

# CONFIDENTIAL

Note: Confidential Provisions released on 25/09/2020



REPORT FOR:	<b>Special Council</b>		
MEETING DATE:	25 September 2020		
REPORT FROM:	Chief Executive Officer		
REPORT TITLE:	<b>Unsolicited Proposal – New City Safe Program</b>		
FILE NAME:	F10/737	RECORD NO:	AR20/46899

## **STRATEGIC DIRECTIONS**

### **1 Community**

1.2 We are resilient, inclusive, safe and a vibrant community where people feel proud to live.

1.3 People of all ages, cultures, abilities and interests have access to services, facilities and experiences that support their wellbeing.

### **5 Governance and Financial Sustainability**

5.2 We have positive relationships with other levels of government and partners that deliver great outcomes for the community.

5.3 We are in a surplus financial operating position

## **SUMMARY/ABSTRACT**

This report is in response to Council's request to give consideration to the unsolicited proposal for a City Safe type Program in accordance with Council Policies.

## **RECOMMENDATION**

### **Council:**

1. Acknowledges receipt of the report AR20/46899 regarding the options to extend the Professional Services Agreement (the Agreement) for the City Safe Program, and the funding options available to continue with this Service, as well as the anticipated budgetary considerations for any amended program that may be developed.
2. Noting the expiry of the Agreement on 30 September 2020, and the Council's desire to ensure continuity of the service for the community, while it correspondingly determines, in an informed, considered manner the unsolicited proposal received from SA Special Operations Group Pty Ltd, to provide an amended scope of services for the provision of a new program, pursuant to Policy 2.3.14 Guidelines for the Receipt and Assessment of Unsolicited Proposals, the Council agrees to extend the existing Agreement for a period of [months], to enable this assessment process under the Guidelines to occur.
3. The extension of the Agreement is to be on the same terms and conditions of the existing Agreement.

**In the alternative:****Council:**

1. Acknowledges receipt of the report AR20/46899 regarding the options to extend the Professional Services Agreement (the Agreement) for the City Safe Program and the funding options available to continue with this Service, as well as the anticipated budgetary considerations for any amended program that may be developed.
2. Based on the information it has received, the Council has determined not to extend the Agreement at this time, noting that it is, correspondingly, determining in an informed, considered manner the unsolicited proposal received from SA Special Operations Group Pty Ltd, to provide an amended scope of services for the provision of a new City Safe type program, pursuant to Policy 2.3.14 Guidelines for the Receipt and Assessment of Unsolicited Proposals.

**BACKGROUND**

On 23 September 2020, Council resolved as follows:

**"Council:**

1. Acknowledges receipt of an Unsolicited proposal from Tony Edmonds Executive Director of Knighton Pty Ltd for the provision of a new City Safe type program following the conclusion of the current contracted program on 30 September 2020; and that pursuant to Policy 2.3.14 Guidelines for the Receipt and Assessment of Unsolicited Proposals, Council initiates an assessment of the proposal.
2. Resolves that as a matter of priority, requests that a report be prepared by Friday 25 September 2020, describing options to extend the current City Safe Contract for such time as to enable actions to take place in accordance with Policy 2.3.14.
3. Resolves that as a matter of priority, requests that a report be prepared by Friday 25 September 2020, describing funding options to achieve the required extension of the current City Safe Program in accordance with this motion and the anticipated funding of any new City Safe type Program that may be developed."

**DISCUSSION**

Options to extend the current City Safe Contract.

Legal advice has been sought in respect to the legal authority and process that Council may enact in seeking to extend the current Professional Services Agreement (the Agreement) for the City Safe Program (the Program).

Immediately following the Council meeting on 23 September 2020, Mr Tony Edmonds was contacted and advised of the Council resolution.

On the morning of 24 September 2020, Mr Edmonds was provided with written confirmation of acknowledging receipt of the unsolicited proposal and the initiation of the assessment process in accordance with Council policy. A copy of the policy, application form, and flow chart were provided to Mr Edmonds and an invitation extended to complete the application form at the earliest convenience.

