IN THE PUBLIC INTEREST

Issues with Unsolicited Bids

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In light of the recently enacted Infrastructure Investment and Jobs Act, states and localities are considering immediate infrastructure priorities. These investments are sorely needed across the country to ensure that people have access to safe, affordable, and modern physical infrastructure, including water and sewer systems, transit systems, roads, bridges, high-speed broadband, and more. As the Biden administration explains, these investments are also meant to help "tackle the climate crisis, advance environmental justice, and invest in communities that have too often been left behind."[1]

Private investors and infrastructure development firms are also interested in the upcoming infrastructure activity. Some states allow for private developers to submit unsolicited proposals for public projects using a "public-private partnership," or "P3," model. Private developers may submit unsolicited bids to invest in and develop public projects that they view as profitable. Private investors may also submit unsolicited bids to take over and rehabilitate existing public infrastructure.

We expect that some states and localities will receive an increased number of unsolicited proposals, as private entities look to capture the incoming federal funds. If your state and/or locality allows for unsolicited bids, there are a number of reasons to be wary of these types of offers.

1. Project selection might favor profitable projects

Unsolicited bids can encourage profitable projects to be built over projects that are not profitable but are needed by the community and already in the project pipeline. Private investors are interested in projects that will produce a healthy return on investment, such as toll roads, courthouses, or university student housing. This means that projects that don't have a reliable revenue stream or are unable to generate returns are not attractive to private investors. But in many cases, these "unprofitable" projects are greatly needed. For example, projects that are located in underserved, low-income geographic areas or those that are designed to increase resiliency against climate change may not be profitable but are greatly needed and in line with the goals of the legislation.

Through the submission of unsolicited bids, private investors and developers may market the use of a public-private partnership project delivery model and the inclusion of private financing as a way to leverage valuable federal funds and ultimately build more projects. But allowing or relying on unsolicited proposals allows for private interests to dictate the prioritization of federal funds and which projects get built first or at all. When a governmental entity chooses to pursue a project brought to them through an unsolicited proposal, a priority project (or many) may actually be crowded out and pushed further down the list. Localities and states must ensure that priority projects are actually given priority to the funding and financing opportunities needed to get them built.

2. The scope of critical projects might change

Unsolicited bids often allow private corporations to determine the scope of the project. Private investors and developers may submit unsolicited bids that bundle various projects together to make the total scope of the project larger than the governmental entity originally intended. For example, a locality may have a bridge replacement project on their priority list. A private developer may submit an unsolicited bid to replace the bridge, but also bundle other projects, such as development of public parklands, parking structures, park concessions, and/or other projects near the bridge to make the project more profitable to the private investors and developers. However, these other “add-on” projects may not be critical, time-sensitive, or even what the community needs. Moreover, these “add-on” projects come at the expense of the government’s ability and capacity to build more critical infrastructure.

3. Public-private partnership procurement process might be initiated

Unsolicited bids may put pressure on governmental entities to initiate a public-private partnership procurement process, even when one was not planned or desired. Some developers may submit an unsolicited proposal in an effort to jumpstart such a process. For example, an unsolicited proposal submitted to the Miami-Dade Expressway Authority triggered the agency to hold an industry forum to discuss the potential public-private partnership proposal.[2] The submission of the unsolicited proposal paved the way for the agency to seriously consider the public-private partnership project delivery method. This can be especially problematic when a locality or state was not considering a public-private partnership project delivery method but must allocate resources to understanding and evaluating a potential proposal.

4. Government capacity might decrease

Governmental entities may not have the capacity to thoroughly evaluate every unsolicited proposal that is submitted. As the Federal Highway Administration notes, “Significant staff and/or specialized consultant resources, such as financial advisors, may need to be dedicated to reviewing and processing unsolicited proposals, leaving staff spread thin on regular tasks.”[3] Having a policy that allows or encourages unsolicited proposals can create capacity issues among planning and procurement staff, taking them away from critical infrastructure projects.

5. There might be a lack of community input

Unsolicited proposals come from opportunities perceived by private developers and/or investors, and often bypass the community outreach and input processes and stages that public infrastructure projects typically follow. Many public agencies' infrastructure planning is guided by understanding what projects are needed by residents in their jurisdiction. Agencies may utilize a variety of community outreach strategies to gather this important information. However, private developers often don't solicit community input or hold public meetings before submitting unsolicited proposals, leaving the public out of the public infrastructure planning process.

For more information about the public-private partnerships, please see In the Public Interest's guide, "Understanding and Evaluating Infrastructure Public-Private Partnerships."

Endnotes

1 The White House, "Factsheet: The Bipartisan Infrastructure Deal," November 6, 2021. https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/

2 Infrastructure Investor, "Unsolicited proposal triggers PPP opportunity for Miami expressway," October 12, 2009. https://www.infrastructureinvestor.com/unsolicited-proposal-triggers-ppp-opportunity-for-miami-expressway/

3 U.S. Department of Transportation, "Public-Private Partnership Procurement: A Guide for Public Owners," pg. 120, March 2019. https://www.fhwa.dot.gov/ipd/pdfs/p3/toolkit/p3_procurement_guide_0319.pdf

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