



A GUIDE FOR THOSE WITH
GREAT IDEAS

LORD MAYOR INTRODUCTION



The City of Adelaide is open for business and we're looking to partner with people and organisations which share our vision.

As the capital city of South Australia, the City of Adelaide welcomes ideas and concepts which place us at the forefront of social, cultural, commercial, technological and environmental progress.

The City of Adelaide has an agenda to enhance the City's liveability and increase prosperity for all people through sustainable economic growth. Council recognises that new ideas and partnerships are important to realising our strategic outcomes.

The City of Adelaide is often approached with great ideas, and in considering these, Council needs to demonstrate transparency and accountability. This document outlines the approach used to manage new and innovative ideas being presented to the City of Adelaide. It is intended to give confidence to innovators, entrepreneurs, investors and the community that proposals will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value.

A handwritten signature in blue ink, consisting of a stylized, circular scribble followed by a long horizontal line extending to the right.

Sandy Verschoor
Lord Mayor of Adelaide

UNSOLICITED PROPOSALS DEFINITION & PROCESS

DEFINITION

An unsolicited proposal:

- is a new and innovative proposal from the private and non-government sectors
- could assist the Council to achieve its strategic objectives or satisfy a community need
- has not been requested by the Council through its regular procurement

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
- the provision of infrastructure for the community; or
- an innovation or entrepreneurship with benefits to the Council

These guidelines apply to an unsolicited proposal with an estimated value of over \$100,000. Where Council receives a proposal under these guidelines that is better suited for assessment under an existing program or scheme, then the proponent will be referred to the relevant program.

Before formally submitting a unsolicited proposal, 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. 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.

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

STAGE ONE INITIAL PROPOSAL

The initial proposal stage allows a proponent to provide a high level outline of the proposal enabling Administration to consider whether it meets the criteria. Once Administration has sufficient information, the proponent will be advised in less than 45 days whether their proposal has advanced to the next stage.

POSSIBLE OUTCOMES

- That the proposal is not suitable for further consideration and is now closed
- That the proposal may form the basis for a competitive bidding process
- That the proposal will proceed to Stage 2

Administration Actions

- Determine if sufficient information has been provided
- Convene a meeting of the Steering Committee
- Determine whether the proposal meets the criteria for it to be considered under the guidelines
- Prepare a report to the Council if the proposal is recommended for Stage 2
- Advise the proponent of the Council's decision

Proponent Actions

- Submit the completed Application Form and any further information online
- Submit any further information that may be requested

UNSOLICITED PROPOSALS DEFINITION & PROCESS

STAGE TWO DETAILED PROPOSAL

This stage involves Administration and the proponent working together to assess the feasibility of the proposal in greater detail, including how it will be delivered and whether it represents value for money for Council. Once this assessment is complete, advice will be prepared for Elected Members and the proponent will be advised whether the proposal will proceed to the next stage.

POSSIBLE OUTCOMES

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

Administration Actions

- Establish the Stage 2 framework and advise the proponent of this
- Arrange meetings of the Steering Committee with any other subject matter experts, professional advisers and other persons
- Arrange meetings with the proponent as required
- Request further information from the proponent as required
- Obtain reports and further information for the Council's consideration of the proposal
- Arrange the preparation of a detailed report on the proposal for Council's Elected Members' consideration
- Advise the proponent of the Council's decision

Proponent Actions

- Submit a detailed proposal
- Provide additional information as requested
- Attend meetings as requested with, and respond to communications from Council

STAGE THREE CONTRACT NEGOTIATION

Here all parties negotiate the final legal and commercial terms. Once these terms are mutually agreed, formal project documentation is prepared for final consideration by Council.

POSSIBLE OUTCOMES

- That the Council agrees to the terms and conditions of the contract and will proceed to execute it
- That the Council agrees to the contract, subject however to specified variations or conditions
- That the Council does not agree to enter into the contract but instead determines to pursue or consider pursuing the unsolicited proposal through another process
- 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

Administration Actions

- Advise the proponent of the process and protocols for the development of a contract
- Negotiate the contract
- Submit the agreed contract to the Council to seek approval for the contract to be executed
- Advise the proponent of the Council's decision

Proponent Actions

- Negotiate contract terms

PROCESS FOR REVIEW

As part of Council's commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, this document will be reviewed for currency as part of the annual review of delegations.

APPLICATION & ASSESSMENT

While Council welcomes unsolicited proposals, the act of receiving and assessing proposals cannot in any way compromise the performance of Council's regulatory functions. Any exclusive negotiation that originates from a unsolicited proposal in accordance with these guidelines is conditional upon requisite approvals and compliance with relevant legislation such as the Local Government Act 1999, Development Act 1993, South Australian Public Health Act 2011 and other legislation that Council is responsible for enforcing.

The Council is the custodian of the Adelaide Park Lands. Section 4 of the Adelaide Park Lands Act 2005 states the statutory principles, including without limitation, that the Adelaide Park Lands should be held for the public benefit of the people of South Australia, and should be generally available to them for their use and enjoyment. Any unsolicited proposal that involves the Adelaide Park Lands will be presented to the Adelaide Park Lands Authority, as required, as well as the Council.

