

Malaysian experience with public private partnerships (PPP) – managing unsolicited proposals

Abstract

Purpose – Lack of competition in procurement processes may affect the sustainable procurement due to overpriced and low quality infrastructure. The purpose of this paper is to investigate the current practices in Malaysian PPP in handling unsolicited proposal within PPP and to suggest ways in which the practices can be improved to achieve sustainability.

Design/methodology/approach – Case study was conducted within which 13 semi-structured interviews were carried out with different groups: the policymakers, the practitioners and the experts. The study also scrutinised published guidelines and relevant regulations used by in management of unsolicited proposal in Malaysian PPP.

Findings – The government of Malaysia welcomes unsolicited proposal from the private sector, even though it does not publish any established mechanisms to handle such proposals. Lack of competition in unsolicited proposal is a major concern in achieving sustainable goals of procurement. This could be addressed by introducing a competitive element to unsolicited proposal,

Originality/value – There is limited study and reports on the implementation of unsolicited proposal by the Malaysian government. Besides adding to the literature, this paper reveals the management of unsolicited proposal. Most importantly, it is useful in assisting potential Malaysian PPP stakeholders and investors in what to expect, based on findings from the actual practice.

1.0 Introduction

Sustainable procurement is defined as achieving sustainable development goals through the act of acquiring and purchasing (Walker et al. 2012). Sustainability in procurement can be achieved through an effective use of resources, improving quality and cost optimisation (United Nations Global Marketplace, 2015). Public Private Partnership (PPP) has been considered as an alternative to conventional procurement as it offers a different financing mechanism and management solutions to consider. As the market for public procurement is large, guarantees of sensible spending of public money are much needed (Andersen et al. 2010).

Nevertheless, a move to PPP does not necessarily result in automatic benefits such as achieving the sustainability goals of procurement by providing best value for money (McQuaid and Scherrer 2010), reducing government spending and debt (Chong and Callender, 2009), or improving the quality of public service provision (Kwak et al., 2009). According to Burger and Hawkesworth (2011), there are a number of factors contributing to the success of PPP, among the significant one is competition amongst private parties. They insist that without competition in PPP, the procurement process will not achieve better value for money (Burger and Hawkesworth, 2011). Andersen et al. (2010) also stressed the importance of competition in public procurement by describing it as a cornerstone.

Currently, there is a gap in organisation of the competitive environment for awarding PPP contracts (United Nations, 2008). Unfortunately, despite awareness of the relevance of competition in PPP, current causes of PPP failure result from a lack of competition in the procurement process (Kwak et al., 2009). This lack of competition has led to: minimal innovation (National Audit Office and Infrastructure UK, 2010); unethical decision making (Hassim, 2012); corruption (Anderson et al. 2011); and abuse of diplomatic and political power (Søreide, 2006).

Unsolicited proposal is an example of global anti-competitive practice in PPP (Andersen et al., 2010; Verma, 2010) which affects the sustainable goals of procurement. In PPP, unsolicited proposal is an attempt by the private sector to submit a new idea or initiative, in return for an exclusive award behind closed doors from the contracting authority.

The Government of Malaysia encourages and welcomes unsolicited proposal for their PPP programme. However, the award of an unsolicited proposal concession usually went to the

original proposer through a direct negotiation process without any competitive bidding (Anuar, 2012). This action might be seen as contradicting the efforts to uphold competition and meet the sustainable goals of procurement. This paper aims to investigate the practice of unsolicited proposal in Malaysian PPP to see how it can be improved by incorporating competitive elements in order to achieve sustainability, with particular reference to sustaining the public sector's financial resources in the long term.

This paper is structured as follows. First, it provides a comprehensive literature review on unsolicited proposal practices. Next, the research method, comprising research and data analysis technique, is elaborated. This is followed by the findings and conclusions.

2.0 Literature Review

2.1 Unsolicited Proposals in PPP

An unsolicited proposal is defined as a proposal initiated by the private sector pursuing business prospects and submitted to the relevant authority. The submission is neither requested by the authority nor is it an invitation to bid (Verma, 2010; Yun et al., 2015). Generally, projects proposed through unsolicited proposal are not included in government planning (World Bank Institute, 2012) although they might be feasible through PPP (Yun et al., 2015) in the case where public needs go unnoticed by government (Meyer, 2012; Verma, 2010). An unsolicited proposal is normally regarded as associated with corruption. The perception of the public regarding unsolicited proposal is that it only benefits certain parties (Hodges and Dellacha, 2007). This is not surprising since the proposer often expects the concession to be awarded to them without any competitive bidding process (Hodges and Dellacha, 2007; Søreide, 2006).

