

GUIDELINES FOR THE RECEIPT AND ASSESSMENT OF UNSOLICITED PROPOSALS	
Administration Policy	
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1. POLICY STATEMENT

- 1.1** Local Government is a leader in local economic development because councils know their local business communities, workforce and comparative advantages better than anyone else. Councils are well positioned to work with local stakeholders to drive a place-based approach to achieve economic prosperity.
- 1.2** As facilitators and enablers of economic growth, Councils are open to working with the private and not-for-profit sectors to pursue innovative ideas that will create jobs, contribute to the best use of public assets and deliver a high quality of service to communities.

2. PURPOSE

2.1 Purpose

The Council has adopted these guidelines as a policy for the purpose of Section 49 of the Local Government Act 1999. These guidelines create a framework for new and innovative ideas to be brought forward. and ensure that unsolicited proposals will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value.

2.2 Scope

These guidelines apply to any unsolicited proposal that a proponent submits to the Council, and in any circumstances in which the Council is considering waiving the application of any or all of its procurement policy (or policies). Any alternative process must be approved by Council.

2.3 Definitions

Intellectual Property means inventions, original designs and practical applications of good ideas protected by law through copyright, patents, registered designs, circuit layout rights and trademarks and it also includes trade secrets, proprietary know-how and other confidential information protected against unlawful use and disclosure by common law and contractual obligations.

Unsolicited Proposal

An unsolicited proposal is a new and innovative proposal from the private and non-government sector, which has not been requested by the Council through its regular procurement processes, and which could assist the Council in achieving its strategic objectives or satisfying a community need.

An unsolicited proposal may include a proposal for:-

- the purchase, lease or development of Council owned or managed land;
- the delivery of goods or services to or on behalf of the Council; or
- the provision of infrastructure for the community.

The financial threshold for an unsolicited proposal being processed under these guidelines is any proposal that does not trigger the requirement for a report to be provided to Council in relation to Section 48 of the Local Government Act 1999 – Prudential Requirements.

Unsolicited Proposals Coordinator is the person occupying the position of Director City Services at the Council.

Steering Committee means the Management Group of the Council.

2.4 Strategic Reference

2. Economy

2.2 Our City is known as a destination of choice where people come to stay awhile to experience our lifestyle and environment.

4. Infrastructure

4.3 Our City develops and evolves in a planned way, improving the appearance of our City and making efficient use of infrastructure.

5. Governance and Financial Sustainability

5.5 We meet or exceed legislative and accreditation, requirements for all relevant programs.

3. PRINCIPLES

3.1 Council's Objectives

3.1.1 promoting the development of innovation ideas by the private and community sector to support the Council's role and functions broad objectives as outlined in its Strategic Plan;

3.1.2 ensuring that unsolicited proposals are received and assessed via an open, transparent and fair process that involves high standards of probity and public accountability;

3.1.3 ensuring that the unsolicited proposals process is not used to circumvent the Council's regular procurement processes where appropriate;

3.1.4 ensuring value for money for the Council is achieved from any unsolicited proposal;

3.1.5 maximising the benefits from unsolicited proposals for the Council and its constituents; and

3.1.6 ensuring the Intellectual Property of a proponent submitting an unsolicited proposal is appropriately protected.

3.2 Process for receipt and consideration of unsolicited proposals

3.2.1 Pre-lodgement meeting

Before formally submitting an unsolicited proposal via the process detailed below, the proponent may request a pre-lodgement meeting with the Unsolicited Proposals Coordinator. This meeting is not mandatory, but it may assist the proponent to determine if their proposal is one that may be considered under these guidelines.

Proponents are encouraged to bring a draft completed Application Form with them to this meeting.

Nothing that is discussed at the pre-lodgement meeting binds the Council or the proponent and the proponent may continue with lodgement of its proposal notwithstanding any feedback that it may receive at or following the pre-lodgement meeting.

3.2.2 Receipt and assessment process

The process by which the Council will receive and consider unsolicited proposals is a three stage process. The three stages are:

- i) Stage 1 – Initial Proposal
- ii) Stage 2 – Detailed Proposal
- iii) Stage 3 – Contract Negotiation

Each of these stages is discussed in more detail below.

3.3 Stage 1: Initial Proposal

3.3.1 The objective of the initial proposal stage is to enable a proponent to provide the Council with a high level overview of its proposal which enables the Council to form a preliminary view as to

- i) Whether the proposal may be considered under these guidelines;
- ii) The proposal should be considered further; and
- iii) The parties should enter into exclusive arrangements in relation to the proposal.

3.3.2 A proposal should comprise a completed Application Form (which can be downloaded from the Council's website) and may also include further information that the proponent wishes to provide at this stage.

3.3.3 A proposal may be lodged electronically to: admin@portaugusta.sa.gov.au or in person to Customer Service, who will provide the proposal to the Records Team for processing.

3.3.4 A proposal will not involve negotiation at this stage. This opportunity will arise in later stages if the Council determines that the proposal should proceed.

3.3.5 Once a proposal has been submitted in accordance with this policy and the Unsolicited Proposals Coordinator determines that it has sufficient information about the proposal to consider it, then the Unsolicited Proposals Coordinator will convene a meeting with (the **Steering Committee**).

3.3.6 The Steering Committee will determine whether the proposal meets the criteria for it to be considered under these guidelines. To make its decision, the Steering Committee may consult with other Council departments and professional advisers as it deems necessary.

3.3.7 If the Steering Committee determines that the proposal should proceed to the next stage of the process, a recommendation and report on this basis will be prepared for consideration of the Council.

3.3.8 If the Steering Committee recommends that the proposal not be accepted or the Council Elected Members do not endorse the proposal, the proponent will be notified in writing of this outcome by the Unsolicited Proposals Coordinator. This notice may also notify the proponent that the subject matter of the proposal may form the basis of a competitive bidding process.

3.3.9 Where the Council Elected Members endorse the proposal the proposal will proceed to Stage 2 and the proponent will be provided with the following:

- a) Notification that the proposal has been approved by the Council to proceed to Stage 2.
- b) A copy of the Council's resolution (subject to any confidentiality).
- c) The broad terms and timeframes for Stage 2 consideration of the proposal; and
- d) Information on any other matters relevant to the proposal and the Council's further consideration of it that the Council considers to be appropriate.

3.3.10 The anticipated timeframe for the completion of Stage 1 is between 2-3 months commencing from when the Unsolicited Proposals Coordinator determines that all of the information required to consider the proposal has been provided.

3.3.11 Any endorsement of a proposal at Stage 1 is 'in principle' endorsement only so that the proposal may proceed to Stage 2 consideration.

3.4 Stage 2: Detailed Proposal

3.4.1 Stage 2 involves further consideration of the feasibility of the proposal, how it will be delivered, whether it represents value for money for the Council and what outcomes it will deliver for the Council and the community.

3.4.2. Stage 2 will be an interactive process between the Council and the proponent within a framework established by the Council.

3.4.3 The Council will establish a framework for Stage 2 which may include:

- a) confidentiality, conflict of interest, communication and probity protocols;
- b) stage 2 participation terms and conditions;
- c) stage 2 assessment criteria;
- d) timeframes;
- e) information to be provided and/or shared
- f) governance requirements; and
- g) any other matters that the Council considers necessary or desirable.

3.4.4 The matters that the Council will consider during Stage 2 are:

- a) the value for money proposition from the proposal for the Council;
- b) if the proposal is legally, technically and financially feasible;
- c) how the proposal would best be structured to deliver the best outcome for the Council and the community;
- d) a cost/benefit analysis of the proposal;
- e) whether the proposal or any part of it would more appropriately be the subject of a competitive bidding process;
- f) the appropriate allocation of risk;
- g) government, strategic and community probity;
- h) the 'uniqueness' of the proposal; and
- i) the proposed delivery method.

