

Unsolicited Proposal Procedure

Procedure Author	General Manager – Strategy and Corporate
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1. Purpose

Local Government is a natural leader in local economic development. Councils are perfectly positioned to work with local stakeholders to drive a place-based approach to achieve economic prosperity.

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.

This Procedure provides a framework for new and innovative ideas to be brought forward. This Procedure also gives confidence to investors and the community that unsolicited proposals will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value.

2. References and Supporting Documentation

This Procedure is to be read in conjunction with the Procurement Policy

- *Local Government Act 1999*
- *Independent Commissioner Against Corruption Act 2012*
- Risk Management Framework
- Worker Code of Conduct
- Procurement Procedure
- Industry Participation Procedure
- Annexure A – Process Flowchart
- Unsolicited Proposal Application Form
- Delegations Register
- City of Playford Global Glossary

3. Application

Mayor and Chief Executive Officer	Execution of a Contract document requiring the affixation of the Common Seal of the Council, following the resolution of Council.
Chief Executive Officer (CEO)	To approve progression of an unsolicited proposal of a value exceeding expenditure limits sub-delegated to General Managers (Minimum approval level set within this Procedure).

	Approval of an Officer maintaining involvement in an unsolicited proposal process where an actual or potential conflict of interest has been declared.
General Managers	The minimum authority level set within this Procedure. Approve progression of an unsolicited proposal, of a value within CEO sub-delegated financial levels, to a following stage.
Senior Manager - Finance	Ensure this Procedure is reviewed by Council as required.
Internal Auditor Position Title	Conduct periodic audit of Council's unsolicited proposal processes and assist in the development of assurance metrics to ensure compliance with this Procedure.
Manager – Procurement and Accounts Payable	Ensure correct application of this Procedure in the development of systemised and non-systemised processes. Development and maintenance of internal training tools to assist in the correct application of this Procedure by Officers.
Procurement Team	Facilitation of the process outlined in this Procedure. Facilitation of training to Council Officers to ensure correct application of this Procedure.
Officers holding CEO sub-delegation pursuant to Section 137 of the Local Government Act 1999 (Minimum General Manager)	Approval of expenditure of Council funds and the process undertaken preceding the approval request, within Financial limitations delegated.
Officers holding CEO sub-delegation pursuant to Section 37 of the Local Government Act 1999 (Minimum General Manager)	Enter into contract arrangements on behalf of Council, within Financial limitations delegated.
Risk & WHS Team	Assistance to Officers in the use of Council's Risk Management Framework and risk assessment tools.
Workers	Ensure compliant application of this Procedure in all unsolicited proposal activities undertaken.

4. Procedure

4.1 Council's Role and Functions

- 4.1.1 The Council is a council constituted under the *Local Government Act 1999* (SA).
- 4.1.2 The Council's principal role and functions are detailed in sections 6 and 7 of the *Local Government Act 1999*.
- 4.1.3 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

4.2 Definition of an Unsolicited Proposal and Application of this Procedure

- 4.2.1 The Council has adopted this Procedure for the purpose of section 49 of the *Local Government Act 1999*.

- 4.2.2 This Procedure applies to any unsolicited proposal that a proponent submits to the Council.
- 4.2.3 An unsolicited proposal is:
- 4.2.3.1 *a new and innovative proposal from the private and non-government sector that could assist the Council to achieve its strategic objectives or satisfy a community need.*
- 4.2.3.2 *a proposal submitted to the Council that has not been requested by the Council through its regular procurement processes.*
- 4.2.4 An unsolicited proposal may include a proposal for:
- the purchase, lease or development of Council owned or managed land; or
 - the delivery of goods or services to or on behalf of the Council; or
 - the provision of infrastructure for the community; or
 - innovative goods and or services requiring a need to perform proof-of-concept testing or outcome-based trials.
- 4.2.5 The minimum financial thresholds for an unsolicited proposal under this Procedure is \$20,000.
- 4.2.6 Where an unsolicited proposal involves more than one Council, the relevant Councils may resolve to adopt any one of their unsolicited proposals Procedures, with any required variations, to apply to that proposal in place of their individual Procedures.

