

UNSOLICITED PROPOSAL POLICY

Policy Type	Council
Responsible Department	Corporate Support
Responsible Officer	Manager Finance & Procurement
Related Policies and Procedures	<ul style="list-style-type: none"> • Procurement Policy • Unsolicited Proposal Framework • Prudential Management Policy • Fraud and Corruption Prevention Policy • Employee Code of Conduct
Community Plan Link	<p>3. Economic Prosperity 3.1 Unley is recognised as an easy place to do business</p> <p>4. Civic Leadership 4.1 We have strong leadership and governance 4.3 Our business systems are effective and transparent</p>
Date Originally Adopted	25 October 2021
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Next Review Date	August 2027
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1. PREAMBLE

- 1.1. Council recognises the benefits of partnering with the private sector and not-for-profit organisations to deliver social, environmental, and economic outcomes for the community. To that end, Council supports the development and presentation of innovative ideas and opportunities that benefit the community and/or council operations.
- 1.2. This Policy describes how Council engages with proponents who make unsolicited proposals and sets out the process for Council to follow in the consideration and evaluation of an *unsolicited proposal*.

2. SCOPE

- 2.1. This Policy applies to all proposals received by Council that have not been requested through a procurement process.
- 2.2. *Unsolicited proposals* include, but are not limited to, proposals for the:
 - 2.2.1. Purchase, lease or development of land owned or managed by Council;

- 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, works or services to or on behalf of Council;
- 2.2.4. Provision of infrastructure for the community;
- 2.2.5. An innovation or entrepreneurial project with benefits to Council; or
- 2.2.6. Any other innovative or entrepreneurial proposal.

3. PURPOSE/OBJECTIVES

- 3.1. Council recognises the need to achieve balance between supporting innovation and running formal procurement processes. In considering *unsolicited proposals*, Council will:
 - 3.1.1. support the development of innovative ideas by the private and community sectors that relate to Council's role, function and priorities;
 - 3.1.2. ensure that *unsolicited proposals* are received and assessed through a transparent and fair process involving high standards of probity and public accountability;
 - 3.1.3. ensure the protection of Intellectual Property in *unsolicited proposals* by keeping such content confidential wherever possible;
 - 3.1.4. ensure the *unsolicited proposal* process is not used to circumvent Council's Procurement Policy and processes, and not to disadvantage other suppliers of similar goods or services;
 - 3.1.5. ensure best value for money outcomes from an *unsolicited proposal* that move through to contract finalisation; and
 - 3.1.6. maximise the benefits to the community from an *unsolicited proposal*.

4. DEFINITIONS

<u>Term</u>	<u>Definition</u>
<i>Confidential Information</i>	Means any documentation or information of a confidential nature supplied by either of the parties to the other and may include scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by each party, but specifically excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by Law
<i>Intellectual Property</i>	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
<i>Probity</i>	Uprightness, integrity, honesty, proper and ethical conduct and propriety in dealings. It is often also used in government in a general sense to mean good process
<i>Procurement</i>	A series of activities that are undertaken when purchasing goods, works or services, based on three key phases, planning, purchasing and contract management

<i>Procurement Process</i>	The step-by-step process for the planning, establishment and contract management of small and large acquisitions
<i>Proponent</i>	A person, business or other organisation that approaches Council, its staff, Mayor or Councillors with an unsolicited proposal, or with the intention to submit an unsolicited proposal
<i>Unsolicited Proposal</i>	A proposal submitted to Council that has not been requested by Council through a procurement process which is more than marketing material or a general approach from a business to work with Council

5. ROLES AND RESPONSIBILITIES

<u>Role</u>	<u>Responsibilities</u>
Elected Members	<ul style="list-style-type: none"> Responsible for the approval and adoption of this Policy Must comply with the requirements of this Policy Advise the CEO if they are approached by a proponent of an <i>unsolicited proposal</i>; and Advise the proponent of an <i>unsolicited proposal</i> to communicate directly with the CEO or CEO's nominated delegate.
Chief Executive Officer (CEO)	<ul style="list-style-type: none"> Implementation of this Policy and associated procedures; The assessment and determination of a position on an <i>unsolicited proposal</i>; and Provision of advice and recommendations to Elected Members, as may be required and determined by the CEO or CEO's delegate
Executive Leadership Team (ELT)	<ul style="list-style-type: none"> Assisting the CEO, or CEO's delegate, with the assessment and determination of a position on an <i>unsolicited proposal</i>;
Management Team	<ul style="list-style-type: none"> Providing subject matter advice to the CEO on an <i>unsolicited proposal</i> pursuant to this Policy and associated procedures.
Procurement Staff	<ul style="list-style-type: none"> Providing procurement and probity advice to the CEO on an <i>unsolicited proposal</i> pursuant to this Policy and associated procedures.
All Employees	<ul style="list-style-type: none"> Must comply with the requirements of this Policy