Nevertheless, unsolicited proposal in PPP has been acknowledged and recognised in major international procurement frameworks, including the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB) and the World Bank (Hodges and Dellacha, 2007; Verma, 2010).

On the other hand, some countries such as the United Kingdom do not permit unsolicited proposal due to its anti-competitive aspect and lack of transparency (UNESCAP, 2010). Hodges (2003) suggested that forbidding unsolicited proposal may be the appropriate way to curb corruption and opportunistic behaviour by the private sector. There are also legal concerns about the proposal's intellectual property rights (Søreide, 2006). Anti-competitive

conduct and lack of transparency may lead to abuse of power, corruption and a diminution of the competitive nature of the entire PPP procedure (World Bank Institute, 2012).

However, the practice of unsolicited proposal may not always be anti-competitive. Hodges and Dellacha (2007) suggested that the problem lies in direct negotiation with a single entity and not in the unsolicited proposal itself. Among the countries that have developed a system to legitimately channel unsolicited proposal are: the Philippines, Taiwan, India, Indonesia, Chile, Korea, South Africa, China, and certain states in the USA and Australia. In anticipating maximising the competency of the private sector and the potential of PPP, these countries encourage the private sector to approach the government with valuable proposals for their consideration (Hodges and Dellacha, 2007).

2.2 Administrating Unsolicited Proposals

There are no international standards for organising unsolicited proposal (Hodges and Dellacha, 2007). The World Bank Institute (2012) advised extreme caution when considering an unsolicited proposal. Felsing and Miranda (2008) suggested three options for a government when the private sector proposes an unsolicited proposal. The respective options are:

- i. Negotiating directly with the original proposer,
- ii. Obtaining the legal right to the project and organising a competitive procurement process; or
- iii. Transforming the unsolicited proposal into a competitive procurement process with a mechanism for pre-defined advantage to the original proposer.

The distinctions between these options are the level of competition incorporated within the procurement process. Hodges (2003) agreed with options (ii) and (iii), but suggested option (i) should prohibit the practice of unsolicited proposal. Awarding the contract through a direct negotiation process results in a lack of accountability, and is proven to lead to corruption (Hodges and Dellacha, 2007).

The choice of procurement process for unsolicited proposal will normally involve multi-faceted considerations. Commercial feasibility alone should not be sufficient to motivate the acceptance of an unsolicited proposal. Some other factors that need to be considered are: the government's budget, how innovative is the proposal, merits of the proposal, requirement for high-level input, exposure to corruption (Felsing and Miranda, 2008), the legal framework,

and the policy environment (UNESCAP, 2010). According to Hodges and Dellacha (2007), the challenge for a government in accepting an unsolicited proposal is to promote innovation while upholding competition and transparency. Some of the recognised practices in dealing with unsolicited proposal are discussed below.

2.2.1 Direct Negotiations

According to Søreide (2006), the proposer of unsolicited proposal will expect exclusive direct negotiations due to ownership of intellectual property rights and the cost incurred in transforming the idea into a realistic proposal. Other common arguments for direct negotiations are: lack of interest from the private sector for small-scale projects, cost efficiency in organising a competitive bidding exercise, and urgency of a proposal (Hodges and Dellacha, 2007).

Many national regulations allow for direct negotiation for unsolicited proposal with the original proposer (Søreide, 2006). The advantage of selecting direct negotiation is possible savings in time and cost (Felsing and Miranda, 2008). The disadvantages, however, outweigh the advantages. Due to inadequate transparency and competition, direct negotiation with a sole company may encourage corruption (Felsing and Miranda, 2008), resulting in poor value for money and other issues of procedural fairness (World Bank Institute, 2012)

2.2.2 Bonus System

The Bonus System concept is to award a certain value in the form of a bonus in exchange for the rights from the unsolicited proposal, giving the original proposer an advantage in the tendering process. The pre-arranged advantage comes in numerous forms as decided by the authority or even with mutual agreement with the original proposer. Among other forms of advantage is the provision of a certain percentage in technical or financial terms. The application of the Bonus System is usually given to the original proposer in the evaluation process. A common form of advantage is an additional theoretical value given to the original proposer (Hodges and Dellacha, 2007). In Chile, the original proposer may sell the bonus to another bidder. In the case where the original proposer drops his interest in bidding for the project or loses in the competitive bidding exercise, they will be compensated in the development cost by the winning bidder (Hodges and Dellacha, 2007; Verma, 2010).

The amount of advantage given, however, must be reasonable so as not to deter other potential bidders from participating and not to dampen the private sector from submitting

unsolicited proposal at all (Hodges and Dellacha, 2007). The Bonus System is widely used in Chile, Korea, Argentina and India (sub-national).