3.4.5 During Stage 2 the Unsolicited Proposals Coordinator will:

- a) convene meetings of the Steering Committee with any other subject matter experts, professional advisers and other persons that the Unsolicited Proposals Coordinator sees fit.
- b) convene meetings with the proponent;
- c) request further information from the proponent as required;

- d) obtain reports and further information for the Council's consideration of the proposal; and
- e) arrange the preparation of a detailed report on the proposal for Council consideration.

3.4.6 During Stage 2, a proponent must:

- a) develop a detailed proposal, consistent with the requirements outlined by the Council at the end of Stage 1;
- b) provide any additional information as required; and
- c) make themselves available to participate in meetings requested by, and respond to communications from, the Unsolicited Proposals Coordinator.

3.4.7 At the end of Stage 2, a report and recommendation will be prepared for the Council Elected Members' consideration and the proponent will be advised in writing of the Council's resolution and one of the following:

- a) that all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis;
- b) that all or part of proposal will not continue to be considered on an exclusive basis but that all or part of the proposal warrants a competitive bidding process; or
- c) that all or part of the proposal is not suitable for further consideration and its consideration under these guidelines is now at an end.

3.5 Stage 3: Contract Negotiation

3.5.1 Stage 3 allows the Council and the proponent to negotiate a suitable contract or contracts for the implementation of the proposal.

3.5.2 At the commencement of Stage 3, the Unsolicited Proposals Coordinator will advise the proponent of the process and protocols for the development of a contract. Contract costs will be shared equally (50/50), with Council's Lawyers preparing the contract taking into account the agreed terms and conditions between both parties.

3.5.3 Once the contract has been agreed in principle between the Council Administration and the proponent, the contract will be submitted to the Council Elected Members to seek their approval for the Contract to be executed. The Unsolicited Proposals Coordinator will then advise the proponent in writing of one of the following:

- a) that the Council agrees to the terms and conditions of the contract and will proceed to execute it;
- b) that the Council agrees to the contract, subject however to specified variations or conditions;
- c) that the Council does not agree to enter into the contract but instead determined to pursue or consider pursuing the unsolicited proposal through another process, including a competitive bidding process; or
- d) that the Council does not agree to enter into the contract and that its consideration of the proposal under these guidelines is now at an end.

3.6 Criteria of Assessment

3.6.1 The Council may, in its absolute discretion, enter into a period of exclusive negotiation with a person in relation to a proposed or submitted unsolicited proposal, if the circumstances warrant it.

3.6.2 Exclusivity between the parties is not assumed simply by submission of an unsolicited proposal to the Council.

3.6.3 Exclusive negotiations may be justified in circumstances, for example, where a party's intellectual Property should be protected or where, on a balancing of the criteria listed below, there is a clear benefit to the Council in doing so.

3.6.4 The criteria that the Council must consider in determining if a period of exclusivity should be entered into with a particular proponent includes:

a) No competing proposals

Whether the subject matter of an unsolicited proposal is already the subject of an existing or proposed procurement process or processes. If the subject matter of an unsolicited proposal is already being considered or proposed to be considered by the Council in this way, then it is unlikely that an unsolicited proposal will pass Stage 1.

b) Community need/Council priority

Whether the unsolicited proposal:

- i) Promotes the Council's role and functions, under the LG Act;
- ii) Is broadly consistent with the Council's objectives outlined in its Strategic Plan and other relevant documents; and
- iii) Provides a clear economic, social or environmental benefit for the Council.

c) Uniqueness

Whether the unsolicited proposal is unique, and how and why it is unique such that it justifies the Council considering it under these guidelines rather than via its usual procurement processes.

A proponent may be able to establish the uniqueness of its proposal by demonstrating that:

- i) it cannot be readily delivered by competitors at all or within the timeframes proposed by the proponent;
- ii) the proponent owns something that would limit other parties from being able to deliver the proposal (for example, Intellectual Property or strategic land holdings);
- iii) the proponent has unique financial arrangements that enable it to deliver the proposal where other parties would not be able to; or
- iv) a combination of factors which may not stand alone as being unique but which together create a unique proposal in the circumstances.

d) Value for Money

Whether the proposal represents value for the Council. The Council should consider factors such as (but not limited to) whether the proposal:

- i) Is fairly and sustainably priced relative to comparative projects and products;
- ii) Will meet acceptable commercial and industry standards; and
- iii) Will effectively deliver on the proposal for the price proposed and in all other respects.

