



MOUNT BARKER
DISTRICT COUNCIL

TITLE: Unsolicited Proposal Policy

REFERENCE NUMBER:	DOC/18/127057
RESPONSIBLE OFFICER/ DEPARTMENT:	Deputy CEO
APPLICABLE LEGISLATION:	Local Government Act 1999
MOUNT BARKER 2035 – DISTRICT STRATEGIC PLAN:	<p>Vision: The Mount Barker district will be recognised as being highly liveable, prosperous and safe, built from a foundation of community spirit and energy, quality of lifestyle and unique heritage, environment and landscape.</p> <p>Goal: Governance & Leadership Objective: Corporate capacity and Leadership</p> <p>Strategy: Foster Strategic alliances to deliver key projects and initiatives in partnership with key stakeholders.</p>
RELATED POLICIES / CORPORATE POLICIES:	<ul style="list-style-type: none">• Procurement Policy
SUPPORTING PROCEDURES:	<ul style="list-style-type: none">• Unsolicited Proposal Procedure
PREVIOUS CORPORATE POLICY DATE:	Nil
ENDORSED BY COUNCIL	4 February 2019
MINUTE RESOLUTION NUMBER:	OM20190204.08
NEXT REVIEW DATE:	4 February 2021

1. PURPOSE

Council are increasingly meeting the needs and expectations of the community in partnership with private and not the profit organisations and other tiers of government.

This policy establishes Councils' position and objectives when unsolicited proposals are presented to council for consideration.

2. SCOPE

This Policy is applicable to all unsolicited proposals with a value in excess of \$50,000.

3. DEFINITIONS

"Unsolicited Proposal" means a proposal submitted to the Council that has not been requested by the council through its regular procurement processes. An unsolicited proposal may include a proposal for:

- The purchase, lease or development of Council owned or managed land;
- The delivery of goods on services to or on behalf of the Council;
- The provision of infrastructure for the community;
- An innovation or entrepreneurial project with benefits to the Council; or
- Any other innovative or entrepreneurial proposal.

4. ROLES & RESPONSIBILITIES

Council

- to determine and maintain a Policy on Unsolicited Proposals.
- assess and resolve a position on unsolicited proposes presented by the CEO.

Chief Executive Officer:

- to implement the policy and associated procedures.
- to provide advice and recommendations to Council in relation to any unsolicited proposal.

Senior Management

- to provide advice to the CEO on any unsolicited proposal relative to this policy and associated procedures.

5. POLICY STATEMENT

Council recognises and endorses the valuable role that strategic partners can play in the provision of infrastructure and services to the Mount Barker district community.

Whilst the Council consults with the community and plans for the orderly delivery of infrastructure and services, the Council recognises that potential strategic partners and/or opportunities for the Council may have different time frames that results in unsolicited proposals being presented to the Council. Equally, in the ordinary course of business but outside of its routine procurement functions, the Council may receive unsolicited proposals in the form of innovative and entrepreneurial projects that may deliver community benefit.

The Council welcomes the submission of unsolicited proposals for consideration in relation to this policy and associated procedures.

The following objectives will guide the Council's consideration of unsolicited proposals;

- The proposal will support the Council's role and functions as detailed in the goals and objectives contained in the Mount Barker District Strategic Plan.
- Ensuring that unsolicited proposals are received and assessed through a transparent and fair process that involves high standards of probity and public accountability.
- Ensuring that the unsolicited proposal process is not used to circumvent the Council's regular procurement process.
- Ensuring the Intellectual Property of a party submitting a proposal is appropriately protected.

6. REVIEW

This Policy will be reviewed every two years or the frequency dictated in legislation, or earlier in the event of changes to legislation or related Policies and Procedures or if deemed necessary by the CEO.

7. ACCESS TO THE POLICY

The Policy is available for public inspection at the Customer Service Centre, at the Local Government Centre, 6 Dutton Road, Mount Barker, South Australia and on the Council's website www.mountbarker.sa.gov.au.