CRITERIA FOR ASSESSMENT

The Council may, in its absolute discretion, enter into a period of exclusive negotiation with a person who has submitted a unsolicited proposal. The Council recognises that circumstances may arise where it is beneficial to deal exclusively with one party in relation to a particular proposal that has been submitted to the Council. These circumstances include where a party's Intellectual Property should be protected.

The criteria that the Council will consider to determine if a period of exclusivity should be entered into with a particular proponent are explained in detail in the stage one application form and include:

- **No competing proposals**
- **Community need/Council priority**
- **Value for money**
- **Capacity and capability of proponent**
- **Uniqueness**



STAGE ONE APPLICATION FORM: ASSESSMENT CRITERIA

Provide a brief description of how the proposal would meet each of the assessment criteria detailed in the Guidelines.

ASSESSMENT CRITERIA

No competing proposals

If the proponent is aware of any existing proposal or procurement process currently under consideration by the Council or under active consideration by another proponent then the proponent should clearly demonstrate how their proposal is distinct from these other proposals.

Community need/Council priority

The proponent should demonstrate how its proposal:

- promotes the Council's role and functions
- is broadly consistent with the Council's objectives outlined in its Strategic Plan
- provides an economic, social, cultural or environmental outcome for the Council

The information that a proponent provides should include:

- details of benefits of the proposal
- details of any economic activity or jobs that would be created by the proposal
- details of any unmet community need that would be met by the proposal
- how the proposal is aligned with the Council's strategic objectives

Uniqueness

The proponent should provide information that demonstrates that its proposal is unique. This may be demonstrated by showing that:

- the proposal cannot be readily delivered by competitors at all or within the timeframes proposed by the proponent
- the proponent owns something that would limit other parties from being able to deliver the proposal (for example, Intellectual Property, strategic landholdings)
- the proponent has unique finance arrangements that enable it to deliver the proposal where other parties would not be able to
- the proponent has a genuinely innovative idea
- a combination of factors which may not stand alone as being unique but which together create a unique proposal

Value for Money

The proponent should provide information that demonstrates how its proposal represents value for money for the Council, such as:

- financial benefits
- economic benefits
- community benefits

The information that a proponent provides should include:

- how the proposal is priced relative to competitors
- the proposed sharing of costs and risks between the Council and the proponent
- the benefits to the Council of the proposal

Capacity and capability of proponent

Proponents should provide information that demonstrates that it has the capacity and capability to deliver the proposal. Proponents should provide:

- a description of their organisation or consortium
- details of previous experience in delivering similar projects
- details of past performance on similar projects
- details of relevant experience in prior dealings with the Council or another council
- details of its skills, experience and competencies to deliver the project
- details of any third parties that would be proposed to be involved in the delivery of the project

FINANCIAL AND COMMERCIAL DETAILS

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.

COSTS AND REQUIREMENTS OF THE COUNCIL

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
- assistance to obtain statutory approvals or legislative or regulatory amendments

A proponent should state what the cost would be for the Council in providing what is sought.

RISKS

Proponents should list risks arising from the proposal for the proponent and the Council.

PREFERRED CONTRACT ARRANGEMENT

A proponent should provide details of its proposed contractual arrangements for the proposal if it is successful.

INTELLECTUAL PROPERTY

Proponents should provide a brief description of:

- each item of Intellectual Property involved in the proposal
- the nature of any Intellectual Property claimed
- details of the owner of Intellectual Property claimed
- registration details (where applicable)
- details of any items for which commercial confidentiality is claimed in whole or in part

OTHER INFORMATION

A proponent may provide any other information that is relevant to its proposal for Stage 1 assessment.

CONTACT PERSON

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: _____

Postal Address: _____

Email Address: _____

Phone number: _____

COUNCIL CONTACT DETAILS

A proponent should provide details of any person at the Council who has already been contacted regarding the proposal.

PROPOSED DURATION

Period of time for which the proposal is valid (min. of six months).

The proposal is to be signed by a representative of the proponent who is authorised to represent and contractually bind the proponent.

Name: _____

Position: _____

Signature: _____

Date: _____

**Please note that additional information or pages may be attached to this form.*

SUBMISSION TERMS AND CONDITIONS

DEFINITIONS

Application Form means any officer, staff, agent or contractor of the Council.

Application Form means the form attached to this guide.

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.

Council means The Corporation of the City of Adelaide.

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

Unsolicited Proposals Coordinator is the person occupying the position of Legal Services Consultant.

INTELLECTUAL PROPERTY

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

If the Council declines to consider, or ends its consideration of, a 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.

PROBITY FRAMEWORK

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 proposals submitted:

- that proposals are received, assessed and negotiated, and decisions are made, through an approved and transparent framework
- that decisions are made through a robust framework and so that they will deliver the best outcomes for the Council and its community
- that confidential information is protected
- that any perceived conflict of interest, bias or misconduct is eliminated

The Council may, at any Stage outlined in these guidelines, engage a probity adviser or auditor.