- e) Capacity and capability of proponent

Whether the proponent has the skills, experience and resources required to enable it to deliver the proposal.

3.7 Exclusivity Period

If the Council determines to enter into a period of exclusive negotiation with a proponent, the following broad terms will apply:

- 3.7.1** during the exclusivity period, the Council will not enter into negotiations with another party in relation to another proposal that is substantially similar to the subject matter of the proposal;
- 3.7.2** the exclusivity period will be limited to the development of the specific proposal;
- 3.7.3** the exclusivity period will be for a set period as advised by the Council to the proponent in writing;
- 3.7.4** the Council may set specific terms and conditions for the exclusivity period which it will advise the proponent of in writing;
- 3.7.5** the Council may end the exclusivity period at any time and withdraw from exclusive or all negotiations with the proponent at no cost or liability to the Council; and
- 3.7.6** all correspondence between the Council and the proponent will be kept confidential, subject to any legislative requirements.

3.8 Probity Framework

- 3.8.1** It is a primary objective of these guidelines to ensure the probity of the processes employed by the Council to consider unsolicited proposals. As such, in addition to any specific requirement outlined in this policy, probity principles and protocols will be established when dealing with proponents in relation to their unsolicited proposals to ensure that:
 - 3.8.1.1** proposals are received, assessed and negotiated, and decisions are made, through an approved and transparent framework;
 - 3.8.1.2** decisions are made through a robust framework so that they will deliver the best outcomes for the Council and its community;
 - 3.8.1.3** confidential information is protected; and
 - 3.8.1.4** any perceived conflict of interest, bias or misconduct is eliminated.
- 3.8.2** The Council may, at any Stage outlined in these guidelines, engage a probity advisor or auditor.

3.9 Intellectual Property Rights

- 3.9.1** The Council acknowledges the unsolicited proposals may contain Intellectual Property of the proponent and/or third parties.
- 3.9.2** If the Council declines to consider, or ends its consideration of, an unsolicited proposal submitted in accordance with these guidelines, and

the Council elects to engage in a competitive bidding process or other approach to the market in relation to the subject matter of the proposal, the Council will respect any Intellectual Property rights of the proponent and/or third parties.

3.10 Supplementary Information

The Council may from time to time at its discretion publish supplementary information to assist proponents with the interpretation and application of these guidelines.

3.11 Publication of details of unsolicited proposals

Council will publish details of unsolicited proposals in due course, however confidentiality in relation to the proposals commercial-in-confidence provisions will be taken into account as part of determining the timeframe for its publication.

4. General Conditions

4.1 No Legal Relationship

By making an unsolicited proposal the proponent acknowledges:

- 4.1.1** without confirmation in writing, that no discussions in relation to a proposed unsolicited proposal or the submission of an unsolicited proposal assumes exclusivity between the parties;
- 4.1.2** that no legally binding contract exists or is to be implied between the Council and the proponent unless and until a formal contract document is signed by both parties; and
- 4.1.3** that the Council is under no contractual or other legal obligation to the proponent with respect to the receipt, assessment, consideration, acceptance or rejection of any proposal or the failure to receive, assess, consider or accept any proposal.

4.2 Legislative Obligations

In submitting a proposal proponents acknowledge that:

- 4.2.1** the Council may have legislative obligations that it will need to comply with in relation to a particular proposal and nothing in these guidelines is intended to override or circumvent those obligations; and
- 4.2.2** the processes established by these guidelines are separate from, and do not override other legislative approval processes that a proponent may need to participate in, in order to progress its proposal (for example, planning approval processes).

4.3 No Soliciting or Outside Discussions

- 4.3.1** All queries or communications in relation to unsolicited proposals must be directed to the Unsolicited Proposals Coordinator to ensure consistency and transparency in the unsolicited proposals process.
- 4.3.2** The Council reserves the right to discontinue assessment of, or negotiations on, a proposal if the proponent discusses the proposal with members of Council staff or Elected Members otherwise than as directed by the Unsolicited Proposals Coordinator.