2.2.3 Swiss Challenge

The concept of Swiss Challenge differs from the Bonus System. A competitive tender exercise is conducted, and the submission from the original proposer is made available to other bidders (Verma, 2010). Within a certain period, the Swiss Challenge allows the original proposer to counter-match any leading or best offer by other bidders, if any (Hodges and Dellacha, 2007; UNESCAP, 2010). In the case that the original proposer matches the best offer, the concession will be awarded to the original proposer. However, in Guam, even if the original proposer matches the leading or the best offer, the concession will be awarded based on technical merit (Hodges and Dellacha, 2007)

The best offer in the Swiss Challenge context is not well defined in the existing literature. Verma (2010) considers that any appealing offer by other bidders during the competitive tender exercise may be the best offer, while Hodges and Dellacha (2007) identify the best offer in the Philippines and Guam as normally referring to the lowest price received and approved.

Potential participants in Swiss Challenge competitive tendering may perceive their chances of winning the bid as rather limited. The first reason is the time limitations on bidders in the exercise to challenge a well prepared proposal from the original proposer. Another reason is that a close relationship between the original proposer and the authority may have been developed during the proposal development phase (Hodges and Dellacha, 2007; Verma, 2010). The Swiss Challenge is used in the Philippines, Italy, Guam, India (sub-national), Australia (sub-national) and Taiwan.

2.2.4 Best and Final Offer

There have been efforts to improve the Bonus System and Swiss Challenge or to combine the two approaches. A common feature of these innovations is the multiple tendering stages, giving an advantage to the original proposer who automatically qualifies for the last round of tendering, against the shortlisted bidders from the earlier rounds (Hodges and Dellacha, 2007; Verma, 2010). The bidders will now need to submit their Best and Final Offer to the authority for consideration.

Countries currently using the Best and Final Offer include South Africa, Argentina, and Costa Rica, although they apply different rules and other details in the process. In South Africa, the original proposer needs to enter the early stage of tendering. Two of the best bids from this early stage will proceed to the final round, but if the original proposer is not one of the best bidders, they can still proceed to compete in the final round. In Argentina, the original proposer is automatically awarded with the concession if the original offer is within 5 percent of the best offer. However, a Best and Final Offer round will be conducted if the original offer is more than five percent of the best offer, and the final round will be a competition on a level playing field with no advantage or bonus given to any party (Hodges and Dellacha, 2007). Another common feature is that the winning bidder needs to compensate the original proposer for the development cost.

In light of the above discussion, it is clear that there are variations in unsolicited proposal practices worldwide, ranging from strictly refusing to accept unsolicited proposal, to creatively introducing an element of competition in the practice. Therefore, it is interesting to explore the Malaysian experience in dealing with unsolicited proposal, especially from its unique perspective of a mid-ranking emerging economy and a developing country that has a protective economic policy for the indigenous group, but at the same time desiring to achieve greater economic growth through investment and co-operation with the private sector by promoting PPP.

2.3 Malaysian PPP

Although the term PPP was officially introduced in 2010, Malaysia has been engaging in a public private relationship through its privatisation policy since 1983, with other forms of PPP such as build–lease–transfer (BLT), build–operate–lease–transfer (BOLT) and build–operate–transfer (BOT) (Rashid, 2014; Takim et al., 2009). If the yardstick of success is measured by delivering infrastructure to the people, credit is due to the agency for its achievements. From its initiation until 2010, 1,679 km of highways were completed through the privatisation programme (Wang et al., 2012). This network of highways connects most of the cities and rural areas in Malaysia, supporting the domestic economic activities and being seen as a positive gain in socio-economic terms in the rural areas.

Malaysia used PPP in numerous industries including transportation, health, highways, education and others (Baker & McKenzie, 2015). According to the Chief of Secretary of Malaysia, he stated that up to December 2014, a total number of 698 PPP projects has been successfully realised which saves the government a total of £ 40.93 Billion (Hamsa, 2015).

2.3 Governance of Malaysian PPP

The organisational structure of a typical PPP in Malaysia does not differ much from best international practice. The structure comprises the government, the Special Purpose Vehicle, lenders, private investors, works contractors and facilities maintenance contractors. The roles and responsibilities of the parties in Malaysian PPP are similar to their counterparts worldwide.

The national PPP implementation in Malaysia is planned and monitored by a central agency with the implementation of the concessions are decentralised to relevant ministries or agencies. PPP project proposals are prepared by ministries or agencies and submitted to the central agency to be brought to the Cabinet Ministers for approval (Public-Private Partnership Unit, 2009).