Mr Edmonds advised that he would endeavour to supply the completed application form by the morning of 25th September 2020. Note that at the time of writing this report the completed application form had not been received.

On 24 September 2020, following verbal advice to the Chief Executive Officer, Mr Edmonds wrote to Council advising the company submitting the unsolicited proposal is Special Operations Group and not Knighton Pty Ltd as per the original correspondence. An extract of the email is as follows:

*"So there is no confusion with this proposal moving forward the offer of a scaled down City Safe service is being offered by South Australian Special Operations Group Pty Ltd the same company that is the current provider of which I am Managing Director. Knighton Pty Ltd is not involved in this proposal at all and is a company I am currently employed with in Adelaide."*

A copy of Council's Policy 2.3.14 Guidelines for the Receipt and Assessment of Unsolicited Proposals is attached. (ATTACHMENT 2)

Also attached are the Application Form (ATTACHMENT 3) and Process Flowchart (ATTACHMENT 4).

Procurement Policy:

There is no provision within the Agreement for the City Safe Program 1 October 2019 – 30 September 2020; however legal advice has been sought regarding the application of policy exemptions permissible pursuant to Policy 1.1.09 Procurement Policy.

The legal advice received is that the Procurement Policy has no application in the circumstances.

The Agreement between the Council and the Contractor, to continue to provide the services under the City Safe Program can be extended with the agreement of both parties, regardless of the fact that the current contract does not contain any provision for extension.

This is because the proposed extension of the contract is for a limited period of time only, is borne of necessity arising from the fact that there has not been a process and decision to achieve continuity of this required service from 1 October 2020 and in doing so, it would not be subject to any 'normal' procurement process for the limited period of its provision. In these circumstances, the legal advice received is that the proposed extension would not be subject to the Council's procurement policy requirements.

However, it is recommended that the Council record its reasons for the limited extension of the contract. Relevant in this regard is the imminent expiry of the contract and the Council's desire to ensure continuity of the service for the benefit of the community, while it determines, in an informed and considered manner, the unsolicited proposal under the Guidelines.

**CONFIDENTIALITY PROVISIONS**

Pursuant to Section 90(2) of the Local Government Act 1999 (the Act), the Council orders that all persons, except the Council Staff as listed, be excluded from attendance at the meeting for report AR20/46899 relating to Unsolicited Proposal – New City Safe program.

The Council is satisfied that, pursuant to section 90(2) and sections 90(3)(g) of the Act, the information to be received, discussed or considered in relation to this agenda item is information, the disclosure of which are matters that must be considered in confidence in order to ensure that the Council does not breach a duty of confidence and its legal obligations.

The Council also wishes to exclude the public in accordance with the ground under section 90(3)(h) of the Act on the basis that it has received legal advice that is required to be received, discussed or considered in confidence.

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed by the need to discuss this agenda item in confidence.

Having considered report AR20/46899 in confidence under section 90(2) and 90(3)(g) and (h) of the Local Government Act 1999, pursuant to section 91(7) of the Act, the Council orders that the report, attachments and minutes relating to this agenda item remain confidential for a period of 12 months, and that this order be reviewed every 12 months.

## **RISK MANAGEMENT**

### **1: Financial/Budget/Asset Management**

There is no budget allocation for the extension of the current City Safe contract beyond 30 September 2020.

The current Contractor submits weekly invoices at \$4788.46. (\$19,153.84 per month)

Council Policy 2.2.14 provides an indicative timeframe for the completion of Stage 1 of the assessment process is 2–3 months (Clause 3.7.2.1)

The cost of the current contract is \$4,788.46 per week (excluding GST).

For information, the cost of procurement for the current contract through LGA procurement was \$3,500.

\$2,300 was spent on LGA Consultancy re City Safe.

It is estimated that if a contract extension was possible, a period of 12 week at least would be required to facilitate assessment of the unsolicited proposal plus another 8 weeks to finalise a procurement process. (It is unlikely that the unsolicited proposal could lead to a contract with SA Special Operations Group without testing the market for other interest in a similar contract). Therefore the cost of contract extension for 20 weeks would be \$95,769.20

There will be a reduction in operational expenditure due to the sale of Julia Lodge as at 30 October 2020, but there is also a loss of revenue of rental income. Therefore the reduction is likely to only be in the vicinity of \$10k.

