



مكتب أبوظبي للاستثمار  
ABU DHABI INVESTMENT OFFICE

# INFRASTRUCTURE PARTNERSHIPS

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## Supplementary Procurement Procedure: Unsolicited Proposals

November 2020



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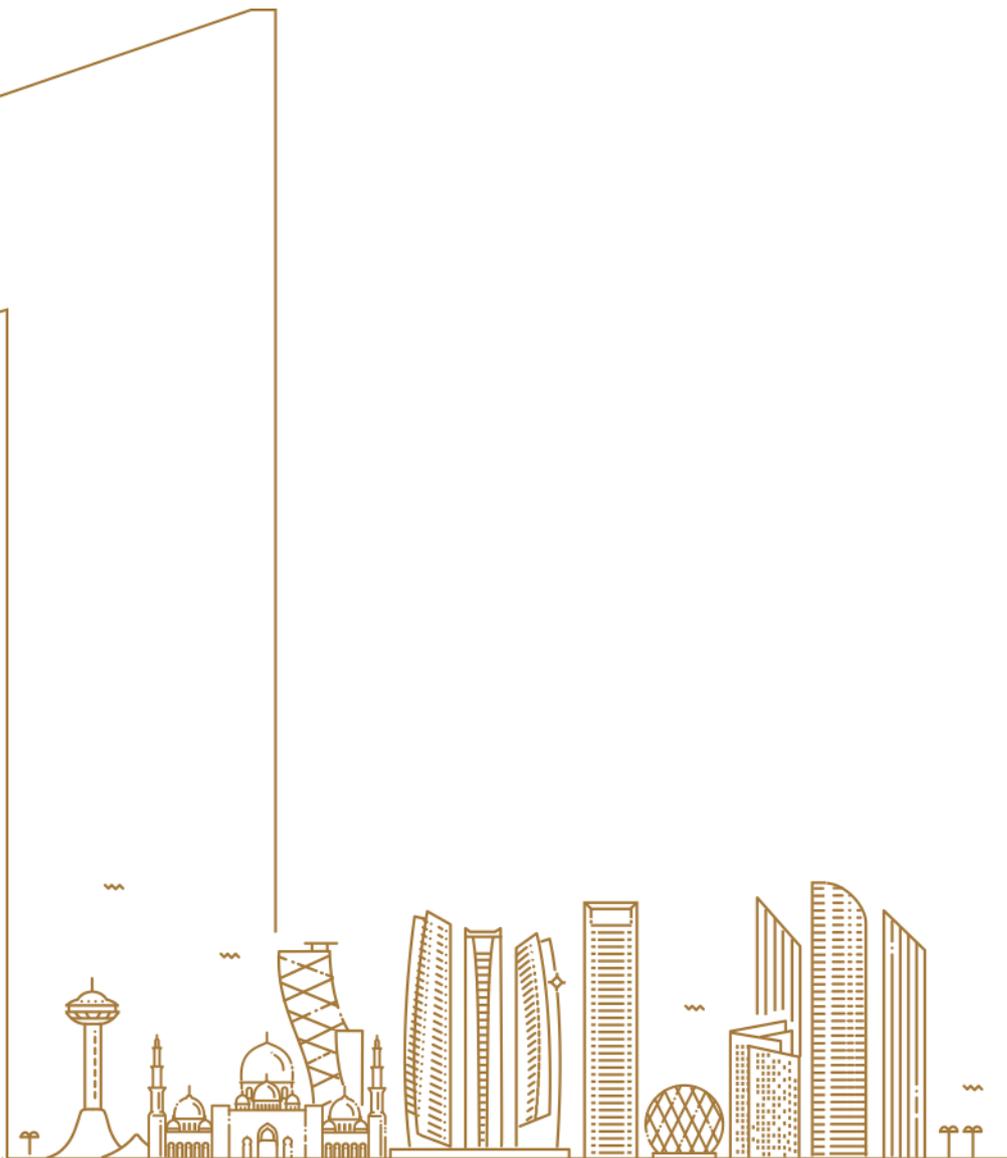
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Chapter One

# INTRODUCTION



# INTRODUCTION

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## 1 Background

### 1.1 Why Partnership Projects?

The Government has identified Partnership Projects as a method of accelerating infrastructure investment, accessing private finance and improving the delivery and quality of public assets and services.

Well-structured Partnership Projects have benefitted economies around the globe by creating jobs, fostering sustainable economic growth and stimulating private sector investment.

Benefits that the Government is seeking to derive from pursuing Partnership Projects include:

- increasing private sector investment in infrastructure in Abu Dhabi (from domestic and international developers and investors);
- building true partner relationships with private sector investors and developers;
- enhancing accountability for Government expenditure through robust analysis and development of (and adherence to) consistent and transparent processes;
- increasing access for the Government to private sector innovation, entrepreneurship and efficiencies;
- spreading the cost of procuring public assets and services through long-term contracting; and
- increasing accountability for the delivery and long-term management of public assets and services through performance-linked payment mechanics.

### 1.2 The Government's approach to Partnership Projects

Notwithstanding that the structure of each Partnership Project will be considered on its own merits, the Government intends that Partnership Projects in Abu Dhabi will broadly conform to the following characteristics:

- requiring the private sector partner to, as appropriate, design, finance, construct, maintain and operate public assets based on output-based specifications (rather than input-driven specifications);
- requiring the private sector partner to operate the assets and deliver services on a long-term basis;
- providing payments in accordance with the terms of the Partnership Agreement, generally only once the assets are operational;
- providing that payments should be made over the term of the Partnership Agreement based on services delivered against the achievement of key performance indicators and output specifications; and
- providing for the assets to be returned to the Procuring Entity at the end of the term in accordance with specified contractual handback requirements.

### 1.3 Legislative background

In order to promote the development and procurement of Partnership Projects, the Government has issued:

- Law No. (1) of 2019 concerning the establishment of ADIO (the **ADIO Establishment Law**); and
- Law No. (2) of 2019 concerning the regulation of Public Private Partnerships (the **PPP Law**).

To facilitate and clarify the implementation of the PPP Law, the Department of Economic Development has subsequently issued an administrative resolution pursuant to the PPP Law (the **Regulations**).

Pursuant to the powers granted to Abu Dhabi Investment Office (**ADIO**) in the ADIO Establishment Law, the PPP Law (which, *inter alia*, provides that Partnership Projects in Abu Dhabi can initially be proposed by ADIO, another governmental entity or the private sector) and the Regulations, ADIO has issued the Partnership Projects Guidebook (the **Guidebook**) and this Supplementary Procurement Procedure (**Unsolicited Proposals**).

## 2 Overview of this Supplementary Procurement Procedure

### 2.1 Purpose of this Supplementary Procurement Procedure

Article 7 of the PPP Law provides for projects to be proposed by ADIO, Procuring Entities or the private sector.

Unsolicited Proposal submissions by a private sector Proponent should be made to both ADIO and the relevant Procuring Entity who will jointly evaluate the Unsolicited Proposal to decide on whether to take it forward.

This Supplementary Procurement Procedure provides guidance on the processes and procedures to be followed in connection with the preparation, submission, evaluation and procurement of Unsolicited Proposals and is intended to augment the guidance on Unsolicited Proposals provided in the Guidebook.