There are neither new legal frameworks nor specific legislation for PPP in Malaysia. The governance of Malaysian PPP is generally based on the central agency guideline, the Privatisation Masterplan, and other national policies. The national guideline on PPP: *Guideline on Public Private Partnership* was published in 2009 and more information about the guideline is made available within the agency's informative website. The intention was to produce clear guidelines on the principles adopted, criteria for project development, justification, and selection criteria for projects (Public-Private Partnership Unit, 2009). However, the guidelines are very general in nature and do not specify mechanism for dealing with unsolicited proposal (Anuar, 2012).

3.0 Methodology

This study adopted the case study as its research strategy. A single holistic case study was used to investigate the current practices of Malaysia in managing unsolicited proposals. The decision to select a single case was influenced by the context of this study As advocated by Yin (2014) a single case study is suitable for “critical, unusual, common, revelatory or longitudinal case”. He added that the approach is suitable when the objectives of the research is to “capture the circumstances and conditions of everyday situation”. The study was conducted within a central agency who manages PPP projects in Malaysia where the agency was considered as a critical case due to their intensive involvement in managing unsolicited proposals and their influences towards the current practices of PPP in Malaysia. A single case study approach is, therefore, considered as the most appropriate research strategy to study the unsolicited proposal practices within PPP in Malaysia.

One of the strengths in using the case study approach is that it permits the researcher to exploit multiple sources of evidence (Yin, 2014). A combination of interviews, review of documentation and archival records were chosen for this research. Interview was selected over other primary data collection methods because of its ability to probe the actual practices, allowing the researcher to clarify any unclear answers with key participants (Kumar, 2011).

This research takes a social constructionism viewpoint in the philosophical paradigm. Considering the nature of the research the generalisation is carried out through theoretical abstraction because a positivist generalization of the results to the whole population based on statistical probability is not valid (Easterby-Smith et al., 2008). Furthermore in case studies, statistical generalisation is not possible since no inference is made about the population or universe (Yin, 2014). However, a context specific generalisation is valid with case studies, as such the findings of this study could be relevant to countries with the similar context of Malaysia. For example, besides Malaysia, according to Wang, et al., (2012) it was identified that China, Indonesia, India and Thailand employed PPP for additional goals hence justifying the different methods in administrating unsolicited proposals. Thus, in this exploratory, theory building research the findings are context sensitive and generalizable to the similar settings (Yin 2014) which in turn will have a sense of global significance.

3.1 Sampling and Collection Protocol

Purposive sampling was selected, and participants were deliberately identified based on their knowledge, experience, and involvement with the Malaysian PPP implementation. Each participant identified has his/her own role and experience with Malaysian PPP procurement process, so individual interviews were appropriate, allowing in-depth exploration of the subject (Petty et al. 2012). Participants were divided into three groups with divergent backgrounds, according to their activity and involvement in the procurement process and practices.

Thirteen face-to-face interviews were carried out in February and March 2015. Different sets of pro-forma semi-structured interview questions were prepared for each group. The first set was designed for the policy making personnel (R1-R5) and aimed at gaining information about competition in the Malaysian unsolicited proposal practice from the policy making perspective. The second set was designed for the PPP practitioners (R6-R10) involved with the PPP procurement by the government to assess their involvement in PPP and gaining their views and perceptions of the current policy on unsolicited proposal. The third set was

designed for identified experts in Malaysian PPP (R11-R13), either from academic institutions or industry. These interviews were intended to gain understanding of the PPP mechanism in Malaysia, their views and opinions on the applicability of unsolicited proposal.

3.2 Data analysis

Qualitative data analysis emphasises in-depth understanding of the meaning of the collected data, focusing on the context (Schutt, 2012). Content analysis was selected for this research as it offers the possibility to examine the participants' responses through multiple approaches in order to identify significant statements. As this study aims to explore the practice of unsolicited proposals, relevant published documents and the experience of the respondents were investigated. The research utilised conceptual content analysis and relational analysis to provide insight into such practices in Malaysia.

4.0 Results

4.1 Findings from Desk Study

These findings were derived from an investigation of PPP implementation in Malaysia identified through published documents. Basically, there are two different frameworks on unsolicited proposal administration those offered in the guideline and on the website, but they complement each other, *mutatis mutandis*. PPP procurement processes for unsolicited proposal share the same route as the government-initiated proposals. The process starts with the initiation of a project proposal from the private sector submitted to the central agency. There is lack of further detail in the flow chart explaining the manner the central agency decides for suitable procurement process to be adopted. The flow chart only mentioned subsequently after the principal approval by the cabinet, ministries may proceed to prepare bidding documents and invitation to bid. Through the procurement process, ministries and agencies are required to shortlist three names to be submitted to the central agency.

The proposal from the ministries or agencies should comprise the following vital information: justification for the proposal, business and financial plan, documents in support of financial capability, payment plan, and risk allocation plan (Public-Private Partnership Unit, 2009; Wang et al., 2012). Unsolicited proposal should adhere to the same requirements. The proposal will then be processed by the government. The *Guideline on Public Private Partnership* did not specify anything on the evaluation mechanisms for the proposal except general criteria as below:

- a) Project output should be measurable;
- b) Project cycle should be 20 years or more;
- c) Project should involve introduction or transfer of new technology. Obsolete or out-dated technology would be rejected; and
- d) Private Sector Proposer must possess financial capability in the form of paid up capital of at least 10% of the proposed development amount.

Besides the lack of detail on the competition aspects in the guideline, there is no explicit information on the assessment criteria and procedures used to evaluate the proposals. These are made known in detail for conventional public procurement project tenders (Ministry of Finance Malaysia, 2008). Within PPP, this information is very important for potential private partners in order to show that the procurement process will operate in an ethical and transparent competitive environment; only the best, and optimum cost, effective bids should be considered (McCrudden and Gross, 2006).

4.2 Findings from Empirical Data

Subsequent to the investigation of published documents, semi-structured interviews were conducted with the identified participants. The findings are presented in headings extracted from the analysis.

4.2.1 Regulations on PPP

There were mixed reviews on the status of PPP as a public procurement. This is the most interesting finding of the paper since it will determine how unsolicited proposal should be managed. Participants R1 and R2 claimed PPP is not public procurement and thus not bound by the public procurement regulations. Participants R4 and R5, however, felt that, since ultimately the government has to pay for the end product, it is considered public procurement. The same view was shared by Participants R12 and R13.

Nonetheless, the procurement processes do not follow the public procurement regulations strictly (R1, R2, R4, and R5). This includes the practice for unsolicited proposal. Participant R2 insisted that the concept of good governance has always been upheld throughout their process, even though they did not restrict themselves with public procurement regulations. Participant R5 added that they tried their best to avoid conflict with the public procurement regulations in practice.

Collectively, the participants claimed that any decisions or practices are discussed by an inter-agency committee and finalised by the Cabinet of Ministers. Under Article 39 of the Malaysian Constitution, the appointed Cabinet is the highest executive authority, given the power to govern. Within the Cabinet, each Minister is responsible for different portfolios and power vested under the purview of the Ministerial Functions Act, 1969. Participant R1 reiterated that this makes the PPP procurement special since no other procurements are decided by the highest executive authority in the country.

4.2.2 Administration of Unsolicited Proposal

Participants R2, R3, R4, R5 and R6 stated that the government did receive many unsolicited proposals. However, due to the confidentiality of the documents and information, statistics on the number of unsolicited proposal received by the government were unavailable. Respondent R5, however, emphasised, “Back again to the numbers of unsolicited proposal received. Yes, we received many unsolicited proposal, but not every project will be realised especially if it is not in the ministries’ or agency’s planning”. However, respondent R12 believed that unsolicited proposal should originate solely from the private sector, from its initiation until the proposal, and not as a project within a ministry or agency development plan. This was also asserted by the World Bank Institute (2012). Respondent R9 pointed out that most of the proposals received were either not feasible, or lopsided. Despite the benefits that can be brought by the private sector, there were attempts to squeeze the government for a supra-profit contract. Due to the vast numbers of unsolicited proposal received, the policy makers admit that “there is a need for a proper mechanism to manage it”.

4.2.3 Direct Negotiation or Competitive Bidding

The published guidelines did not specify whether an unsolicited proposal will be awarded to the original proposer or will be advertised for competitive bidding. It will be decided by the Cabinet of Ministers with the recommendation of the inter-agency committee. Despite the perception of linkage between unsolicited proposal and direct negotiations the government did try to inculcate some competitive elements for unsolicited proposal. Respondent R3 stressed that “If there were more than one proposal for the same infrastructure, we might suggest an open competition for Request for Proposal”. In contrast, private practitioners may take the opposite view. Respondent R10 felt that it is unfair not to award a concession to the original proposer. The contrasting views are not surprising since the goal of the government

and the private sector will not be the same. The government has a duty to advocate good governance, whilst the private sector's motivations are to attain maximum profit.

From an expert point of view, respondent R12 asserted that a purely private initiated proposal typically comprises the private company's own initiative and uses its own resources to conduct research, studies and preparation of the proposal. This involves a substantial cost which has been absorbed by the private company. This explains why the private sector would prefer direct negotiation when submitting an unsolicited proposal. It is important to distinguish between the direct negotiation procurement process of a government-initiated project and a purely privately initiated unsolicited proposal.

