



POLICY NO: CCC038

UNSOLICITED PROPOSALS POLICY

May 2019

© Central Coast Council

Wyang Office: 2 Hely St / PO Box 20 Wyong NSW 2259 | **P** 02 4350 5555

Gosford Office: 49 Mann St / PO Box 21 Gosford NSW 2250 | **P** 02 4325 8222

E ask@centralcoast.nsw.gov.au | **W** www.centralcoast.nsw.gov.au | ABN 73 149 644 003



Unsolicited Proposals Policy

AUTHORITY	NAME & TITLE
AUTHOR	Kathy Bragg, Senior Governance Officer
MANAGER	Shane Sullivan, Unit Manager Governance and Business Services
DIRECTOR	Evan Hutchings, Director Governance
CHIEF EXECUTIVE OFFICER	Gary Murphy, Chief Executive Officer

History of Revisions:

Version	Date	Reason	TRIM Doc. #
1	29 April 2019	Consideration of Policy after public exhibition period.	D13414947
2	13 May 2019	Adoption of Policy with changes	D13414947

Policy Rank: Strategic



Unsolicited Proposals Policy

Table of Contents

POLICY SUMMARY 4

PURPOSE OF THE POLICY 4

GENERAL..... 5

 GUIDING PRINCIPLES 5

DEFINITIONS..... 14

REVIEW..... 15



Unsolicited Proposals Policy

POLICY SUMMARY

1. An Unsolicited Proposal is an approach to Council from a Proponent with a proposal to deal directly with Council over a commercial proposition, where Council has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.

PURPOSE OF THE POLICY

2. Central Coast Council is continually seeking to capture value, and unique and innovative ideas from industry that provide real and tangible benefits to the people of the Central Coast. In order to achieve this it procures projects, goods and services by two broad means.
 - a. Council initiated procurement processes. This is the predominant form of procurement and is based on competition through tendering in order to achieve value for money in a fair and transparent manner. Such procurement is driven by the Council's strategic and operational planning processes and allows efficient and timely delivery of Council services. This form of procurement is not covered by this Policy.
 - b. Non-Government sector initiated proposals, not solicited by Council through the process described above. The non-Government sector includes private individuals, companies, not-for-profit entities and Local Authorities such as councils. Such proposals are by definition outside the normal planning and procurement processes of Council but may offer opportunities for real value for Council. These proposals are administered under this Policy for Submission and Assessment of Unsolicited Proposals.
3. The unsolicited proposals process is not a substitute for routine competitive procurement by Council. The focus of unsolicited proposals is on unique and innovative projects or services. Similarly, the unsolicited proposals process is not designed to replace applicable environmental and planning assessment processes. If Council decides to progress an unsolicited proposal, that should not be interpreted as any form of explicit or tacit support for planning approvals.
4. While direct negotiation with a proponent in response to an Unsolicited Proposal may be pursued in justifying circumstances, Council's usual procurement approach is to test the market. This generally results in the demonstrable achievement of value-for-money outcomes and provides fair and equal opportunities for private sector participants to do business with Council.



Unsolicited Proposals Policy

5. Council will generally only consider proposals where both the proposal and its proponent have unique attributes such that others could not deliver a similar proposal with the same value-for-money outcome. Council will consider directly negotiating with an individual or organisation that presents an Unsolicited Proposal where circumstances justify this approach and at its absolute discretion.
6. Council will generally only consider proposals that have direct alignment to the Community Strategic Plan and progress its outcomes and have the capacity to influence the Community Strategic Plan key indicators positively.
7. Council will at all times meet its obligations under the relevant legislation, including but not limited to section 55 of the Local Government Act 1993 – Tender requirements.
8. A purpose of this Policy is to ensure transparency, accountability and fairness in Council's dealings with all stakeholders for the benefit of the Central Coast community.
9. A purpose of this Policy aims to protect Council's reputation and minimise risk of corruption.

GENERAL

GUIDING PRINCIPLES

10. Optimise Outcomes

By their nature, Unsolicited Proposals are unlikely to be the current focus of Council's strategic planning or identified in the Community Strategic Plan. Proposals must therefore be considered in light of the wider benefits and strategic outcomes that may be derived. In order to proceed however, proposals must be broadly consistent with Local Government Area (LGA) objectives and plans, and offer some unique attributes that justify departing from a competitive tender process. Outcomes must always be in the best interest of the LGA.

