

UNSOLICITED PROPOSAL POLICY

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| Policy Type: | Council Policy |
| Responsible Department: | Business Support & Improvement |
| Responsible Officer: | General Manager Business Support & Improvement |
| Related Policies and Procedures | <ul style="list-style-type: none"> • Unsolicited Proposal Framework • Code of Conduct, Employees • Prudential Management Policy • Procurement Policy • Disposal of Surplus Non-Community Land • Risk Management Policy • Purchase Card Policy • Motor Vehicle Policy • Employees & Volunteers • Financial Delegations |
| Community Plan Link | 3.1 Unley is recognised as an easy place to do business. 4.1 We have strong leadership and Governance. 4.3 Our business systems are effective and transparent |
| Date Adopted | 25 October 2021 |
| Last review date | Not applicable |
| Next review date | October 2023 |
| Reference/Version Number | |
| ECM Doc set I.D. | 8634243 |

1. PREAMBLE

The City of Unley recognises the benefits of partnering with private sector and not-for-profit organisations to deliver social, environmental and economic outcomes for the community. To that end the City of Unley encourages the development and presentation of innovative ideas that will contribute to those goals.

This Policy defines how the City of Unley engages with proponents who make unsolicited proposals that may provide unique and innovative outcomes for the City of Unley and the community.

This policy creates a framework for the submission of new and innovative ideas to the City of Unley for consideration. The policy also gives confidence to investors and the community that unsolicited proposals will be considered in a consistent and transparent manner.

An Unsolicited Proposal Framework is maintained to support the application of this policy.

2. SCOPE

- 2.1. This policy applies to all proposals submitted to the City of Unley that have not been requested by the City of Unley through its regular procurement processes.
- 2.2. Unsolicited proposals may include, but are not limited to, proposals for the:
 - 2.2.1. Purchase, lease or development of land owned or managed by the City of Unley;
 - 2.2.2. Purchase or lease of assets, unless the purchase or lease is undertaken in accordance with another policy;
 - 2.2.3. Delivery of goods or services to or on behalf of the City of Unley;
 - 2.2.4. Provision of infrastructure for the community;
 - 2.2.5. An innovation or entrepreneurial project with benefits to the City of Unley; or
 - 2.2.6. Any other innovative or entrepreneurial proposal.

3. POLICY PURPOSE/OBJECTIVES

- 3.1. This policy has been developed to provide accountability, consistency and transparency to the process of receiving and considering unsolicited proposals by Council. The following objectives will guide the City of Unley's consideration of unsolicited proposals:
 - 3.1.1. promoting the development of innovative ideas by the private and community sector to support the City of Unley's role, functions and broad objectives as outlined in the Community Plan;
 - 3.1.2. ensuring that unsolicited proposals are received and assessed via an open, transparent and fair process that involves high standards of probity and public accountability, subject to ensuring the Intellectual Property of a proponent submitting an unsolicited proposal is appropriately protected;
 - 3.1.3. ensuring that the unsolicited proposals process is not used to circumvent the City of Unley's regular procurement processes;
 - 3.1.4. ensuring value for money for the City of Unley is achieved from any unsolicited proposal; and
 - 3.1.5. maximising the benefits from unsolicited proposals for the City of Unley and its constituents.

4. PROCUREMENT PRINCIPLES

- 4.1. The following key principles underpin all procurement activities at the City of Unley and apply to the consideration of unsolicited proposals:
 - 4.1.1. Open and Effective Competition
 - 4.1.2. Value for Money
 - 4.1.3. Ethical Behaviour and Fair Dealing
 - 4.1.4. Social, Economic and Environmental Sustainability
- 4.2. These principles are explained in the City of Unley's Procurement Policy.

5. DEFINITIONS

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| City of Unley | The Corporation of the City of Unley |
| Council | The elected, decision making body for the City of Unley. |
| Intellectual property | Inventions, original designs and practical applications of good ideas protected by law through copyright, patents, registered designs, circuit layout rights and trademarks. Intellectual property also includes trade secrets, proprietary know-how and other confidential information protected against unlawful use and disclosure by common law and contractual obligations. |
| Procurement | The complete action or process of acquiring or obtaining goods, services or property from outside the City of Unley at the operational level. For example, purchasing, contracting, and negotiating directly with the source of the supply through to acceptance and payment. |
| Proponent | A person, business or any other organisation that approaches the City of Unley, its staff, Mayor or Councillors with an unsolicited proposal, or with an intention to submit an unsolicited proposal. |
| Unsolicited proposal | A proposal submitted to the City of Unley that has not been requested by the City of Unley through its regular procurement processes. This includes, but is not limited to, approaches to the City of Unley to procure products or services it has not sought to procure. |

6. ROLES AND RESPONSIBILITIES

- 6.1. The CEO, or CEO's delegate, is responsible for:
 - 6.1.1. Implementation of the policy and associated procedures;
 - 6.1.2. The assessment and determination of a position on unsolicited proposals; and
 - 6.1.3. Provision of advice and recommendations to Council, as may be required.
- 6.2. The Mayor and Councillors are required to:
 - 6.2.1. Advise the CEO if they are approached by a proponent of an unsolicited proposal, and
 - 6.2.2. Advise the proponent of an unsolicited proposal to communicate directly with the CEO or CEO's nominated delegate.
- 6.3. Council employees are required to:
 - 6.3.1. Advise the CEO if they are approached by a proponent of an unsolicited proposal, or refer the approach to the manager responsible for Procurement or their delegate, to assess whether the approach constitutes an unsolicited proposal; and

- 6.3.2. Advise the proponent of an unsolicited proposal to communicate directly with the CEO or CEO's nominated delegate.
- 6.4. Senior Management, in conjunction with the manager responsible for Procurement or their delegate, are responsible for providing advice to the CEO on any unsolicited proposal relative to this policy and associated procedures.
- 6.5. If required, the CEO will prepare a report to Council, for Council to assess and resolve a position on unsolicited proposals presented to the CEO.

