

	<b>U900 UNSOLICITED PROPOSALS</b>	Version No:	1
		Issued:	July, 2019
		Next Review:	July, 2023

## 1. POLICY STATEMENT

The City of Mount Gambier (Council) recognises that new ideas and partnerships are important to realising our strategic outcomes. The Council is open for business and it is looking to partner with people and organisations which share our communities' and Council's vision.

When handling such approaches, Council needs to demonstrate that it is delivering such projects with consistency and transparency, lawfully, and with accountability to ensure public value.

In order to ensure an unsolicited proposal received by Council does not duplicate a current or previous procurement evaluation process initiated by Council, it will verify that the proposal is unique and requiring further assessment.

## 2. OBJECTIVES

New ideas are essential to the ongoing growth of the Council area and region. Council's Community Plan – The Futures Paper 2016-2020 identifies the City's Vision to be an inclusive City where people lead fulfilling lives and we strive to create vibrancy, promote our identity and build our reputation as a place to live, work, visit and invest.

Council welcomes ideas that help deliver it's Community Plan objectives, including those that will push the Council area forward in terms of social, cultural, commercial, technological and environmental progress.

This policy, outlines the approach used to manage new and innovative ideas being presented to Council. It is intended to give confidence to innovators, entrepreneurs, investors and the community that proposals will be considered appropriately ensuring that they are treated consistently, transparently, lawfully and with accountability to deliver the highest standards of public value.

## 3. DEFINITIONS

**CEO** means the Chief Executive Officer of the Council.

### **An Unsolicited Proposal:**

- is a new and innovative proposal from the private and non-government sectors; and which
- could assist the Council to achieve its strategic objectives or satisfy a community need; and which
- has not been requested by the Council through its regular procurement.

Examples of an Unsolicited Proposal may include, but are not limited to, a proposal for:

- the purchase, lease or development of Council owned or managed land;
- the delivery of goods or services to or on behalf of the Council;
- the provision of infrastructure for the community; or
- an innovation or entrepreneurship with benefits to the Council.

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#### 4. SCOPE

Whilst the Council welcomes unsolicited proposals, the act of receiving and assessing proposals cannot in any way compromise the performance of Council's statutory or regulatory functions. Any exclusive negotiation that originates from an unsolicited proposal in accordance with this policy is conditional upon requisite approvals and compliance with relevant legislation such as the Local Government Act 1999, Development Act 1993, Planning, Development and Infrastructure Act 2016, South Australian Public Health Act 2011 and other legislation that the Council is responsible for implementing.

Where the Council receives any purported unsolicited proposal, the CEO will determine at their absolute discretion whether it satisfies the definition of an unsolicited proposal under this policy. This policy governs the consideration of any unsolicited proposal, to the exclusion of other Council policies. The process outlined in this policy may be varied or departed from on a case by case basis by the CEO or the Council at their absolute discretion, by notice in writing to the proponent.

Proponents are not entitled to rely upon this policy as forming any binding right, obligation or expectation upon any party, or any legal relationship between any parties. The Council 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.

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 policy, and make an approach to the market in respect of the subject matter of the proposal;
- amend, vary or revoke and replace this policy at any time;
- accept or reject any unsolicited proposal on any basis;
- subject to any period of exclusivity determined in accordance with this policy, negotiate with any person in relation to the subject matter of an unsolicited proposal;
- accept all or part of an unsolicited proposal; or
- discontinue negotiations with any proponent at any time.

The Council may, in certain circumstances, consider information and documents (including commercial information and documents) in confidence under the Local Government Act 1999, and may order that such documents be kept confidential. However, the Council is not compelled to do so under the Local Government Act 1999. Further, if any documents are ordered to be kept confidential, such orders may eventually expire or be revoked.

Additionally, the Freedom of Information Act 1991 gives members of the public rights to access documents of the Council.

To fall under the scope of this policy, the unsolicited proposal must have an estimated value in excess of \$50,000.

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## 5. PRINCIPLES

The Council may, at its absolute discretion, enter into a period of exclusive negotiation with a person 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.

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

- 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;
- the exclusivity period will be limited to the development of the specific proposal;
- the exclusivity period will be for a set period as advised by the Council to the proponent in writing;
- the Council may set specific terms and conditions for the exclusivity period which it will advise the proponent of in writing;
- 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
- all correspondence between the Council and the proponent will be kept confidential, subject to any legislative requirements.

In determining whether to treat a proposal as an unsolicited proposal for the purposes of this policy, and/or whether and how long to maintain any period of exclusivity, and/or to take any step contemplated under this policy, the Council and the CEO will have regard to any considerations which they see as appropriate, including the extent to which the following conditions are satisfied:

- there are no competing proposals;
- there is Community need/Council priority;
- the proposal offers value for money;
- the proponent can demonstrate capacity and capability;
- the proposal demonstrates uniqueness; and
- the proposal demonstrates innovation in a State sense.

## 6. IMPLEMENTATION

Before formally submitting an unsolicited proposal, the proponent may request a pre-lodgement meeting with the CEO. This meeting is not mandatory, but it may assist the proponent to determine if their proposal is one that may be considered under this policy.

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.

The process by which the Council will receive and consider unsolicited proposals is a three stage process.

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## STAGE ONE Initial Proposal

## STAGE TWO Detailed Proposal

## STAGE THREE Contract Negotiation

### **STAGE ONE – INITIAL PROPOSAL**

The initial proposal stage allows a proponent to provide a high level outline of the proposal to the CEO, enabling the CEO to consider whether it meets the definition of an unsolicited proposal set out in this policy. If the CEO determines that the proposal is an unsolicited proposal as defined under this policy, the Elected Members will make a decision as to whether the proposal will advance to the next stage.

### **POSSIBLE OUTCOMES**

- That the proposal is not suitable for further consideration and is now closed;
- That the proposal may form the basis for a competitive bidding process; or
- That the proposal will proceed to Stage 2.

### **Council Actions**

- Determine if sufficient information has been provided;
- CEO to determine whether the proposal satisfies the definition of an unsolicited proposal under this policy;
- Prepare a briefing to Elected Members if the proposal is recommended for Stage 2;
- Prepare a report to Elected Members;
- Elected Members to decide whether the proposal (or any part thereof) will proceed to Stage 2;
- Advise the proponent of the Council's decision.

### **Proponent Actions**

- Submit the completed Application Form (see Attachment 1) and any further information online, by email to [city@mountgambier.sa.gov.au](mailto:city@mountgambier.sa.gov.au); and
- Submit any further information that may be requested.

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## **STAGE TWO – DETAILED PROPOSAL**

This stage involves the CEO (and any nominated staff and/or advisers assisting the CEO) and the proponent working together to assess the feasibility of the proposal in greater detail, including how it will be delivered and whether it represents value for money for Council. Once this assessment is complete, advice will be prepared for Elected Members and the proponent will be advised whether the proposal will proceed to the next stage.

### **POSSIBLE OUTCOMES**

- That all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis;
- That all or part of the 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 policy is now at an end.

### **Council Actions**

- Arrange meetings with the proponent as required;
- Request further information from 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 Council's consideration;
- Elected Members to decide whether the proposal (or any part thereof) will proceed to Stage 3 and the terms of the period of exclusive negotiation; and
- Advise the proponent of the Council's decision.

### **Proponent Actions**

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

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### **STAGE THREE – CONTRACT NEGOTIATION**

Here all parties negotiate the legal and commercial terms. If terms are mutually agreed, formal project documentation is prepared for consideration by Council.

#### **POSSIBLE OUTCOMES**

- That the Council agrees to the terms and conditions of the contract/s and will proceed to execute it/them;
- That the Council agrees to the contract/s, subject however to specified variations or conditions;
- That the Council does not agree to enter into the contract/s but instead determines to pursue or consider pursuing the proposal through another process; or
- That the Council does not agree to enter into the contract/s and that its consideration of the proposal under this policy is now at an end.

#### **Council Actions**

- Advise the proponent of the process and protocols for the development of contract/s;
- Negotiate the contract/s;
- Submit any proposed contract/s to the Council for decision;
- Elected Members to decide whether or not to enter the contract/s
- Record reasons for entering into contract/s other than as a result of a tender process; and
- Advise the proponent of the Council's decision.

#### **Proponent Actions**

- Negotiate contract terms.

## **7. REVIEW & EVALUATION**

This Policy is scheduled for review by Council in July 2023; however it will be reviewed as required by any legislative changes which may occur.

## **8. AVAILABILITY OF POLICY**

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website [www.mountgambier.sa.gov.au](http://www.mountgambier.sa.gov.au). Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

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File Reference:	AF18/59
Applicable Legislation:	Local Government Act 1999
Reference: Community Plan - The Futures Paper	Goal 3, Our Diverse Economy
Related Policies:	Procurement and Disposal of Land & Assets P420 Prudential Management P415
Related Procedures:	
Related Documents:	

## DOCUMENT DETAILS

Responsibility:	CHIEF EXECUTIVE OFFICER
Version:	1.0
Last revised date:	July, 2019
Effective date:	16 July 2019
Minute reference:	16 July 2019, Minute Resolution 23.2
Next review date:	July, 2023
<u>Document History</u>	
First Adopted By Council:	16 July 2019
Reviewed/Amended:	

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## UNSOLICITED PROPOSALS - STAGE ONE - APPLICATION FORM

- Provide information on:**
- The objectives of the proposal and the method of the approach
  - What is needed from the City of Mount Gambier.
  - The nature and extent of the expected outcomes
  - The benefits that the proposal will deliver for the Council and community

**Applicant (company or consortium name):**

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

**Address:**

**Date:**

### PROPOSAL DETAILS

**Title:**

**Description:**

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

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**CONTACT PERSON**

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

**Name:**

**Postal address:**

**Email address:**

**Phone number:**

**COUNCIL CONTACT DETAILS**

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

**PROPOSED DURATION**

Period of time for which the proposal is valid (min. of six months).

**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:**

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**UNSOLICITED PROPOSALS - STAGE ONE – ASSESSMENT CRITERIA**

Provide a brief description of how the proposal would meet each of the following assessment criteria.

**No competing proposals**

If the proponent is aware of any existing proposal or procurement process currently under consideration by the Council or under active consideration by another proponent then the proponent should clearly demonstrate how their proposal is distinct from these other proposals.

**Community need/Council priority**

The proponent should demonstrate how its proposal:

- promotes the Council’s role and functions;
- is broadly consistent with the Council’s objectives outlined in its Strategic Plan; and
- provides an economic, social, cultural or environmental outcome for the Council.

The information that a proponent provides should include:

- details of benefits of the proposal;
- details of any economic activity or jobs that would be created by the proposal;
- details of any unmet community need that would be met by the proposal; and
- how the proposal is aligned with the Council’s strategic objectives.

**Uniqueness**

The proponent should provide information that demonstrates that its proposal is unique. This may be demonstrated by showing that:

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

**Value for Money**

The proponent should provide information that demonstrates how its proposal represents value for money for the Council, such as:

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

The information that a proponent provides should include:

- how the proposal is priced relative to competitors;
- the proposed sharing of costs and risks between the Council and the proponent; and
- the benefits to the Council of the proposal.

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### **Capacity and capability of proponent**

Proponents should provide information that demonstrates that it has the capacity and capability to deliver the proposal. Proponents should provide:

- a description of their organisation or consortium;
- details of previous experience in delivering similar projects;
- details of past performance on similar projects;
- details of relevant experience in prior dealings with the Council or another council;
- details of its skills, experience and competencies to deliver the project; and
- details of any third parties that would be proposed to be involved in the delivery of the project.

### **Innovation in a State sense**

Proponents should explain whether and how the proposal represents innovation from a State-wide perspective.

### **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.

### **Costs and Requirements of the Council**

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

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

### **Risks**

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

### **Preferred Contract Arrangement**

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

### **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.

### **Other Information**

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