8. FURTHER INFORMATION

For further information on this Policy, please contact:

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MOUNT BARKER
DISTRICT COUNCIL

TITLE: Unsolicited Proposal Procedure

REFERENCE NUMBER:	DOC/18/127055
RESPONSIBLE OFFICER/ DEPARTMENT	Deputy Chief Executive Officer
APPLICABLE LEGISLATION:	Local Government Act 1999
MOUNT BARKER 2035 - DISTRICT STRATEGIC PLAN:	<p>Vision: The Mount Barker district will be recognised as being highly liveable, prosperous and safe, built from a foundation of community spirit and energy, quality of lifestyle and unique heritage, environment and landscape.</p> <p>Goal: Governance & Leadership Objective: Corporate capacity and Leadership</p> <p>Strategy: Foster Strategic alliances to deliver key projects and initiatives in partnership with key stakeholders</p>
RELATED POLICIES / CORPORATE POLICY / PROCEDURE	<ul style="list-style-type: none">• Procurement Policy• Unsolicited Proposal Policy
PREVIOUS PROCEDURE DATE:	Nil
APPROVED:	4 February 2019
NEXT REVIEW DATE:	4 February 2022

1. PURPOSE

The unsolicited proposal procedure sets out the various steps for the lodgement assessment and determination of an unsolicited proposal.

The procedure will provide clarity to the proponent, assessors and decision makers in relation to a proposal. The procedure will reinforce Council's procurement objectives to:

- enhance value for money;
- promote the use of resources in an efficient, effective and ethical manner; and
- make decisions with probity, accountability and transparency.

2. PROCEDURE

Stage One – Initial Proposal

1.1 Pre-lodgement meeting

Before submitting an unsolicited proposal, the proponent may request a pre-lodgement meeting with the Council's Chief Executive Officer.

This meeting is not mandatory but may assist the proponent to determine if their proposal is one that may be considered under this procedure.

(DOC/19/3397 - Template letter for proponents)

1.2 Lodgement.

The objective of the Initial Proposal Stage (Stage 1) 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:

1.2.1 The proposal is not one that can be considered under this procedure; or

1.2.2 The proposal warrants further consideration under this procedure.

A proposal must be submitted with a completed Application Form (Attachment A (available on councils website)) and any further information the proponent may wish to provide to support their proposal.

1.3 Assessment Criteria

In determining whether a proposal will proceed to Stage 2, with or without a period of exclusivity, the proposal will be assessed against the following criteria:

1.3.1 Is the subject of the proposal already the subject of an existing or proposed procurement process? If the answer is yes, it is unlikely that an unsolicited proposal will pass Stage 1 unless the proponent can demonstrate that their proposal has a distinct advantage;

- 1.3.2 The proposal demonstrates outstanding value for money in the form of financial, environmental and/ or community benefits;
- 1.3.3 the proposal cannot be readily delivered by competitors at all or within the timeframes proposed by the proponent;
- 1.3.4 the proponent owns something that would limit other parties from being able to deliver the proposal (for example, intellectual property or strategic land holdings);
- 1.3.5 that the proponent has innovative financial arrangements that enable it to deliver the proposal where other parties would not be able to;
- 1.3.6 that the proponent has a genuinely innovative idea;
- 1.3.7 a combination of factors which may not stand alone as being innovative but which together create a proposal worthy of consideration.
- 1.3.8 The proponent has the capacity, capability, skills, experience and required resources to successfully deliver their proposal. The proponent must provide evidence of such capability and capacity to deliver the proposal and must include any relevant experience in similar projects.

Any unsolicited proposal must, in addition to the criteria above:

- be consistent with the goals and objectives outlined in the Mount Barker District Strategic Plan 2035 or any related Lead Strategy;
- be consistent with Council's role and function; and
- provide an economic, social or environmental outcome for the council and community.

1.4 Stage One – Assessment Process

A proposal will not involve negotiation at this stage. This opportunity will arise in later stages should the Council determine to proceed to stages 2 and 3.