Although it is not mentioned in the *Guideline* or website, the government has been experimenting with Swiss Challenge, but with no success. When asked to define "no success", Respondent R2 replied "In the end, the original proposer's offer is still the best". Respondents R1 and R2 believed that the whole process of the Swiss Challenge was time consuming. This may be caused by the absence of guidelines on dealing with unsolicited proposal. The respondents were also of the opinion that Swiss Challenge is unfair and unethical (R3, R9 and R10). The researcher observed that these views were based purely on the sentiments of the respondents. The only problem relating to the unethicality and unfairness of Swiss Challenge legally is the issue of intellectual property, which can be managed through an appropriate approach.

As the researcher probed further as to why the Swiss Challenge was found to be undesirable, a clear indication given by an expert was that it was merely a waste of time and money, for both the government and the private sector. Respondent R13 pointed out that, in whatever situation, the original proposer will always hold the upper hand in Swiss Challenge. Respondents R9 and R10 elaborated that the original proposer will always have an advantage in terms of time, and the comprehensive knowledge about the project proposed.

Notwithstanding the good intention of organising competition through Swiss Challenge, Respondent R2 believed that it would not be able to achieve competition since it would not attract other bidders. Failure to attract bidders defeats the purpose of having Swiss Challenge.

4.2.4 Best and Final Offer

Like Swiss Challenge, the Best and Final Offer was not specified in any of the authoritative guidelines or on the website, thus making its implementation unclear, although it was understood that the substance of Best and Final Offer is being used within the PPP procurement process. Respondent R3 revealed that “For Best and Final Offer we call for a multiple round of tendering. The original proponent is also invited to join the tender exercise” Where Respondent R9 further added that multiple rounds of tendering are conducted until the government obtains its objective.

4.2.5 New Economic Policy

The government created the New Economic Policy much earlier than the PPP programme and even before privatisation. Since then, it has been used in an attempt to balance the socio-economic equality of the multi-racial society of Malaysia, consequently aimed at national unity. The policy also underlines empowering and upgrading the socio-economy of the *Bumiputera*, the indigenous people of Malaysia.

However, little is known about the implementation of the New Economic Policy in relation to the unsolicited proposal procurement. In public procurement regulations set by the Malaysian Treasury, there are clear guidelines on its implementation, but none on its implementation in the unsolicited proposal procurement process.

In an attempt to discover the status of the New Economic Policy within unsolicited proposal, the respondents were asked whether the *Bumiputera* policy is applied to the PPP procurement process. The response in general confirms that it is, simply because it is the national policy. Furthermore, respondents were asked whether the government would benefit from PPP with the restrictions imposed. Respondent R12 confirmed that the government has always used government procurement to achieve its aim in New Economic Policy, and PPP is not spared. Hence if the *Bumiputera* benefits from PPP, the government has accomplished its mission, even if it outweighs other elements such as the competitive procurement process. Respondent R13 also praised the national policy and is of the opinion that the New Economic Policy should also promote competition between the *Bumiputeras*.

In addition to priority being given to *Bumiputera* companies, another restriction of the policy is on the involvement of foreign companies in Malaysian PPP projects. PPP is an important way of tapping resources and transferring technology from the private sector, but by limiting

the participation of foreign companies in the procurement process, some of the benefits of PPP will be relinquished (R5).

5.0 Conclusion

This paper has analysed the practice of Malaysia in dealing with unsolicited proposal. Unsolicited proposal in Malaysia seems to be a catalyst for the nation in procuring varied facilities and services. Although in the Malaysian experience, the original proposers wish to have exclusivity for the concession; the government needs to allow these opportunities appropriately for the private sector while reminding themselves to always uphold good governance practices. The practice of direct negotiation for unsolicited proposal makes the government lose its bargaining power, thus enabling concessionary companies to make excess profits from the government over a prolonged period. This may result in government spending and unacceptable deficits due to the high cost further affecting the sustainable procurement goals. The long-term payment due to the private partner might exceed the potential cost saving from the earlier phase. The practice of direct negotiation with a single company may lead to corruption and abuse of power (Hodges and Dellacha, 2007). This may be resolved by introducing competitive elements within the unsolicited proposal and transparencies in the process, which will in turn help to achieve the sustainable goals of procurement.

