

Unsolicited Proposals Framework

December 2020

Introduction

- The *Canada Infrastructure Bank Act* (the Act) provides the Canada Infrastructure Bank (the CIB) the ability to receive unsolicited proposals (USPs) for new infrastructure projects from private sector and institutional proponents (Proponents).
- The CIB created this framework (the Framework) to effectively execute the USP. The Framework sets out the guiding principles and high-level processes for receiving, considering and advancing USPs in collaboration with public sector sponsors and private and institutional proponents.
- The CIB will only consider USPs for infrastructure projects that are new, revenue generating and within the CIB's mandate to support. USPs that are not within the CIB's mandate are not eligible for consideration.
- Given the CIB is not a procurement agency or asset owner, agencies and departments from federal, provincial, territorial, municipal and Indigenous governments (Public Sponsors) will play a critical role in the advancement of any USPs that address infrastructure priorities in their respective jurisdiction. The CIB will not move forward on a USP without support from a Public Sponsor, as outlined in the Framework.
- Projects pursued as USPs with potential CIB participation will ultimately require all normal CIB decision-making approvals, including confirmation of the public interest and satisfaction of bankability requirements.

Infrastructure Development Context

- The Canadian infrastructure market is world-renowned for executing on infrastructure projects once they are through the planning and procurement phase, especially when using the public private partnership model.
- Infrastructure projects, especially those driven by Public Sponsors, take significant time to identify, approve as policy priorities, develop with outcome specifications for procurement and finalize with financial commitments and contracts.
- The dominant approach in Canada has been fixed price, cost-certain procurement models with long public sector planning periods ending in competitive processes.
- USPs are an option for Public Sponsors to enable Proponents to bring forward innovative project opportunities to address infrastructure gaps or problems and potentially change the timeframe, costs and solutions available to the Public Sponsor.

Observations About Infrastructure Development: *Innovation*

- Current approaches tend to be relatively rigid with a high degree of specification and narrow ability to make comparisons between alternative solutions, which can limit innovation from the private sector.
- Timeframes are long and require extensive public sector business planning followed by long public procurements, which means projects take longer, fewer make it to market and those that do are relatively inflexible, further limiting the ability to leverage private sector innovation.
- The private sector is largely excluded from identifying public needs and opportunities and from coming forward with unique, innovative solutions early enough in the project development process to effectively leverage the significant expertise that exists in the market.
- In some cases, public sector entities have resource and expertise constraints for infrastructure development, so fewer and less complex projects may be advanced when private sector involvement is limited.

Observations About Infrastructure Development: Cost

- Typical procurement costs are significant for both public sector procuring authorities and bidders.
- Public sector often does significant pre-procurement reference design work that is then re-done or discarded by bidders. Extensive reference design work also limits private sector innovation, as it tends to lock procuring authorities into a specific, predetermined approach.
- Multiple bidders undertake the same or similar work, which is especially extensive when a committed design and financing are required and only one preferred version is used as a result of procurement.

Rationale for Unsolicited Proposals

- Given the context and potential innovation and costs benefits, there is sound rationale for strategically fostering and pursuing USPs, as follows:
 - Proponents can bring unique solutions to existing problems and even propose solutions to previously unknown, unique problems
 - USPs can lower project development costs and make better use of scarce government infrastructure development resources and expertise
 - USPs can foster innovation, with the potential for higher quality and lower-cost delivery of infrastructure
- USPs do not eliminate or redefine infrastructure procurement practices, but with strategic implementation can play a useful and valuable role as a new option for partnerships and project development.

Potential of CIB's USP Framework

- Governments across Canada today have varying approaches to USPs, ranging from non-existent to ad hoc to fully developed processes, which leaves a market gap.
- The CIB is well positioned to fill that gap for projects within its mandate, in order to help realize the benefits of USPs across Canada, based on the following:
 - The CIB's longer-term mandate is to develop new infrastructure that has private and institutional investment in revenue-generating projects, which are key components of most USPs
 - The CIB has a role in developing and implementing more innovative responses to infrastructure needs in cooperation with Public Sponsors
 - Projects within the CIB's mandate tend to be among the most complicated and costly to develop, which means USPs could provide significant cost and innovation advantages when strategically applied to them

Potential of CIB's USP Framework

- The Framework is intended to provide **clear principles and a defined process** of engagement for USPs.
- The CIB will act as a **point of contact**, facilitator and potentially, financing source for projects resulting from USPs under the Framework.
- **Public Sponsors** will ultimately decide whether projects proceed and the process for the development, procurement and execution of those projects will be determined with the Public Sponsor.
- The Framework will allow the CIB to **assist** Public Sponsors in navigating complex projects as an advisor, facilitator and potentially as an investor, while at the same time seeking to improve risk transfer and private sector engagement throughout the lifecycle of projects.
- The Framework is an **additional tool** and option for Public Sponsors to act on their infrastructure priorities.