6. STATEMENT

Principles

- 6.1. Council will apply the following key principles to the consideration of *unsolicited proposal*:
- 6.1.1. assessing if it meets an actual need on the part of the Council or the community;
 - 6.1.2. obtaining value in the expenditure of public money;
 - 6.1.3. providing for ethical and fair treatment of participants; and
 - 6.1.4. ensuring Probity, accountability and transparency in the evaluation process.
- 6.2. Council will consider *unsolicited proposal* in three stages as outlined below:

Stage 1: Initial Proposal	The objective of the Initial Proposal Stage (Stage 1) is for the CEO or the CEO's delegate to determine if: <ul style="list-style-type: none"> the proposal is an <i>unsolicited proposal</i> and should be considered in accordance with this Policy; and the proposal warrants further consideration.
Stage 2: Detailed Proposal	If the CEO or the CEO's delegate determines that the <i>unsolicited proposal</i> warrants further consideration, the assessment moves into Stage 2. This stage involves exploring the feasibility of the proposal, how it will be delivered, whether it represents value for money and what outcomes it will deliver for Council and the community. Stage 2 is an interactive process between Council and the proponent.
Stage 3: Contract Negotiations and Finalisation	If determined by the CEO or CEO's delegate that a proposal represents a sufficient benefit to the community that is worthy of acceptance by Council, the proponent will proceed to Stage 3 and enter into formal contract negotiations with Council.

PROBITY

- 6.3. Council recognises that Probity is of fundamental importance to the review and assessment of *unsolicited proposals* and as such, Council will maintain high levels of Probity by:
- 6.3.1. ensuring that proposals are received, assessed and negotiated, and decisions are made through a fair and transparent process;
 - 6.3.2. ensuring that confidential information contained in an *unsolicited proposal* is protected (except for disclosures to third party advisors and as may be required by law); and
 - 6.3.3. ensuring the completion of declarations of conflicts of interest by key staff involved in the decision-making process.
- 6.4. Council may, at any stage in the evaluation process, engage a probity advisor or Probity Auditor.

Intellectual Property

- 6.5. Council acknowledges that an *unsolicited proposal* may contain Intellectual Property of the proponent and/or third parties. Wherever possible, Council will endeavour to keep confidential any intellectual property of the proponent and/or third parties.

No Legal Relationship

- 6.6. By making an *unsolicited proposal* the proponent acknowledges:
- 6.6.1. that no legally binding contract exists or is to be implied between Council and the proponent unless and until a formal contract is signed by both parties; and
 - 6.6.2. Council is under no contractual or other legal obligation to the proponent with respect to the receipt, assessment, consideration, acceptance or rejection of any

unsolicited proposal or the failure to receive, assess, consider or accept any *unsolicited proposal*.

No Soliciting or Outside Discussions

- 6.7. All communications in relation to an *unsolicited proposal* must be directed to the CEO or the CEO's nominated delegate to ensure consistency and transparency in the process. Council reserves the right to discontinue evaluation or negotiations regarding a proposal if the proponent discusses the proposal with anyone other than the CEO or the CEO's delegate, unless the proponent has sought and obtained prior written approval from the CEO or the CEO's delegate.
- 6.8. A proponent must not offer any incentive or otherwise seek to influence any person who is either directly or indirectly involved in the assessment or negotiation process. Council reserves the right to end any consideration of a proposal if a proponent fails to comply with this requirement.

7. LEGISLATION

- 7.1. Council acknowledges that there is no formal legislative or statutory framework that applies to an *unsolicited proposal*.
- 7.2. Council recognises that the *Local Government Act 1999 (SA)* establishes principles of good governance and sound practice in relation to procurement and will seek to apply these principles to the assessment of unsolicited proposals wherever possible.

8. AVAILABILITY OF POLICY

- 8.1. 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 Council.

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

9. DOCUMENT HISTORY

Date	Version No.	Comment
25 October 2021	Version 1	Adopted by Council
25 November 2024	Version 2	C0001/24