The findings of the study show that efforts are being made by the government to incorporate competition into its unsolicited proposal procurement process. However, they are still inconsistent. The justification given for this was that the government is still experimenting and finding a suitable method of dealing with unsolicited proposal. Nevertheless, this has been in progress since the privatisation era (Anuar, 2012). Most of the current PPP projects are still at the construction phase, and success is yet to be proven in terms of sustaining the payments of the facilities built. The government will be in a better position to sustain PPP financially if competitive tender procedure is established for its unsolicited proposal practices. This paper outlined international practices such as the Swiss Challenge in incorporating competition in unsolicited proposal practice. Malaysia should adapt this good practice and improve it to suit its own context and requirements.

It is acknowledged and understood that PPP in Malaysia is one of the instruments for achieving the national agenda, including the New Economic Policy. With the progress made by the nation since the initiation of New Economic Policy, *Bumiputera* companies should be

able to compete with each other. A transparent and competitive tender exercise for unsolicited proposal should be organised between the *Bumiputera* rather than exclusively negotiating with and awarding contracts to a single company. Otherwise, this may extend the perception of corruption and abuse of power by the government.

Even though the research focuses on localised issue, it is hoped that the discussion and findings of this paper will motivate policymakers across the world with similar context to address the issues highlighted in this paper, contributing to the global significance of the study. The current framework may perhaps deliver infrastructure to the people rapidly. Nevertheless, the prime objective should be obtaining the best out of unsolicited proposal and PPP, whilst maintaining good governance and accountability of the agency through a robust procurement process.

References

- Andersen, H., Cao, F., Tvarnø, C.D. and Wang, P. (2010), *Public-Private Partnerships - An International Analysis from a Legal and Economic Perspective*, edited by Tvarno, C.D., 1st ed., The EU Asia Inter University for Teaching in Public Procurement Regulations, Nottingham.
- Anderson, R.D., Kovacic, W.E. and Müller, A.C. (2011), “Ensuring Integrity and Competition in Public Procurement Markets: A Dual Challenge For Good Governance”, in Arrowsmith, S. and Anderson, R.D. (Eds.), *The WTO Regime on Procurement: Challenge and Reform*, 1st ed., Vol. 35, Cambridge University Press, United Kingdom, pp. 29–35.
- Anuar, R.K. (2012), *Malaysia’s BOT Method Implementation for Highway Development Projects*, Ritsumeikan Asia Pacific University, (Masters Thesis) available at: <http://r-cube.ritsumei.ac.jp/bitstream/10367/3922/1/51210007.pdf>.
- Baker & McKenzie. (2015). ASEAN Infracapital Legal Update (vol. 4). *Baker & McKenzie Newsletter*. Retrieved August 20, 2015, from http://www.bakermckenzie.co.jp/pdf/Newsletter_201505_ASEANInfracapital_Vol4_E.pdf
- Burger, P. and Hawkesworth, I. (2011), “How to Attain Value for Money: Comparing PPP and Traditional Infrastructure Public Procurement”, *OECD Journal on Budgeting*, Vol. 1, pp. 12–13.
- Chong, S.Y.L. and Callender, G.C. (2009), “One More Time ... How to Measure Alliance Success in Conditions of Public-Private Partnering”, in Thai, K. V. (Ed.), *Advancing Public Procurement: Practices, Innovation and Knowledge-Sharing*, Eds., Taylor & Francis Group, Florida, pp. 97–115.
- Easterby-Smith, M., Thorpe, R. and Jackson, P.R. (2008), *Management Research*, 3rd Ed., SAGE Publications, London.
- Felsing, K. and Miranda, J. (2008), *Public-Private Partnership Handbook*, Asian