4.3 Council's Objectives

- 4.3.1 The following objectives will guide the Council's consideration of unsolicited proposals in accordance with this Procedure.
- 4.3.1.1 promoting the development of innovative ideas by the private and community sector to support the Council's role and functions discussed in clause 4.1 of this Procedure and the Council's broad objectives as outlined in its Strategic Plan;
- 4.3.1.2 ensuring that unsolicited proposals are received and assessed via an open, transparent and fair process that involves high standards of probity and public accountability;
- 4.3.1.3 ensuring that the unsolicited proposals process is not used to circumvent the Council's regular procurement processes where appropriate;
- 4.3.1.4 ensuring value for money for the Council is achieved from any unsolicited proposal;
- 4.3.1.5 maximising the benefits from unsolicited proposals for the Council and its constituents; and
- 4.3.1.6 ensuring the Intellectual Property of a party submitting an unsolicited proposal is appropriately protected.

4.4 Period of Exclusivity

4.4.1 Criteria for assessment.

The Council may, in its absolute discretion, enter into a period of exclusive negotiation with a proponent who has submitted an 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:

4.4.1.1 *No competing proposals*

The Council will consider whether the subject matter of an unsolicited proposal is already the subject of existing or proposed procurement 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 (as described in paragraph 4.5.3.1 below).

4.4.1.2 *Community need/Council priority*

An unsolicited proposal must:

- promote the Council's role and functions discussed in clause 4.1 of this Procedure;
- be broadly consistent with the Council's objectives outlined in its Strategic Plan; and
- provide an economic, social or environmental outcome for the Council.

4.4.1.3 *Uniqueness*

It is imperative that an unsolicited proposal demonstrates how and why it is unique to justify the Council considering the proposal under this Procedure rather than via its usual procurement processes.

A proponent may be able to establish the uniqueness of its proposal by demonstrating that:

- its 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);
- that the proponent has unique finance arrangements that enable it to deliver the proposal where other parties would not be able to; or
- a combination of factors which may not stand alone as being unique but which together create a unique proposal.

4.4.1.4 *Value for money*

The proposal must represent value for money for the Council. 'Value' can include:

- financial benefits;
- economic benefits; and
- community benefits.

4.4.1.5 *Capacity and capability of proponent*

The proponent must have the skills, experience and resources required to enable it to deliver the proposal.

4.4.2 The exclusivity period.

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

- 4.4.2.1 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;
- 4.4.2.2 the exclusivity period will be limited to the development of the specific proposal submitted by the proponent to the Council;
- 4.4.2.3 the exclusivity period will be for a set period as advised by the Council to the proponent;
- 4.4.2.4 the Council may set specific terms and conditions for the exclusivity period which it will advise the proponent of in writing;
- 4.4.2.5 the Council may end the exclusivity period at any time and withdraw from exclusive or all negotiations with the proponent; and
- 4.4.2.6 all correspondence between the Council and the proponent will be kept confidential, subject to any legislative requirements.

4.5 Process for Receipt and Consideration of Unsolicited Proposals

4.5.1 Facilitation of an Unsolicited Proposal through Council.

All unsolicited proposals provided to Council will be registered and facilitated by Council's Procurement team. The Procurement team will register the proposal in the Procurement team work plan assigning a unique identifying number and will assign the facilitation of the proposal through Council to the most adequately experienced procurement team member. The team member assigned will be herein referred to as the Unsolicited Proposal Coordinator

4.5.1.1 The key role of the Unsolicited Proposal Coordinator is to:

- ensure in the first instance that the proposal broadly conforms to the criteria set out in clause 4.2; and
- facilitate the consideration of the proposal through Council, ensuring adherence to the following process.

4.5.2 Pre-lodgment meeting.

Before formally submitting an unsolicited proposal via the process detailed below, the proponent may request a pre-lodgment meeting with the Unsolicited Proposal Coordinator. This meeting is not mandatory but it may assist the proponent to determine if their proposal is one that may be considered under this Procedure.

Proponents are encouraged to bring a draft completed Application Form with them to this meeting.