Guiding Principles of the Framework

1. **Value** – The Framework must include concepts of market testing and/or appropriate levels of competitive tension, as well as seeking to solve problems that are in the public interest. Public funds are involved so there must be value for taxpayers' monies spent and projects must be useful and viable.
2. **Innovation** – The Framework must foster innovation by the private sector, so Canada can utilize its comparative advantage in infrastructure development, including by facilitating engagement with potential Proponents and providing adequate protection of Proponents' intellectual property.
3. **Fairness** – The Framework must reflect a clear and transparent process map for USPs, which includes an appropriate level of openness and accountability throughout to maximize effective participation by Proponents and Public Sponsors and to maintain public trust.
4. **Flexibility** – USPs are by definition unique, so the Framework must reflect a flexible approach that allows the CIB and Public Sponsors to determine the best course for a given project, while maintaining transparency and accountability of decision-making.
5. **Legal Alignment** – The Framework must respect existing laws and government policies, including specifically with respect to procurement and the treatment of private sector proponents.
6. **Public Sponsor Support & Control** – The Framework must allow the CIB to provide effective support to Public Sponsors in considering and developing projects resulting from USPs and must respect the jurisdictional control of Public Sponsors.

Unsolicited Proposals Process: Qualifying Criteria

When determining whether a USP qualifies to proceed through each stage of the process, the CIB will consider, and will provide advice to Public Sponsors to inform their decision-making based on, the below qualifying criteria:

1. **CIB Mandate** – Alignment of the project with the CIB's mandate and government priorities, including being new, revenue-generating infrastructure, in a target sector, in the public interest and potentially bankable.
2. **Uniqueness** – Uniqueness of the project being proposed from the perspectives of the uniqueness of the problem being solved, the solution proposed and/or the Proponent.
3. **Value** – Value over the lifecycle of the project, including anticipated return on investment and allocation of risk.
4. **Advancement** – Level of advancement of the project concept and supporting information.
5. **Proponent Capability** – Whether the Proponent has the capacity and qualifications to undertake the project and meets the relevant standards of integrity and compliance.
6. **Benefits** – Social, economic and environmental benefits of the project.

See the *Rules of Engagement* slides below for details on engaging with the CIB on USPs.



Stage 1: Initial Submission

Proponents shall make an initial submission to the CIB that includes:

- An overview of the project concept, including a preliminary demonstration of alignment with the CIB's mandate and government priorities;
- Preliminary evidence of uniqueness and value proposition of the USP;
- Preliminary information regarding the Proponent's capacity and qualifications to undertake the project; and
- Information regarding previous engagement with Public Sponsors relating to the project being proposed, if any.