In order to demonstrate that optimal Value for Money will be achieved, an "open book" approach to negotiations is to be adopted once the proposal has progressed to Stage 2 assessment. Council will also consider whole-of-Council impact and cost. The approach to demonstrating Value for Money is outlined Clause 10 of this Policy.

In order to guide the Proponent, Council will provide an early indication of an acceptable return on investment and other requirements to be achieved by the Proponent in the delivery of its proposal.



Unsolicited Proposals Policy

A triple bottom line approach (economic, environmental and social) must be applied to the consideration, assessment and implementation of proposals.

11. Uniqueness

Proposal and Proponent to be uniquely able to deliver proposed service

For unsolicited proposals to progress through the assessment process, the uniqueness needs to apply to both the proposal and the proponent. The essential questions to be addressed in any Unsolicited Proposal are:

- Can this proposal be readily delivered by competitors? If the answer is yes, then what, if any, justification would Council have to the public for not seeking best value through a competitive tender process? What benefit(s) would Council gain?
- Does the proponent own something that would limit Council from contracting with other parties if Council went to tender? This would include IP, real property and other unique assets.
- Are there other attributes which may not necessarily stand alone as unique but, when combined, create a "unique" proposal? This may include genuinely innovative ideas, including financial arrangements or solutions that are otherwise unlikely to be defined and put to market (e.g. alternatives to providing a Council service or substantive processes, products or methods for delivering a service that is not offered by other service providers and constitute a significant departure from traditional service delivery).

Types of proposals that are NOT considered unique and/or proposals that are unlikely to be progressed

- Proponents seeking to directly purchase or acquire a Council owned entity or property. Unless the proposal presents a unique opportunity to Council, Council is unlikely to enter into such an arrangement without an open tender process.
- Proponents with an existing government license to provide goods or services seeking to bypass a future tender process.
- Proposals for significant extensions/variations to existing contracts/leases, or the next stage of a staged project on the basis that the contractor is already "on-site" or has some other claimed advantages, absent of other "uniqueness" criteria.
- Proposals seeking to develop land that is not owned by Council or the proponent.



Unsolicited Proposals Policy

- Proposals that identify the proponent's skills or workforce capability as the only unique characteristic are unlikely to progress to Stage 2. A proponent with personnel holding superior expertise or experience in a particular field is not sufficient for Council to justify bypassing an open tender.
- Proposals to provide widely available goods or services to Council. This includes proposals for Council to purchase standard office administration products, software development and other readily available services.
- Proposals seeking only to change Council policy that have no associated project.
- Proposals for consultancy services.
- Proposals for projects where the tender process has formally commenced, whether published or not.
- Proposals that are early concepts or lack detail.
- Proposals seeking grants (e.g. scientific research), loans or bank guarantees etc.
- Proposals whose claim to uniqueness is trivial e.g. a 'unique' view from particular site.
- Proposals seeking Council support for a 'pilot' program.
- Proposals seeking to stop or suspend another Council process (e.g. compulsory acquisition).
- Proposals seeking an exclusive mandate, or exclusive rights over a Council asset, for a period of time so the Proponent can develop a feasibility study
- This Policy does not apply to Council community facilities unless outside the scope of current operation, lease arrangements and procedures.

12. Assessment Criteria

Proposals will be initially assessed against the Assessment Criteria as set out in the Unsolicited Proposals Procedure. Assessment will be based on the proposal satisfactorily meeting each of the criteria. Additional Criteria relevant to a particular proposal may also be applied at later stages. If so, the Proponent will be informed of the criteria in order for these to be addressed in its Detailed Proposal during Stage 2. A triple bottom line approach (economic, environmental and social) must be applied to the consideration, assessment and implementation of proposals.