Some of the key questions that this Supplementary Procurement Procedure aims to address include the following:

- How is the process for preparing and submitting Unsolicited Proposals initiated between ADIO and the private sector Proponent?
- What is the framework for evaluating Unsolicited Proposal submissions?
- How does ADIO take Unsolicited Proposal submissions forward to the Tender Process (stage 3)?

This Supplementary Procurement Procedure is a general statement of intent on how ADIO will treat Unsolicited Proposal submissions rather than a prescriptive binding process. Unsolicited Proposal submissions can take various forms and therefore the evaluation process will need to be sufficiently flexible to reflect this.

### 2.2 Status of this Supplementary Procurement Procedure

This Supplementary Procurement Procedure should be read in conjunction with the PPP Law, the Regulations, the Guidebook and any other guidance that may be issued by ADIO from time to time (including updates to this Supplementary Procurement Procedure).

Any inconsistency or conflict between this Supplementary Procurement Procedure, the PPP Law, the Regulations, the Guidebook and any other guidance issued by ADIO shall be resolved in the following order of priority:

- PPP Law;
- Regulations;

- the Guidebook; and
- this Supplementary Procurement Procedure (Unsolicited Proposals) and any other Supplementary Procurement Procedures or guidance notes issued by ADIO from time to time.

### 2.3 Structure of this Supplementary Procurement Procedure

This Supplementary Procurement Procedure is set out as follows:

- **Chapter 1: Introduction:** introduces and describes the broader legislative framework for Partnership Projects in Abu Dhabi and the structure and purpose of this Supplementary Procurement Procedure;
- **Chapter 2: Submission and Assessment of Unsolicited Proposals:** provides an introduction to the general principles for considering Unsolicited Proposal submissions; and
- **Appendices**
  - **Appendix A:** USP Development MOU term sheet;
  - **Appendix B:** Covering letter template for Unsolicited Proposal submission;
  - **Appendix C:** Preliminary Submission (stage 1) requirements; and
  - **Appendix D:** Detailed Submission (stage 2) requirements.

### 2.4 Defined terms

Any defined terms used in this Supplementary Procurement Procedure not defined herein shall have the same meaning given to them in the Table of Acronyms and the Glossary of Terms contained in chapter 5 of the Guidebook.

Chapter Two

# SUBMISSION AND ASSESSMENT



# SUBMISSION AND ASSESSMENT

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## 1 General considerations

### 1.1 Overview

Unsolicited Proposal submissions are proposals for projects received directly from the private sector. This is different from the conventional Partnership Projects origination path where the Government, represented by a Procuring Entity, identifies the project need, conceptualizes the project, carries out project studies and then launches a Tender Process (stage 3) to select a private sector partner.

A key benefit of Unsolicited Proposals is that it involves the private sector in the need identification, project conceptualization and preparation of project studies. This helps bring in private sector best practices and innovation at a very early stage of a project.

Managing Unsolicited Proposals however requires a different process to ensure all stakeholders are appropriately aligned and incentivised. This chapter 2 provides an overview of the general principles covering Unsolicited Proposals.

### 1.2 Benefits of Unsolicited Proposals

Many countries provide for Unsolicited Proposal submissions as part of their public-private partnership frameworks. Unsolicited Proposals provide opportunities to benefit from private sector innovation to deliver infrastructure assets and services, while driving economic growth, job creation and achieving better outcomes.

Unsolicited Proposals typically cover one or more of the following:

- construction and/or financing of public infrastructure;
- transfer of assets between the public and private sector for provision of public infrastructure and services;
- divestment and (or) outsourcing of public assets and (or) services; and
- business partnerships and collaboration between the public and private sectors that involve considered entrepreneurship.

### 1.3 Criteria for consideration of Unsolicited Proposals

A successful Unsolicited Proposal needs to be of the highest standards and be well developed, substantively addressing some or all of the following criteria:

- be in **alignment with Government strategic objectives and priorities**;
- **provide socio-economic and environmental benefits** by satisfying a community need or otherwise providing clear and measurable benefits to the Emirate of Abu Dhabi;
- **be innovative** by providing unique attributes, innovative design, proprietary/ new technology or new concepts with very limited alternatives; offering an innovative approach to project development and management; presenting a new and cost-effective method of service delivery;
- deliver **Value for Money** to the Government;
- **be affordable** within the Government's budget, funding priorities and fiscal strategy;
- demonstrate **appropriate risk and cost allocation** between the Proponent and the Government;
- **be feasible** from a technical and commercial perspective;
- the Proponent has the **financial, legal and technical capacity, capability and experience to deliver** the proposed project successfully;
- **minimal support** is required in the form of Government incentives (e.g. fiscal incentives in the form of contingent liabilities including Government guarantees or in the form of financial incentives including subsidy/ grant, capital and equity support); and
- **minimal investment** is required from Government for provision of connecting infrastructure and/ or inter-linkages.

While considering Unsolicited Proposals, more weight will be given to ideas that align with the strategic priorities of the Government. However it is understandable that there may be Unsolicited Proposals of interest that are beyond the current focus of the Government and ADIO and the relevant Procuring Entity may consider such proposals on a case-by-case basis.

Proponents are encouraged to meet with ADIO and the relevant Procuring Entity prior to submitting an Unsolicited Proposal in order to gain an understanding of the Government's needs, sector specific strategic objectives and budget capacity.

## 1.4 Exclusions

Unsolicited Proposals with some or all of the following characteristics are likely to be viewed as unacceptable:

- proposals which **contravene the provisions of any law** that is in force;
- proposals that are **not unique** and are similar to the procurement of goods/works/services already being undertaken by the relevant Procuring Entity;
- proposals to **provide widely available goods or services**;
- proposals for **significant extensions to existing contracts** or for the next stage of a multi-stage project that is already underway;
- proposals for projects for which the **tender process has formally commenced** or for which planning has commenced, whether published or not;
- **proposals seeking grants** to fund organizational projects, e.g. scientific research; and
- **proposals seeking funding for startup enterprises** and organizations.

## 1.5 Appropriateness

A Proponent should ideally present some or all of the following in its Unsolicited Proposal submission(s):

- the **key needs addressed** by the proposed project, the anticipated **outcomes and benefits** of the proposal;
- meets the **technical requirement and standards** specified by the Government;
- the **roles, responsibilities and contributions required of the Government** in delivering the proposed project;
- the **roles, responsibilities and contributions of the Proponent** in delivering the proposed project;
- where relevant, the **proposed delivery model**, including planning, design and construction and operations arrangements (as required);
- **demonstrated capability and capacity of the Proponent** to deliver the project, including in terms of technical issues; and
- the **appropriateness of the proposed risk allocation** between the Proponent and the Government.

## 1.6 Costs

The cost and expense of the development of an Unsolicited Proposal submission is to be borne by the Proponent and shall be documented in the USP Development MOU.

ADIO is responsible for the cost of assessing the Unsolicited Proposal submission received from the Proponent.

The process for any potential cost reimbursement to the Proponent will be set out in the USP Development MOU. Cost reimbursement will be determined by ADIO on a case by case basis and subject to necessary approvals from the Relevant Approving Authority.

## 1.7 Security

ADIO may require the Proponent to provide Proposal Security in connection with an Unsolicited Proposal.