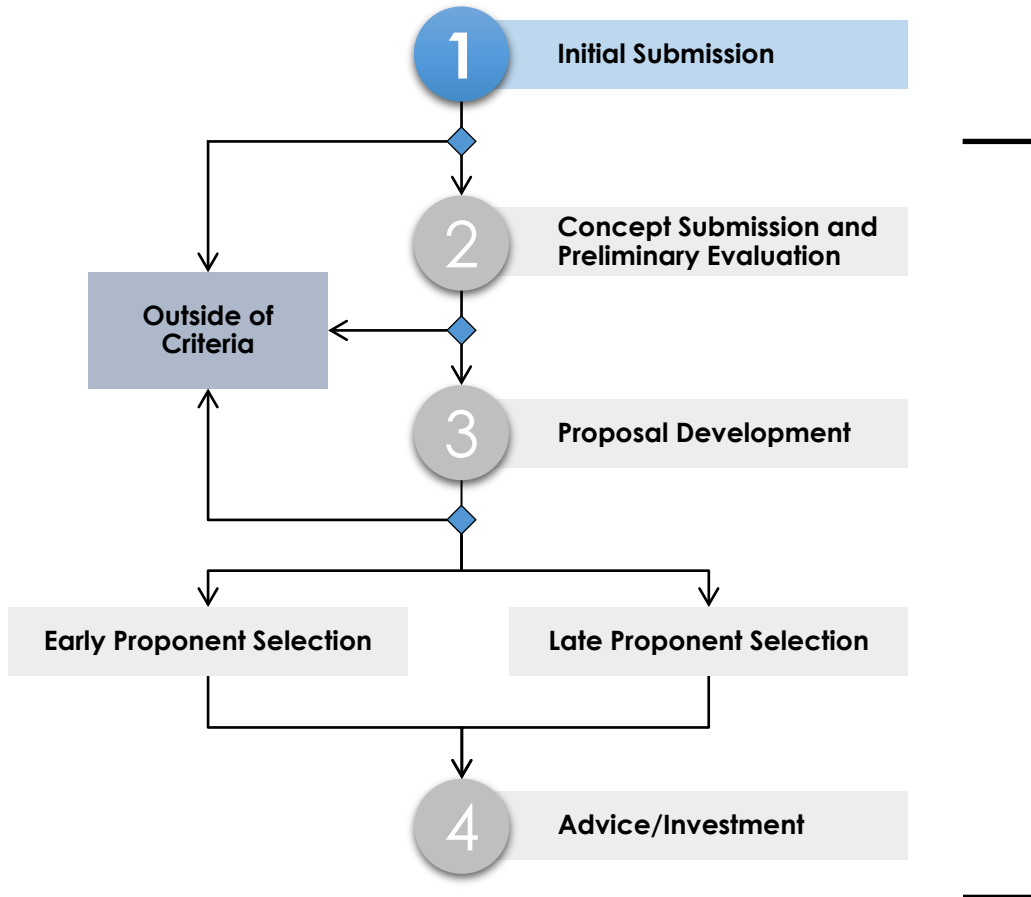
Assessment

- The CIB will perform an initial review of the proposed USP for *prima facie* potential to meet the qualifying criteria. The CIB may request further information from a Proponent during such review.

Legend: Decision Point

Public Sponsor Involvement

Unsolicited Proposals Process: Stage 1



Stage 1: Initial Submission

Decision Point

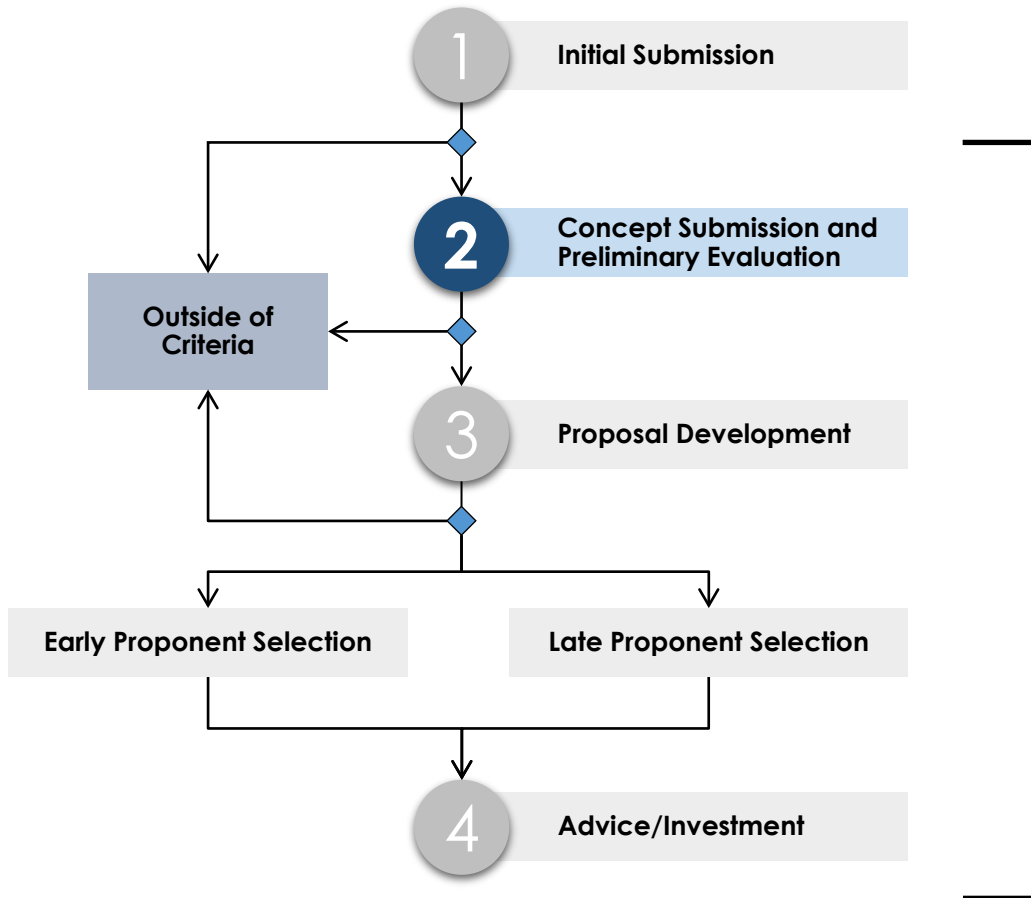
The CIB shall then determine, in its sole discretion, which of the following two categories the USP falls into and shall take the associated action:

1. The USP does not have a reasonable prospect of meeting the qualifying criteria, in which case the CIB shall notify the Proponent that its USP will not be progressed to Stage 2; or
2. The USP has a reasonable prospect of meeting the qualifying criteria, in which case the CIB shall notify the Proponent that it is invited to proceed to Stage 2.

Legend: ◆ Decision Point

▣ Public Sponsor Involvement

Unsolicited Proposals Process: Stage 2



Stage 2: Concept Submission and Preliminary Evaluation

Upon accepting an invitation to proceed to Stage 2, the Proponent shall supplement its initial submission with more detailed project information, which (at minimum) shall include:

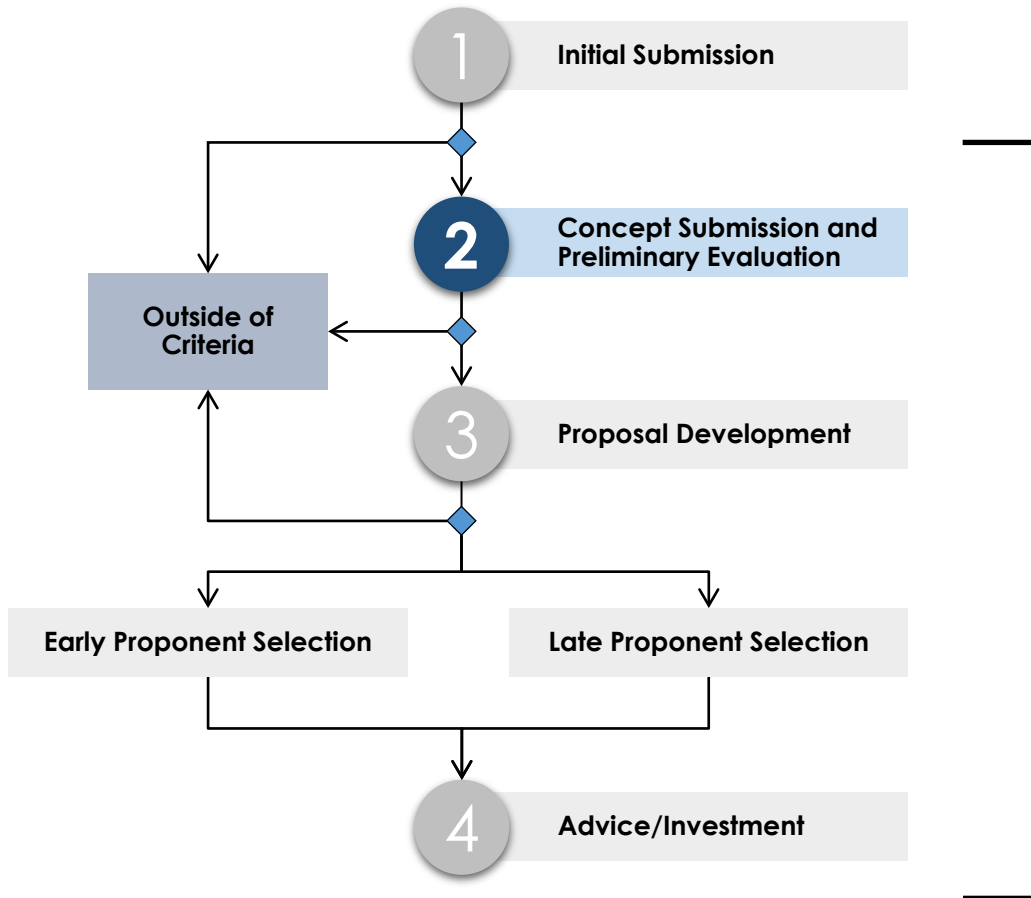
- Detailed evidence that the project is a qualifying USP;
- A proposed procurement approach and detailed information supporting that approach, including an examination of alternatives;
- Preliminary business case, financial information of the project and the Proponent;
- Detailed information regarding the Proponent's capacity, qualifications and experience; and
- Information regarding previous engagement with relevant Public Sponsors, including reasonable evidence that a Public Sponsor is interested in supporting the project.

