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1. Introduction

District Council of Grant (the **Council**) recognises the value in working together with the private and not-for-profit sectors to pursue innovative ideas that will create jobs, contribute to the best use of public assets and deliver a high quality of service to our community.

This Policy creates a framework for new and innovative ideas to be brought forward and also gives confidence to investors and the community that unsolicited proposals will be considered in a consistent, transparent and lawful manner to deliver the highest standards of public value.

2. Scope

The Council has adopted this policy for the purpose of section 49 of the *Local Government Act 1999* (the **LG Act**). This Policy (the **guidelines**) applies to any unsolicited proposal that a proponent submits to the Council, and in any circumstances in which the Council is considering waiving the application of any or all of its Procurement Policy (FINPOL04).

3. Definitions

Application Form means the Unsolicited Proposal Application Form (ED002) available on Council's website:
<https://www.dcgrant.sa.gov.au/services/forms>


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.

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

Unsolicited Proposals

Coordinator means the member of the Council's Management Team with the most appropriate skills and expertise relevant to the Unsolicited Proposal, as appointed by the Chief Executive Officer (CEO) from time to time.

Steering Committee means the panel of identified parties with appropriate skills and expertise relevant to the Unsolicited Proposal, which may include staff, consultants, business owners, community members etc, as appointed by the Chief Executive Officer (CEO) from time to time.

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4. Policy

4.1. Council's role and functions

The Council is a council constituted under the LG Act. The Council's principal role and functions are detailed in sections 6 and 7 of the Act. The Council's strategic vision for our community and area is outlined in the Strategic Management Plan, a copy of which is available on the Council's website or at its Council's office.

4.2. Definition of an Unsolicited Proposal

An unsolicited proposal is a new and innovative proposal from the private and non-government 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.

An unsolicited proposal may include 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; or

the provision of infrastructure for the community.

The minimum financial thresholds for an unsolicited proposal under these guidelines are:


- An unsolicited proposal with an estimated value in excess of \$5,000 that does not fall within an established Policy position of Council; or
- Any unsolicited proposal with an estimated value in excess of \$50,000.

Where an unsolicited proposal involves more than one council, the relevant councils may resolve to adopt any one of their unsolicited proposals guidelines, with any required variations, to apply to that proposal in place of their individual policies.

4.3. Objectives

The following objectives will guide the Council's consideration of unsolicited proposals in accordance with these guidelines:

- promoting the development of innovative ideas by the private and community sector to support the Council's role and functions discussed in these guidelines and the Council's broad objectives as outlined in its Strategic Plan;
- ensuring that unsolicited proposals are received and assessed via an open, transparent and fair process that involves high standards of probity and public accountability;
- ensuring that the unsolicited proposals process is not used to circumvent the Council's regular procurement processes where appropriate;
- ensuring value for money for the Council is achieved from any unsolicited proposal;
- maximising the benefits from unsolicited proposals for the Council and its constituents; and

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- ensuring the Intellectual Property of a proponent submitting an unsolicited proposal is appropriately protected.

4.4. Process

4.4.1. Pre-lodgement meeting

Before formally submitting an unsolicited proposal via the process detailed below, the proponent may request a pre-lodgement meeting with the Unsolicited Proposals Coordinator. This meeting is not mandatory but it may assist the proponent to determine if their proposal is one that may be considered under these guidelines.

Proponents are encouraged to bring a draft completed Application Form with them to this meeting.

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.

4.4.2. Receipt and assessment process

The process by which the Council will receive and consider unsolicited proposals is a three state process. The three stages are:

Stage 1 – Initial Proposal

Stage 2 – Detailed Proposal

Stage 3 – Contract Negotiation

Each of these stages is discussed in more detail below.

(a) Stage 1: Initial Proposal


The objective of the initial proposal stage 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:

- 1) the proposal may be considered under these guidelines;
- 2) the proposal should be considered further; and
- 3) the parties should enter into exclusive arrangements in relation to the proposal.

A proposal should comprise a completed Application Form (which can be downloaded from the Council's website: <https://www.dcgrant.sa.gov.au/services/forms>) and may also include further information that the proponent wishes to provide at this stage.