Unsolicited Proposals Policy

The Criteria are:

- Uniqueness
- Value for money
- Whole of Council impact
- Return on investment
- Capability and capacity to deliver and carry out
- Affordability
- Risk allocation – who is bearing the risk

<p>Uniqueness</p>	<p>Demonstration of unique benefits of the proposal and the unique ability of the proponent to deliver the proposal. In particular the following are to be demonstrated:</p> <ul style="list-style-type: none"> • Can this proposal be readily delivered by competitors? If the answer is yes, then what, if any justification would Council have to the public for not seeking best value through a competitive tender process? What benefit(s) would Council gain? Are the benefits and outcomes of the proposal unlikely to be obtained via a standard competitive procurement process? • Does the proponent own something that would limit Council from contracting with other parties if Council went to tender? This would include intellectual property, real property and other unique assets. • Are there other attributes which may not necessarily stand alone as unique but, when combined, create a “unique” proposal? This may include genuinely innovative ideas, including financial arrangements or a unique ability to deliver a strategic outcome. It is possible that Council might agree to initiate market testing of a new proposal that has merit, but is not unique. <p>Note that while a proposal may contain unique characteristics such as design or technology, this may represent one option among a range of technologies or solutions available to Council.</p>
<p>Value for Money</p>	<p>Does the proposal deliver Value for Money to Council?</p> <p>What are the net economic benefits of the proposal (the status quo should be defined)?</p> <p>Is the proposal seeking to purchase a Council asset at less than its</p>



Unsolicited Proposals Policy

	<p>value in exchange for other services?</p> <p>Does the proposal provide time and/or financial benefits/savings that would not otherwise be achieved?</p> <p>A proposal is Value for Money if it achieves the required project outcomes and objectives in an efficient, high quality, innovative and cost- effective way with appropriate regard to the allocation, management and mitigation of risks.</p> <p>While Value for Money will be tested appropriately in the context of each specific proposal, factors that will be given consideration are likely to include:</p> <ul style="list-style-type: none">• Quality of all aspects of the proposal, including: achievable timetable, clearly stated proposal objectives and outcomes, design, community impacts, detailed proposal documentation and appropriate commercial and/or contractual agreements (including any key performance targets), and a clearly set- out process for obtaining any planning or other required approvals.• Innovation in service delivery, infrastructure design, construction methodologies, and maintenance.• Competitively tendering aspects of the proposal where feasible or likely to yield value for money.• Cost efficient delivery of Council policy targets.• Optimal risk allocation (refer to criterion below).• Evaluation of Value for Money may also include, but not be limited to the following quantitative analysis:• Interrogation of the Proponent's financial models to determine the reasonableness of any capital, land acquisition, service and maintenance cost estimates and, if relevant, revenue estimates (including the appropriateness of any user fees or prices and estimates of quantity levels).• This evaluation may include the use of independent experts or valuers, benchmarking analysis, sensitivity testing, and where appropriate, the use of comparative financial models like Public Sector Comparators or Shadow Bid Models, based on a Reference Project.• Return on Investment (refer to criterion below). <p>Note: A high level indicative Value for Money assessment will occur at Stage 1. A more detailed assessment of Value for Money will</p>
--	---



Unsolicited Proposals Policy

	occur at Stage 2 and beyond.
Whole of Council Impact	<p>Does the proposal meet a project or service need?</p> <p>What is the overall strategic merit of the proposal?</p> <p>What is the opportunity cost for Council if it were to proceed with the proposal?</p> <p>Is the proposal consistent with the Council's plans and priorities?</p> <p>Does the proposal have the potential to achieve planning approval, taking into account relevant planning and environmental controls?</p> <p>Does the proposal contribute to meeting the objectives of District Plans, Regional Plans and Metropolitan Plans, and delivering on housing targets?</p> <p>Consideration will be given to whether the proposal would require Council to reprioritise and reallocate funding.</p>
Return on Investment	<p>Is the proposed Return on Investment to the proponent proportionate to the proponent's risks, and industry standards?</p> <p>Where feasible, the proposed rate of return may be subject to independent review or benchmarking.</p>
Capability and Capacity	<p>Does the proponent have the experience, capability and capacity to carry out the proposal? What reliance is there on third parties?</p> <p>Where appropriate, the Proponent should provide referees in relation to working with government (e.g. NSW or other Australian governments).</p>
Affordability	<p>Does the proposal require Council funding, or for Council to purchase proposed services? Does Council have these funds available or budgeted and if not what source would be proposed?</p> <p>Where State funding is required, Council may undertake or require the Proponent to undertake a (Preliminary) Business Case and/or an economic appraisal at Stage 2 (where appropriate). Regardless of the outcome of the Business Case/economic appraisal, the proposal still needs to be affordable in the context of the Council's other priorities, and to be considered as part of Council's Budget process.</p>



Unsolicited Proposals Policy

Risk Allocation	What risks are to be borne by the proponent and by Council? Appropriate risk allocation and quantification may also be considered under the Value for Money criterion. Does the proposal require Environmental and Planning Approvals? If so, has the process been appropriately considered, including whether Council or Proponent bears the risks associated in obtaining the approvals.
------------------------	--

13. Interactive Process

Council will manage an interactive process with the proponent at all formal stages of assessment, commencing with the formal pre-lodgement meeting set out in the Procedure. During both the pre-lodgement meeting and the Stage 1 Assessment this interaction will be limited to clarification of the proposal by Council in order to effectively carry out the assessment. It will not be an opportunity to negotiate the details of the proposal. This opportunity will arise in later stages if the proposal proceeds past the Stage 1 Assessment.

14. Probity

Council seeks to conduct its commercial dealings with integrity. The assessment of Unsolicited Proposals must be fair, open and demonstrate the highest levels of probity consistent with the public interest. The assessment of Unsolicited Proposals will be conducted through the application of established probity principles that aim to assure all parties of the integrity of the decision making processes. These principles are outlined as below:

(a) Maintaining impartiality

Fair and impartial treatment will be a feature of each stage of the assessment process. The process will feature a clearly defined separation of duties and personnel between the assessment and approval functions.

(b) Maintaining accountability and transparency

Accountability and transparency are related concepts. The demonstration of both is crucial to the integrity of the assessment.

Accountability requires that all participants be held accountable for their actions. The assessment process will identify responsibilities, provide feedback mechanisms and require that all activities and decision making be appropriately documented.

Transparency refers to the preparedness to open a project and its processes to scrutiny, debate and possible criticism. This also involves providing reasons for all decisions taken and the provision of appropriate information to relevant stakeholders.



Unsolicited Proposals Policy

Relevant summary information regarding proposals under consideration at Stage 2 will be made publicly available. Further information may be published as appropriate.

(c) Managing conflicts of interest

In support of the public interest, transparency and accountability, Council requires the identification, management and monitoring of conflicts of interest. Participants will be required to disclose any current or past relationships or connections that may unfairly influence or be seen to unfairly influence the integrity of the assessment process.

(d) Maintaining confidentiality

In the assessment of Unsolicited Proposals there is need for high levels of accountability and transparency. However, there is also a need for some information to be kept confidential, at least for a specified period of time. This is important to provide participants with confidence in the integrity of the process. All proposals submitted will be kept confidential at Stage 1 of the assessment process.

(e) Obtaining value for money

Obtaining optimal value for money is a fundamental principle of public sector work. This is achieved by fostering an environment in which Proponents can make attractive, innovative proposals with the confidence that they will be assessed on their merits and where Council appropriately considers value. At Stage 2 of the assessment process, the approach to assessing Value for Money will be confirmed. Where a probity advisor has been appointed, their role is to monitor the evaluation process and ensure that Value for Money has been optimally considered. It is not the role of the probity advisor to determine whether the proposal meets the required Value for Money criterion.

15. Resource Commitments

In order for an Unsolicited Proposal to progress, Council and the Proponent will be required to commit resources. The staged approach to assessment as detailed in the Procedure seeks to balance resource input at each stage in order to reduce the potential for unnecessary expenditure.

While this Policy sets out information and processes to minimise costs for Proponents, Council will not normally reimburse costs associated with Unsolicited Proposals.



Unsolicited Proposals Policy

16. Governance Arrangements

Formal Stage 1 submissions will be reported to Council for consideration.

Once a proposal reaches Stage 2 of the assessment process by way of Council resolution, Council will establish appropriate governance arrangements that will detail the make-up and responsibilities of the Steering Committee and assessment/technical panels, management of confidentiality and conflict of interest, and provide details of the appointed Proposal Manager and probity advisor.

Unsolicited Proposals will take into account relevant processes and approval requirements as provided in the *Local Government Act 1993* and other relevant legislation.

The Stage 2 Participation Agreement will outline whether the proposal will be subject to an approval process outlined in another procurement policy document and/or a project assurance mechanism.