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.

EXCLUSIVITY PERIOD

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

- 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
- the exclusivity period will be limited to the development of the specific proposal submitted by the proponent to the Council
- the Council may set specific terms and conditions for the exclusivity period which it will advise the proponent of in writing
- the Council may end the exclusivity period at any time and withdraw from exclusive or all negotiations with the proponent
- all correspondence between the Council and the proponent will be kept confidential, subject to any legislative requirements

RECEIPT AND ASSESSMENT PROCESS

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

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
- if the proposal should be considered further

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 via Council's website.** 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 to Stage 2.

Once a proposal has been submitted in accordance with this policy and the Unsolicited Proposals Coordinator determines that there is 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's Elected Members.

If the Steering Committee recommends that the proposal not be accepted or the Council's 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's Elected Members endorse the proposal, the proposal will proceed to Stage 2 and the proponent will be provided with the following:

- notification that the proposal has been approved by the Council to proceed to Stage 2
- a copy of the Council's resolution
- the broad terms and timeframes for Stage 2 consideration of the proposal
- 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 is 45 days and commences from when the Unsolicited Proposals Coordinator has all of the information that is needed to consider the proposal. Any endorsement of a proposal at Stage 1 is "in principle" endorsement only so that the proposal may proceed to Stage 2 consideration.

SUBMISSION TERMS AND CONDITIONS

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 Administration and the proponent within a framework established by the Council.

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

- confidentiality, conflict of interest, communication and probity protocols
- Stage 2 participation terms and conditions
- Stage 2 assessment criteria
- timeframes
- information to be provided and/or shared
- governance requirements
- any other matters that Administration considers necessary or desirable

The matters that Administration will consider during Stage 2 are:

- the value for money proposition from the proposal for the Council
- if the proposal is legally, technically and financially feasible;
- how the proposal would best be structured to deliver the best outcome for the Council
- a cost/benefit analysis of the proposal
- whether the proposal or any part of it would more appropriately be the subject of a competitive bidding process
- the appropriate allocation of risk
- the proposed delivery method

During Stage 2 the Unsolicited Proposals Coordinator will:

- convene meetings of the Steering Committee with any other subject matter experts, professional advisers and other persons that the Unsolicited Proposals Coordinator sees fit
- convene meetings with the proponent
- request further information from the proponent as required;
- obtain reports and further information for Administration's consideration of the proposal
- arrange the preparation of a detailed report on the proposal for the Council's Elected Members' consideration

During Stage 2, a proponent must:

- develop a detailed proposal, consistent with the requirements outlined by the Council at the end of Stage 1
- provide any additional information as required
- 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's Elected Members' consideration and the proponent will be advised in writing of the Council's resolution and one of the following:

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

Stage 3: Contract Negotiation

Stage 3 allows Administration 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.

Once a contract has been agreed in principle between the Council Administration and the proponent, the contract will be submitted to the Council's 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:

- that the Council agrees to the terms and conditions of the contract and will proceed to execute it
- that the Council agrees to the contract, subject however to specified variations or conditions
- 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
- 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

NO LEGAL RELATIONSHIP

By making an unsolicited proposal the proponent acknowledges:

- 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
- 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

LEGISLATIVE OBLIGATIONS

In submitting a proposal proponents acknowledge that:

- 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
- that 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)

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 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's 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.

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.

SUBMISSION TERMS AND CONDITIONS

COSTS OF PROPOSAL

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

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.

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,

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 a 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 do not apply to a unsolicited proposal that is covered by these guidelines.

GENERAL ACKNOWLEDGEMENTS

Proponents acknowledge when submitting a unsolicited proposal in accordance with these guidelines that the Council:

- 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
- may undertake 'due diligence' checks on any proponents
- 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
- accepts no responsibility for any proponents failing to undertake any investigations or understanding any matters that may impact on its proposal
- 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
- 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.

COUNCIL'S GENERAL RIGHTS

The Council may, at any stage of the process of receiving, considering and negotiating a unsolicited proposal:

- if it assesses that a proposal does not meet the criteria to be considered or considered further under these guidelines, to make an approach to the market in respect of the subject matter of the proposal and end consideration of the unsolicited proposal and withdraw from any negotiation with the proponent in relation to it
- amend, vary or revoke and replace these guidelines at any time
- accept or reject any unsolicited proposal
- subject to any period of exclusivity determined in accordance with these guidelines, negotiate with any person in relation to the subject matter of a unsolicited proposal
- accept all or part of an unsolicited proposal
- discontinue negotiations with any proponent
- include any proponent's name in council reports and, subject to any period of exclusivity determined in accordance with these guidelines and any agreement with a proponent to the contrary, make them public

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.

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.

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 objects 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.

DEPARTURE FROM GUIDELINES AND TERM & CONDITIONS

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

REVIEW OF GUIDELINES AND TERMS & CONDITIONS

These guidelines will be reviewed regularly by the Council to ensure that the objectives of the guidelines remain relevant and are met.

CITY OF ADELAIDE

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