



Unsolicited Proposals Procedure

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Responsible Department:	Strategy & Development
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1. UNSOLICITED PROPOSALS

The Council has adopted the Public Private Partnership Policy (**Policy**) to provide a framework for non-traditional market engagement that ensures value for ratepayers while also recognising and protecting the innovative capacity of the private sector.

The following procedure (**Procedure**) creates a framework for new and innovative ideas to be brought forward. This Procedure also gives confidence to proponents and the community that Unsolicited Proposals (defined in clause 2) will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value.

2. DEFINITION OF AN UNSOLICITED PROPOSAL AND APPLICATION OF THIS PROCEDURE

2.1 This Procedure applies to any Unsolicited Proposal with an estimated value of over \$25,000.

2.2 An Unsolicited Proposal is a new and innovative proposal from the private sector, which has not been requested by the Council through its regular procurement processes, and which could assist the Council in achieving its strategic objectives or satisfying a community need.

2.3 An Unsolicited Proposal may include a proposal for:

2.3.1 the purchase, lease or development of Council owned or managed land;

2.3.2 the delivery of goods or services to or on behalf of the Council; or

2.3.3 the provision of infrastructure for the community.

2.4 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 policy, guidelines or procedures.

3. PROCESS FOR RECEIPT AND CONSIDERATION OF UNSOLICITED PROPOSALS

3.1 Pre-lodgement meeting

- 3.1.1 Before formally submitting an Unsolicited Proposal via the process detailed below, the proponent may request a pre-lodgement meeting with the Chief Executive Officer. 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.
- 3.1.2 Proponents are encouraged to bring a draft completed Application Form with them to this meeting.
- 3.1.3 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.

3.2 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:

Stage 1 – Initial Proposal/ Assessment

Stage 2 – Detailed Proposal/ Assessment

Stage 3 – Contract Negotiation

3.3 Exclusivity period

- 3.3.1 The Council may, in its absolute discretion, enter a period of exclusive negotiation with a person in relation to a proposed or submitted Unsolicited Proposal.
- 3.3.2 Exclusivity between the parties is not assumed simply by submission of an Unsolicited Proposal to the Council.
- 3.3.3 Exclusive negotiations may be justified in circumstances, for example, where a proponent's Intellectual Property should be protected or where, on a balancing of the Stage 1 assessment criteria, there is a clear benefit to the Council in doing so.
- 3.3.4 If the Council determines to enter into a period of exclusive negotiation with a proponent, the following broad terms will apply:
- 3.3.4.1 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;
- 3.3.4.2 the exclusivity period will be limited to the development of the specific proposal;
- 3.3.4.3 the exclusivity period will be for a set period as advised by the Council to the proponent in writing;

- 3.3.4.4 the Council may set specific terms and conditions for the exclusivity period which it will advise the proponent of in writing;
- 3.3.4.5 the Council may end the exclusivity period at any time and withdraw from exclusive or all negotiations with the proponent at no cost or liability to the Council; and
- 3.3.4.6 all correspondence between the Council and the proponent will be kept confidential, subject to any legislative requirements.

3.4 Stage 1: Initial Proposal

- 3.4.1 The objective of 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:
 - 3.4.1.1 the proposal may be considered under this Procedure; and
 - 3.4.1.2 the proposal should be considered further.
- 3.4.2 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 for Stage 1.
- 3.4.3 A proposal must be lodged electronically to: tenders@light.sa.gov.au and marked to the attention of the Chief Executive Officer.
- 3.4.4 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.
- 3.4.5 Once a proposal has been submitted in accordance with this Procedure and the Chief Executive Officer determines that it has sufficient information about the proposal to consider it, then the Chief Executive Officer will convene a meeting with representatives of relevant departments of the Council or external experts depending on the subject matter of the proposal (**Steering Committee**).
- 3.4.6 The Steering Committee will operate in accordance with a standard operating procedure as determined from time to time depending on the nature of the unsolicited proposal.
- 3.4.7 The Steering Committee will determine whether the proposal meets the criteria for it to be considered under this Procedure. To make its decision, the Steering Committee may consult with other Council departments and further professional advisers as it deems necessary.
- 3.4.8 If the Steering Committee determines that the proposal should proceed to Stage 2, a recommendation and report on this basis will be prepared for consideration of the Council's Elected Members.