Nothing that is discussed at the pre-lodgment meeting binds the Council or the proponent and the proponent may continue with lodgment of its proposal notwithstanding any feedback that it may receive at or following the pre-lodgment meeting.

4.5.3 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:

1. Initial Proposal
2. Detailed Proposal
3. Contract Negotiation

Each of these stages is discussed in more detail below.

4.5.3.1 *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 this Procedure; and
- 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: UnsolicitedProposals@playford.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 Procedure 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 (Assessment Panel).

The Assessment Panel will determine whether the proposal meets the criteria for it to be considered under this Procedure. To make its decision, the Assessment Panel may consult with other Council departments and professional advisers as it deems necessary.

If the Assessment Panel 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 Delegate. Council's CEO sub-delegated financial authority thresholds shall form the basis of the selected Delegate, however shall be set at a minimum level of General Manager.

If the Assessment Panel recommends that the proposal not be accepted or the Council's Delegate does 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 Council's Delegate does 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, where applicable;
- the broad terms and timeframes for Stage 2 consideration of the proposal; and
- 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 it has all of the information it needs to consider the proposal, is 30 days.

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

4.5.3.2 *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:

- 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; and
- any other matters that the Council considers necessary or desirable.

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

- the value for money proposition from the proposal;
- 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 consideration of risk; and
- the proposed delivery method.

During Stage 2 the Unsolicited Proposal Coordinator will:

- convene meetings of the Steering Committee with any other subject matter experts, professional advisers and other persons that the Unsolicited Bids Coordinator sees fit;
- convene meetings with the proponent;
- request further information from the proponent as required;
- obtain reports and further information for the Council's consideration of the proposal; and
- arrange the preparation of a detailed report on the proposal for the Council Delegate's 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; and
- make themselves available to participate in meetings requested by, and respond to communications from, the Unsolicited Bids Coordinator.

At the end of Stage 2, a report and recommendation will be prepared for the Council Delegate's consideration and the proponent will be advised in writing of the Delegate's recommendation with respect to 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 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
- that all or part of the proposal is not suitable for further consideration and its consideration under this Procedure is now at an end.

4.5.3.3 *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.

Once a contract has been agreed in principle between the Council Administration and the proponent, the contract will be submitted to the Council Delegate 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; or
- that the Council does not agree to enter into the contract and that its consideration of the proposal under this Procedure is now at an end.

4.6 Probity Framework

- 4.6.1 It is a primary objective of this Procedure 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 Procedure, probity principles and protocols will be established when dealing with proponents in relation to their unsolicited proposals to ensure:
- 4.6.1.1 proposals are received, assessed and negotiated, and decisions are made, through an approved and transparent framework;
- 4.6.1.2 decisions are made through a robust framework and so that they will deliver the best outcomes for the Council and its community;
- 4.6.1.3 confidential information is protected; and
- 4.6.1.4 any perceived conflict of interest, bias or misconduct is eliminated.
- 4.6.2 Council may, at any Stage outlined in this Procedure, engage a probity advisor.

4.7 Intellectual Property Rights

- 4.7.1 The Council acknowledges the unsolicited proposals may contain Intellectual Property of the proponent and/or third parties.
- 4.7.2 If the Council declines to consider, or ends its consideration of, an unsolicited proposal submitted in accordance with this procedure, 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.

4.8 Supplementary Information

- 4.8.1 The Council may from time to time, at its discretion, publish supplementary information to assist proponents with the interpretation and application of this Procedure.

4.9 Publication of Details of Unsolicited Proposals

- 4.9.1 Council may, where deemed appropriate for the level of risk and or community impact, publish the consideration of an Unsolicited Proposal. The publication will give due consideration to any Intellectual Property rights of the proponent and as such the publication may be drafted in consultation with the proponent.

5. Feedback

Your feedback on this policy is invited and can be directed to the Manager Governance via email to governance@playford.sa.gov.au or by calling the Customer Contact Team on 8256 0333.

Administration use only

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1	25 May 2021	Ordinary Council Resolution No. 4615	New Procedure