A proposal must be lodged electronically to: info@dcgrant.sa.gov.au

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.

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Once a proposal has been submitted in accordance with this policy and the Unsolicited Proposals Coordinator determines that it has sufficient information about the proposal to consider it, then the Unsolicited Proposals Coordinator will convene a meeting with the CEO.

The CEO will determine whether the proposal meets the criteria for it to be considered under these guidelines. To make it decision, the CEO may consult with other Council departments and professional advisers as deemed necessary.

If the CEO determines that the proposal should proceed to the next stage of the process, a recommendation and report on this basis will be prepared for consideration of the Steering Committee.

If the CEO recommends that the proposal not be accepted or the Steering Committee do not endorse the proposal, the proponent will be notified in writing of this outcome by the Unsolicited Proposals Coordinator. This notice may also notify the proponent that the subject matter of the proposal may form the basis of a competitive bidding process.

Where the Steering Committee endorse the proposal the proposal will proceed to Stage 2 and the proponent will be provided with the following:

- 1) notification that the proposal has been endorse by the Steering Committee to proceed to Stage 2;
- 2) the broad terms and timeframes for Stage 2 consideration of the proposal; and
- 3) information on any other matters relevant to the proposal and the Council's further consideration of it that the Council considers to be appropriate.


The anticipated timeframe for the completion of Stage 1, commencing from when the Unsolicited Proposals Coordinator determines that it has all of the information is needs to consider the proposal, is between thirty (30) and ninety (90) days, unless an alternative timeframe is advised to the proponent in writing.

Any endorsement of a proposal at Stage 1 is "in principle" endorsement only so that the proposal may proceed to Stage 2 consideration.

(b) Stage 2: Detailed Proposal

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.

Unsolicited Proposals Coordinator will convene a meeting with representatives of relevant departments of the Council depending on the subject matter of the proposal (Steering Committee).

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

The Council will establish a framework for Stage 2 which may include:

- confidentiality, conflict of interest, communication and probity protocols;
- Stage 2 participation terms and conditions;
- Stage 2 assessment criteria;
- timeframes;
- information to be provided and/or shared;
- governance requirements; and
- any other matters that the Council considers necessary or desirable.


The matters that the Council will consider during Stage 2 are:

- the value for money proposition from the proposal for the Council;
- if the proposal is legally, technically and financially feasible;
- how the proposal would best be structured to deliver the best outcome for the Council and the community;
- a cost/benefit analysis of the proposal;
- assignment of risk and reward;
- whether the proposal or any part of it would more appropriately be the subject of a competitive bidding process;
- the appropriate allocation of risk;
- government, strategic and community priority;
- the 'uniqueness' of the proposal;
- the proposed delivery method; and
- negotiation of a memorandum of understanding to bind an outcome.

During Stage 2 the Unsolicited Proposals Coordinator will:

- convene meetings of the Steering Committee with any other subject matter experts, professional advisers and other persons that the Unsolicited Proposals Coordinator sees fit;
- convene meetings with the proponent;
- request further information from the proponent as required;
- obtain reports and further information for the Council's consideration of the proposal; and
- arrange the preparation of a detailed report on the proposal for the Council Elected Members' consideration.

During Stage 2, a proponent must:

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- develop a detailed proposal, consistent with the requirements outlined by the Council at the end of Stage 1;
- provide any additional information as required;
- make themselves available to participate in meetings or presentations requested by, and respond to communications from, the Unsolicited Proposals Coordinator; and
- make themselves available to participate in Elected Member information and briefing sessions (if required) and answers questions of the Elected Council.

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:

- 1) that all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis;
- 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) that all or part of the proposal is not suitable for further consideration and its consideration under these guidelines is now at an end.


(c) Stage 3: Contract Negotiation

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

At the commencement of Stage 3, the Unsolicited Proposals Coordinator will advise the proponent of the process and protocols for the development of a contract.

