

Unsolicited Proposal Treatment Policy

Classification:	Council Policy
Policy Name:	Unsolicited Proposal Treatment Policy
First Issued / Approved:	14 June 2016 C10680
Last Reviewed:	28 August 2018 C11786
Next Review:	28 August 2020
ECM Tracking No.:	2704827
Responsible Officer:	General Manager, Corporate and Development
Relevant Legislation:	Local Government Act 1999
Related Policies and Protocols:	Procurement Governance Framework Code of Conduct for Council Members Code of Conduct for Council Employees Code of Conduct for Volunteers Employees, Staff and Associates Gifts and Benefits Policy Fraud and Corruption Prevention Policy ICAC Application and Awareness Policy Internal Financial Control Framework Risk Management Policy Sale or Disposal of Assets Policy Tender and Contract Engagement Policy Unsolicited Proposal Treatment Protocol

1. Introduction

- 1.1 This Policy oversees how Council treats approaches by the market place proposing to undertake particular projects that provide unique and innovative outcomes for Council and the community.
- 1.2 Whilst the primary focus for this Policy is directed to the conduct of Council's employees, parts of it may apply to Elected Members in certain circumstances.

2. Strategic Plan Desired Outcomes

- 2.1 Delivery of good governance in Council business.
- 2.2 A financially sound Council that is accountable, responsible and sustainable.

3. Our Approach

- 3.1 Regularly review, update and adopt leading governance, risk management and administrative processes.
- 3.2 Provide sufficient resources to meet current and future needs of the community.

4. Legislative Requirements and Corporate Policy Context

- 4.1 This Policy has been developed in to order provide guidance as to the treatment of aspirational approaches initiated by the market to Council, with the aim of successfully being awarded contracts with Council for the provision of goods, works or services.
- 4.2 This Policy has been developed to adhere to Section 49 of the Local Government Act, 1999
- 4.3 In the main, these Policies are conventionally predicated towards Council ensuring it engages with the market, as the initiator of the engagement process to acquire goods, works or services from an external party.

5. Interpretation

- 5.1 For the purpose of this policy:
 - 5.1.1 “Chief Executive Officer” or “CEO” means Councils most senior executive officer.
 - 5.1.2 “Expression of Interest” means an EOI (also referred to as a Registration of Interest - ROI) Suppliers are invited to express/register their interest in providing particular goods, works or services and the responses evaluated to develop a shortlist for future market approaches or negotiations, using a more detailed specification.
 - 5.1.3 “Employee” means any person who is employed by the Council, but also includes any contractors, volunteers and consultants undertaking work for, or on behalf of Council.
 - 5.1.4 “Intellectual Property” means inventions, original designs and practical applications of ideas protected by copyright, patents, registered designs, circuit layout rights and trademarks. It can also mean trade secrets, proprietary know-how and other commercial-in-confidence information protected against unlawful disclosure by common law and through other contractual obligations.
 - 5.1.5 “Request For Tender” (RFT) means an invitation to tender based on clearly defined and specific statement of requirements.
 - 5.1.6 “Unique” in the context of this Policy means Council cannot reasonably engage another market place provider to complete the same or equivalent outcome, within acceptable timeframes.

5.1.7 “Request for Quotes” (RFQ) means an invitation for quotations based on clearly defined and specific statement of requirements.

6. Policy

6.1 Definition

6.1.1 An unsolicited proposal is a unique or innovative proposal initiated by the private sector to deliver outcomes that are desirable to Council, without being formally requested by Council through a recognised market engagement process. It may be otherwise known as a “market-led proposal” in other jurisdictions.

6.1.2 For the purposes of this Policy, an unsolicited proposal as defined at clause 6.1.1 initiated by an existing or prospective supplier to Council will constitute an unsolicited proposal, regardless of the nature or value associated with the proposal.

6.2 Assessment

6.2.1 In order to ensure an unsolicited proposal received by Council does not usurp or duplicate a current or previous procurement evaluation process initiated by Council, it will verify that the proposal is unique and therefore requiring further assessment.

6.3 Probity

6.3.1 At all times, Council and its officers will adhere to the Procurement Governance principles outlined in Council’s *Procurement Policy*.

Council and its officer must also continue to observe Codes of Conduct and other Policies and Protocols providing guidance on potential conflicts of interest, fair and transparent business transactions and undertaking risk averse decision making, in consideration of all aspects of a proposal.

6.4 Value Thresholds and Responsibility

6.4.1 In the event that Administration pursue an Unsolicited Proposal, this shall be authorised by the CEO.

6.5 Exclusivity

6.5.1 Council’s default procurement method will be to invite or request proposals from the market, in order to balance its procurement governance principles in assessing and evaluating any proposals it subsequently receives in response to invites or requests.

6.5.2 However there may be unique occasions when an unsolicited proposal represents an opportunity where a desired outcome can be attained by negotiating exclusively with the proponents of that proposal.

6.5.3 If Council wishes to enter into exclusive negotiations with a proponent of an unsolicited proposal, the proposal must;

- (a) be solely limited to the proponent for the purposes of developing the outcomes proposed; and
- (b) be granted for a limited time period.

6.5.4 During the period of the exclusive negotiation, similar rights will not be granted to another proponent, if that proponent happens to offer a proposal that is substantially similar, or equivalent, to that which exclusive negotiations have already commenced with a previous proponent.

6.5.5 However Council may enter into individual exclusive negotiations with more than one proponent separately, if it has received multiple unsolicited proposals concerning the equivalent subject matter at the same time, prior to ultimately selecting a successful proponent if warranted.