4.3.3 A proponent must not offer any incentive to, or otherwise attempt to, influence any person who is either directly or indirectly involved in an assessment or negotiation process. The Council reserves the right to end any consideration of a proposal if a proponent fails to comply with this requirement.

4.4 Conflict of Interest

Proponents must inform the Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the proponent is successful in negotiating a contract for its unsolicited proposal. If any conflict or potential conflict exists, the proponent must advise the Council how it proposes to address this.

4.5 Cost of Proposal

A proponent bears its own costs of preparing, discussing and negotiating any unsolicited proposal with the Council.

4.6 Use of documents

Any documents provided by the Council to a proponent during any of the Stages outlined in these guidelines must only be used for the purpose of progressing a proposal in accordance with these guidelines and must be returned to the Council at the end of the process on request.

4.7. Change in circumstances

A proponent must inform the Council promptly in writing of any material change to any of the information contained in the proponent's submission.

4.8 Interaction with other Council policies

Unless specifically stated in these guidelines or determined by the Council, these guidelines are not intended to override any other policy of the Council that may apply to an unsolicited proposal.

Any policy on the sale and disposal of Council assets and procurement policies that the Council has adopted for the purposes of Section 49 of the LG Act does not apply to an unsolicited proposal that is covered by these guidelines, except in relation to any consultation process that is required.

4.9 General Acknowledgements

Proponents acknowledge when discussing, negotiating, considering, preparing or submitting an unsolicited proposal to the Council in accordance with these guidelines, that the Council:

4.9.1 makes no representations or undertakings that it will enter into a contract with any proponent in respect of the subject matter of any unsolicited proposal;

4.9.2 may undertake 'due diligence' checks on any proponents;

4.9.3 will not be responsible for any costs or expenses incurred by a proponent arising in any way from the preparation, submission or negotiation of its proposal;

4.9.4 accepts no responsibility for any proponents failing to undertake any investigations or understanding any matters that may impact on its proposal;

4.9.5 will not be liable for or pay any expenses or losses incurred by a proponent, whether in the preparation of a proposal or prior to the signing of any agreement relating to a proposal or otherwise;

4.9.6 will not be bound by any verbal advice given or information furnished by any member, officer or agent of the Council except written advice or information furnished by the Unsolicited Proposals Coordinator.

4.10 Ombudsman

Proponents should be aware that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest, including misconduct and maladministration. Proponents must ensure compliance with all obligations arising under that Act.

4.11 Independent Commissioner Against Corruption (ICAC)

Proponents should also be aware that the *Independent Commissioner Against Corruption Act 2012* establishes the Independent Commissioner Against Corruption and the Office for Public Integrity. The Commissioner can investigate corruption, misconduct and maladministration in public administration. Proponents must ensure compliance with all obligations arising under that Act.

4.12 Freedom of Information

The *Freedom of Information Act 1991 (SA) (FOI Act)* gives members of the public rights to access documents of the Council. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objectives confers on members of the public a legally enforceable right to be given access to documents, including contracts, held by the Council subject but not limited to such restrictions as are consistent with the public interest, commercial in confidence and/or the preservation of personal privacy in respect of those from whom information is collected and held by the Council and other public authorities.

4.13 Departure from Guidelines

The Council may, by resolution, where it is justified in the circumstances, determine that these guidelines will not apply to a particular unsolicited proposal.

5. RESPONSIBILITY & REVIEW

5.1 Responsible Officer

Chief Executive Officer

5.2 Availability

These Guidelines will be available on Council's website.

5.3 Review

These Guidelines will be reviewed within 12 months of a General Election for Local Government, or as required to meet other obligations.

6. REFERENCES

6.1 Legislation

Local Government Act 1999

6.2 Other References

Disposal of Land and Assets Policy
Procurement Policy
Unsolicited Proposal Application Form
Unsolicited Proposal Process Flow Chart