

ADOPTED BY EXECUTIVE MANAGEMENT COMMITTEE ON: 6 OCTOBER 2020

1. CONTEXT

This guideline details the processes to be followed by both Council and Proponents in developing Unsolicited Proposals. It represents a commitment by Council to the allocation of resources to meet its responsibilities as outlined in the accompanying Policy. A three-stage assessment process has been developed to guide the evaluation of proposals:

- Pre-Submission Concept Review
- Stage 1: Initial Submission and Preliminary Assessment
- Stage 2: Detailed Proposal & Negotiation

Council recognises that a Proponent will be entitled to a fair rate of return for its involvement in a project and that outcomes should be mutually beneficial for the Proponent and Council. Further, Council recognises the right of Proponents to derive benefit from unique ideas.

Where Council determines a proposal as not meeting the criteria set out in the accompanying policy, it reserves its usual right to go to market. The Proponent will be provided with the opportunity to participate in that procurement process should the concept be offered to the market but will have no additional rights beyond those afforded to other market participants.

The unsolicited proposals assessment process is separate to other Council statutory approvals processes. However, where appropriate, the assessment of unsolicited proposals will consider the potential consistency of the proposal with relevant planning and environmental controls, and approvals processes.

2. PROPONENT RESPONSIBILITIES

The Proponent is required to:

- Prepare an outline Submission and meet with the Proposal Manager to discuss its unique characteristics and other key principles, prior to lodgment of a formal submission. This involves the Proponent completing an initial Schedule of Information Requirements (generally in the form attached to this Procedure).
- Prepare and lodge with Council an Initial Submission for Preliminary or Stage 1 Assessment. This involves the Proponent completing the Schedule of Information Requirements and attaching any other relevant information. It must also involve demonstrating a clear alignment with Council's published strategic direction and values.
- Enter into a MOU if recommended to proceed to Stage 2.
- Provide a Detailed Proposal at the conclusion of Stage 2.

3. LODGMENT AND COMMUNICATION

Enquiries, requests for 'pre-lodgement' meetings to discuss an Unsolicited Proposal, and all submissions should be submitted to:

Office of the General Manager
Wollongong City Council
Locked Bag 8821
WOLLONGONG DC NSW 2500

A soft copy can also be submitted to records@wollongong.nsw.gov.au.

Once a proposal has been submitted, Council will formally acknowledge receipt of the proposal and provide contact details of the Proposal Manager within 21 days (refer section 4.2.3). The Proposal Manager will be the Proponent's only point of contact at Council regarding the proposal. Once lodged, the proposal is subject to a formal assessment process.

Once an unsolicited proposal has been submitted, Proponents must not contact Councillors or Council officers, in regard to the submitted proposal, outside of the formal assessment process. This includes organisations authorised to act on the Proponent's behalf. Councillors will be notified by a confidential note that an unsolicited proposal (with some detail) has been received and now formal processes are in place, Councillors are obligated to no longer engage with any party informally.

4. UNSOLICITED PROPOSAL PROCESS

Unsolicited Proposals will be subject to a three-stage assessment process. The defined steps and stages may be refined in order to most effectively manage the assessment of any particular proposal. For example, each stage may include a number of milestones to be achieved in order to prevent unnecessary expenditure and to provide confidence for the Proponent to continue. Any milestones or changes to the stages will be discussed and agreed with the Proponent.

4.1 Pre-submission Concept Review Stage

4.1.1 Stage Objectives

Opportunity for the Proponent to meet with the Proposal Manager (and any other identified officers and/or advisors) in order to formally explore whether the proposal is likely to meet the Stage 1 assessment criteria and to guide Proponents in their decision regarding whether to formally lodge their proposal.

A key outcome of this stage will be the demonstration of the unique attributes of both the proposal and the Proponent in order to progress through the process. The key attributes, benefits, requirements and assumptions underlying the potential proposal may also be discussed. Council may provide feedback at this stage as to whether it considers that the proposal, as presented, is consistent with the Policy.

Notwithstanding this feedback, it is the Proponent's decision as to whether it proceeds with making a formal Stage 1 submission.

This is not a compulsory stage, but Proponents planning to formally submit an Unsolicited Proposal are strongly advised to arrange such a meeting with the Proposal Manager, prior to committing substantial resources for the development of the proposal, noting that Council will not reimburse costs associated with Unsolicited Proposals.