At this stage in the financial year, there hasn't been any other operational savings identified. Therefore to fund the additional expenditure, Council would need to either reduce service level of another program or extend the budgeted deficit.

### **2: Legal/Policy**

In the interest of ensuring that the Council has all available information to it, in order to make an informed decision regarding this matter, the legal advice received has noted a relevant consideration being the fact that Administration has recently become aware of a number of breaches of the existing contract by the Contractor, which are relevant considerations, to take into account on any proposed extension of the contract.

The nature of the alleged breaches and the seriousness of them, are factors that must be taken into account before the Council determines whether to continue to engage this Contractor (or enter into any new arrangement with the same).

These alleged breaches include:

- potential issues of fatigue as a result of staffing issues for the Contractor;
- the Contractor providing support to other agencies, both Government and private, including attendances on private property, which is in breach of clause 43.5 of the contract;
- some of these attendances have been recorded in submitted log sheets;
- on 2 January 2020 the Contractor being warned of a breach of the contract after a delay in reporting that an employee of the Contractor was charged with assault whilst on duty in relation to the City Safe Program;
- unsubstantiated complaints regarding conduct of the Contractor received in January 2020 (AR20/3069) and in June 2020 (AR20/27512);
- an email reminder being sent to the Contractor in February 2020, reminding him of appropriate conduct. (AR20/7702)
- the presentation of log sheets being delayed and some of those presented not containing the required information, in breach of clause 6.2 of the contract; and
- the Contractor advising that he has lifted unconscious persons into Mobile Assistance Patrols transport, run by the Substance Misuse Services in circumstances where SA Ambulance should have been called and, potentially, where consent had not been provided;

They are only alleged breaches at this time, as the Contractor is yet to have the opportunity to respond to the matters.

It is to be noted that the Council will be required to, concurrently, determine whether it wishes to extend the existing contract, while it considers the unsolicited proposal, or otherwise undertakes a tender or similar process for the services under its Procurement Policy, the Contractor must be afforded procedural fairness, as part of the decision making process.

This includes ensuring that the allegations, which the Contractor has yet to have the opportunity to respond to, **are not made public at this time.**

If they were made public, this would expose the Council to a risk of litigation from the Contractor upon the basis of personal and corporate reputational damage in circumstances where the Council has unfairly and without affording him procedural fairness, discussed allegations in a meeting open to the public, resulting in a loss of business. The other risks are of potential breaches of duties of confidentiality owed to the Contractor, in circumstances whereby the contract contains Dispute Resolution provisions which have not been followed.

**John Banks**  
**25/09/2020**



### 2.3.14: GUIDELINES FOR THE RECEIPT AND ASSESSMENT OF UNSOLICITED PROPOSALS

Administration Policy	
TRIM Reference	AR19/50399
First Issued	22 August 2016
Last Reviewed	26 November 2019
Next Review	March 2020

#### 1. POLICY STATEMENT

- 1.1 Local Government is a natural leader in local economic development because councils know their local business communities, workforce and comparative advantages better than anyone else. Councils are perfectly 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 together 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

These guidelines create a framework for new and innovative ideas to be brought forward. These guidelines also give confidence to investors and their community that unsolicited proposals will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value.

##### 2.2 Scope

Council's Role and functions:

- 2.2.1 The Council is a council constituted under the LG Act.
- 2.2.2 The Council's principal role and functions are detailed in Section 6 and 7 of the LG Act.
- 2.2.3 The Council's strategic vision for its Council area is outlined in its Strategic Plan, a copy of which is available on the Council's website or at its Council's Office. Copies of other Council policies and plans are also available on its website.

##### 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.

**LG Act** means the *Local Government Act 1999 (SA)*.

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

**Steering Committee** means the Management Group of the Council.

##### 2.4 Strategic Reference

###### 1. We Thrive

- 1.1 Identify and support new opportunities for our city to change and grow through bold and innovative projects including alternative energy and infrastructure.

