



WHYALLA CITY COUNCIL

**WHYALLA**

<b>UNSOLICITED PROPOSALS POLICY</b>	
Type	Governance Statutory - Council
GDS Category	Governance – Public
Responsible Directorate	Corporate Services
Policy Adopted	27 February 2023
Review Period	4 yearly (within 12 months of a period election)
Last Reviewed	Not applicable
Next Review Date	27 February 2027
Policy Version Number	1
Applicable Legislation	<ul style="list-style-type: none"><li>• Section 49 Local Government Act 1999</li></ul>
Related Documents	<ul style="list-style-type: none"><li>• Procurement Policy</li><li>• Prudential Management Policy</li><li>• Disposal of Land and Other Assets Policy</li></ul>
Public Consultation Required	NO
File reference	0-227

## **1. INTRODUCTION**

- 1.1 New ideas are essential to the transformation and growth of the City of Whyalla.
- 1.2 With once-in-a-generation opportunities courtesy of hydrogen, green steel and other renewable projects of vital importance to the state and national economies on the horizon, City of Whyalla's vision clearly articulates an agenda to enhance the City's liveability, community and culture; leverage the area's economic assets and advantages; and support growth in key sectors.
- 1.3 The City of Whyalla is often approached with great ideas and welcomes those which place us at the forefront of social, cultural, commercial, technological, environmental and infrastructure progress.
- 1.4 In considering these, Council needs to demonstrate transparency and accountability. This Policy therefore provides a framework that allows Council to consider your great ideas.

## **2. SCOPE**

- 2.1 Council considers an unsolicited proposal (your great idea) to have the following properties:
  - 2.1.1 A new and innovative proposal from the private and non-government sectors.
  - 2.1.2 Could assist the Council to achieve its strategic objectives, satisfy a community need and deliver public value.
  - 2.1.3 It is not currently the subject of Council's regular procurement program
- 2.2 Your unsolicited proposal may include items like:
  - 2.2.1 The purchase, lease or development of Council owned or managed land.
  - 2.2.2 The delivery of goods or services to or on behalf of the Council.
  - 2.2.3 The provision of infrastructure for the community.
  - 2.2.4 An innovation or entrepreneurship with public value outcomes.
- 2.3 This Policy applies to all unsolicited proposals submitted to Council. City of Whyalla has the sole discretion as to when and if this Policy applies to a particular proponent, including if and when an exclusive negotiation or period of exclusivity will apply.

## **3. SUMMARY ROLES AND RESPONSIBILITIES**

- 3.1 Proponent
  - 3.1.1 Prepare submissions at each stage of the framework.
  - 3.1.2 Meet with Council representatives as needed.
  - 3.1.3 Negotiate with Council in the spirit of partnership for the benefit of the City.
- 3.2 Manager Finance
  - 3.2.1 Take a lead role in the receipt and coordination of the consideration of unsolicited proposals.

### 3.3 Steering Committee

- 3.3.1 Comprising the Executive Leadership Team and Manager Finance, together with other relevant staff pending the nature of the unsolicited proposal.
- 3.3.2 Consider unsolicited proposals through each stage of assessment, approve referral to the Audit and Risk Committee and Council as required.
- 3.3.3 Negotiate with proponents in the spirit of partnership for the benefit of the City.

### 3.4 Audit and Risk Committee

- 3.4.1 Provide feedback on unsolicited proposals at stage three of the Framework as required.

### 3.5 Council

- 3.5.1 Approve unsolicited proposal proceeding at stages three and five of the Framework as required.

## 4. FRAMEWORK

### Process

#### 4.1 A six-stage process will facilitate Council's consideration of unsolicited proposals:

- Stage 1 A proponent may wish to request a pre lodgement meeting with Council's Manager Finance to discuss their proposal before submission.
- Stage 2 Initial proposal, considered by Steering Committee.
- Stage 3 Detailed proposal, considered by Council's Audit and Risk Committee if required.
- Stage 4 Preliminary contract negotiations.
- Stage 5 Consideration by authorised delegate.
- Stage 6 Final contract negotiations.

### Criteria

#### 4.2 The following objectives will guide Council's consideration of unsolicited proposals:

- 4.2.1 Community need or Council priority.
- 4.2.2 Uniqueness.
- 4.2.3 Value for money / public value.
- 4.2.4 No competing proposals.
- 4.2.5 Capacity and capability of the proponent.

### Delegation

- 4.3 This Policy is intended to be scalable, with appropriate assessment and decision-making authority dependent on the value / risk of the proposal.
- 4.4 The default position for all unsolicited proposals is that where there are material impacts in terms of costs, labour, time, risk, reputation and public value that fall outside of Council's approved strategic plans and budgets, such proposals will require consideration and review by the Council.
- 4.5 Outside of the above default position, the following matrix is a guide to the application of this Policy.

<b>Authority</b>	<b>&lt;\$10,000</b>	<b>\$10,000 – \$100,000</b>	<b>&gt;\$100,000</b>
Council (including Audit and Risk Committee Review)	X	X	X
Chief Executive Officer	X	X	
Director	X		

- 4.6 The decision making of the above authorities will be supported by advice / recommendations from the Steering Committee and Council's Audit and Risk Committee.

### Exclusivity

- 4.7 Council may determine to enter into a period of exclusive negotiation at any stage of the process.
- 4.8 During any exclusivity period, 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.
- 4.9 The exclusivity period will be limited to the development of the specific proposal for a set period as advised by Council.
- 4.10 Council may set specific terms and conditions for the exclusivity period.
- 4.11 Council may end the exclusivity period at any time and withdraw from exclusive or all negotiations with the proponent at no cost of liability to Council.
- 4.12 All correspondence between Council and the proponent will be kept confidential, subject to relevant Council Policy provisions and legislative requirements.

### Intellectual Property Rights

- 4.13 Council acknowledges unsolicited proposals may contain intellectual property of the proponent and/or third parties.
- 4.14 If Council declines to consider, or ends its consideration of an unsolicited proposal, and elects to approach the market in relation to the subject matter of the proposal, Council will respect any intellectual property rights of the proponent and/or third parties as legally required.

## 5. GENERAL TERMS

- 5.1 No legal relationship – 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.
- 5.2 Legislative obligations – Council may have legislative obligations that it needs to comply with in relation to a particular proposal and nothing in this policy is intended to override or circumvent those obligations.
- 5.3 No soliciting or outside discussions
  - 5.3.1 All queries or communications in relation to unsolicited proposals must be directed to the Manager Finance to ensure consistency and transparency in the unsolicited proposals process.
  - 5.3.2 Council reserves the right to discontinue the process if the proponent discusses the proposal with Council Members or Council staff other than as directed by the Manager Finance.
- 5.4 Conflict of interest – proponents must inform 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. If any conflict or potential conflict exists, the proponent must advise Council how it proposes to address this.
- 5.5 Costs of proposal – a proponent bears its own costs of preparing, discussing and negotiating any unsolicited proposal with Council.
- 5.6 Publication of unsolicited proposals - Council may choose to publish details of unsolicited proposals received, being considered or approved at any Stage of the process outlined in this Policy.
- 5.7 Interaction with other Council policies:
  - 5.7.1 Unless specifically stated in this Policy or determined by Council, this Policy is not intended to override any other policy of Council that may apply to an unsolicited proposal.
  - 5.7.2 Council's Disposal of Land and Other Assets Policy and Procurement Policy do not apply to an unsolicited proposal that is covered by this Policy to the extent of any inconsistency with this Policy.
- 5.8 Council's general rights – Council may:
  - 5.8.1 At any stage of the process, if it assesses that a proposal does not meet the criteria to be considered or considered further, make an approach to the market in respect of the subject matter of the proposal and end consideration of the proposal and withdraw from any negotiation with the proponent in relation to it.
  - 5.8.2 Amend, vary or revoke and replace this Policy at any time.
  - 5.8.3 Accept or reject any unsolicited proposal.
  - 5.8.4 Subject to any period of exclusivity, negotiate with any person in relation to the subject matter of an unsolicited proposal.
  - 5.8.5 Accept all or part of an unsolicited proposal.
  - 5.8.6 Discontinue negotiations with any proponent.

- 5.8.7 Include any proponents name in Council reports and, subject to any period of exclusivity and any agreement with a proponent to the contrary, make them public.
- 5.9 Departure from Policy – Council may by resolution, where it is justified in the circumstances, determine that this Policy will not apply to a particular unsolicited proposal.