4.1.2 Timing

This initial meeting represents the first formal step in assessing the merits of each Unsolicited Proposal and may be held before or after lodgement of the full proposal. Council's preference is that this occurs before formal lodging of any proposal and commencement of Stage 1.

4.1.3 Proponent Responsibilities

The proponent needs to develop their proposal to a stage where the key inputs and outcomes have been identified, key assumptions and requirements of Council are clear, and other key elements have been identified. The Proponent should only seek a pre-submission concept review meeting once they are at this point of proposal development.

The Proponent at this stage, should be able to demonstrate and document the unique ability of the proponent to deliver the proposal. The initial Schedule of Information Requirements at Section 7 should be completed, as well as the Pre-Lodgement Meeting Checklist at Section 8. Irrespective of the outcomes of this meeting, proponents may lodge their proposal formally.

4.1.4 Council Responsibilities

Where Council is of the view that there is little prospect of the uniqueness criteria being met, it will communicate this to the proponent. In such circumstances, Council reserves the right not to advance assessment of the proposals to Stage 1 assessment as set out below.

4.1.4 Interactive Process

Council will manage an interactive process with the proponent at all formal stages of assessment, commencing with the formal pre-lodgement meeting. During both the pre-lodgement meeting and the Stage 1 Assessment this interaction will be limited to clarification of the proposal by Council in order to effectively carry out the assessment. It will not be an opportunity to negotiate the details of the proposal. This opportunity will arise in later stages if the proposal proceeds past the Stage 1 Assessment.

4.2 Stage 1 – Initial Submission and Preliminary Assessment

4.2.1 Stage Objectives

This stage allows Council to undertake a preliminary assessment of the proposal to determine if the submission constitutes an Unsolicited Proposal in accordance with the Policy and if sufficient justification exists to undertake a Stage 2 assessment. Council reserves the right to further consider, or not consider, Unsolicited Proposals beyond this stage at its absolute discretion. Progression to Stage 2 of the process will be at the sole discretion of the Council executive.

4.2.2 Proponent responsibilities

In this stage of the process the Proponent is responsible for:

- Preparing an Initial Submission in accordance with the Schedule of Information Requirements appended to this Procedure
- Identification of unique elements of the proposal
- Forwarding the Initial Submission to the Proposal Manager
- Responding to requests for further information. The information to be provided will depend on the size and complexity of the proposed project.

4.2.3 Council responsibilities

In this stage of the process Council will:

- Promptly acknowledging receipt of the Initial Submission.
- Undertaking an initial compliance check to ensure the required information has been provided, requesting further information from the Proponent if required. This may involve clarification meetings with the Proponent in order to promote clarity of Council requirements.
- Identify if a Probity Role is required at this stage
- Undertaking a preliminary assessment that will be based on the potential for the proposal to satisfactorily meet the Assessment Criteria.
- As soon as practicable, determine if the proposed arrangement is required to be treated as a Public-Private Partnership under the *Local Government Act 1993*. Consultation with the Office of Local Government in this regard will occur if required
- Preparing a preliminary assessment report for review and approval by the Executive Management Committee (EMC).

- EMC approval to progress to Stage 2, if warranted.
- Notification of the preliminary assessment outcome to the Proponent.

4.2.4 Outcomes

The following outcomes may result from this stage:

- The Submission is considered suitable for progression to Stage 2 as determined by EMC.
- The Submission is not considered suitable for further consideration. In this case, the Proposal Manager will recommend a course of action, for example:
 - Inform Proponent that the submission will not be considered further.
 - Refer Proponent to another procurement process (e.g. Pre- Qualification Scheme).
 - Refer submission for consideration under an alternative framework or scheme (e.g. Voluntary Planning Agreement).
 - Refer proponents seeking financial support to the relevant application scheme, if any.

4.2.5 Feedback

The Proponent will be provided with written feedback on whether their Submission has progressed to Stage 2 or reasons for a decision not to proceed with a proposal. In the event that the proposal is referred to an alternative process, as described above, details will be provided.

4.3 Stage 2 – Detailed Proposal & Negotiation

In order to demonstrate that optimal Value for Money will be achieved, an “open book” approach to negotiations is to be adopted once the proposal has progressed to Stage 2 assessment. Council will also consider whole-of- council impact and cost.

