facility may require more assistance from the Arranging Authority. If the Arranging Authority is reluctant to assume responsibility for providing required assistance, it may tend to select another project which requires less assistance, given that both projects are not emergent needs. As a result, the private sector may, in the future, tend to propose projects which are less complicated and/or require less assistance from the government, as they have a better chance of being selected. This situation will then undermine the benefits of accepting unsolicited proposals by discouraging the private sector from submitting proposals for complex projects.

4.3.3 Evaluation team

In Taiwan's framework, the roles and responsibilities of parties involved in the proposal evaluation are unclear [12]. For example, in the evaluation of Type B projects, two

Evaluation Committees may be formed: the Initial and the Secondary Evaluation Committees. However, the division of authority between these two committees is not well defined. For instance, to what level of detail can the Initial Evaluation Committee critique a proposed project? Can it base approval only on whether the project is compliant with the policy, or can it also determine the project scope? Furthermore, in forming an Initial Committee, the procedure for recruiting members who are capable of evaluating project outlines which may be related to various infrastructure sectors is also unclear. Equally ill-defined are the role and responsibility of the professional consultant in the evaluation process. For instance, is it mandatory for the Evaluation Committee to consider the opinions of the professional consultant in proposal evaluation, or do these opinions simply serve as references?

4.4 Process management

Process management involves planning and administering four key components of a process model: 1) activities related to the process; 2) actors; 3) information flows which link actors; and 4) inputs and outputs of activities [13]. Good management is necessary to achieve a high level of performance for the process, and to identify opportunities for improvement. Unfortunately, a systematic process management mechanism is still absent from Taiwan's framework. More specifically, Taiwan's framework focuses mainly on defining all activities required in the process, while overlooking other components such as the roles and responsibilities of different actors (e.g., different governmental departments, professional consultants, evaluation committees, etc.). The information flows which link these actors and the inputs and outputs of activities are also unclear. This ambiguity in the roles and responsibilities of actors, along with the information flows among them, usually results in numerous information inquiries and redundant effort during the process. Furthermore, the absence of a systematic management mechanism also results in less effort being put into the process evaluation. For instance, when an unsolicited proposal is rejected, there is little, if any, effort devoted to identifying problems related to the procurement process. As a result, the opportunities for process improvement are limited.

5. Conclusions

While the PPP procurement process has been well researched, much of this research has focused on solicited proposals. However, solicited and unsolicited proposals differ in several aspects. First, in an unsolicited setting, responsibilities of the public sector are reduced to evaluating proposals and negotiating agreements. Second, compared with a solicited setting, an unsolicited setting has a higher potential for identifying new infrastructure needs and encouraging innovative ideas. However, a framework to evaluate unsolicited proposals is also more complicated. The fundamental differences between solicited and unsolicited proposals make it important to study their procurement processes separately.

If the procurement process for an unsolicited project is properly formulated and managed, this mechanism can bring some additional benefits to the public sector [1][9]. Unfortunately, the case study of Taiwan has demonstrated a need for an improved framework to evaluate unsolicited proposals, because several issues have not yet been properly addressed. These issues include the suitability of applying the same guidelines to

various infrastructure sectors, the importance of consensus building for addressed infrastructure needs, the maintenance of sufficient competition, and the integration of a systematic process management mechanism into the framework. An improved framework to evaluate unsolicited proposals shall not only thoroughly address the foregoing issues, but also clearly define the roles of participants, the relationships and interfaces of activities, information flows, and decision making points.

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