The CIB, with the cooperation of the Proponent, will engage with the relevant Public Sponsor during this stage.

Legend: ◆ Decision Point

▢ Public Sponsor Involvement

Unsolicited Proposals Process: Stage 2



Stage 2: Concept Submission and Preliminary Evaluation

Assessment

Upon receipt of Stage 2 information, the CIB and the Public Sponsor will assess:

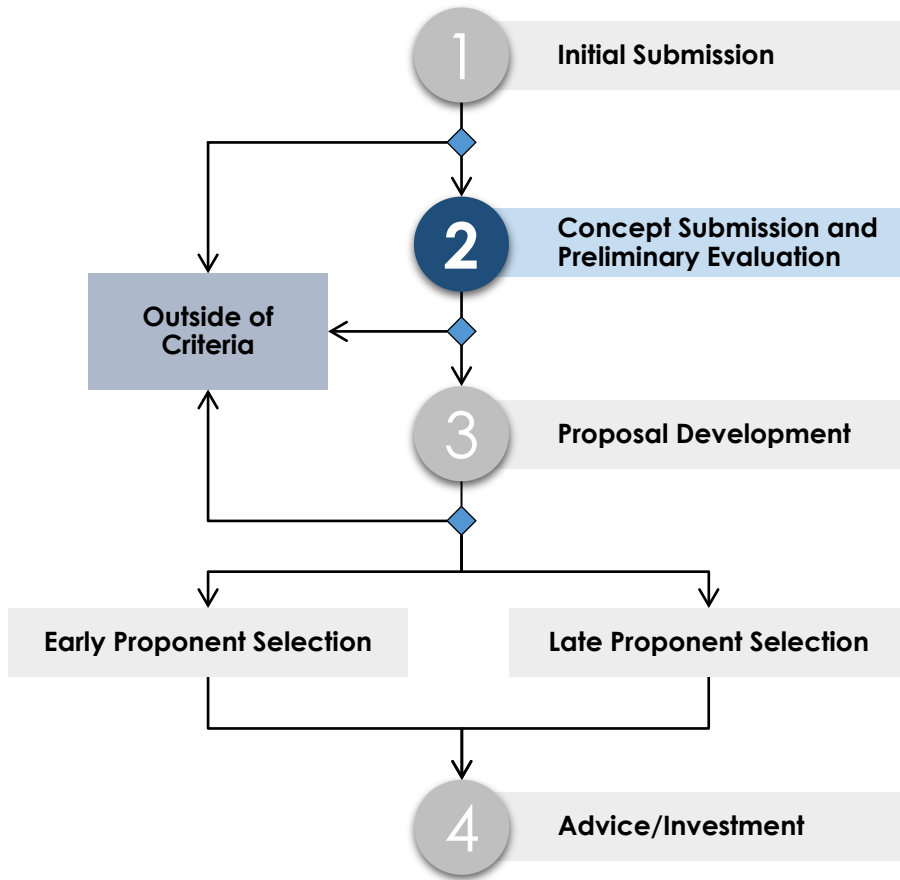
- Whether submission requirements have been satisfied and whether the USP meets the relevant qualifying criteria;
- Whether the Public Sponsor has a *prima facie* interest in proceeding with or supporting the USP; and
- The Proponent's profile – experience, ethical standards, performance reputation, corporate stability and compliance with corporate obligations.