4.3.1 Objective

The key objective during this stage is for the Proponent and Council to work cooperatively in the development and assessment of a Detailed Proposal, which may require a degree of preliminary negotiation on key issues, subject to the nature of the proposal.

4.3.2 Proponent responsibilities

In this stage of the process the Proponent is responsible for:

- Enter into a Memorandum of Understanding
- Participate in Proposal Development Workshops
- Prepare and submit a Detailed Proposal in a form previously agreed with Council that addresses each of the Council’s Assessment Criteria. This may include (where appropriate):
 - Draft commercial terms for Council’s consideration
 - A (Preliminary) Business Case and/or economic appraisal.
- Negotiate commercial and legal terms with a view to entering into a binding agreement
- Submit a Final Binding Offer, as required.

4.3.3 Council responsibilities

In this stage of the process Council will:

- Establish a Proposal Specific Steering Committee and associated governance framework
- Appoint a Probity Advisor
- Prepare an internal Governance Plan (may be updated as appropriate throughout the process)
- Consider the engagement of a specialist Project Director
- Enter into a MOU
- Commence discussions concerning the acceptable commercial and legal terms (with a view to developing draft *commercial and* legal terms that will form the basis of a final binding offer).
- Commit appropriately experienced and qualified resources to participate in the Stage 2 process, including legal, financial, and technical advice where appropriate.
- Confirm the approach to assessing Value for Money (which may include investigating benchmarking).
- Where appropriate, undertake (or require the Proponent to undertake) a business case.
- Ensure relevant policy and project assurance processes are considered and applied, where appropriate.
- Participate in Proposal Development Workshops. Where appropriate, Council may establish commercial/technical teams to guide and liaise with the proponent. These teams will provide information to the Proposal Specific Steering Committee.
- Provide further information to the Proponent to assist with proposal development.
- Receive the Detailed Proposal.
- Undertake assessment of the Detailed Proposal against each of the Assessment Criteria outlined in the Policy.
- Request further information from the Proponent as required.
- Negotiate commercial and legal terms and prepare a binding agreement.
- Prepare an Assessment Report for the Final Binding Offer and make recommendations to EMC.
- Council approval to progress to Council report for resolution under Section 55 of the LG Act, or other approval, if warranted.

4.3.4 Memorandum of Understanding

A Memorandum of Understanding (MOU) provides an agreed (but not legally binding) framework for Stage 2 which will be entered into by Council and the proponent in order to ensure the alignment of expectations regarding participation in the process. The MOU will contain:

- Acknowledgement that a Value for Money outcome is a requirement for the proposal to proceed
- Assessment Criteria and other relevant Council requirements
- Communication channels, including a prohibition on lobbying
- Cost arrangements
- Resource commitments
- Conflict of interest management arrangements
- Confidentiality requirements

- Commitment to following an open book approach to discussions
- Timeframe
- Identification of approval requirements, including planning and environmental approvals (note at all times Council's separate planning and approval functions).

4.3.5 Outcomes

The following outcomes may result from this stage:

- The Detailed Proposal is considered acceptable to progress to agreement. Ideally, commercial terms should be agreed by Council and the Proponent and will form the basis of a Final Binding Offer.
- The Detailed Proposal (or Final Binding Offer) is not considered suitable for further consideration.

4.3.5 Feedback

Proponents will be provided feedback on Council's decision in relation to the detailed proposal, providing reasons if Council decides not to proceed with the proposal.

If Council progresses to accept the Final Binding Offer the Proponent will be informed of this and any ongoing procedures/requirements. The Proponent agreement will be provided with a draft Agreement and a schedule of items and issues to be negotiated.

4.3.6 Disclosure

Any agreement with the Proponent will be available in accordance with the *Government Information (Public Access) Act 2009*.

Further information may be published as appropriate. Council will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

5. COUNCIL RESPONSIBILITIES

5.1 Proposal Manager

The Proposal Manager will be responsible for:

- Act as the initial point of contact for an Unsolicited Proposal.
- Meet with a proponent for the purpose of a pre-submission concept review.
- After confirming a completed Schedule of Information Requirements has been lodged, convene a meeting with a representative of Council Divisions likely to be involved in any review (including, at all times, a representative from the Governance and Customer Service Division).
- In conjunction with the meeting group above, prepare a preliminary assessment report with a recommendation that a Proposal should proceed to Stage 2, or be declined.
- Provide updates to EMC and Audit Risk and Improvement Committee via Council reporting lines, as required.
- Provide the result of Council assessment to Proponent at the end of Stage 1.