- 3.4.9 If the Steering Committee recommends 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 Chief Executive Officer. This notice may also notify the proponent that the subject matter of the proposal may form the basis of a competitive bidding process pursuant to the Council's Procurement Policy.
- 3.4.10 Where the Council Elected Members endorse the proposal the proposal will proceed to Stage 2 and the proponent will be provided with the following:
- 3.4.10.1 notification that the proposal has been approved by the Council to proceed to Stage 2;
 - 3.4.10.2 a copy of the Council's resolution (subject to any confidentiality);
 - 3.4.10.3 the broad terms and timeframes for Stage 2 consideration of the proposal; and
 - 3.4.10.4 information on any other matters relevant to the proposal and the Council's further consideration of it that the Council considers to be appropriate.
- 3.4.11 The anticipated timeframe for the completion of Stage 1, commencing from when the Chief Executive Officer determines that it has all of the information it needs to consider the proposal, is 90 days, but maybe shorter or longer depending on the nature of the proposal and Council's resources and priorities prevalent at the time.
- 3.4.12 Any endorsement of a proposal at Stage 1 is "in principle" endorsement only so that the proposal may proceed to Stage 2 consideration.
- 3.5 Stage 1 Assessment Criteria**
- 3.5.1 In determining whether a proposal will proceed to Stage 2, with or without a period of exclusivity, the Steering Committee will assess the proposal against the following criteria:
- 3.5.1.1 **No competing proposals**
Whether the subject matter of the Unsolicited Proposal is already the subject of an existing or proposed Procurement Process or 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 unless the proponent can demonstrate that their proposal has a distinct advantage.
 - 3.5.1.2 **Community need/Council priority**
Whether the Unsolicited Proposal:
 - (a) promotes the Council's role and functions;
 - (b) is broadly consistent with the Council's objectives outlined in its Strategic Plan and other relevant documents; and

- (c) provides a clear economic, social or environmental beneficial outcome for the Council.

3.5.1.3 **Innovative**

Whether the Unsolicited Proposal is innovative, and how and why it is innovative such that it justifies the Council considering it under this Procedure rather than via its usual Procurement Processes.

A proponent may be able to establish their proposal is innovative by demonstrating that:

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

3.5.1.4 **Value for money**

Whether the proposal represents outstanding value for money for the Council. The Council should consider factors such as (but not limited to) whether the proposal delivers:

- (a) financial benefits;
- (b) economic benefits; and/or
- (c) community and social benefits.

3.5.1.5 **Capacity and capability of proponent**

Whether the proponent has the skills, experience, reputation, credibility and resources required to enable it to deliver the proposal.

3.6 **Stage 2: Detailed Proposal**

3.6.1 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.

3.6.2 Stage 2 will be an interactive process between the Steering Committee and the proponent within a framework established by the Steering Committee.

3.6.3 The Steering Committee will establish a framework for Stage 2 which may include:

- 3.6.3.1 confidentiality, conflict of interest, communication and probity protocols;