- 1.4.1 Once a proposal has been submitted in accordance with this procedure and the Chief Executive Officer determines there is sufficient information about the proposal to consider it, the Chief Executive Officer will then refer the proposal to relevant council staff, and external expert advisors as required.

1.4.2 Acting on the advice received, the Chief Executive Officer will either:

- 1) Advise the proponent that the proposal does not adequately meet the criteria for the proposal to proceed further; or
- 2) Prepare a report for Council's consideration recommending that the proposal proceed to Stage 2.

1.4.3 If the Chief Executive Officer determines that the proposal not be accepted or the Council Elected Members do not endorse the proposal, the proponent will be notified in writing of this outcome by the Council's Chief Executive Office. 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 Elected Members endorse the proposal through a confidential report, the proposal will proceed to Stage 2 and the proponent will be provided with the following:

1.4.3.1 notification that the proposal has been approved by the Council to proceed to Stage 2;

1.4.3.2 The broad terms and timeframes for Stage 2 consideration of the proposal including the period of exclusivity (if any) for discussions with the proponent; and

1.4.3.3 Information on any other matters relevant to the proposal and the Council's further consideration of it that the Council considers to be appropriate.

1.4.4 The anticipated timeframe for the completion of Stage 1 is 90 days and commences from when the Council's Chief Executive Officer has all of the information that is needed to consider the proposal.

1.5 Exclusivity Period

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

1.5.1 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;

1.5.2 the exclusivity period will be limited to the development of the specific proposal submitted by the proponent to the Council;

- 1.5.3 the exclusivity period will be for a set period as advised by the Council to the proponent;
- 1.5.4 the Council may set, in its absolute discretion, specific terms and conditions for the exclusivity period which it will advise the proponent of in writing;
- 1.5.5 the Council may end the exclusivity period at any time and withdraw from exclusivity or all negotiations with the proponent, at which time all relevant documents will be returned to the proponent or destroyed; and
- 1.5.6 all correspondence between the Council and the proponent will be kept confidential, subject to any legislative requirements.

Stage Two – Detailed Proposal

- 2.1 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:

- 2.1.1 confidentiality, conflict of interest, communication and probity Protocols;
- 2.1.2 Stage 2 participation terms and conditions;
- 2.1.3 Stage 2 assessment criteria;
- 2.1.4 timeframes including a period of exclusivity (if applicable) for discussion with the proponent;
- 2.1.5 information to be provided and/or shared;
- 2.1.6 governance requirements; and
- 2.1.7 any other matters that the Council considers necessary or desirable.

- 2.2 The matters that the Council may consider during Stage 2 are:
 - 2.2.1 the value for money proposition from the proposal for the Council;
 - 2.2.2 if the proposal is legally, technically and financially feasible;
 - 2.2.3 how the proposal would best be structured to deliver the best outcome for the Council;
 - 2.2.4 a cost/benefit analysis of the proposal;
 - 2.2.5 whether the proposal or any part of it would more appropriately be the subject of a competitive bidding process;
 - 2.2.6 the appropriate allocation of risk; and
 - 2.2.7 the proposed delivery method.
- 2.3 During Stage 2 the Council's Chief Executive Officer will:
 - 2.3.1 convene meetings of council staff with any other subject matter experts, professional advisers and other persons that the Council's Chief Executive Officer sees fit;
 - 2.3.2 convene meetings with the proponent;
 - 2.3.3 request further information from the proponent as required;
 - 2.3.4 obtain reports and further information for the Council's consideration of the proposal; and
 - 2.3.5 arrange the preparation of a detailed report on the proposal for the Council Elected Members' consideration.
- 2.4 During Stage 2, a proponent must:
 - 2.4.1 develop and submit a detailed proposal, consistent with the requirements outlined by the Council at the end of Stage 1;
 - 2.4.2 provide any additional information as required by Council; and
 - 2.4.3 make themselves available to participate in meetings requested by, and respond to communications from, the Council's Chief Executive Officer.