This may be through an on-demand draft or bank guarantee or equivalent format, acceptable to ADIO with a validity period of not less than 360 days (including claim period of 60 days), commencing from the date of submission of the Preliminary Submission (Stage 1).

The Proposal Security should have provisions that allow it to be extended as mutually agreed. The Proposal Security may be called in for a number of reasons, including but not limited to:

- where a Proponent withdraws its Unsolicited Proposal after the submission of the Preliminary Submission (Stage 1); and
- where the Proponent is invited to submit a Detailed Submissions (Stage 2), it (i) fails to submit same or (ii) the proposals contained in the Detailed Submission (stage 2) materially deviate from those approved as part of the Preliminary Submission (stage 1)

An indicative Proposal Security framework is provided as follows:

|   | PROJECT COST                       | VALUE OF PROPOSAL SECURITY  |
|---|------------------------------------|---|
| 1 | less than AED 250 million          | 0.50% of the estimated project cost as provided in the Preliminary Submission (stage 1) |
| 2 | AED 250 million to AED 500 million | 0.25% of the estimated project cost as provided in the Preliminary Submission (stage 1) |
| 3 | Greater than AED 500 million       | 0.10% of the estimated project cost as provided in the Preliminary Submission (stage 1) |

## **1.8 Intellectual property**

The treatment of Intellectual Property will be formalised if the Unsolicited Proposal progresses to the Tender Process (stage 3) where ADIO may enter into an agreement with the Proponent covering areas such as confidentiality and Intellectual Property rights.

When the Government chooses not to proceed with the Unsolicited Proposal past the Detailed Submission (stage 2) stage of the process and wishes to use the Intellectual Property or a specific idea provided by the Proponent, the Proponent will be entitled to appropriate compensation subject to agreement with ADIO and the relevant Procuring Entity. This shall be documented in the USP Development MOU.

Any agreement relating to such compensation will need to represent Value for Money and cover any scenarios where the Proponent retains the right to use Intellectual Property and the ability of the Procuring Entity to own, transfer, licence or sub-licence the Intellectual Property.

## **1.9 External Advisors**

After receiving an Unsolicited Proposal and before either accepting or rejecting an Unsolicited Proposal ADIO may seek advice from External Advisors.

The cost of retaining External Advisors will generally be incurred by ADIO, unless the Proponent withdraws the Unsolicited Proposal prior to receipt of responses to the Requests for Proposals, in which case the Proponent will be liable for the costs of External Advisors.

## **1.10 Use of Unsolicited Proposals**

During the course of assessing and evaluating an Unsolicited Proposal, ADIO and the Procuring Entity should not:

- use any data, concept, idea, or other part of an Unsolicited Proposal as the basis (in whole or in part) for solicitation or negotiations with any other firm unless the project proceeds to Tender Process (stage 3) and the Proponent is notified of and agrees to the intended use; provided that this prohibition does not preclude the use of any data, concept or idea in the Unsolicited Proposal that also is, or becomes, available from another source without restriction; or
- disclose information identified in the Unsolicited Proposal submission as confidential.

## 2 Assessment process

### 2.1 Overview

This section provides guidance on the process to be followed in receiving, assessing and approving Unsolicited Proposals. The process involves:

- a **Pre-proposal Meeting** with ADIO and the relevant Procuring Entity;
- the **Preliminary Submission (stage 1)**;
- the **Detailed Submission (stage 2)**; and
- the **Tender Process (stage 3)**.

The evaluation of Unsolicited Proposals will commence formally from the date of submission of the Preliminary Submission (stage 1) to ADIO.

#### 2.1.1 Pre-proposal Meeting

Proponents are strongly encouraged to request a meeting with ADIO and the relevant Procuring Entity before making a formal Unsolicited Proposal submission (the **Pre-proposal Meeting**).

Depending on the nature of the Unsolicited Proposal, ADIO may invite representatives from other relevant Procuring Entities to attend the Pre-proposal Meeting.

The Pre-proposal Meeting is a useful forum for the Proponent to outline the underlying concept and for ADIO to outline the process for the submission and approval of Unsolicited Proposals and clarify expectations for the Preliminary Submission (stage 1).

Pre-proposal Meetings also help guide proposals that do not meet the definition of an Unsolicited Proposal to appropriate alternative mechanisms within the Government for consideration.

To request a Pre-proposal Meeting or make enquiries regarding the Unsolicited Proposals, Proponents should contact ADIO.

### 2.2 Preliminary Submission

#### 2.2.1 Overview

The Preliminary Submission (stage 1) marks the start of the formal Unsolicited Proposal process. Following the Pre-proposal Meeting, the Proponent will be requested to prepare a Preliminary Submission (stage 1).

The Preliminary Submission (stage 1) is expected to include all aspects required of a Concept Report as set out in the Guidebook and include the requirements as set out in Appendix C: Preliminary Submission Requirements, though there is no restriction on a Proponent using an alternative format, if appropriate, for its Preliminary Submission (Stage 1).

In addition to setting out the Unsolicited Proposals merit and viability, the Preliminary Submission (stage 1) should also include (and explain the rationale for) the proposed Contracting Model.

Proponents must declare any conflicts of interest when submitting their Preliminary Submission (stage 1). During the evaluation of the Preliminary Submission (stage 1), Proponents should not enter into discussions with public officials from the Procuring entity or any Government entity, other than the nominated representative of ADIO, or discuss the Unsolicited Proposal with any media organizations, unless agreed with ADIO.

A Proponent must not offer any incentive to, or otherwise attempt to, influence any person who is either directly or indirectly involved in any stage of the assessment process.

Should ADIO become aware of information that materially affects an Unsolicited Proposal, either during a Pre-proposal Meeting or at any other time prior to ADIO concluding its assessment of the Preliminary Submission (stage 1), ADIO may take into account such information regardless of whether it was part of the Preliminary Submission (stage 1). Examples include information calling into question:

- the uniqueness of the Unsolicited Proposal;
- the feasibility of the Unsolicited Proposal; or
- the capability or capacity of the Proponent to undertake the Unsolicited Proposal.

### **2.2.2 Submission requirements**

The Preliminary Submission (stage 1) should include:

- cover letter (refer

- Appendix B: Cover Letter templates); and
- the requirements as set out in Appendix C: Preliminary Submission Requirements.

The submission should be submitted in accordance with the following:

- in sealed envelopes, one addressed to ADIO and the other addressed to the relevant Procuring Entity, bearing the title of the proposed Unsolicited Proposal, the Proponent's name and address, and the words "Partnership Project Unsolicited Proposal"; and
- include a minimum of two hard copies and two electronic copies of the Preliminary Submission (stage 1) on a USB (in word and pdf format copy or any other equivalent format acceptable to ADIO).

### **2.2.3 Initial review**

On receipt of the Preliminary Submission (stage 1), ADIO will carry out an initial review to determine whether the Preliminary Submission (stage 1) contains sufficient information and is within the scope of the guidelines set out in this Supplementary Procurement Procedure.

This will consist of a completeness review to ensure that mandatory documents such as the Cover Letter, Preliminary Submission (stage 1) requirements and Proposal Security (if applicable) have been provided.

Based on the review, ADIO will acknowledge receipt of the Preliminary Submission (stage 1) or will notify the Proponent that the Preliminary Submission (stage 1) received is incomplete.