- 1.2 Develop partnerships to attract investors in business proposals and new developments that contribute to a diversified and robust economy.
- 6. **We Achieve**
- 6.3 We aim to provide good governance practices and compliance with all legislative requirements in delivery of services.

### 3. PRINCIPLES

#### DEFINITION OF AN UNSOLICITED PROPOSAL AND APPLICATION OF THESE GUIDELINES

- 3.1 The Council has adopted these guidelines as a policy for the purpose of Section 49 of the *Local Government Act 1999*.
- 3.2 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).
- 3.3 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.
- 3.4 An unsolicited proposal may include a proposal for:
  - 3.4.1 the purchase, lease or development of Council owned or managed land;
  - 3.4.2 the delivery of goods or services to or on behalf of the Council; or
  - 3.4.3 the provision of infrastructure for the community.
- 3.5 The financial threshold for an unsolicited proposal being processed under these guidelines is:
  - 3.5.1 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.

#### **PROCEDURE**

- 3.6 **Council's Objectives**
  - 3.6.1 promoting the development of innovation ideas by the private and community sector to support the Council's role and functions discussed in Clause 2 of these guidelines and the Council's broad objectives as outlined in its Strategic Plan;
  - 3.6.2 ensuring that unsolicited proposals are received and assessed via an open, transparent and fair process that involves high standards of probity and public accountability;
  - 3.6.3 ensuring that the unsolicited proposals process is not used to circumvent the Council's regular procurement processes where appropriate;
  - 3.6.4 ensuring value for money for the Council is achieved from any unsolicited proposal;
  - 3.6.5 maximising the benefits from unsolicited proposals for the Council and its constituents; and
  - 3.6.6 ensuring the Intellectual Property of a proponent submitting an unsolicited proposal is appropriately protected.

### 3.7 Process for receipt and consideration of unsolicited proposals

#### 3.7.1 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.

#### 3.7.2 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.

##### 3.7.2.1 Stage 1: Initial Proposal

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 whether:

The proposal may be considered under these guidelines;

- i) The proposal should be considered further; and
- ii) The parties should enter into exclusive arrangements in relation to the proposal.

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.

A proposal must be lodged electronically to: [admin@portaugusta.sa.gov.au](mailto:admin@portaugusta.sa.gov.au)

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.

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 representatives of relevant departments of the Council depending on the subject matter of the proposal (**Steering Committee**).

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.

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.

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.

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.

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

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

#### 3.7.2.2 Stage 2: Detailed Proposal

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.

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

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.

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

- h) the value for money proposition from the proposal for the Council;
- i) if the proposal is legally, technically and financially feasible;
- j) how the proposal would best be structured to deliver the best outcome for the Council and the community;
- k) a cost/benefit analysis of the proposal;
- l) whether the proposal or any part of it would more appropriately be the subject of a competitive bidding process;
- m) the appropriate allocation of risk;
- n) government, strategic and community probity;

- o) the 'uniqueness' of the proposal; and
- p) the proposed delivery method.

During Stage 2 the Unsolicited Proposals Coordinator will:

- q) convene meetings of the Steering Committee with any other subject matter experts, professional advisers and other persons that the Unsolicited Proposals Coordinator sees fit.
- r) convene meetings with the proponent;
- s) request further information from the proponent as required;
- t) obtain reports and further information for the Council's consideration of the proposal; and
- u) arrange the preparation of a detailed report on the proposal for Council consideration.

During Stage 2, a proponent must:

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

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:

- y) that all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis;
- z) 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
- aa) that all or part of the proposal is not suitable for further consideration and its consideration under these guidelines is now at an end.

### 3.7.2.3 Stage 3: Contract Negotiation

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

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.

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.

### 3.8 Period of Exclusivity

#### 3.8.1 Criteria for assessment

3.8.1.1 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.

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

3.8.1.3 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.