The CIB will work with the Proponent and Public Sponsor to specify additional information as required. The CIB and/or Public Sponsor may undertake preliminary benchmarking and/or targeted market testing to inform the preliminary evaluation process and potential support to advance the project, subject to confidentiality obligations.

Legend: ◆ Decision Point

■ Public Sponsor Involvement

Unsolicited Proposals Process: Stage 2



Stage 2: Concept Submission and Preliminary Evaluation

Decision Point

The CIB and the Public Sponsor shall then jointly determine which of the following two categories the USP falls into and shall take the associated action:

- The USP does not meet the qualifying criteria, in which case the Public Sponsor and the CIB shall notify the Proponent that its USP will not be progressed to Stage 3; or
- The USP meets the qualifying criteria, in which case the Public Sponsor and the CIB shall notify the Proponent that it is invited to proceed to Stage 3.

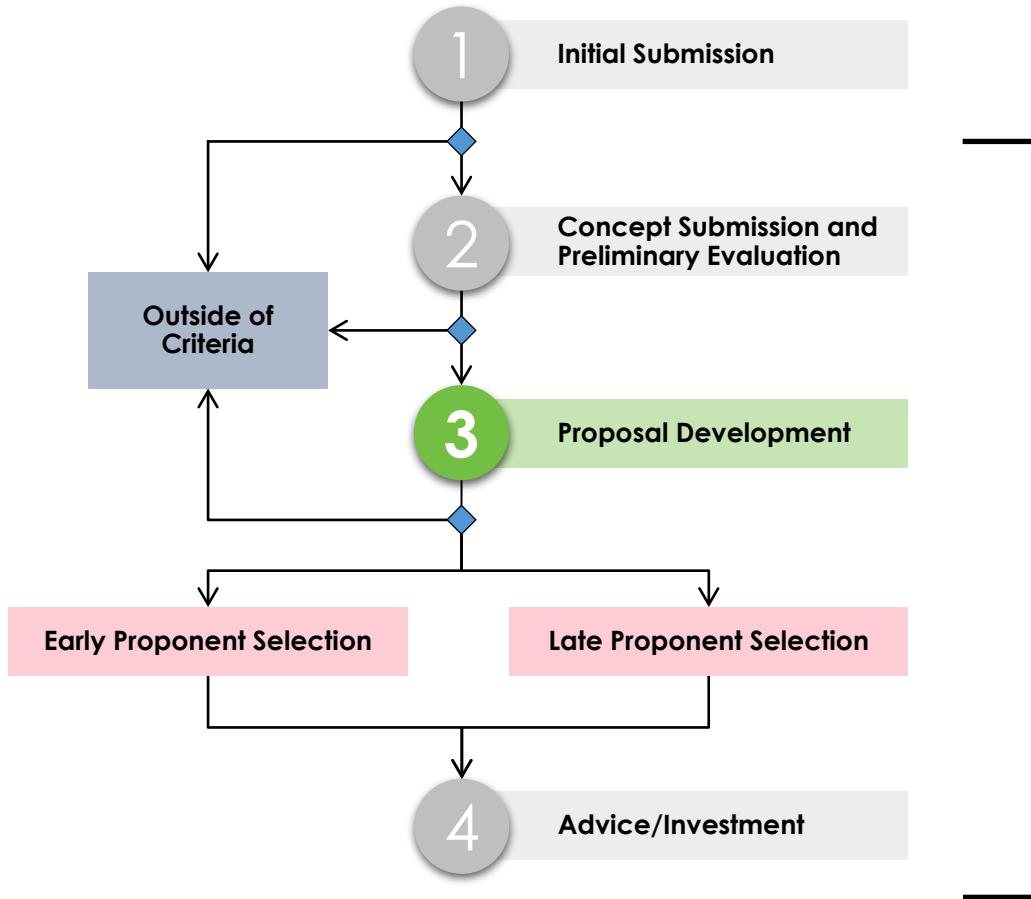
Upon the Proponent accepting the invitation to proceed to Stage 3, the CIB will formalize its relationship with the Public Sponsor in respect of the project and confirm that the project meets the CIB's public interest criteria (a requirement in the CIB's investment process).