### **2.2.4 Evaluating the Preliminary Submission**

ADIO will undertake the assessment of the Preliminary Submission (stage 1) jointly with the Procuring Entity in accordance with the assessment criteria set out in Appendix C: Preliminary Submission Requirements. For this purpose, ADIO will form a Project Team including representatives from ADIO, the Procuring Entity and any External Advisors required pursuant to the Guidebook.

This assessment primarily serves to ensure that neither the Proponent nor ADIO expends resources unnecessarily on an Unsolicited Proposal that does not warrant further consideration. During the evaluation process, the Project Team will consider, amongst other things, the following:

- whether the Preliminary Submission (stage 1) contains sufficient and relevant information to enable assessment;

- if the same or a similar proposal has been assessed previously under the guidelines set out in this Supplementary Procurement Procedure;
- whether the Preliminary Submission (stage 1) meets the principles and criteria set out in in Appendix C: Preliminary Submission Requirements and contents of a Concept Report pursuant to the Guidebook;
- whether a Proponent can demonstrate capability and capacity to deliver the proposed project;
- the current economic and financial environment;
- community expectations;
- broader reforms that may be occurring nationally; and
- any other factors deemed relevant to the assessment of the Preliminary Submission (stage 1).

During this process, the Project Team may also request further clarifications and/or additional information to augment the Preliminary Submission (stage 1).

The Project Team will determine, at its absolute discretion, whether the Preliminary Submission (stage 1) satisfies the criteria for consideration as an Unsolicited Proposal or whether the Government should deal with it through another, more appropriate mechanism. While making the aforementioned determination the Project Team will duly consider the inputs received from other relevant Government entities.

### **2.2.5 Presentation and review**

If the Preliminary Submission (stage 1) is found to merit further consideration, the Proponent may be invited to make a presentation. The presentation should reflect the Preliminary Submission (stage 1) and any clarifications or information sought by the Project Team during the initial evaluation process.

Following the presentation, the Project Team will undertake a final evaluation of the Preliminary Submission (stage 1) to ensure it aligns with the requirements, principles and objectives set out in Appendix C: Preliminary Submission Requirements.

The Project Team may request the Proponent to provide further clarifications and/or additional information to assist in its review and decision as to whether to move forward to the stage 2.

### **2.2.6 Evaluation decision**

Following the evaluation of the Preliminary Submission (stage 1), the Proponent will be notified of the Government's decision to either:

- proceed to the Detailed Submission (stage 2) stage of the process; or
- not proceed, but refer the Proponent to another Government entity; or
- decline to proceed with the Unsolicited Proposal.

### 2.2.7 Process timeframe

ADIO will complete the assessment of the Preliminary Submission (stage 1) as quickly as practically possible, but timeframes for the assessment will vary depending on the nature of the Unsolicited Proposal and the level of analysis required.

ADIO will advise Proponents regarding the status of the review of the Preliminary Submission (stage 1) within 30 calendar days of receipt of the Preliminary Submission (stage 1).

ADIO will then provide a periodic (weekly or fortnightly as appropriate) status update.

## 2.3 Detailed Submission

### 2.3.1 Overview

The Detailed Submission (stage 2) stage of the process shall commence following the approval of the Preliminary Submission (stage 1). Upon commencement of this stage of the process, the Proponent shall be required to enter into the USP Development MOU with ADIO and the Procuring Entity. The terms of the USP Development MOU will be determined and agreed on a case-by-case basis. However, it is generally expected that the USP Development MOU will be consistent with the term sheet set out in **Error! Reference source not found..**

During the Detailed Submission (stage 2) stage of the process, the Project Team will notify the Proponent:

- that ADIO and the Procuring Entity wish to receive a Detailed Submission (stage 2) from the Proponent; or
- that ADIO and the Procuring Entity wish to develop the Business Case based on the Preliminary Submission (stage 1) and do not require a Detailed Submission (stage 2) from the Proponent.

The Detailed Submission (stage 2) is expected to include (i) all aspects required of a Business Case as set out in the Guidebook and (ii) the requirements set out in Appendix D: Detailed Submission (Stage 2) Requirements.

The Detailed Submission (stage 2) should be fully developed, be sufficiently robust and include sufficient information to enable the Project Team to evaluate and make a decision on the merits of the Unsolicited Proposal and whether it should proceed to the Tender Process (stage 3).

### **2.3.2 Dialogue Process**

As part of the Detailed Submission (stage 2) stage of the process, ADIO and the Procuring Entity may engage in dialogue with the Proponent, in writing or otherwise, in order to work through the technical challenges and solutions arising in connection with the Unsolicited Proposal. ADIO and the Procuring Entity may, at their discretion, take such other steps as part of this dialogue process as they deem appropriate, including arranging meetings with the Proponent and /or sharing or requesting further technical information.

Notwithstanding the foregoing, ADIO and the Procuring Entity will take all appropriate steps to keep to a minimum any competitive advantage that the Proponent may obtain by comparison to other Bidders that may engage in the Tender Process (stage 3).

### **2.3.3 Submission requirements**

The Detailed Submission (stage 2) should include:

- Cover Letter (refer Appendix B: Cover Letter templates); and
- the requirements as set out in section 6.1 of Appendix D: Detailed Submission (Stage 2) Requirements.
- The Detailed Submission (stage 2) should be submitted in accordance with the following: in sealed envelopes, one addressed to ADIO and the other addressed to the relevant Procuring Entity, bearing the title of the proposed Unsolicited Proposal, the Proponent's name and address, and the words "Partnership Project Unsolicited Proposal"; and
- include a minimum of two hard copies and two electronic copies of the Detailed Submission (stage 2) on a USB (in word and pdf format copy or any other equivalent format acceptable to ADIO).

### **2.3.4 Initial review**

On receipt of the Detailed Submission (stage 2) ADIO will carry out an initial review to determine whether the Detailed Submission (stage 2) has sufficient information and is within the scope of the guidelines set out in this Supplementary Procurement Procedure.

This will consist of a completeness review to ensure that mandatory documents such as the Cover Letter and Detailed Submission (stage 2) requirement have been provided.

Based on the assessment, ADIO will acknowledge receipt of the Detailed Submission (stage 2) or will notify the Proponent that the Detailed Submission (stage 2) received is incomplete.

### **2.3.5 Evaluating the Detailed Submission**

The Project Team will undertake the assessment of the Detailed Submission (stage 2) in accordance with the assessment criteria contained in Section 6.2 of Appendix D.

During the evaluation process, the Project Team will consider, amongst other things, the following:

- whether the Detailed Submission (stage 2) contains sufficient and relevant information to enable assessment;
- whether the Detailed Submission (stage 2) meets the principles and criteria identified in section 6.1 of appendix D;
- whether Proponent can demonstrate capability and capacity to deliver the project;
- whether the Detailed Submission (stage 2) demonstrates Value for Money;
- the economic, financial and other benefits associated with the Detailed Submission (stage 2);
- whether the Detailed Submission (stage 2) meets the requirements for innovation and uniqueness; and
- any other factors deemed relevant to the assessment of the Detailed Submission (stage 2).

The Proponent may nominate its preferred Contracting Model in the Detailed Submission (stage 2). The Project Team will evaluate the Proponent's preference with reference to, amongst other things, Value for Money analysis.