- 3.6.3.2 Stage 2 participation terms and conditions;
 - 3.6.3.3 Stage 2 assessment criteria;
 - 3.6.3.4 timeframes;
 - 3.6.3.5 information to be provided and/or shared;
 - 3.6.3.6 governance requirements; and
 - 3.6.3.7 any other matters that the Council considers necessary or desirable.
- 3.6.4 The matters that the Steering Committee may consider during Stage 2 are:
- 3.6.4.1 the value for money proposition from the proposal for the Council;
 - 3.6.4.2 if the proposal is legally, technically and financially feasible;
 - 3.6.4.3 how the proposal would best be structured to deliver the best outcome for the Council and the community;
 - 3.6.4.4 a cost/benefit analysis of the proposal;
 - 3.6.4.5 the appropriate allocation of risk;
 - 3.6.4.6 government, strategic and community priority;
 - 3.6.4.7 how innovative the proposal is; and
 - 3.6.4.8 the proposed delivery method.
- 3.6.5 During Stage 2 the Steering Committee may:
- 3.6.5.1 convene meetings with any other subject matter experts, professional advisers and other persons that the Steering Committee sees fit;
 - 3.6.5.2 convene meetings with the proponent;
 - 3.6.5.3 request further information from the proponent as required;
 - 3.6.5.4 obtain reports and further information for the Steering Committee's consideration of the proposal; and
 - 3.6.5.5 arrange the preparation of a detailed report on the proposal for the Council Elected Members' consideration.
- 3.6.6 During Stage 2, a proponent must:
- 3.6.6.1 develop a detailed proposal, consistent with the requirements outlined by the Council at the end of Stage 1;
 - 3.6.6.2 provide any additional information as required; and
 - 3.6.6.3 make themselves available to participate in meetings requested by, and respond to communications from, the Steering Committee.
- 3.6.7 At the end of Stage 2, a report and recommendation 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:
- 3.6.7.1 that all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis;

3.6.7.2 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

3.6.7.3 that all or part of the proposal is not suitable for further consideration and its consideration under this Procedure is now at an end.

3.7 Stage 3: Contract Negotiation

3.7.1 Stage 3 allows the Council and the proponent to negotiate a suitable contract or contracts for the implementation of the Unsolicited Proposal.

3.7.2 At the commencement of Stage 3, the Chief Executive Officer will advise the proponent of the process and protocols for the development of a contract.

3.7.3 Once a contract has been agreed in principle between the Council Administration and the proponent, the contract will be submitted to the Council Elected Members to seek their approval for the Contract to be executed. The Chief Executive Officer will then advise the proponent in writing of one of the following:

3.7.3.1 that the Council agrees to the terms and conditions of the contract and will proceed to execute it;

3.7.3.2 that the Council agrees to the contract, subject however to specified variations or conditions;

3.7.3.3 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

3.7.3.4 that the Council does not agree to enter the contract and that its consideration of the proposal under this Procedure is now at an end.

4. 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 their unsolicited proposals to ensure that:

- proposals are received, assessed and negotiated, and decisions are made, through an approved and transparent framework;
- decisions are made through a robust framework and so that they will deliver the best outcomes for the Council and its community;
- confidential information is protected; and
- 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 based on a risk assessment of the proposal under consideration.

5. INTELLECTUAL PROPERTY RIGHTS

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, 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.

6. 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.

7. CONFIDENTIALITY

Any report provided to the Council's Elected Members will generally be considered confidentially depending on the subject matter of the report and the Unsolicited Proposal in general.

8. GENERAL TERMS

8.1 Definitions

8.1.1 **Application Form** means the application form attached as Annexure A to this Procedure.

8.1.2 **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.

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

8.1.4 **Procurement Policy** means Council's Procurement Process as amended from time to time.

8.1.5 **Procurement Process** means the processes and methods outlined in the Council's Procurement Policy.

8.2 No legal relationship

By making an unsolicited proposal the proponent acknowledges:

8.2.1 without confirmation in writing, that no discussions in relation to a proposed unsolicited proposal or the submission of an unsolicited proposal assumes exclusivity between the parties;

8.2.2 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; and

8.2.3 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.

8.3 **Legislative obligations**

In submitting a proposal proponents acknowledge that:

8.3.1 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

8.3.2 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 in order to progress its proposal (for example, planning approval processes).