- 2.5 At the end of Stage 2, a confidential report will be prepared for the Council Elected Members' consideration and the proponent will be advised in writing of the Council's resolution and one of the following:
- 2.5.1 that all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis;
 - 2.5.2 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; or
 - 2.5.3 that all or part of the proposal is not suitable for further consideration and its consideration under this procedure is now at an end.
- 2.6 Any endorsement by Council of a proposal at Stage 2 is "in principle" endorsement of the detailed proposal and a desire to proceed to contract negotiations (Stage 3). Stage 2 endorsement does not bind or commit the council in any way other than to commence contract negotiations. Council retains the right not to proceed with the proposal should contract negotiation be unsuccessful.

All costs of preparing, lodging, developing and negotiating a proposal are to be borne by the proponent.

Stage Three – Contract Negotiation and Finalisation

- 3.1 If a proposal is successful is progressing through Stage 2, the Council and the proponent will then proceed to Stage 3 and enter into formal and final contract negotiations.
- 3.2 The Stage 3 negotiations will result in one of the following outcomes between the Proponent and the Council:
- 1. Both parties agree on the terms of a contract and execute same;
 - 2. The Council agrees to the contract, subject however to specified terms or conditions the Council requires;
 - 3. The Council does not agree to enter into the contract but resolves to pursue the proposal through another form of procurement; or
 - 4. The Council does not agree to enter into the contract and concludes any further consideration or assessment of the proposal.

3. General Provisions

3.1 Probity Framework

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 proposals submitted to ensure:

3.1.1 that proposals are received, assessed and negotiated, and decisions are made through an approved and transparent framework;

3.1.2 that decisions are made through a robust framework and so that they will deliver the best outcomes for the Council and its community;

3.1.3 that confidential information is protected and not disclosed (except for disclosures to professional advisers and where disclosure is required by law); and

3.1.4 that any perceived conflict of interest, bias or misconduct is eliminated.

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

3.2 Intellectual Property Rights

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

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

3.3 Supplementary Information

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

3.4 No Legal Relationship

By making an unsolicited proposal the proponent acknowledges:

3.4.1 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 in Stage 3; and

3.4.2 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.

3.5 ***Legislative Obligations***

In submitting a proposal proponents acknowledge that:

3.5.1 the Council may have legislative obligations that it will need to comply with in relation to a particular proposal and nothing in this procedure is intended to override or circumvent those obligations; and

3.5.2 that the processes established by this procedure are separate from, and do not override, other legislative approval processes that a proponent may need to participate in order to progress its proposal (for example, planning approval processes).

3.6 ***No Soliciting or Outside Discussions***

All queries or communications in relation to innovative proposals must be directed to the Chief Executive Officer 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 staff or Elected Members otherwise than as directed by the Council's Chief Executive Officer.

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.

3.7 ***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.

3.8 ***Costs of Proposal***

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

3.9 ***Use of Documents***

Any documents provided by the Council to a proponent during any of the Stages outlined in this procedure must only be used for the purpose of progressing a proposal in accordance with this procedure and must be returned to the Council at the end of the process on request.

3.10 ***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.

3.11 ***Interaction with Other Council Policies***

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 an innovative proposal that is covered by this procedure.

3.12 ***General Acknowledgements***

Proponents acknowledge when submitting an innovative proposal in accordance with this procedure that the Council:

3.12.1 makes no representations or undertakings that it will enter into a contract with any proponent in respect of the subject matter of any innovative proposal;

3.12.2 may undertake 'due diligence';

3.12.3 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;

3.12.4 accepts no responsibility for any proponents failing to undertake any investigations or understanding any matters that may impact on its proposal;

3.12.5 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; and

3.12.6 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 Council's Chief Executive Officer.