6.5.6 These provisions are included to protect intellectual properties rights of the individual proponent and ensure Council and its officers commence and conclude any exclusive negotiations with fairness and probity.

6.6 No Other Competing Proposals

6.6.1 The criteria for evaluating an unsolicited proposal is substantially the same as those outlined in Council's *Procurement Policy*.

6.6.2 Underpinning the criteria is the principle of achieving value for money, culminating in desired outcomes for Council and the community.

6.6.3 This premise guiding Council undertaking the procurement of goods, works or services supplied by the market place is not waived through the consideration of an unsolicited proposal.

6.6.4 Nevertheless, there are distinctive evaluation characteristics that an unsolicited proposal shall be measured against, that may not be applicable to the default procurement methods predominantly undertaken by Council.

6.6.5 The predominant characteristic is that there are no other competing proposals from the market place through default procurement methods, such as a RFT, RFQ or EOI.

6.6.6 Council reserves the right not to enter into any form of negotiations with any proponent of an unsolicited proposal, if it can be shown the proposal is substantially similar to a proposal under current consideration, or has been previously considered and evaluated, or is being proposed for consideration in the future.

6.6.7 This can be either through conventional means of procurement engagement, outlined in Council's *Procurement Policy*, or receipt of another similar unsolicited proposal.

6.7 Evaluation Criteria

6.7.1 Council will evaluate an unsolicited proposal based on the following criteria.

6.7.2 Unique and Innovative

- 6.7.2.1 Primarily a proposal is unique if it is able to demonstrate it can provide Council with a strategic outcome desired by the community.
- 6.7.2.2 It must be innovative in how the proposal plan is developed and undertaken and be able to present Council with a rare opportunity to consider progressing.
- 6.7.2.3 The proponent may possess particular assets, such as real property or intellectual property rights (IP), that other competitors do not possess, that could bring about the desired strategic outcome.
- 6.7.2.4 The proponent must be able to demonstrate that the sole possession of those rights would limit an outcome sought through a competitive evaluation process initiated by Council.

6.7.3 Community Need

- 6.7.3.1 The unsolicited proposal must promote economic, social and/or environmental outcomes for Council and the community and provide a clear and demonstrable link with its strategic community plans.
- 6.7.3.2 Council shall also consider whether the proposal would require the reallocation or reprioritisation of capacity at its disposal and whether that would run congruent with Council's strategic objectives.

6.7.4 Capability

- 6.7.4.1 The proponent must be able to demonstrate that it can leverage the unique and innovative rights at its disposal to achieve the outcome it is proposing to Council.
- 6.7.4.2 Council reserves its right to perform any due-diligence it deems necessary of a proposal and its proponent, as part of the evaluation process.

6.8 Assessment Progression

- 6.8.1 If the criteria outlined above have been met to the satisfaction of the Council Administration, it will undertake an assessment process according to the stages summarised below.

6.8.2 Preliminary Meeting

- 6.8.2.1 Parties may wish to meet prior to formally registering an unsolicited proposal with Council.
- 6.8.2.2 Whilst a non-compulsory stage of the assessment process, both parties may find this useful, primarily to ascertain if the high level attributes of the proposal necessitate it to be assessed further.

6.8.2.3 If confidential aspects to the proposal are discussed, these shall remain so between those parties at the meeting, or their representative entities, regardless of whether the proposal is considered worthy of further assessment.

6.8.3 Stage One – Initial Assessment

6.8.3.1 This stage of the assessment process primarily measures the attributes of the proposal against those deemed to be appropriate for classifying the proposition as a definitive unsolicited proposal.

6.8.3.2 Formal lodgement of the proposal must be completed before the assessment of the proposal can commence. The Council portal unsolicitedproposals@burnside.sa.gov.au is the only vehicle by which the proposal can be formally lodged and registered.

6.8.3.3 At a high level, dependent on the value of the proposal according to criteria outlined above, the details of the proposal will be considered by commensurate Council bodies and/or officers to determine its suitability to strategic Council needs and its uniqueness.

6.8.3.4 At the completion of the initial assessment, the proposal may be considered for further assessment and progression to Stage Two – Detailed Assessment, or alternatively the proposal may be deemed inappropriate for further consideration and assessment.

6.8.3.5 In any case, the proponent will be advised of the outcome of the initial assessment by the commensurate Council body or officer responsible for managing and overseeing the proposal.

6.8.3.6 Only after the initial assessment has been complete and the proponent has been advised of the outcome, will Council communicate any information regarding to the proposal the public.

6.8.4 Stage Two – Detailed Assessment

6.8.4.1 If warranted, the second assessment phase involves testing the feasibility of delivering the proposal in a practical manner.

6.8.4.2 The proponent and Council will work collaboratively to undertake feasibility testing where cost and benefit assumptions and their margins of error are agreed, along with timings for potential delivery confirmed.

6.8.4.3 Council Administration will also consider delivery options and the implications for budgeting, resourcing and impacts on the community throughout a proposed implementation and completion phase.

6.8.5 Stage Three – Contract Negotiation

6.8.5.1 If an unsolicited proposal progresses through the assessment stages outlined above, Council may wish to enter into negotiations with the proponent to deliver the proposal.

6.8.5.2 Those negotiations shall be undertaken according to current Council Policy and Protocols concerning contract negotiation and execution.

6.9 Policy Review

6.9.1 This Policy will be reviewed bi-annually in accordance with Council's Policy and Procedure Framework.

7. Availability

7.1 The Policy is available to be downloaded, free of charge, from Council's website www.burnside.sa.gov.au.

The Policy will be available for inspection without charge at the Civic Centre during ordinary business hours and a copy may be purchased at a fee as set annually by Council.

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