Note that, if the CIB declines to proceed with a project, a Public Sponsor is nonetheless free to proceed with or support it independently on its own terms.

Legend: ◆ Decision Point

▢ Public Sponsor Involvement

Unsolicited Proposals Process: Stage 3



Legend: ◆ Decision Point

▣ Public Sponsor Involvement

Stage 3: Proposal Development

Through Stage 3, the CIB will work with the Proponent and Public Sponsor to:

- Undertake a more detailed evaluation of the proposed project;
- Develop conceptual mechanisms to advance the project, which may include CIB financing / risk transfer; and
- Determine the appropriate procurement approach (early or late proponent selection).

At this stage the CIB and Public Sponsor may determine that the project does not meet the qualifying criteria, in which case the Proponent shall be notified that its USP will not be progressed to Stage 4.

Otherwise, if the Public Sponsor is to procure the project, responsibility for it shall be formally transferred to the Public Sponsor, which will proceed with the USP under the procurement approach as determined above. If the Proponent is responsible for advancing the project (with the Public Sponsor's support), that process will continue and the CIB will engage as required.

Unsolicited Proposals Process: Stage 3

- In determining the procurement approach for a qualifying USP during Stage 3, there are generally two potential paths depending on the **unique** features of the USP:

Early Proponent Selection

An upfront selection process may be applicable when the USP **demonstrates significant uniqueness with respect to the Proponent and/or solution but is not necessarily for a unique problem**. In this instance, potential procurement approaches include:

- Credentials-Based RFP; or
- Negotiated exclusivity.

Each approach would involve robust market testing to ensure that the public interest is respected and value for money is attained.