3.13 ***Council's General Rights***

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

3.13.1 if it assesses that a proposal does not meet the criteria to be considered or considered further under this procedure, to make an approach to the market in respect of the subject matter of the proposal and end consideration of the innovative proposal and withdraw from any negotiation with the proponent in relation to it;

3.13.2 amend, vary or revoke and replace this procedure at any time;

- 3.13.3 accept or reject any unsolicited proposal;
- 3.13.4 subject to any period of exclusivity determined in accordance with this procedure and any agreement with a proponent to the contrary, make them public;
- 3.13.5 accept all or part of an unsolicited proposal;
- 3.15.6 discontinue negotiations with any proponent; and
- 3.15.7 include any proponent's name in Council reports and, subject to any period of exclusivity determined in accordance with this procedure and any agreement with a proponent to the contrary, make them public.

3.14 ***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.

3.15 ***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 the Act.

3.16 ***Freedom of Information***

The Freedom of Information Act 1991 (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 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.

3.17 ***Departure from Procedure***

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

3.18 ***Review of Procedures***

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

Annexure A Process Flowchart

STAGE ONE – INITIAL PROPOSAL	
Proponent Actions <ul style="list-style-type: none"> • Submit the completed Application Form and any further information • Submit any further information that may be requested. 	Council Actions <ul style="list-style-type: none"> • Determine if sufficient information has been provided • Convene a meeting of relevant staff and external experts where appropriate • Determine whether the proposal meets the criteria for it to be considered under the procedure • Prepare a report to the Council if the proposal is recommended for Stage 2. • Advise the proponent of the Council decision.
POSSIBLE OUTCOMES <ul style="list-style-type: none"> • That the proposal is not suitable for further consideration and is now closed. OR <ul style="list-style-type: none"> • That the proposal may form the basis for a competitive bidding process. OR <ul style="list-style-type: none"> • That the proposal will proceed to Stage 2. 	

STAGE TWO – DETAILED PROPOSAL

Proponent Actions

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

Council Actions

- Establish the Stage 2 framework and advise the proponent of this
- Arrange meetings of relevant staff with any other subject matter experts, professional advisers and other persons.
- Arrange meetings with 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 the Council Elected Members' consideration.
- Advise the proponent of the Council's decision.

POSSIBLE OUTCOMES

- That all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis

OR

- That all or part of proposal should 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.

STAGE THREE**Proponent Actions**

- Negotiate contract terms

Council Actions

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

POSSIBLE OUTCOMES

- That the Council agrees to the terms and conditions of the contact and will proceed to execute it.

OR

- That the Council agrees to the contract, subject however to specified variations or conditions.

OR

- That the Council does not agree to enter into the contract but instead determines to pursue or consider pursuing the innovative proposal through another process.

OR

- That the Council does not agree to enter into the contract and that its consideration of the proposal under the procedure is now at an end.

4. REVIEW

This Procedure will be reviewed every three years or if aligned with a Policy at the time the policy is reviewed, or earlier in the event of changes to legislation or related Policies and Procedures or if deemed necessary by the General Manager, Planning and Development.

5. ACCESS TO THE PROCEDURE

The Procedure is available to staff via the Policies section of the Intranet.

6. FURTHER INFORMATION

For further information on this Procedure, please contact:

Title: Manager Strategic Projects, Planning & Development
Address: PO Box 54, Mount Barker
South Australia, SA, 5251
Extension: 8391 7269
Email: lgray@mountbarker.sa.gov.au

APPLICATION FORM
(Blank Template – Example Only)

Unsolicited Proposal for consideration by Mount Barker District Council

Legal Name of Proponent:

Address:

Date:

Project Title:

Project Summary:
(200 words)

Authorised Contact Person:

Name:
Address:
Email:
Phone:

Description of Proposal:

A proponent should provide as much detail as possible for what is proposed. Plans and/or reports should be attached if appropriate.

Requirements of the Council:

A proponent should identify what you are seeking from the Council for the proposal.

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

Assessment Criteria

A proponent must address the Assessment Criteria contained in the Unsolicited Proposal Procedure.

Risks

A proponent should list the risks and mitigation strategies for the proposal for the proponent and the Council.

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 the Intellectual Property claimed
- Registration details (where applicable); and
- 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.

The proposal is to be signed by an authorized representative of the proponent.

Name:

Position:

Signature:

Date: