



# **Government of South Australia**

## **Department of the Premier and Cabinet Circular**

**PC038 – Unsolicited Proposals**

**November 2014**

## **DPC CIRCULAR – UNSOLICITED PROPOSALS**

The *Guidelines for the Assessment Unsolicited Proposals* were approved by Cabinet on 29 September 2014. Consultation was undertaken subsequent to this approval with Cabinet noting the outcomes of this process, and establishment of this Circular.

This policy should be reviewed every 3 (three) years, although can be reviewed at any time as required.

The Guidelines are to be read in conjunction with this Circular.

### **Summary**

This Circular relates to the application of the Guidelines which is applicable to all Government agencies and all public authorities under the *Public Finance and Audit Act 1997*, unless specifically excluded by the State Coordinator-General.

The unsolicited proposals policy directly contributes to the Premiers ten economic priorities to make South Australia '*The Place Where People and Business Thrive*'. The Guidelines are aimed to develop a fair, clear and transparent framework for the assessment of unsolicited proposals.

An unsolicited proposal originates from a private entity (either for profit or not-for-profit) which is submitted without formally being requested by the Government.

The nature of the proposal can cover a wide range of areas and may include:

- Delivery of goods and services to or on behalf of Government;
- Provision of infrastructure;
- Access to Government assets;
- Seeking Government support (financial, regulatory or other support) to undertake a specific activity; or
- Financing arrangements.

The Guidelines are more of an outward looking document for the benefit of proponents looking to deal with the State Government. This Circular is focused on internal use for agencies to understand and operate within the ambit of the Guidelines.

### **Policy**

Agencies are advised that Cabinet has approved the Guidelines which cover unsolicited proposals that originate from a private entity (either for profit or not-for-profit) and are submitted to Government without formally being requested.

The objective of the unsolicited proposals Guidelines and policy is to provide a framework for the assessment of unsolicited proposals that is consistently applied across all of government. The policy will ensure a robust, transparent and easily navigated process that will encourage the private sector to bring innovative ideas to Government while maintaining value for money and probity.

Key features of the policy include:

- All unsolicited proposals submissions will be centrally coordinated through the Office of the State Coordinator-General who will oversee the assessment process.
- Agency expertise is to be made available to the State Coordinator-General during the assessment process through representation on the Unsolicited Proposals Steering Committee, Assessment Panel and in liaising with proponents as required.
- Cabinet will be informed of the progress of submissions and give final approval for any proposals moving forward.
- Agencies will be responsible for the implementation of approved unsolicited proposals.

### **Minimum Financial Threshold**

There is an applicable minimum financial threshold in the application of these Guidelines. This will ensure low cost, low risk unsolicited proposals are handled directly by agencies and remove the requirement for the State Coordinator-General to be involved in proposals of a more minor nature.

The limits have been set to ensure the Government does not exclude proposals which may require a partnership from government that does not necessarily equate to a dollar value but that may be innovative and beneficial to the South Australian community e.g. changing policy, legislation, regulations or releasing data.

The minimum financial thresholds for an unsolicited proposal are:

1. A \$3 million threshold has been included for unsolicited proposals with an investment construction value of \$3 million or greater, or
2. A \$1 million threshold for non-infrastructure unsolicited proposals.

While dollar limits will apply the State Coordinator-General can elect to review any proposal that is below these thresholds. These thresholds do not preclude a proponent making an application through this process. Other internal guidelines, such as the Industry Participation Policy, will still apply.

## **Role of the State Coordinator-General**

The process for considering unsolicited proposals and determining whether they warrant exclusive negotiations between the Government and the proponent will be overseen by the State Coordinator-General. The Government has expanded the role of the State Coordinator-General to help stimulate the South Australian economy.

On 6 June 2013, Cabinet approved the 'Affordable Housing Stimulus Package (AHSP)' which was aimed at providing a stimulus to the residential construction industry. The *Development Regulations 2008* were amended to empower the position of the State Coordinator-General to provide the necessary planning approvals to fast track the development process for all AHSP proposals.

On 7 July 2014, Cabinet approved the drafting of a regulation sop that the State Coordinator-General's approval powers can be expanded to cover development proposals with an investment construction value of \$3 million or greater.

On 29 September 2014, Cabinet approved the on-going role of the State Coordinator-General, including expanded duties and staff to service the expanded functions and established workload of the position.

The State Coordinator-General role is also supported by changes to the *Development Regulations 2008* to enable the Coordinator-General to assign the Development Assessment Commission (DAC) as the planning authority for certain proposals over \$3 million. Further, expansion of the DPTI Case Management Service to assist proponents in navigating the planning and development system has occurred.

The State Coordinator-General will:

- conduct pre lodgement meetings with proponents;
- manage the initial assessment of unsolicited proposals submissions;
- oversee the process of assessing unsolicited proposals through the Unsolicited Proposals Steering Committee and Assessment Panel including requesting agency expertise where necessary;
- case manage submissions by liaising and assisting proponents where appropriate during the assessment process.

Proposals that are not accepted by the Unsolicited Proposals Steering Committee, the Assessment Panel or by Cabinet, may form the basis of a competitive bidding process or be referred to a relevant agency for further consideration through standard procurement processes.

Proposals that are deemed by the State Coordinator-General to be better suited for agencies consideration through standard procurement processes will be referred back to agencies where appropriate.

### **Application of the *Guidelines for the Assessment Unsolicited Proposals to Agencies***

Agency expertise during the assessment process of unsolicited proposals is crucial to reaching optimal outcomes.

To facilitate this, Cabinet has approved that agencies nominate a Senior Officer to be available to assist in the assessment of proposals as appropriate. The contact officers expertise will need to be made available to support the assessment process for unsolicited proposals, including being available to participate in the Unsolicited Proposals Steering Committee and Assessment Panel as required.

In providing assistance to the Unsolicited Proposals Steering Committee and Assessment Panel, agencies will be required to:

- Prepare initial assessments on proposals for advice to the State Coordinator-General, Unsolicited Proposals Steering Committee and/or the Assessment Panel.
- Provide ongoing support to the State Coordinator-General during the assessment process, including meeting with stakeholders where necessary.
- Construct submissions for Cabinets consideration.

Other key considerations for agencies include:

- All submissions relating to unsolicited proposals must be referred to the State Coordinator-General for assessment.
- If an agency has initial contact with a proponent on an unsolicited proposal, agencies should encourage proponents to contact the State Coordinator-General's office for a pre lodgement meeting prior to lodging the submission.
- All standard procurement proposals should be dealt with by agencies using existing approved processes. The Guidelines and this Circular do not affect the application of other Circulars and Treasury instructions. Further, the Guidelines do not override statutory powers or a legislated process, such as Crown Lands under the *Crown Lands Management Act (2009)*.
- Ministers, advisors and agency staff should not meet or communicate with lobbyists or proponents regarding the proposals post submitting the proposal to ensure the integrity of the process.

## **Process for Review of Unsolicited Proposals**

The Guidelines should be read in conjunction with this Circular.

### **1. Process for Consideration of Unsolicited Proposals**

The process for the consideration of Unsolicited Proposals is essentially a three stage process:

1. Initial Proposal
2. Detailed Proposal
3. Contract Negotiation

Where the Government assesses that a proposal does not meet the criteria at any stage of the process, it reserves the right to go to market, end the proposal consideration process or withdraw from exclusive negotiations. The proponent will be given the opportunity to participate in any subsequent procurement process. If the Government does go to market it will respect any intellectual property owned by the proponent.

Prior to the process commencing a proponent may seek a pre-lodgement meeting with the State Coordinator-General. This is not a compulsory requirement but may assist the proponent to identify whether their proposal has the attributes which may potentially meet the criteria, including its unique attributes, prior to committing significant resources to the development of the proposal.

The State Coordinator-General may provide feedback as to whether the proposal, as presented, is consistent with the criteria. Notwithstanding any feedback provided at, or following, the pre-lodgement meeting, the proponent may proceed to the formal stages of the process.

The three stage process involves the following:

#### **Stage 1: Initial Proposal**

The initial proposal stage allows a proponent to provide Government with a high level outline, which enables the Government to form a preliminary view as to whether to further consider the unsolicited proposal. The initial proposal, using the template at Appendix 1 of the Guidelines, is to be lodged electronically to: [unsolicitedproposals@sa.gov.au](mailto:unsolicitedproposals@sa.gov.au).

Stage 1 will not involve negotiation of the proposal. That opportunity will arise at later stages.

Once the State Coordinator General has determined that sufficient information has been provided to assess the proposal, it is submitted to the Unsolicited Proposals Steering Committee, which is chaired by the State Coordinator General and comprised of senior Government representatives of relevant departments. The Steering Committee will also call on senior departmental staff that have more detailed information pertaining to the proposal.

The Steering Committee will determine whether the unsolicited proposal meets the criteria based on the outline submitted by the proponent. In making their determination, the Steering Committee may consult with other Government agencies, seeking their input on the assessment of the proposal.

If the Steering Committee recommends that the proposal should proceed to the next stage of the process, this advice will be prepared for Cabinet's consideration and endorsement.

If the Steering Committee recommends the proposal not be accepted, the proponent will be notified of this outcome in writing, by the State Coordinator-General. This may include advice that the proposal is not suitable for further consideration on an exclusive basis, however may instead form the basis of a competitive bidding process.

Proposals that have merit, do not conflict with any other existing government process, are consistent with other government policies, and involve low risk and minor resource commitment, may be referred to a relevant agency for further consideration.

The Government will seek to ensure that the Stage 1 process takes no more than 45 days (commencing from when the Coordinator General has determined that sufficient information has been provided by the proponent and has referred the proposal to the Steering Committee for assessment).

## **Stage 2: Detailed Proposal**

Stage 2 involves further consideration of the feasibility of the proposal, how it will be delivered and whether it represents value for money for government. Confidentiality, communication and probity protocols will be established and probity advisers appointed.

The Government will manage an interactive process with the proponent. Brief details of all unsolicited proposals that progress to Stage 2 will be published on the Government website. Generally, the Government seeks to disclose all proposals at this stage. In some cases, proponents may request that proposals are not listed, if this would pose significant risks to commercial confidentiality, commercial negotiations or intellectual property.

The Government will establish the terms of participation for Stage 2 which may contain:

- Acknowledgement that for the project to proceed it must deliver value for money and a net benefit to South Australians;
- The stage 2 assessment criteria and other relevant Government requirements;
- Communication protocols, including a prohibition on lobbying;
- Conflict of interest management arrangements;
- Confidentiality arrangements;
- Timeframes;
- Commitments for open sharing of information;
- Approval requirements.

Stage 2 will involve a detailed examination of:

- The nature and terms of the arrangement, including time frames and the nature of any exclusivity arrangements;
- Whether the project represents value for money for government – which may require benchmarking to be undertaken, and require that the proponent to provide information on project costs and/or revenues on an open book basis;
- The costs and risks to government and the benefits to South Australians;
- Whether the proposal is technically and financially feasible.

The Government will seek to consider the following issues:

- Does the project represent value for money for government?
- Is the proposal affordable?
- Is the proposal technically and financially feasible?
- What is the optimal scope of the proposal to meet Government needs?
- Do the benefits of the proposal to South Australians outweigh the costs?
- Should the proposal or parts of it be open to competition?
- What is the appropriate risk allocation?
- What is the appropriate return for the private sector party given their risk exposure?
- What is the appropriate delivery method?

The relevant Industry Participation Plan (IPP) for the contract value should be submitted and scored by the Office of the Industry Advocate at this stage to assist determining the economic benefit to the State.

During this stage the Government will:

- Convene an assessment panel which will include representatives from relevant agencies;
- Request further information and arrange meetings with proponents with an aim to better understand the requirements and obligations of the proposal;
- Prepare a detailed report to the relevant Minister(s) and Cabinet advising of key outcomes of the assessment process and decisions on next steps.

During this stage it is expected that the proponent will:

- Develop a detailed proposal, consistent with requirements outlined following the Stage 1 process;
- Provide any additional information as required and to make themselves available to participate in meetings to respond to or clarify any further requests by Government.

During Stage 2 independent assessments may be required.

Once the assessment process of Stage 2 is complete, advice will be prepared for Cabinet and the government will provide a response to the proponent, outlining;

- The outcome of the assessment stage;
- Whether the proposal is suitable to proceed to Stage 3 (Contract Negotiation) and the appropriate justification;
- Whether the proposal is not suitable for further consideration on an exclusive basis however may still warrant a competitive bidding process;
- That the proposal is not suitable for further consideration and is now closed.

### **Stage 3: Contract Negotiation**

The contract negotiation stage allows the Government and the proponent to negotiate final legal and commercial terms then prepare and execute formal project documentation.

Key steps of this stage include:

1. Advise the proponent of the process and protocols for the development of the final contract;
2. Government may seek legal, financial and technical advice on finalising the unsolicited proposal;

3. Final negotiations between the Government and the proponent;
4. Formal contract management documentation prepared based on the final negotiations, noting key milestones/objectives;
5. Contractual documentation and project management proposals comprehensively reviewed;
6. Proposal presented to Cabinet to seek Cabinet approval;
7. Advise proponent of the Government's final decision.

At the conclusion of the Contract Negotiation process, the Government has 4 options:

1. Agree to the terms included in the contractual documentation and approve formal documentation to be executed;
2. Agree to the contractual documentation, with specific conditions;
3. Do not agree to the contractual documentation but pursue the unsolicited proposal through an alternative arrangement, for example a competitive process. (Should this occur, Government agencies must take appropriate steps not to disclose or use any intellectual property provided by the proponent);
4. Do not agree to the contractual documentation and conclude the unsolicited proposal assessment process.

Where an unsolicited proposal has been accepted by the Government, the relevant agency should take appropriate steps to ensure that the Government's obligations and relevant steps under the terms of the agreement are met. This may include collaboration with other agencies where necessary.

## **Contact**

For further details in relation to this Circular, or any information pertaining to unsolicited proposals or the Guidelines please contact:

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