7. POLICY STATEMENT

- 7.1. The City of Unley will apply a three stage approach to receiving and considering an unsolicited proposal as outlined below and detailed in the City of Unley Unsolicited Proposal Framework.

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| Stage 1: Initial Proposal | <p>The objective of the Initial Proposal Stage (Stage 1) is to enable a proponent to provide the City of Unley with a high-level overview of its proposal which enables the City of Unley to form a preliminary view as to whether:</p> <ul style="list-style-type: none"> • The proposal is an unsolicited proposal, and should be considered in accordance with this Policy; and • The proposal warrants further consideration. |
| Stage 2: Detailed Proposal | <p>Stage 2 involves further consideration of the feasibility of the proposal, how it will be delivered, whether it represents value for money for the City of Unley and what outcomes it will deliver for the City of Unley and the community. Stage 2 will be an interactive process between the City of Unley and the proponent within the framework established by the City of Unley.</p> |
| Stage 3: Contract Negotiations and Finalisation | <p>If a proposal is successful and progresses through Stage 2, the City of Unley and the proponent will then proceed to Stage 3 and enter into formal contract negotiations.</p> |

8. PROBITY

- 8.1. It is a primary objective of this policy to ensure probity during the process of considering unsolicited proposals. Consequently, probity principles and protocols will be followed to ensure:
- 8.1.1. that proposals are received, assessed and negotiated, and decisions made through an approved and transparent framework;
- 8.1.2. that ethically-based decisions are made that deliver the best outcomes for the City of Unley and its community;

- 8.1.3. that confidential information is protected and not disclosed (except for disclosures to third party advisers and as required by law); and
 - 8.1.4. avoidance of any actual or perceived conflict of interest, bias or misconduct.
- 8.2. The City of Unley may, at any stage outlined in this procedure, engage a probity adviser or auditor.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. The City of Unley acknowledges that unsolicited proposals may contain Intellectual Property of the proponent and/or third parties.
- 9.2. If the City of Unley declines to consider, or ends its consideration of, a proposal submitted in accordance with this procedure, and the City of Unley elects instead to engage in a competitive procurement process in relation to the subject matter of the proposal, the City of Unley will respect any Intellectual Property rights of the proponent and/or third parties.

10. NO LEGAL RELATIONSHIP

- 10.1. By making an unsolicited proposal the proponent acknowledges:
- 10.1.1. that no legally binding contract exists or is to be implied between the City of Unley and the proponent unless and until a formal contract document is signed by both parties in Stage 3; and
 - 10.1.2. that the City of Unley 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.

11. NO SOLICITING OR OUTSIDE DISCUSSIONS

- 11.1. All queries or communications in relation to unsolicited proposals must be directed to the CEO or the CEO's nominated delegate to ensure consistency and transparency in the process. The City of Unley reserves the right to discontinue assessment or negotiations regarding a proposal if the proponent discusses the proposal with unauthorised members of City of Unley staff or Elected Members without the prior knowledge of the CEO or the CEO's delegate.
- 11.2. A proponent must not offer any incentive or otherwise seek to influence any person who is either directly or indirectly involved in an assessment or negotiation process. The City of Unley reserves the right to end any consideration of a proposal if a proponent fails to comply with this requirement.

12. LEGISLATION

- Section 49(a1) of the *Local Government Act 1999* (the Act) requires the City of Unley to develop and maintain procurement controls including policies and procedures directed towards:
 - Obtaining value in the expenditure of public money;
 - Providing for ethical and fair treatment of participants; and
 - Ensuring probity, accountability and transparency in procurement operations.

- Policies developed must include how the City of Unley manages:
 - The contracting out of services; and
 - Competitive tendering and the use of other measures to ensure that services are delivered cost-effectively; and
 - The use of local goods and services; and
 - The sale or disposal of land or other assets.
- In the main, these Policies are conventionally predicated towards the City of Unley ensuring it engages with the market as the initiator of the engagement process to acquire goods, works or services from an external party. However, currently there is no formal legislative or statutory framework the City of Unley is obliged to comply with in dealing with unsolicited proposals initiated by external third parties.

13. AVAILABILITY OF POLICY

13.1. The Policy is available for public inspection during normal office hours at:

The Civic Centre,
181 Unley Road, Unley SA 5061.

A copy may be purchased for a fee as determined annually by the City of Unley.

It is also available for viewing, download and printing free of charge from the Council’s website www.unley.sa.gov.au.

14. DOCUMENT HISTORY

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| Date | Ref/Version No. | Comment |
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