17. Participation Agreement

A Participation Agreement provides an agreed framework for Stage 2 which will be entered into by both Council and the Proponent in order to ensure the alignment of expectations regarding participation in the process.

The Participation Agreement will contain:

- Acknowledgement that a Value for Money outcome is a requirement for the proposal to proceed
- Assessment Criteria and other relevant Council requirements
- Communication channels, including a prohibition on lobbying
- Agreement regarding cost arrangements
- Resource commitments
- Conflict of interest management arrangements
- Confidentiality requirements
- Commitment to following an open book approach to discussions
- Timeframe – including gateway determination dates and reports for Council
- Approval requirements, including planning and environmental approvals.



Unsolicited Proposals Policy

18. Stage 3 Agreement

- A Stage 3 Agreement provides an agreed framework for participation in Stage 3 which will be entered into by both Council and the Proponent in order to ensure alignment of expectations. The Stage 3 Agreement will contain (but not limited to):
- Communication channels, including a prohibition on lobbying.
- Agreement regarding cost arrangements.
- Resource commitments.
- Conflict of interest management arrangements.
- Confidentiality requirements.
- Timeframe.
- Approval requirements, including planning and environmental matters where relevant. Except where otherwise approved, Council will require projects to have secured relevant planning consents as part of the unsolicited proposal agreement.
- Outline of any conditions arising from Council's consideration of the Detailed Proposal.
- Schedule of items and issues to be negotiated (this may be provided separately to the Stage 3 Agreement).

DEFINITIONS

The following definitions are used in this policy:

- (a) **Assessment Criteria** means the criteria upon which Unsolicited Proposals will be assessed.
- (b) **Assessment Panel** means a panel of Council representatives established to assess an Unsolicited Proposal (this may include specialist advisers).
- (c) **Council** means Central Coast Council.
- (d) **Detailed Proposal** means a submission by a Proponent to Council at the conclusion of Stage 2.
- (e) **Final Binding Offer** means a formal proposal submitted by the Proponent at the conclusion of Stage 3 which is capable of acceptance by Council.
- (f) **Council Website** means www.centralcoast.nsw.gov.au
- (g) **Initial Submission** means a submission by the Proponent during Stage 1 which briefly describes the Unsolicited Proposal (in accordance with the Schedule of Information Requirements).



Unsolicited Proposals Policy

- (h) **Initial Schedule of Information Requirements** means information to be prepared by Proponent in preparation for pre-lodgement meeting with Council.
- (i) **Intellectual Property** means inventions, original designs and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks; also trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by common law and through additional contractual obligations such as Confidentiality Agreements.
- (j) **Participation Agreement** means a signed by Council and the Proponent at the commencement of Stage 2.
- (k) **Proponent** means the person or organisation that submits an Unsolicited Proposal.
- (l) **Proposal Manager** means the person with responsibility for coordinating Council input for the receipt and assessment of an Unsolicited Proposal.
- (m) **Public Sector Comparator (PSC)** means an estimate of the net present value of a project's whole life costs and revenues using the most efficient and likely form of Council delivery.
- (n) **Reference Project** means the basis for calculating the PSC, reflecting Council delivery of the project by traditional means.
- (o) **Shadow Bid Model** means the Council's best estimate of a private party bid price.
- (p) **Stage 3 Agreement** means an agreement signed by Council and the Proponent at the commencement of Stage 3.
- (q) **Steering Committee** means a committee of senior Council representatives with responsibility for oversight of Council consideration of Unsolicited Proposals (this may include independent chair/members).
- (r) **Unsolicited Proposal** means an approach to Council from a Proponent with a proposal to deal directly with Council over a commercial proposition, where Council has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.
- (s) **Value for Money** means the overall value of a proposal to Council (refer to Clause 10 for further details).

REVIEW

19. Council will establish a structured periodic review to assess the effectiveness of the approach to dealing with Unsolicited Proposals and Direct Approaches.



Unsolicited Proposals Policy

RELATED RESOURCES

20. Legislation:

- (a) [Local Government Act 1993](#)

21. Associated Council Documents:

- (a) Unsolicited Proposals Procedure
- (b) [Code of Conduct](#)
- (c) [Procedures for the Administration of the Code of Conduct](#)
- (d) [Procurement or Sale of Goods, Services and Materials](#)