5.2 Proposal Specific Steering Committee

The Proposal Specific Steering Committee will be responsible for:

- Review the Schedule of Information Requirements and assessment undertaken to date.
- Finalise the MOU.
- Approve the Governance Plan to be applied to Stage 2, including appointment of Probity Adviser (if warranted).
- Review and determine the further reporting, information, modelling and analysis to be undertaken, as well as likely budget to be utilised.
- Seek further information from the Proponent, as required, via the Proposal Manager.
- Ensure relevant policy and project assurance processes are adhered to, where appropriate.
- Seek advice from other areas of Council, as required.
- Finalise assessment of the proposal and provide recommendation to EMC.
- Agree feedback to be provided to Proponent.

6. REVIEW

These Procedures will be reviewed every two years or in-line with the review of the parent policy and at other times as required. Changes to the Procedure that are consistent with the parent policy can be approved by the Manager Governance and Customer Service.

7. SCHEDULE OF INFORMATION REQUIREMENTS

This form is to be completed by organisations in presenting an Unsolicited Proposal to Council. Please ensure all sections of this form are adequately addressed. Information may be presented in the form of cross-referenced addenda if preferred.

An initial version of this schedule should be prepared prior to the formal “Pre-Lodgement” meeting with the Proposal Manager.

Organisation Name:		Address:	
Identity:	[Individual, sole trader, company, etc.]	Type of organisation:	[Profit / non-profit, educational, small business, etc.]
Contact person(s) details for evaluation purposes:		Date of submission	
Concise title and abstract of proposal (approx. 200 words)			
Short Title			
Abstract			
Proposal details			
<ul style="list-style-type: none"> i. Objectives of the proposal ii. Method of approach iii. Nature and extent of anticipated outcomes iv. Benefits the proposal will bring to Council v. Consideration of the proposal in light of Council’s strategic direction. 			

Assessment Criteria

Please provide a brief description of how the proposal would meet each of the assessment criteria. Refer to section 2.2 of the Policy for detailed description of each criteria and items to be addressed.

- 1 Uniqueness i.e. what are the unique elements of the proposal that would provide justification for Government entering into direct negotiations with the Proponent? Unique elements may include characteristics such as:
 - Intellectual property or genuinely innovative ideas
 - Ownership of real property
 - Ownership of software or technology offering a unique benefit
 - Unique financial arrangements
 - Unique ability to deliver strategic outcome
 - Other demonstrably unique elements.
- 2 Value for money
- 3 Whole of Council impact
- 4 Return on investment
- 5 Capability and capacity
- 6 Affordability
- 7 Risk allocation

Financial and commercial details

Please provide a brief description of the financial and commercial details of the proposal and the proponent's financial capacity to deliver the proposal. Clearly explain what the proposed commercial proposition is.

Costs and Requirements of Council

Please provide details of costs to Council.

Clearly explain the requirements of Council emerging from the proposal (what are you seeking from Council?) This may include legislative/regulatory amendments, finance or the use of Council assets, facilities, equipment, materials, personnel, resources, and land. What would be the cost of Council providing this? (e.g. what would be the value of the Council land?)

Risks

Please provide a list of proponent and Council risks.

Organisation

Please provide a brief description of:

- 1 Your organisation
- 2 Previous experience in delivery of similar project
- 3 Past performance operating similar project
- 4 Facilities to be used (e.g. land owned by proponent or Council land)

Intellectual property

If applicable, please provide a description of the following:

- 1 Inventory of each item of intellectual property
- 2 Nature of the intellectual property claimed (e.g. copyright, patent, etc.)
- 3 The owner(s) of the intellectual property claimed
- 4 Registration details (where applicable)
- 5 Details of any items for which confidentiality is wholly or partly claimed.

Other statements

For example, please detail any applicable organisational conflict of interest and environmental impacts.

Preferred contractual arrangements

Agency points of contact

If applicable, please provide names and contact information of any Council or other Government points of contact **already** contacted regarding this proposal.

Period of time for which the proposal is valid	Minimum six months	Proposed duration of the arrangement	
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This proposal is to be signed by a representative of the proponent authorised to represent and contractually bind the proponent.