During this process, the Project Team may also request further clarifications and/or additional information to augment the Detailed Submission (stage 2).

### **2.3.6 Presentation and review**

If the Detailed Submission (stage 2) is found to merit further consideration, the Proponent may be invited to make a presentation. The presentation should reflect the Detailed Submission (stage 2) and any clarifications or information sought by the Project Team during the initial evaluation process.

Following the presentation, the Project Team will undertake a final evaluation of the Detailed Submission (stage 2) to ensure it complies with the requirements set out in Appendix D: Detailed Submission (Stage 2) Requirements.

The Project Team may still request the Proponent to provide further clarifications and/or additional information to assist in its review and decision as to whether to move forward to the Tender Process (stage 3).

### **2.3.7 Evaluation decision**

Following the evaluation of the Detailed Submission (stage 2), the Proponent will be notified of the Government's decision to either:

- proceed to the Tender Process (stage 3); or
- decline to proceed with the Unsolicited Proposal.

### **2.3.8 Process timeframe**

ADIO will complete the assessment of the Detailed Submission (stage 2) as quickly as practically possible, but timeframes for the assessment will vary depending on the nature of the Unsolicited Proposal and the level of analysis required.

ADIO will advise Proponents regarding the status of the review of the Detailed Submission (stage 2) within 30 calendar days of receipt of the Detailed Submission (stage 2).

ADIO will then provide a periodic (weekly or fortnightly as appropriate) status update

## **2.4 Tender Process**

The Tender Process (stage 3) shall commence once the Business Case has been approved by the Relevant Approving Authority and concludes with the achievement of Financial Close.

The Tender Process (stage 3) for Unsolicited Proposals will be carried in accordance with the Guidebook (chapter 3).

### **3 Incentives for Proponent**

For Unsolicited Proposals that have successfully moved to the Tender Process (stage 3), one or more of the following incentives may be made available to Proponent. These incentives should be set out in the USP Development MOU.

#### **3.1 Direct Shortlisting**

The Proponent will be automatically shortlisted to receive the RfP issued to the bidders shortlisted after the RfQ evaluation process.

#### **3.2 Reimbursement of the USP & bid preparation costs**

In circumstances where the Proponent participates in the Tender Process (stage 3) relating to its Unsolicited Proposal and is unsuccessful in this Tender Process, the Proponent will be entitled to be reimbursed (by the successful Bidder) its reasonable costs incurred in appointing external advisers specifically for the purpose of developing the Unsolicited Proposal and its bid (provided the Proponent provides copies of the relevant adviser appointment letters and all invoices relating to the same).

Such costs should be communicated to all Bidders not later than two weeks prior to submission of RfP responses and should be (i) agreed between the Proponent and the Project Team, or failing such agreement, (ii) determined by a third-party auditor (appointed jointly by ADIO and the Proponent).

The successful Bidder will be required to reimburse such costs on the date of Commercial Close or, if applicable, Financial Close of the relevant Partnership Project.

#### **3.3 Intellectual Property licencing costs**

If there is proprietary Intellectual Property involved in the Unsolicited Proposal that is:

- the property of the Proponent or its suppliers; and
- required for the implementation of the Partnership Project,

the USP Development MOU will include details specifying the basis on which such proprietary Intellectual Property will be licenced to the successful Bidder, including the amount payable to the Proponent, if the Proponent is not the successful Bidder.

Chapter Three

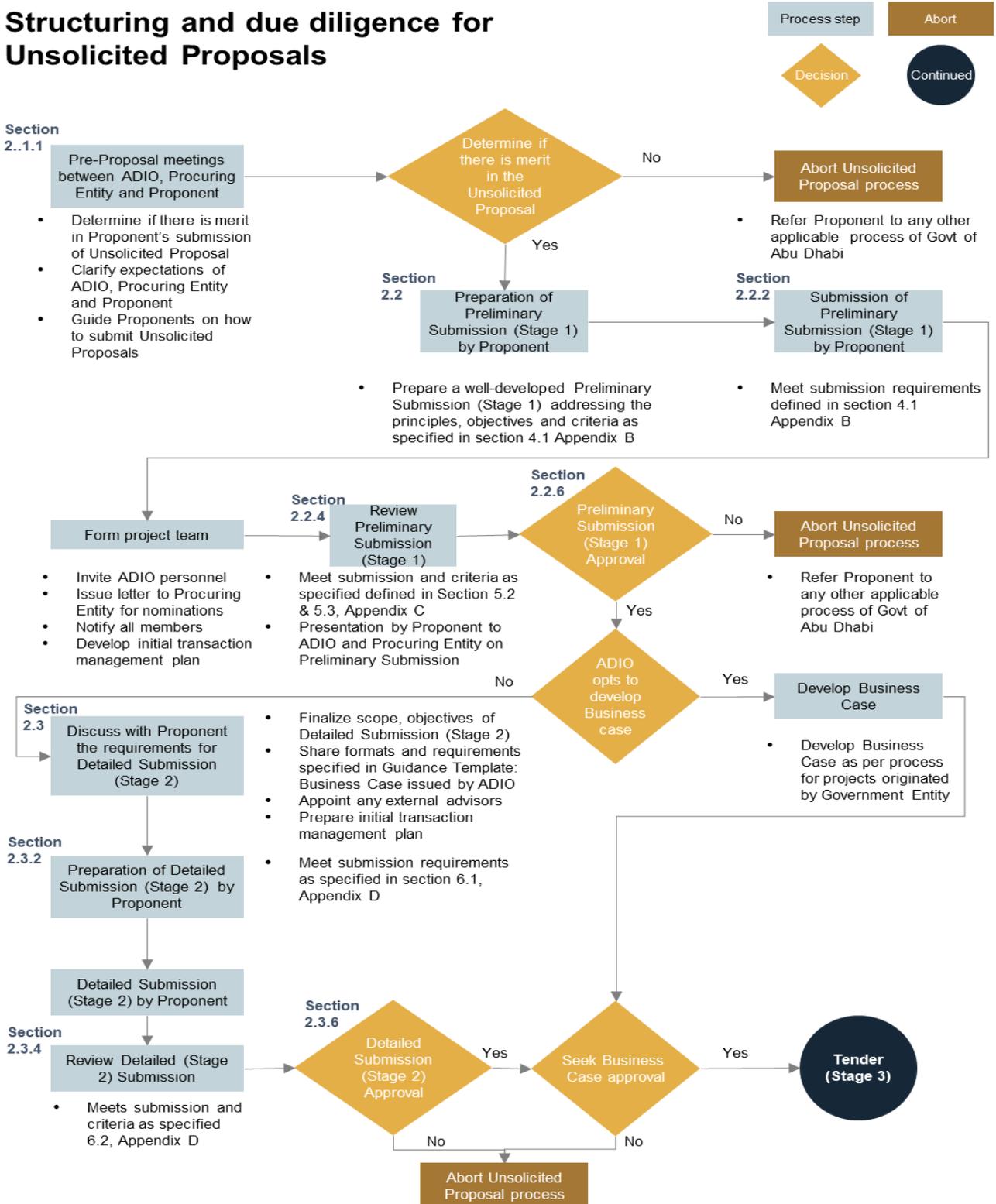
# APPENDICES



# APPENDICES

## 1 Process Map

### Structuring and due diligence for Unsolicited Proposals



## 2 Glossary of Terms

Definitions unique to this Supplementary Procurement Procedure and not otherwise defined in the Guidebook are set out below.

