

1. POLICY STATEMENT

Council has adopted this policy for the purpose of section 49 of the Local Government Act 1999 (“Contracts and Tenders Policies”).

The policy provides confidence to our 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 standards of public value.

2. PRINCIPLES

The City of Marion’s underlying principle is that that all unsolicited proposals will be considered in accordance with Council’s Procurement and Contractor Management Policy, utilising open market competitive processes, unless Council determines by resolution that exceptional and/or unique circumstances exist.

Where Council determines by resolution that exceptional and/or unique circumstances exist it will consider whether exclusive negotiation or a period of exclusivity should be entered into with a proponent of an unsolicited proposal.

3. OBJECTIVES

The following objectives will guide Council’s consideration of unsolicited proposals:

- 3.1 Promoting the development of innovative ideas to support the Council’s role and functions, and broad objectives as outlined in its Strategic Plan;
- 3.2 Ensuring that unsolicited proposals are received and assessed through a transparent and fair process that involves high standards of probity and public accountability;
- 3.3 Ensuring that the unsolicited proposals process is not used to circumvent the Council’s regular procurement processes;
- 3.4 Ensuring value for money for the Council and the community is achieved from any unsolicited proposal;
- 3.5 Maximising the benefits from unsolicited proposals for the Council and the community; and
- 3.6 Ensuring the Intellectual Property of a party submitting an unsolicited proposal is appropriately protected.

4. POLICY SCOPE AND IMPLEMENTATION

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 if and when an exclusive negotiation or a period of exclusivity will apply.

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; or
 - 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

- 4.2.1** Council may, at its absolute discretion, enter into 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 to determine if a period of exclusivity should be entered into are:
- No competing proposals exist;
 - Urgency;
 - Community benefit;
 - Uniqueness - promoting the development of unique and innovative ideas for the ultimate purpose of increasing public value through jobs creation and more efficient and effective services;
 - Ensuring an open, transparent and fair process that involves a high standard of probity and public accountability;
 - Value for money unlikely to be matched in an open tender; and
 - Capacity and capability of the proponent.
- 4.2.3** During a period of exclusivity appropriate confidentiality will be maintained and respected, particularly in regards to information supplied to Council from a proponent that is confidential.

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 elects 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. GENERAL TERMS

5.1 No legal relationship

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.

5.2 Legislative obligations

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.

5.3 Conflict of interest

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.

5.4 Costs of proposal

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

5.5 Interaction with other Council policies

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.

5.6 Council's General Rights

Council may:

- At any stage of the process if it assesses that a proposal does not meet the criteria to be considered or considered further, make an approach to the market in respect of the subject matter of the proposal and end consideration of the proposal and withdraw from any negotiation with the proponent in relation to it;
- Amend, vary or revoke and replace this policy at any time;
- Accept or reject any unsolicited proposal;
- Subject to any period of exclusivity, 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; and
- 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.

6. ROLES AND RESPONSIBILITIES

6.1 Senior Leadership Team

- Responsible for ensuring this policy is implemented and adhered to.

6.2 Corporate Services

- Provide advice to the City of Marion regarding unsolicited proposals in accordance with this Policy.
- Ensure any contracts as a result of an acceptance by Council of an unsolicited proposal are being appropriately managed and administered.
- Reporting and managing contract breaches.

6.3 Finance and Audit Committee

- Responsible for providing governance oversight for Council on unsolicited proposals.
- Provide feedback and guidance on the subsequent review/update of this Policy and complementary Procedure.

6.4 Council

- Responsible for considering and endorsing unsolicited proposals in accordance with this Policy.
- Authority to enter into or withdraw from a period of exclusivity or exclusive negotiation to accept an unsolicited proposal in accordance with this policy.

7. REFERENCES

- Local Government Act 1999 (SA)
- City of Marion Procurement and Contractor Management Policy
- LGA Unsolicited Proposals Guidelines (May 2018)
- NSW Unsolicited Proposals: Guide for Submissions and Assessment (August 2017)
- City of Marion Unsolicited Proposals Procedure (TBC)

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 and Audit Committee and Council at the conclusion of the 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 Review Schedule and Register administered by the Governance Department.