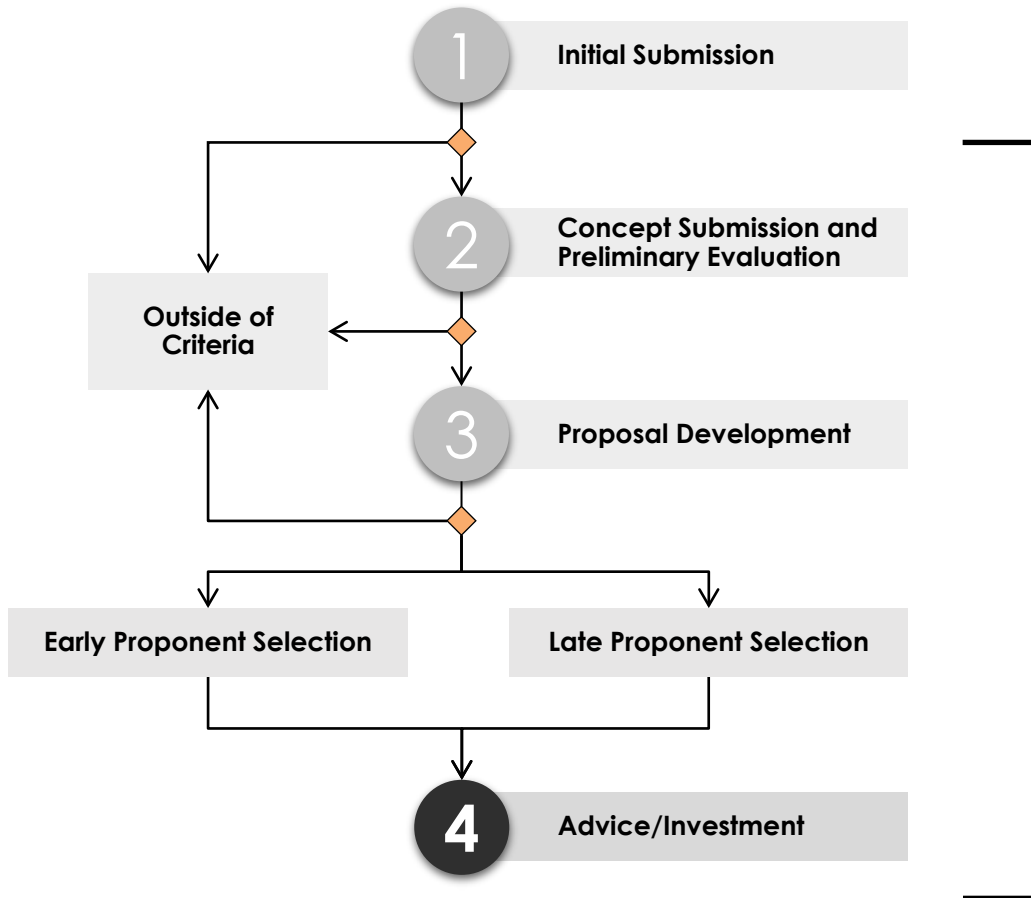
Late Proponent Selection

A back-ended competitive process may be applicable when **the problem the USP is intending to solve is unique, but the project/solution/Proponent nonetheless lends itself to a competitive process**. In this instance, the proposal is typically developed to a certain extent with the Proponent and then one of the following procurement approaches is selected:

- Some form of typical competitive process (e.g., fixed-price bid); or
- Swiss Challenge, where the Public Sponsor goes to the market with a request for competing proposals in a compressed timeframe under certain agreed rules.

Typically, project development agreements are utilized with late Proponent selection.

Unsolicited Proposals Process: Stage 4



Stage 4: Advice/Investment

- At this stage, the Public Sponsor or the Proponent, as applicable, will progress, procure and develop the project.
- Depending on the procurement approach, the Public Sponsor and/or the CIB may enter into project development agreement(s) with a Proponent to specify, for example, roles and responsibilities, compensation (if any), timelines, and legal and regulatory obligations.
- The CIB may continue to provide advice to the Public Sponsor to advance the procurement and development of the Project.
- The CIB no longer plays a decision-making role in the USP process except with respect to any CIB investment.
- The CIB will decide whether to invest in the project during this stage, structuring and negotiating all the required instruments. The CIB's typical investment evaluation and approval process will apply to that decision.

Legend: ♦ Decision Point

▢ Public Sponsor Involvement

Rules of Engagement

1. The CIB's goal is to undertake evaluations of USPs as expeditiously as possible. While the timescale will vary from project to project, the CIB targets a turnaround time of 45 days or less from receipt of a compliant USP to communication of the results of the preliminary evaluation (i.e., Stage 1). Given the unique nature of USPs there are no committed timelines beyond that.
2. The CIB is not a procurement agency, so responsibility for a USP will be transferred to the relevant Public Sponsor or Proponent, as applicable, during Stage 3 of the process.
3. Unless exclusivity has been granted to a Proponent by the relevant Public Sponsor, and subject to any relevant confidentiality obligations, the CIB reserves the right to engage with other potential proponents with respect to similar or the same project.
4. Appropriate confidentiality and intellectual property safeguards will be in place at each Stage, to provide comfort to all potential Proponents that they will be treated fairly.
5. In the event a Public Sponsor receives a USP that it wishes to be screened by the CIB in accordance with the Framework, it may at any time direct the potential Proponent to CIB, at which point the process would commence.

Rules of Engagement

6. The Framework may be amended from time to time at the discretion of the CIB and may be supported by supplementary policies, procedures and requirements (e.g., user guide, templates, rules for sharing of information and closing of files, etc.)
7. The Framework and its supplementary documents provide a guideline of what is required for a successful qualifying USP, but every project is different. The CIB reserves the right to specify information and process requirements for any given USP and involve personnel internal or external to the CIB as required at any stage in the process, subject to appropriate confidentiality obligations.
8. The Qualifying Criteria are indicative but not exhaustive or finally determinative. The CIB and Public Sponsors are under no obligation with respect to supporting the advancement of USPs and may reject or return a USP at any time in their respective sole discretions.
9. The USP process is not directly binding on Public Sponsors, whose approval and support are explicitly necessary for a project to proceed.

Rules of Engagement

- 10. Costs associated with preparing and presenting USPs will be borne entirely by the Proponent.
- 11. In appropriate circumstances the CIB may recommend that the Public Sponsor negotiate and enter into pre-development agreement(s) with a Proponent (and potentially the CIB) to specify, for example, roles and responsibilities, compensation (if any), development timelines, legal and regulatory obligations and termination processes/consequences.

Contact Information & Making a USP Submission

To make a USP submission, please contact a member of the CIB's Investments Team directly or email us at:

investments@cib-bic.ca