

# Unsolicited Proposals Policy



## 1. RATIONALE

The purpose of this Policy is to provide confidence to the community and potential proponents that all unsolicited proposals put forward to the City of Marion will be considered in a consistent, transparent, and lawful manner to deliver the highest standard of public value.

## 2. POLICY STATEMENT

The City of Marion has adopted this Policy for the purpose of section 49 of the *Local Government Act 1999* (Contracts and Tenders Policies). The City of Marion's underlying principle is that all unsolicited proposals will be considered in accordance with Council's Procurement and Contract Management Policy, utilising open market competitiveness processes, unless Council determines by resolution that exceptional or unique circumstances exist. If adopted Council will consider whether exclusive negotiation or a period of exclusivity should be entered into with a proponent of an unsolicited proposal.

## 3. OBJECTIVES

The Policy will align with supporting Council's Legislative objectives by ensuring it is consistent with the *Local Government Act 1999* (Contracts and Tender Policies). The objectives of this Policy are as follows:

- Promoting the development of innovative ideas to support the Council's role and functions, and broad objectives as outlined in its Strategic Plan.
- Ensuring that unsolicited proposals are received and assessed through a 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.
- Ensuring value for money for the Council and the community is achieved from any unsolicited proposal.
- Maximising the benefits from unsolicited proposals for the Council and the community.
- Ensuring the intellectual property of a party submitting an unsolicited proposal is appropriately protected.

## 4. POLICY SCOPE AND IMPLEMENTATION

### **Scope**

This Policy applies to all unsolicited proposals submitted by a proponent to the City of Marion. The City of Marion has the sole discretion as to when and if this Policy applies to a particular proponent, including when an exclusive negotiation or a period of exclusivity will apply.

### **Implementation**

#### **4.1 Unsolicited Proposals:**

- 4.1.1 An unsolicited proposal is a new and innovative proposal which could assist the Council to achieve its strategic objectives or satisfy a community need, which has not been requested by the Council through its regular procurement processes.
- 4.1.2 An unsolicited proposal may include a proposal for the:
  - Purchase, lease, or development of Council owned or managed land.
  - Delivery of goods or services to or on behalf of the Council.
  - Provision of major capital works projects.
  - Provision of infrastructure for the community.
- 4.1.3 The minimum financial threshold for an unsolicited proposal under this Policy is \$500,000.

#### **4.2 Period of Exclusivity as follows:**

- 4.2.1 Council may, at its absolute discretion, enter a period of exclusive negotiation with a proponent. 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. These circumstances include where a party's intellectual property should be protected.
- 4.2.2 The criteria that Council will consider in determining if a period of exclusivity should be entered into are:
  - No competing proposals exist
  - Urgency
  - Community Benefit
  - Uniqueness
  - Value for money
- 4.2.3 During a period of exclusivity, appropriate confidentiality will be maintained and respected, particularly regarding information supplied to Council from a proponent that is confidential.

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## 4.3 Intellectual Property Rights

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

## 5. DEFINITIONS

<i>Term</i>	<i>Definition</i>
<i>Conflict of Interest</i>	Proponents must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the proponent is successful in negotiating a contract. If any conflict or potential conflict exists, the proponent must advise Council how it proposes to address this.
<i>Costs of proposal</i>	A proponent bears its own costs of preparing, discussing and negotiating any unsolicited proposal with the Council.
<i>Council's General Rights</i>	<p>Council may:</p> <ul style="list-style-type: none"><li>• At any stage of the process if it assesses that a proposal does not meet the criteria to be considered further, make an approach to the market in respect for the subject matter of the proposal and end consideration of the proposal and withdraw from any negotiation with the proponent in relation to it.</li><li>• Amend, vary or revoke and replace this Policy at any time.</li><li>• Accept or reject any unsolicited proposal.</li><li>• Subject to any period of exclusivity, negotiate with any person in relation to the subject matter of an unsolicited proposal.</li><li>• Discontinue negotiations with any proponent.</li><li>• Include any proponents name in Council reports and, subject to any period of exclusivity and any agreement with a proponent to the contrary, make them public.</li></ul>
<i>Interaction with other Council Policies</i>	Unless specifically stated in this Policy or determined by Council, this Policy is not intended to override any other Policy of Council that may apply to an unsolicited proposal.

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<i>Term</i>	<i>Definition</i>
<i>Legislative obligations</i>	Council may have legislative obligations that it needs to comply with in relation to a particular proposal and nothing in this Policy is intended to override or circumvent those obligations.
<i>No legal relationship</i>	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.

## 6. ROLES AND RESPONSIBILITIES

<i>Role</i>	<i>Responsibility</i>
<i>Senior Leadership Team</i>	<ul style="list-style-type: none"> <li>Responsible for ensuring this Policy is implemented and adhered to.</li> </ul>
<i>Corporate Services</i>	<ul style="list-style-type: none"> <li>Provide advice to the City of Marion regarding unsolicited proposals in accordance with this Policy.</li> <li>Ensure all contracts are appropriately managed and administered.</li> <li>Reporting and managing contract breaches.</li> </ul>
<i>Finance, Risk and Audit Committee</i>	<ul style="list-style-type: none"> <li>Responsible for providing governance oversight for Council on unsolicited proposals.</li> <li>Provide feedback and guidance on the subsequent review/update of this Policy and complementary Procedure.</li> </ul>
<i>Council</i>	<ul style="list-style-type: none"> <li>Responsible for considering and endorsing unsolicited proposals in accordance with this Policy.</li> <li>Authority to enter into or withdraw from a period of exclusivity or exclusive negotiation to accept an unsolicited proposal in accordance with this Policy.</li> </ul>

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## 7. REFERENCES

### City of Marion

- *City of Marion Procurement and Contract Management Policy.*
- *City of Marion Unsolicited Proposals Procedure.*

### Other

- *Local Government Act 1999 (SA).*
- *LGA Unsolicited Proposals Guidelines (May 2018).*
- *NSW Unsolicited Proposals: Guide for Submissions and Assessment (August 2017)*

## 8. MONITORING AND REPORTING

A summary of all (approved and not approved) unsolicited proposals received during a financial year will be provided to the Finance Risk and Audit Committee and Council at the conclusion of each financial year.

## 9. REVIEW AND EVALUATION

This policy will be reviewed once during a term of Council in accordance with the City of Marion Policy Framework.