3.8.1.4 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 discussed in Clause 2 of these guidelines and generally, 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

**3.8.2 Exclusivity Period**

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

- 3.8.2.1 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;
- 3.8.2.2 the exclusivity period will be limited to the development of the specific proposal;
- 3.8.2.3 the exclusivity period will be for a set period as advised by the Council to the proponent in writing;
- 3.8.2.4 the Council may set specific terms and conditions for the exclusivity period which it will advise the proponent of in writing;
- 3.8.2.5 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
- 3.8.2.6 all correspondence between the Council and the proponent will be kept confidential, subject to any legislative requirements.

**3.9 Probity Framework**

- 3.9.1 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:
  - 3.9.1.1 proposals are received, assessed and negotiated, and decisions are made, through an approved and transparent framework;
  - 3.9.1.2 decisions are made through a robust framework so that they will deliver the best outcomes for the Council and its community;
  - 3.9.1.3 confidential information is protected; and
  - 3.9.1.4 any perceived conflict of interest, bias or misconduct is eliminated.
- 3.9.2 The Council may, at any Stage outlined in these guidelines, engage a probity advisor or auditor.

**3.10 Intellectual Property Rights**

- 3.10.1 The Council acknowledges the unsolicited proposals may contain Intellectual Property of the proponent and/or third parties.

3.10.2 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.

**3.11 Supplementary Information**

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

**3.12 Publication of details of unsolicited proposals**

3.12.1 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.

**3.13 General Conditions**

**3.13.1 No Legal Relationship**

By making an unsolicited proposal the proponent acknowledges:

- 3.13.1.1 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;
- 3.13.1.2 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
- 3.13.1.3 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.

**3.13.2 Legislative Obligations**

In submitting a proposal proponents acknowledge that:

- 3.13.2.1 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
- 3.13.2.2 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).

**3.13.3 No Soliciting or Outside Discussions**

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. 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.

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.

#### 3.13.4 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.

#### 3.13.5 Cost of Proposal

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

#### 3.13.6 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.

#### 3.13.7 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.

#### 3.13.8 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.

### 3.14 General Acknowledgements

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

- 3.14.1.1 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;
- 3.14.1.2 may undertake 'due diligence' checks on any proponents;
- 3.14.1.3 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;
- 3.14.1.4 accepts no responsibility for any proponents failing to undertake any investigations or understanding any matters that may impact on its proposal;
- 3.14.1.5 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;

- 3.14.1.6 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; and

3.15 Ombudsman

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

3.16 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 Act empowers the Commissioner to investigate corruption, misconduct and maladministration in public administration. Proponents must ensure compliance with all obligations arising under that Act.

3.17 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.

3.18 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.

4. RESPONSIBILITY & REVIEW

4.1 Responsible Officer

Chief Executive Officer

4.2 Availability

This policy will be available on Council's website.

4.3 Review

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

5. REFERENCES

5.1 Legislation

Local Government Act 1999

5.2 Other References

Disposal of Land and Assets Policy 1.1.12  
Procurement Policy 1.1.09  
Unsolicited Proposal Application Form  
Unsolicited Proposal Process Flow Chart

 <b>Port Augusta</b> <small>CITY COUNCIL</small>	<p style="text-align: center;">Unsolicited Proposal for Consideration by Port Augusta City Council</p> <p style="text-align: center;"><b>APPLICATION FORM - AR20/8123</b></p>
<b>1. General Information</b>	
<p>Company Details (if applicable):</p> <p>Legal Name/s of proponents or company participants:</p> <p>Address:</p> <p>Email:</p> <p><i>The proposal signed by a representative of the proponent who is authorised to represent and contractually bind the proponent:</i></p> <p>Name:</p> <p>Position:</p> <p>Signature:</p> <p>Date: ...../...../.....</p>	
<b>2. Proposal Title and Abstract</b>	
<p>Title:</p> <p>Abstract: (approximately 200 words)</p>	
<b>3. Proposal Details</b> Please provide the following information	
1) the objectives of the proposal	
2) the method of the approach	
3) the nature and extent of expected outcomes	
4) the benefits that the proposal will deliver for the Council.	