- Development Bank, Manila, available at: <http://www.adb.org/Documents/Handbooks/Public-Private-Partnership/Public-Private-Partnership.pdf>.
- Hamsa. (2015). Public-Private Partnerships: Nation Path Through the Next Decade. The Malaysian Chief of Secretary Speech at the International Directors Summit 2015 at InterContinental Hotel, Kuala Lumpur. Retrieved from <http://ksn.jpm.gov.my/home.php?frontpage/speech/detail/2000#>
- Hassim, A.A. (2012), *Project Governance: Ethical Decision Making in Project Procurement in the Malaysia Public Sector*, (Unpublished PhD Thesis) Queensland University of Technology.
- Hodges, J.T. (2003), “Unsolicited Proposals the Issues for Private Infrastructure Projects”, *The World Bank*, available at: <http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/282884-1303327122200/257Hodge-031103.pdf> (accessed 30 August 2015).
- Hodges, J.T. and Dellacha, G. (2007), *Unsolicited Infrastructure Proposals: How Some Countries Introduce Competition and Transparency*, No. 1, Washington D.C.
- Kumar, R. (2011), *Research Methodology - a Step-by-Step Guide for Beginners*, 3rd ed., SAGE Publications Ltd, London.
- Kwak, Y.H., Chih, Y. and Ibbs, C.W. (2009), “Towards a Comprehensive Understanding of Public Private Partnerships for Infrastructure Development”, *California Management Review*, Vol. 51 No. 2, pp. 51–78.
- McCrudden, C. and Gross, S.G. (2006), “WTO Government Procurement Rules and the Local Dynamics of Procurement Policies: A Malaysian Case Study”, *European Journal of International Law*, Vol. 17 No. 1, pp. 151–185.
- McQuaid, R.W. and Scherrer, W. (2010), “Changing Reasons for Public–Private Partnerships (PPPs)”, *Public Money & Management*, Vol. 30 No. 1, pp. 27–34.
- Meyer, K.S. (2012), *Testing Tradition - Assessing the Added Value of Public - Private Partnerships*, United States of America.
- Ministry of Finance Malaysia. (2008), “Garis Panduan Penilaian Tender”, *Ministry of Finance Malaysia*, available at: <http://www.treasury.gov.my/pekeliling/sap/sap2008-03-21.pdf> (accessed 22 September 2015).
- National Audit Office & Infrastructure UK. (2010), *From Private Finance Units to Commercial Champions: Managing Complex Capital Investment Programmes Utilising Private Finance - A Current Best Practice Model for Departments*, London.
- Petty, N.J., Thomson, O.P. and Stew, G. (2012), “Ready for a Paradigm Shift? Part 2: Introducing Qualitative Research Methodologies and Methods”, *Manual Therapy*, Elsevier Ltd, Vol. 17 No. 5, pp. 378–384.
- Public-Private Partnership Unit. (2009), *Public Private Partnership (PPP) Guideline*, Putrajaya.
- Rashid, K.A. (2014), “Public–Private Partnership and its Significance for Malaysia”, in Silvester, K., Bystrova, K. and Jade, F. (Eds.), *Commonwealth-Governance and Growth 2014*, 2014th ed., Nexus Strategic Partnerships for Commonwealth Secretariat, Cambridge, pp. 54–57.
- Saron, N.N.M., Jaafar, M.N. and Razali, M.N. (2013), “Implementation Public Private Partnership (PPP) in Malaysia: A Review on Participation of Local Government and

- Private Sector's in Land Development", *Proceeding of the Global Conference on Business, Economics and Social Sciences*, Vol. 2013, pp. 573–582.
- Schutt, R.K. (2012), "Qualitative Data Analysis", *Investigating the Social World - The Process and Practice of Research Seventh Edition*, SAGE Publications, Inc., Boston, pp. 320–357.
- Søreide, T. (2006), "Tender Manipulation: Large Firms and Infrastructure Contracts", *2nd International Public Procurement Conference*, Rome.
- Takim, R., Ismail, K., Nawawi, A.H. and Jaafar, A. (2009), "The Malaysian Private Finance Initiative and Value for Money", *Asian Social Science*, Vol. 5 No. 3, pp. 103–111.
- UNESCAP. (2010), "A Guidebook on Public-Private Partnership Projects in Infrastructure", United Nations Economic and Social Commission for Asia and The Pacific, Bangkok, available at:<http://doi.org/10.1017/CBO9780511974403>.
- United Nations. (2008), *Guidebook on Promoting Good Governance in Public Private Partnership*, Geneva.
- United Nations Global Marketplace. (2015), "Sustainable procurement", *United Nations Global Marketplace*, available at:<http://doi.org/10.1680/sp.42117>.
- Verma, S. (2010), "Government Obligations in Public-Private Partnership Contracts", *Journal of Public Procurement*, Vol. 10 No. 4, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1671081 (accessed 30 November 2013).
- Walker, H., Miemczyk, J., Johnsen, T. and Spencer, R. (2012), "Sustainable procurement: Past, present and future", *Journal of Purchasing and Supply Management*, Vol. 18 No. 4, pp. 201–206.
- Wang, S., Campagnac, E., Ray, G., Pradono, W.B.O., Pratami, D.K., Onishi, M., Kobayashi, K., et al. (2012), *Taking Stock of PPP and PFI Around the World*, London.
- World Bank Institute. (2012), *Public-Private Partnership Reference Guide Version 1.0*.
- Yin, R.K. (2014), *Case Study Research - Designs and Methods*, 5th ed., SAGE Publications, Inc., Thousand Oaks.
- Yun, S., Jung, W., Han, S.H. and Park, H. (2015), "Critical Organizational Success Factors for Public Private Partnership Projects – A Comparison of Solicited and Unsolicited Proposals", *Journal of Civil Engineering and Management*, Vol. 21 No. 2, pp. 131–143.