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 Unsolicited Proposals Coordinator will then advise the proponent in writing of one of the following (taking into consideration the memorandum of understanding entered into during Stage 2):

- 1) that the Council agrees to the terms and conditions of the contract and will proceed to execute it;
- 2) that the Council agrees to the contract, subject however to specified variations or conditions;
- 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

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- 4) that the Council does not agree to enter into the contract and that its consideration of the proposal under these guidelines is now at an end.

4.5. Period of Exclusivity

4.5.1. Criteria for assessment


The Council may, in its absolute discretion, enter into a period of exclusive negotiation with a person in relation to a proposed or submitted unsolicited proposal, if the circumstances warrant it.

Exclusivity between the parties is not assumed simply by submission of an unsolicited proposal to the Council.

Exclusive negotiations may be justified in circumstances, for example, where a party's Intellectual Property should be protected or where, on a balancing of the criteria listed below, there is a clear benefit to the Council in doing so.

The criteria that the Council must consider in determining if a period of exclusivity should be entered into with a particular proponent includes:

- 1) No competing proposals – Whether the subject matter of an 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.
- 2) Community need/Council priority – Whether the unsolicited proposal:
 - (a) promotes the Council's role and functions discussed in clause 2 of these guidelines and generally, under the LG Act;
 - (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 benefit for the Council.
- 3) Uniqueness – Whether the unsolicited proposal is unique, and how and why it is unique such that it justifies the Council considering it under these guidelines rather than via its usual procurement processes. A proponent may be able to establish the uniqueness of its proposal 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 unique financial arrangements that enable it to deliver the proposal where other parties would not be able to; or

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(d) a combination of factors which may not stand alone as being unique but which together create a unique proposal in the circumstances.

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

- (a) is fairly and sustainably priced relative to comparative projects and products;
- (b) will meet acceptable commercial and industry standards; and
- (c) will effectively deliver on the proposal for the price proposed and in all other respects. Note that ‘value’ can include:
- (d) financial benefits;
- (e) economic benefits; and/or
- (f) community benefits.

5) Capacity and capability of proponent – Whether the proponent has the skills, experience and resources required to enable it to deliver the proposal.


4.5.2. The exclusivity period

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 and/or specific location 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.

4.6. **Probity framework**

It is a primary objective of these guidelines 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 policy, probity principles and protocols will be established when dealing with proponents in relation to their unsolicited proposals to ensure that:

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- 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 these guidelines, engage a probity adviser or auditor.

4.7. Intellectual property rights

The Council acknowledges the 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 these guidelines, 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.

4.8. General terms

4.8.1. No legal relationship


By making an unsolicited proposal the proponent acknowledges:

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

4.8.2. Legislative obligations

In submitting a proposal proponents acknowledge that:

- the Council may have legislative obligations that it will need to comply with in relation to a particular proposal and nothing in these guidelines is intended to override or circumvent those obligations; and
- the processes established by these guidelines 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).

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4.9. No soliciting or outside discussions

All queries or communications in relation to unsolicited proposals must be directed to the Unsolicited Proposals Coordinator 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, Elected Members or third parties with Council influence otherwise than as directed by the Unsolicited Proposals Coordinator.

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.

4.10. 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.

4.11. Costs of proposals

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

4.12. Use of documents

Any documents provided by the Council to a proponent during any of the Stages outlined in these guidelines must only be used for the purpose of progressing a proposal in accordance with these guidelines and must be returned to the Council at the end of the process on request.

4.13. 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.


4.14. Interaction with other Council policies

Unless specifically stated in these guidelines or determined by the Council, these guidelines are 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 these guidelines.

4.15. General acknowledgements

Proponents acknowledge when discussing, negotiating, considering preparing or submitting an unsolicited proposal to the Council in accordance with these guidelines, that the Council:

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- makes no representations or undertakings that it will enter into 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 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 Unsolicited Proposals Coordinator.

4.16. 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 these guidelines, and make an approach to the market in respect of the subject matter of the proposal;
- amend, vary or revoke and replace these guidelines at any time;
- accept or reject any unsolicited proposal on any basis;
- subject to any period of exclusivity determined in accordance with these guidelines, 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 these guidelines and any agreement with a proponent to the contrary, make them public.

4.17. 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.

4.18. 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

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to investigate corruption, misconduct and maladministration in public administration. Proponents must ensure compliance with all obligations arising under that Act.

4.19. 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.

4.20. Departure from Policy

The Council may, by resolution, where it is justified in the circumstances, determine that these guidelines will not apply to a particular unsolicited proposal.

5. Responsibilities

All Elected Members and Council staff who receive an Unsolicited Proposal in the course of their role must comply with this policy. It is the responsibility of Council employees involved in the procurement process to understand the meaning and intent of this policy.

6. References / Other Documents

6.1. Legislation

Ombudsman Act 1972 (SA)

Independent Commissioner Against Corruption Act 2012

Freedom of Information Act 1991 (SA)

6.2. Council Policies / Procedures

Business Activity on Council Land Policy (GOVPOL23)

Disposal of Land and Other Assets Policy (FINPOL03)


Fraud and Corruptions Prevention Policy (GOVPOL01)

Procurement Policy (FINPOL04)


Prudential Management Policy (FINPOL02)

7. Review

This Policy shall be reviewed by the District Council of Grant at a minimum, once within every four (4) year Council term (or on significant change to legislation or other matters which could affect this policy).


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Action	Date	Minute Reference
Adopted by Council	16 October 2023	23216

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Annexure A – Process Flowchart

Stage 1 – Initial Proposal		
Proponent Actions	Council Actions	Possible Outcomes
<p>Submit the completed Application Form and any further information to: info@dcgrant.sa.gov.au</p> <p>Submit any further information that may be requested.</p> <p>Engage in discussions with Council about the proposal as and when requested.</p>	<p>Determine if sufficient information has been provided to be considered under the guidelines and in terms of exclusivity.</p> <p>Meet with CEO.</p> <p>Determine whether the proposal meets the criteria for it to be considered under the guidelines.</p> <p>Convene a meeting of the Steering Committee if the proposal is recommended for Stage 2.</p> <p>Advise the proponent of the decision.</p>	<p>That the proposal is not suitable for further consideration and is now closed.</p> <p style="text-align: center;">OR</p> <p>That the proposal may form the basis for a competitive bidding process.</p> <p style="text-align: center;">OR</p> <p>That the proposal will proceed to Stage 2.</p>
Stage 2 – Detailed Proposal		
Proponent Actions	Council Actions	Possible Outcomes
<p>Submit a detailed proposal.</p> <p>Provide additional information as requested.</p> <p>Attend meetings as requested with, and respond to communications from, the Council.</p>	<p>Establish the Stage 2 framework and advise the proponent of this.</p> <p>Arrange meetings of the Steering Committee with any other subject matter experts, professional advisers and other persons.</p> <p>Arrange meetings with the proponent as required.</p> <p>Request further information from the proponent as required.</p> <p>Obtain reports and further information for the Council's consideration of the proposal.</p> <p>Arrange the preparation of a detailed report on the proposal for the Council Elected Members' consideration.</p> <p>Advise the proponent of the Council's decision.</p>	<p>That all or part of the proposal will proceed to Stage 3 on an exclusive consideration basis.</p> <p style="text-align: center;">OR</p> <p>That all or part of proposal should not continue to be considered on an exclusive basis but that all or part of the proposal warrants a competitive bidding process.</p> <p style="text-align: center;">OR</p> <p>That all or part of the proposal is not suitable for further consideration and its consideration under these guidelines is now at an end.</p>

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Stage 3 – Contract Negotiation		
Proponent Actions	Council Actions	Possible Outcomes
Negotiate contract terms.	<p>Advise the proponent of the process and protocols for the development of a contract.</p> <p>Negotiate the contract.</p> <p>Submitted the agreed contract to the Council</p> <p>Elected Members to seek approval for the contract to be executed.</p> <p>Advise the proponent of the Council's decision.</p>	<p>That the Council agrees to the terms and conditions of the contact and will proceed to execute it.</p> <p align="center">OR</p> <p>That the Council agrees to the contract, subject however to specified variations or conditions.</p> <p align="center">OR</p> <p>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.</p> <p align="center">OR</p> <p>That the Council does not agree to enter into the contract and that its consideration of the proposal under the guidelines is now at an end.</p>