<p><b>4. Assessment Criteria</b> Provide a brief description of how the proposal would meet each of the following assessment criteria.</p>
<p><b>4.1 No competing proposals</b> <i>If the proponent is aware of any existing proposal or procurement process currently under consideration by the Council or under active consideration of another proponent then the proponent should clearly demonstrate how their proposal is distinct from these other proposals</i></p>
<p><b>4.2 Community Need/Council Priority</b> The proponent should demonstrate how its proposal:</p> <ol style="list-style-type: none"> <li>1) promotes the Council's role and functions discussed in Clause 2 of the guidelines;</li> <li>2) is broadly consistent with the Council's objectives outlined in its Strategic Plan;</li> <li>3) provides an economic, social or environmental outcome for the Council.</li> </ol> <p>Information that a proponent provides should include:</p> <ol style="list-style-type: none"> <li>4) details of benefits of the proposal;</li> <li>5) details of any economic activity or jobs that would be created by the proposal;</li> <li>6) details of any unmet community need that would be met by the proposal; and</li> <li>7) how the proposal is aligned with the Council's strategic objectives.</li> </ol>

4.3	<p><b>Uniqueness</b></p> <p>The proponent should provide information that demonstrates that its proposal is unique. This may be demonstrated by showing one or more of the following:</p> <ol style="list-style-type: none"> <li>1) <i>the proposal cannot be readily delivered by competitors at all or within the timeframes proposed by the proponent;</i></li> <li>2) <i>the proponent owns something that would limit other parties from being able to deliver the proposal (for example, Intellectual Property, strategic landholdings);</i></li> <li>3) <i>the proponent has unique finance arrangements that enable it to deliver the proposal where other parties would not be able to; or</i></li> <li>4) <i>a combination of factors which may not stand alone as being unique but together create a unique proposal.</i></li> </ol>
4.4	<p><b>Value for Money</b></p> <p>The proponent should provide information that demonstrates how its proposal represents value for money for the Council. 'Value' can include financial benefits, economic benefits, and community benefits. The information that a proponent provides should include:</p> <ol style="list-style-type: none"> <li>1. how the proposal is priced relative to competitors;</li> <li>2. the proposed sharing of costs and risks between the Council and the proponent;</li> <li>3. the benefits to the Council of the proposal.</li> </ol>
4.5	<p><b>Capacity and capability of proponent</b></p> <p>Proponents should provide information that demonstrates that it has the capacity and capability to deliver the proposal. Proponents should provide:</p> <ol style="list-style-type: none"> <li>1) a description of their organisation or consortium;</li> <li>2) details of previous experience in delivering similar projects;</li> <li>3) details of past performance on similar projects;</li> <li>4) details of relevant experience in prior dealings with the Council or another Council;</li> <li>5) details of its skills, experience and competencies to deliver the project;</li> <li>6) details of any third parties that would be proposed to be involved in the delivery of the project.</li> </ol>

<b>4. Financial and Commercial Details</b>
<p>A proponent should provide a brief description of the financial and commercial details of the proposal and the proponent's financial capacity to deliver the proposal.</p>
<b>5. Costs and requirements of the Council</b>
<p>A proponent should identify what they are seeking from the Council for the proposal. This may include Land; Use of assets, facilities, equipment, materials, personnel or other resources; Finance; or Assistance to obtain statutory approvals or legislative or regulatory amendments.</p> <p>A proponent should state what the cost would be for the Council in providing what is sought.</p>
<b>6. Risks</b>
<p>Proponents should list risks arising from the proposal for the proponent and the Council.</p>
<b>7. Intellectual property</b>
<p>Proponents should provide a brief description of:</p> <ol style="list-style-type: none"> <li>1) Each item of Intellectual Property involved in the proposal;</li> <li>2) The nature of any Intellectual Property claimed;</li> <li>3) Details of the owner of Intellectual Property claimed;</li> <li>4) Registration details (where applicable); and</li> <li>5) Details of any items for which commercial confidentiality is claimed in whole or in part.</li> </ol>