| GLOSSARY OF TERMS                    |  |
|--------------------------------------|--|
| <b>CAPABILITY PROFILE</b>            | A document prepared by the Proponent which is submitted as part of the stage 2 Detailed Submission which evidences the capability and capacity to undertake the proposed project which includes the requirements set out in Appendix D: Detailed Submission (stage 2) Requirements.            |
| <b>CONTRACTING MODEL</b>             | A Form of Contract Structure developed for the Unsolicited Proposals during either (i) the Preliminary Submission (stage 1) and/or (ii) the Detailed Submission (stage 2) which falls within the scope and coverage of the Procurement Framework   |
| <b>DETAILED SUBMISSION (STAGE 2)</b> | Detailed submission prepared by the Proponent and submitted to ADIO following the approval of the Preliminary Submission (stage 1), which should at minimum meet the content requirements of the Business Case set out in the Guidebook.   |
| <b>EXTERNAL ADVISORS</b>             | Are strategic, technical, financial, transaction, legal, insurance and other specialised advisors appointed by ADIO who have done similar work related to assessment and procurement of Unsolicited Proposals.   |
| <b>GUIDEBOOK</b>                     | The Partnership Projects Guidebook published by ADIO.  |
| <b>INTELLECTUAL PROPERTY</b>         | Any inventions, original designs and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks. It also includes trade secrets, proprietary know how and other confidential information to the extent |

|   |   |
|---|---|
|   | they are protected against unlawful disclosure and use by Government through applicable laws or through additional contractual obligations such as confidentiality agreements.  |
| <b>PARTNERSHIP MODEL</b>                | A long-term arrangement between the Government and the private sector for provision of an asset or service which involves appropriate risk sharing and where returns to the private sector are linked to performance in order to deliver Value for Money to the Government of Abu Dhabi, improved services to the public and incentivise private sector investment. |
| <b>PRELIMINARY SUBMISSION (STAGE 1)</b> | Initial submission made by the Proponent to ADIO regarding its Unsolicited Proposal which should at minimum meet the content requirements of the Concept Report as set out in the Guidebook.  |
| <b>PRE-PROPOSAL MEETING</b>             | A preliminary meeting between the Proponent and ADIO and the relevant Procuring Entity, for the Proponent to obtain advice on how best to develop and present their Unsolicited Proposals.  |
| <b>PROCUREMENT FRAMEWORK</b>            | The PPP Law, the Regulations, this Guidebook and all other guidance notes, tools or templates issued by ADIO from time to time for the purpose of regulating the procurement of Partnership Projects in Abu Dhabi   |
| <b>PROPOSAL SECURITY</b>                | The interest free security (on-demand draft or bank guarantee) provided by the Proponent in connection with the Proponent's Unsolicited Proposal.   |
| <b>TENDER PROCESS (STAGE 3)</b>         | The tender process set out in section 2 of chapter 3 of the Guidebook.  |
| <b>USP DEVELOPMENT MOU</b>              | The memorandum of understanding to be entered into by ADIO, the relevant Procuring Entity and the Proponent in  |



respect of an Unsolicited Proposal, following the approval of a Preliminary Submission (stage 1).

### 3 Appendix A: USP Development MOU Term Sheet

| USP DEVELOPMENT MOU TERM SHEET |  |
|--------------------------------|--|
| <b>PURPOSE</b>                 | <p>This section should set out the objectives of the parties including the provision of assistance to each other, as applicable, in developing out an approved Preliminary Submission (stage 1) into a [Detailed Submission (stage 2) / Business Case].</p>  |
| <b>PROONENT INCENTIVES</b>     | <p>This section should set out the incentives that will / may be made available to Proponent if the Unsolicited Proposal successfully moves to the Tender Process (stage 3). These incentives may include direct shortlisting to the RfP stage or reimbursement of bid costs by the preferred Bidder (where the Proponent is not the preferred Bidder).</p>  |
| <b>COSTS</b>                   | <p>The cost and expense of the development of an Unsolicited Proposal submission is to be borne by the Proponent.</p> <p>Where ADIO terminates the Unsolicited Proposal process or the Tender Process (stage 3) for its convenience, provided always that such termination is not due to an act or omission of the Proponent, ADIO and the Procuring Entity shall reimburse the Proponent its reasonable direct costs incurred in the development of the Unsolicited Proposal.</p> <p>Where the Proponent withdraws the Unsolicited Proposal or withdraws from the Tender process (stage 3) (without ADIO's approval) prior to receipt by ADIO / the Procuring Entity of responses to the Requests for Proposals, the Proponent shall reimburse all costs incurred by ADIO and the Procuring Entity as a result of their engagement in the Unsolicited Proposal process and/or Tender Process (stage 3), including the costs incurred as a result of appointing External Advisors.</p> |

## INTELLECTUAL PROPERTY

Where there is proprietary Intellectual Property involved in the Unsolicited Proposal that is the property of the Proponent or its suppliers and is required for the implementation of the Partnership Project, this section should be used to set out the basis on which such proprietary Intellectual Property will be licenced to the successful Bidder, including the amount payable to the Proponent, if the Proponent is not the successful Bidder.

## ADIO'S RESERVATION OF RIGHTS

In addition to any other rights at law or otherwise, ADIO may (without limitation) at any stage of the Unsolicited Proposal process:

- reject or refuse to consider, or to accept, any Unsolicited Proposal that does not comply with the requirements of the Supplementary Procurement Procedure or which is otherwise incomplete;
- suspend or terminate the process;
- elect not to further consider any Unsolicited Proposal that fails to satisfy the principles, objectives and criteria specified in the Supplementary Procurement Procedure;
- require, request, receive or accept (whether requested or not) additional information, material, clarification or explanation from the Proponent relating to an Unsolicited Proposal at any time and ADIO may, at its sole discretion, take such information, material, clarification or explanation into consideration in its assessment of an Unsolicited Proposal;
- change the timing, order or application of any phase or process in the assessment of Unsolicited Proposals or supplement, remove, add to or vary any part of the assessment process;
- negotiate with any Proponent on any matter ADIO may determine;
- suspend or terminate negotiations with any Proponent;
- in assessing any Unsolicited Proposal, have regard to;

|   |  |
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|   | <ul style="list-style-type: none"><li>- ADIO's, the Procuring Entity's and other Government entities' knowledge and previous experience and dealings with the Proponent or any of its respective associates; or</li><li>- information concerning a Proponent or any of their respective associates that is in the public domain or which is obtained by ADIO through its or their own investigations; or</li></ul> <ul style="list-style-type: none"><li>• take any such other action as it considers appropriate in relation to the Unsolicited Proposal assessment process.</li></ul>  |
| <b>NO LIABILITY</b>                     | <p>Other than as specified in this USP Development MOU, neither ADIO, the Procuring Entity, the Government nor their officers, employees or advisers will be liable to any Proponent on the basis of any promissory, estoppel, quantum merit or on any other contractual or restitution grounds or any rights with a similar legal or equitable basis whatsoever or in negligence as a consequence of any matter or thing relating or incidental to a Proponent's participation in this process, including without limitation instances where:</p> <ul style="list-style-type: none"><li>• ADIO decides not to proceed with any or all parts of an Unsolicited Proposal;</li><li>• ADIO suspends or terminates the process; or</li><li>• ADIO exercises or fails to exercise any of its other rights under or in relation to the guidelines set out in the Supplementary Procurement Procedure or an Unsolicited Proposal assessment process (whether or not the ADIO has informed a Proponent of its exercise of the rights).</li></ul> |
| <b>RELATIONSHIP BETWEEN THE PARTIES</b> | <p>This USP Development MOU shall be legally binding on the parties and shall constitute the entire agreement between the parties as to its subject matter and supersedes all earlier understandings or agreements in relation to the purpose and obligations of each party in relation to the Unsolicited Proposal.</p>   |