Name: _____

Position: _____

Signature: _____

Date: _____

8. PRE-LODGEMENT MEETING CHECKLIST

The following checklist should be completed prior to the formal “Pre-Lodgement” meeting with the Proposal Manager.

		YES	NO
1	Have you completed the initial Schedule of Information Requirements?	<input type="checkbox"/>	<input type="checkbox"/>
2	Are you the only party that could deliver your proposal?	<input type="checkbox"/>	<input type="checkbox"/>
3	Have you documented why the product/service you are proposing (or similar) cannot be delivered by a competitor?	<input type="checkbox"/>	<input type="checkbox"/>
4	Do you own any intellectual or real property required for your proposal?	<input type="checkbox"/>	<input type="checkbox"/>
5	Have you documented your ownership of any intellectual or real property required for your proposal?	<input type="checkbox"/>	<input type="checkbox"/>
6	Does your proposal contain unique elements that could not be replicated by others, other than related intellectual or real property?	<input type="checkbox"/>	<input type="checkbox"/>
7	Does your proposal contain unique elements that would require Council to contract with your company if Council went to tender?	<input type="checkbox"/>	<input type="checkbox"/>
8	Have you documented the unique elements (other than related intellectual or real property) of your proposal that could not be replicated by others, and which provide tangible benefits to Council?	<input type="checkbox"/>	<input type="checkbox"/>
9	<p>If you answered “NO” to any questions, have you documented in the (initial) Schedule of Information Requirements the basis you believe Council should consider your proposal, given that it is likely it does not meet basic “uniqueness” criteria as set out in the Policy.</p> <p>Note – in some cases Council may recognise merit in your proposal but want to ask the market to confirm value for money. Please discuss this with the Proposal Manager in the pre-lodgment meeting.</p>	<input type="checkbox"/>	<input type="checkbox"/>

9. GLOSSARY OF TERMS

Term	Meaning
Assessment Criteria	The criteria upon which Unsolicited Proposals will be assessed
Detailed Proposal	A submission by a Proponent to Council at Stage 2
Final Binding Offer	A formal proposal submitted by the Proponent at the conclusion of Stage 2 which is capable of acceptance by Council
Council	Council - this includes the elected Council and Council Divisions. Where possible, specific reference to relevant Council Divisions is made throughout the Policy.
Initial Submission	A submission by the Proponent during Stage 1 which briefly describes the Unsolicited Proposal (in accordance with the required Schedule)
Initial Schedule of Information Requirements	Information to be prepared by Proponent in preparation for pre-lodgment meeting with Council
Intellectual Property	Inventions, original designs, and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks; also trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by common law and additional contractual obligations such as Confidentiality Agreements.
MOU	A Memorandum of Understanding (not legally binding) signed by Council and the Proponent at the commencement of Stage 2
Probity Advisor	An advisor with specialist governance or legal qualifications and experience, including, where appointed, an external contractor.
Project Director	A Council staff member specifically appointed for the purpose of ensuring Council's responsibilities at Stage 2 are met. Where appointed, replaces the Proposal Manager as first contact for the Unsolicited Proposal.
Proponent	The person or organisation that submits an Unsolicited Proposal
Proposal Development Workshop	Interactive meetings held between Council and Proponent representatives with the aim of progressing proposal development
Proposal Manager	The person with responsibility for coordinating Council input for the receipt and assessment of an Unsolicited Proposal
Proposal Specific Steering Committee	A committee of senior Council representatives with responsibility for oversight of any specific Unsolicited Proposal
Public-Private Partnership	An arrangement between a council and a private person where public infrastructure or facilities are provided in part or in whole through private sector financing, ownership, or control
Unsolicited Proposal	An approach to Council from a Proponent with a proposal to deal directly with Council over a commercial proposition, where Council has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.
Value for Money	The overall value of a proposal to Government (refer to section 2.2 for further details).

SUMMARY SHEET	
Responsible Division	Governance and Customer Service
Related Policy that this procedure supports	Unsolicited Proposals Policy
Date/s adopted	<i>Executive Management Committee</i> 6 October 2020
Date/s of previous adoptions	
Date of next review	October 2022
Legislative or other requirement for review	2 years from date of adoption by resolution of Council
Responsible Manager	Manager Governance and Customer Service
Authorised by	Manager Governance and Customer Service