<b>8. Other information</b>
A proponent may provide any other information that is relevant to its proposal for Stage 1 assessment.
<b>9. Preferred Contract Arrangement</b>
A proponent should provide details of its proposed contractual arrangements for the proposal if it is successful.
<b>10. Contact Person</b>
A proponent must nominate a contact person to be the only point of contact for this proposal. All communications from the Unsolicited Proposals Coordinator about the proposal will be sent to this person.  Name: Phone: Email:
<b>11. Council Contact Details</b>
A proponent should provide details of any person at the Council who has already been contacted regarding the proposal.
<b>12. Validity Period</b>
Period of time for which the proposal is valid (this must be a minimum of six months).
<b>13. Proposed duration of the proposed arrangements</b>
Provide the structure and duration of the proposed arrangements relating to the proposal.

Please attach any other supporting documentation that you deem appropriate.

## Unsolicited Proposal - Process Flowchart 2.3.14

ATTACHMENT 4

Stage 1 - Initial Proposal		
Proponent Actions	Council Actions	Possible Outcomes
<ul style="list-style-type: none"> <li>Submit the completed Application Form and any further information to: <a href="mailto:admin@portaugusta.sa.gov.au">admin@portaugusta.sa.gov.au</a></li> <li>Submit any further information that may be requested.</li> <li>Engage in discussions with Council about the proposal as and when requested.</li> </ul>	<ul style="list-style-type: none"> <li>Determine if sufficient information has been provided to be considered under the guidelines and in terms of exclusivity.</li> <li>Convene a meeting of the Steering Committee</li> <li>Determine whether the proposal meets the criteria for it to be considered under the guidelines.</li> <li>Prepare a report to the Council if the proposal is recommended for Stage 2.</li> <li>Advise the proponent of the Council decision.</li> </ul>	<ul style="list-style-type: none"> <li>That the proposal is not suitable for further consideration and is now closed.</li> <li>OR</li> <li>That the proposal may form the basis for a competitive bidding process.</li> <li>OR</li> <li>That the proposal will proceed to Stage 2.</li> </ul>
Stage 2 - Detailed Proposal		
Proponent Actions	Council Actions	Possible Outcomes
<ul style="list-style-type: none"> <li>Submit a detailed proposal</li> <li>Provide additional information as requested.</li> <li>Attend meetings as requested with, and respond to communications from, the Council.</li> </ul>	<ul style="list-style-type: none"> <li>Establish the Stage 2 framework and advise the proponent of this</li> <li>Arrange meetings of the Steering Committee with any other subject matter experts, professional advisers and other persons.</li> <li>Arrange meetings with the proponent as required.</li> <li>Request further information from the proponent as required.</li> <li>Obtain reports and further information for the Council's consideration of the proposal.</li> <li>Arrange the preparation of a detailed report on the proposal for the Council Elected Members' consideration.</li> <li>Advise the proponent of the Council's decision.</li> </ul>	<ul style="list-style-type: none"> <li>That all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis.</li> <li>OR</li> <li>That all or part of proposal should not continue to be considered on an exclusive basis but that all or part of the proposal warrants a competitive bidding process.</li> <li>OR</li> <li>That all or part of the proposal is not suitable for further consideration and its consideration under these guidelines is now at an end.</li> </ul>
Stage 3 - Contract Negotiation		
Proponent Actions	Council Actions	Possible Outcomes
<ul style="list-style-type: none"> <li>Negotiate contract terms</li> </ul>	<ul style="list-style-type: none"> <li>Advise the proponent of the process and protocols for the development of a contract.</li> <li>Negotiate the contract</li> <li>Submitted the agreed contract to the Council Elected Members to seek approval for the contract to be executed.</li> <li>Advise the proponent of the Council's decision.</li> </ul>	<ul style="list-style-type: none"> <li>That the Council agrees to the terms and conditions of the contract and will proceed to execute it.</li> <li>OR</li> <li>That the Council agrees to the contract, subject however to specified variations or conditions.</li> <li>OR</li> <li>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.</li> <li>OR</li> <li>That the Council does not agree to enter into the contract and that its consideration of the proposal under the guidelines is now at an end.</li> </ul>