|                           |  |
|---------------------------|--|
| <b>CONFIDENTIALITY</b>    | <p>All parties to the USP Development MOU shall regard and treat all documents and information concerning the Unsolicited Proposal or exchanged in connection with the Unsolicited Proposal as being strictly private and confidential in accordance with the requirements and subject to the exceptions outlined in the Guidebook and shall ensure that the same is not disclosed, copied, reproduced, distributed or passed to any other person at any time except: (i) for the purpose of enabling the Preliminary Submission (stage 1), the Detailed Submission (stage 2) or the Business Case, as applicable, and the Tender Process (stage 3).</p> |
| <b>GOVERNING LAW</b>      | <p>The governing law of the USP Development MOU, and any non-contractual obligations arising out of or in connection therewith shall be governed by and construed in all respects in accordance with the laws of the Emirate of Abu Dhabi and the federal laws of the United Arab Emirates.</p>  |
| <b>DISPUTE RESOLUTION</b> | <p>Any dispute arising out of, relating to or having any connection with the USP Development MOU shall be referred to and finally resolved by arbitration under the ICC Arbitration Rules as amended from time to time.</p> <p>The legal seat of the arbitration and location of the hearings shall be the Abu Dhabi Global Market and the language used in the arbitral proceedings shall be English.</p> <p>The Parties shall continue to perform their obligations under the USP Development MOU during resolution of the dispute.</p>  |

## 4 Appendix B: Cover Letter templates

### 4.1 Preliminary Submission (Stage 1)

[Date]

[PRELIMINARY SUBMISSION (STAGE 1)]

REG: UNSOLICITED PROPOSAL – [SUBJECT]

Dear Sir/Madam,

[Letter to contain brief detail of the following:

- introduction to the Proponent;
- brief profile of the Proponent with its capacity and capability to implement the proposed project;
- proposal idea / concept emphasising the unique attributes and proposed innovation;
- total estimated investment as contemplated in the Unsolicited Proposal;
- value proposition to the Government; and
- contact details.]

Yours faithfully

[Signature]

[Name & Title]

[Organization]

## 4.2 Detailed Submission (Stage 2)

[Date]

[DETAILED SUBMISSION (STAGE 2)]

REG: UNSOLICITED PROPOSAL – [SUBJECT]

Dear Sir/Madam,

[Letter to contain brief detail of the following:

- Capability Profile (evidencing Proponent's financial and legal capacity and technical ability to deliver the proposed project) ;
- Business Case;

Yours faithfully

[Signature]

[Name & Title]

[Organization]

## 5 Appendix C: Preliminary Submission Requirements

### 5.1 Preliminary Submission (stage 1) contents

Proponents should provide the information requested below in their Preliminary Submission (stage 1) of their Unsolicited Proposal:

- title and abstract of the Unsolicited Proposal (Maximum 200 words);
- details of the Proponent(s);
  - name of the Proponent (including the members of the consortium, if applicable)
  - address of the Proponent (for all the members of the consortium, if applicable)
  - details of the authorised representative(s); and
  - country/ jurisdiction of incorporation (for all the members of the consortium, if applicable);
- Date of the Preliminary Submission (stage 1);
- Preferred Contracting Model and proposed risk allocation with justification for the chosen model;
- Proposal details – briefly include information on the key needs addressed, proposal objectives, proposal methodology, anticipated outcomes and benefits of the Unsolicited Proposal, scope and configuration of the proposed product or service (maximum 1,000 words);
- Innovation & unique attributes - provide a statement describing how the Unsolicited Proposal is demonstrably innovative and supported by evidence that the Proponent is the sole provider of the innovation;
- financial and commercial details – provide a brief description of the financial and commercial details of the Unsolicited Proposal and the Proponent's financial capacity to deliver the Unsolicited Proposal. Clearly explain the proposed commercial proposition;
- costs and requirements from the Procuring Entity and Government – this section may include legislative/regulatory amendments, finance or the use of Government assets, facilities, equipment, materials, personnel, resources and land. What would be the cost of Government providing

these resources? (e.g. What is the value of Government land required for the Unsolicited Proposal?);

- risks – for both the Proponent, Procuring Entity and Government – this section should contain a comprehensive description of the risks relating to the Unsolicited Proposal, together with proposed mitigation measures;
- Intellectual Property details - if applicable, please provide a description of the following;
  - inventory of each item of Intellectual Property;
  - nature of the Intellectual Property claimed (e.g. copyright, patent, etc.);
  - the owner(s) of the Intellectual Property claimed;
  - registration details (where applicable); and
  - details of any items for which confidentiality is wholly or partly claimed.
- previous contact with the Government- provide the name, agency and contact details of anyone within the Government (including the Procuring Entity and other Government entities) with whom previous discussions about this project have occurred;
- proposal validity and expiry period- advise of any time period over which the Unsolicited Proposal will remain valid, which should be a minimum of six months;
- other statements- for example, please detail any applicable organisational conflict of interest and environmental impacts.

## **5.2 Assessment Criteria for Preliminary Submissions**

The Preliminary Submission (stage 1) should be evaluated by the Project Team based on the following criteria:

- satisfies the objectives and benefits the Government seeking to derive from Partnership Projects;
  - increasing private sector investment in infrastructure in Abu Dhabi (from domestic and international developers and investors);
  - building true partner relationships with private sector investors and developers;

- enhancing accountability for Government expenditure through robust analysis and development of (and adherence to) consistent and transparent processes;
  - increasing access for the Government to private sector innovation, entrepreneurship and efficiencies;
  - spreading the cost of procuring public assets and services through long-term contracting; and
  - increasing accountability for the delivery and long-term management of public assets and services.
- satisfies a community need or otherwise provides clear and measurable benefits to the Emirate of Abu Dhabi;
  - comprises an innovative proposal – providing unique attributes, innovative design, proprietary/new technology or a new concept with very limited alternatives; offering an innovative approach to project development and management; presenting a new and cost-effective method of service delivery;
  - delivers Value for Money to the Government;
  - is affordable within the Government's budget, funding priorities and fiscal strategy;
  - allocates risks and costs between the private sector and the Government in a way that is beneficial to the Government;
  - is technically, commercially and practically feasible;
  - is something that the Proponent has the capacity and capability (financially, technically and legally) to deliver successfully;
  - requires limited fiscal incentives and support from the Government in the form of contingent liabilities or financial incentives (including Government guarantee, subsidy/ grant, capital & equity support); and
  - is suitable for public investment, i.e. does not displace private sector activity, crowd out private sector investment, or contravene competitive neutrality principles.

### **5.3 Criteria for rejecting Preliminary Submissions**

Preliminary Submissions (stage 1) which satisfy any of the following criteria may be rejected:

- proposals which contravene the provisions of any law that is in force;
- proposals that are not unique and similar to the procurement of goods / works / services, already being undertaken by the Procuring Entities;
- proposals to provide widely available goods or services to the Government or Government entities;
- proposals for significant extensions to existing contracts, or for the next stage of a multi-stage project, on the basis that the contractor is already on-site or has some other claimed advantages.;
- proposals covering projects for which a tender process has formally commenced or for which planning has commenced, whether published or not;
- proposals merely seeking grants to fund organizational projects, e.g. scientific research; and
- proposals seeking funding for startup enterprises and organizations, as it is unlikely that they would satisfy the criteria of the Proponent having an appropriate capacity and capability.

## 6 Appendix D: Detailed Submission (Stage 2) Requirements

### 6.1 Detailed Submission contents

The Proponent should submit the Detailed Submission (stage 2) which shall include (i) all aspects of a Business Case as set out in the Guidebook and (ii) satisfy the criteria and requirements contained in this Appendix D.

#### 6.1.1 Proponent's Profile and Capacity

The Detailed Submission (stage 2) should include the following submittal in addition to the Business Case which evidences the capability and capacity to undertake the proposed project which includes as a minimum the following:

- description of the Proponent's organisation, trade or business;
- an overview of the proposed organisation and management structure and the proposed delivery team;
- legal information including corporate organisational documents and commercial registration and licencing details;
- technical information such as technical and project experience; and
- financial information such as audited financial statements.

### 6.2 Assessment Criteria for Detailed Submission

Assessment criteria that might be considered by the Project Team for the Detailed Submission (stage 2) include:

| DETAILED SUBMISSION |  |   |
|---------------------|--|---|
| 1                   | Meets a service or project need aligned with Government policy objectives and strategic priorities | <ul style="list-style-type: none"><li>• Does the Unsolicited Proposal address a clear service or project need?</li><li>• Are there other options for addressing the stated need?</li><li>• Does the Unsolicited Proposal align with Government policy e.g. Government's key priorities?</li></ul> |

|   |  |  |
|---|--|--|
|   |  | <ul style="list-style-type: none"> <li>• Is the proposal, or a similar Unsolicited Proposal, being considered currently as part of Government processes?</li> <li>• Is the Unsolicited Proposal consistent with Government's desired timeframes?</li> <li>• Are there key dependencies in the Unsolicited Proposal?</li> </ul>   |
| 2 | <p>Unsolicited Proposal has potential to be affordable in the context of budget priorities</p> | <ul style="list-style-type: none"> <li>• Is any Government funding required to support the Unsolicited Proposal?</li> <li>• Is the proposed funding affordable given competing Government budget priorities?</li> <li>• Are there realistic, credible alternative funding sources?</li> <li>• Are there direct or indirect costs or risks inhibiting the Unsolicited Proposal proceeding?</li> </ul>   |
| 3 | <p>The Unsolicited Proposal has the potential to offer Value for Money</p>                     | <ul style="list-style-type: none"> <li>• The VFM assessment includes both quantitative and qualitative considerations and is informed by multiple factors including benefits, scope, timelines and risk allocation.</li> <li>• The VFM assessment will also consider how reasonable the cost estimates (such as CAPEX, OPEX and LCSF) are to achieve the proposed benefits given the available information.</li> <li>• The VFM assessment will review the Proponents detailed breakdown of the estimated Reasonable Direct Costs incurred in the development of the Unsolicited Proposal and forecast for the development of its bid submission.</li> <li>• The assessment will also consider whether the proposed allocation of costs and risks between the Proponent and other parties is acceptable to the Government.</li> </ul> |
| 4 | <p>Provides significant social, environmental, economic or</p>                                 | <ul style="list-style-type: none"> <li>• What are the benefits of what is being proposed and are they adequately defined?</li> <li>• Are the benefits of value to Government?</li> </ul>   |

|   |   |  |
|---|---|--|
|   | financial benefits to the Government  | <ul style="list-style-type: none"> <li>• Are there key innovations the Unsolicited Proposal is offering e.g. commercial structure, design, idea, Intellectual Property, technology?</li> <li>• Are there critical dependencies for achieving the benefits?</li> <li>• Are there other options for Government to achieve the benefits?</li> <li>• Are the benefits likely to be achieved and are there any risks to achieving them?</li> <li>• Have the benefits for key stakeholders been identified?</li> </ul>   |
| 5 | The Unsolicited Proposal is commercial, feasible and capable of being delivered   | <ul style="list-style-type: none"> <li>• Is there a clear commercial proposition?</li> <li>• Is there a clear technical and practical feasibility?</li> <li>• Is there evidence that the Unsolicited Proposal will not be not displacing private sector activity, crowding-out private sector investment, or contravening competitive neutrality principles?</li> <li>• Is there evidence of capability to deliver what is proposed financially?</li> <li>• Is there evidence of capability to deliver what is proposed technically?</li> <li>• Is there evidence to support delivery in the proposed timeframes?</li> </ul> |
| 6 | The Unsolicited Proposal has unique characteristics resulting in outcomes that are not likely to be obtained using standard competitive processes within acceptable | <ul style="list-style-type: none"> <li>• Are unique characteristics present?</li> <li>• Does the Unsolicited Proposal include a unique idea?</li> <li>• Does the Proponent hold a unique position through ownership of, or access to, strategic assets e.g. rights under an existing contract, land, technology, software, Intellectual Property? For the avoidance of doubt, the Proponent must clearly evidence the existence of Intellectual Property within in the Detailed Proposal and state the licensing costs.</li> <li>• Are any of the strategic assets still being developed or negotiated?</li> </ul>           |

|   |  |  |
|---|--|--|
|   | <p>timeframes and therefore justifies the Unsolicited Proposal route for directly engaging with a Proponent.</p> | <ul style="list-style-type: none"> <li>• Are the unique characteristics material to achieving the desired outcome?</li> <li>• Does the Unsolicited Proposal provide value to Government compared with alternatives?</li> <li>• Does it improve Value for Money?</li> <li>• Does it provide other value that would not otherwise be achieved i.e. service delivery, risks not borne by Government or other advantages?</li> <li>• Are timeframes for delivery improved?</li> <li>• Would the Unsolicited Proposal result in outcomes not likely to be obtained within acceptable timeframes using standard competitive processes?</li> <li>• Are there any other factors considered material to demonstrate a unique position?</li> </ul> |
| 7 | <p>The Unsolicited Proposal is innovative</p>  | <ul style="list-style-type: none"> <li>• Whether the Unsolicited Proposal offers an innovative design, proprietary/ new technology or new concept with very limited alternatives?</li> <li>• Whether the Unsolicited Proposal involves an innovative approach to project development and management?</li> <li>• Whether Unsolicited Proposal presents a new and cost-effective method of service delivery?</li> </ul>  |

### 6.3 Criteria for rejecting Detailed Submissions

Detailed Submissions which fail to satisfy the requirements of this Appendix D or satisfy any of the criteria contained in 5.3 (Criteria for rejecting Preliminary Submissions) may be rejected.