8.4 **No soliciting or outside discussions**

8.4.1 All queries or communications in relation to unsolicited proposals must be directed to the Chief Executive Officer in the first instance, with each proponent advised of any subsequent delegation, to ensure consistency and transparency in the unsolicited proposals 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 Chief Executive Officer.

8.4.2 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.

8.5 **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.

8.6 **Costs of proposal**

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

8.7 **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.

8.8 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.

8.9 Interaction with other Council policies

Unless specifically stated in this Procedure or determined by the Council, this Procedure is not intended to override any other policy of the Council that may apply to an 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 does not apply to an unsolicited proposal that is covered by this Procedure.

8.10 General Acknowledgements

Proponents acknowledge when discussing, negotiating, considering, preparing or submitting an unsolicited proposal to the Council in accordance with this Procedure, 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; and
- 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 Chief Executive Officer.

8.11 Council's General Rights

The Council may, at any stage of the process of discussing, receiving, considering and/or negotiating an unsolicited proposal, at no cost to itself or acceptance of liability to the proponent in any way:

- end consideration of the unsolicited proposal and withdraw from any negotiation with the proponent in relation to it if it considers or assesses that a proposal may not or does not meet the criteria to be considered or considered further under this Procedure, and make an approach to the market in respect of the subject matter of the proposal;
- amend, vary or revoke and replace this Procedure at any time;

- accept or reject any unsolicited proposal on any basis;
- subject to any period of exclusivity determined in accordance with this Procedure, negotiate with any person in relation to the subject matter of an unsolicited proposal;
- accept all or part of an unsolicited proposal;
- discontinue negotiations with any proponent at any time; and
- include any proponents 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.

8.12 **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

8.13 **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.

8.14 **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.

8.15 **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.

8.16 **Review of Procedure**

This Procedure will be reviewed regularly by the Council to ensure that the objectives of the Policy remain relevant and are met.

9. REFERENCES

Local Government Act 1999

Light Regional Council Procurement Policy

Treasury Management Policy

Prudential Management Policy

Risk Management Policy

History of Procedure Amendment

Procedure adopted by Council on date, 22 October 2019. Minute Reference Item 13.5.1 New Public-Private Partnerships Policy and Procedures, Page 2019/336

Procedure adopted by Council on 13 December 2022 Resolution No OCM-2022/221

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**UNSOLICITED PROPOSAL FOR CONSIDERATION BY
LIGHT REGIONAL COUNCIL**

1. GENERAL INFORMATION

Consortium or company details (if applicable):

Legal name/s of proponents or consortium or company participants:

Address:

Date:

2. PROPOSAL TITLE AND ABSTRACT

Title:

Abstract (approximately 200 words):

3. PROPOSAL DETAILS

Provide information on:

- the objectives of the proposal;
- the method of the approach;
- the nature and extent of expected outcomes; and
- the benefits that the proposal will deliver for the Council.

4. ASSESSMENT CRITERIA

Provide a brief description of how the proposal would meet each of the assessment criteria detailed in clause 3.5.

5. 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.

6. COSTS AND REQUIREMENTS OF THE COUNCIL

A proponent should identify what you are seeking from the Council for the proposal. This may include:

- land;
- use of assets, facilities, equipment, materials, personnel or other resources;
- finance; or
- 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.

7. RISKS

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

8. 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); and
- details of any items for which commercial confidentiality is claimed in whole or in part.

9. OTHER INFORMATION

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

10. PREFERRED CONTRACT ARRANGEMENT

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

11. CONTACT PERSON

A proponent must nominate a contact person to be the only point of contact for this proposal. All communications from the Chief Executive Officer about the proposal will be sent to this person.

Name:

Postal Address:

Email Address:

Phone number:

12. COUNCIL CONTACT DETAILS

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

13. VALIDITY PERIOD

Period of time for which the proposal is valid (this must be a minimum of six months):

14. PROPOSED DURATION OF THE PROPOSED ARRANGEMENTS

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

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: