

Guide - Alternative Procurement - Unsolicited Proposals

1 Introduction

1.1 The Guidelines

Good ideas are not the preserve of the public sector. AT welcomes unique, innovative and opportune proposals from business and individuals that support its vision and objectives.

This guide sets out the process to be followed by both AT and Proponents (of any proposal) in developing and assessing Unsolicited Proposals. It has been developed to provide:

- Clarity
- Consistency
- Transparency and fairness
- To encourage business to share ideas

This guide is designed to support the overarching principle guiding AT procurement, to provide **sustainable 'value for money' through the 'whole of life' of an asset or service over the long term**. In so doing, AT will adhere to the basic principles of:

- Accountability
- Openness
- Value for money
- Fairness
- Integrity

This document is a guide rather than prescriptive. AT may alter its approach to better respond to any given set of circumstances.

In preparing the guide, the approach taken by other agencies within New Zealand and Australia has been considered, with particular reference to:

- NZ MBIE Unsolicited Unique Proposals – How to deal with uninvited bids (May 2013)
- NSW Unsolicited Proposals Guide for Submission and Assessment (February 2014)

Both the NZ MBIE and the NSW guides provide for uniqueness as an essential characteristic of an unsolicited proposal before it can be considered.

This guide provides that for an unsolicited proposal to be considered it would typically need to have one or more of a set of attributes, of which uniqueness is one such attribute (discussed in clause 2.1 below).

It is also recognised that an unsolicited proposal is just one means of direct procurement within the public sector, including the following examples:

- Direct appointment where competition reduces value for money (NZTA Procurement Manual (July 2009))

- Exceptions to open tendering (NZ Government Cabinet Mandatory Rules for Departments (April 2006))
- Direct Procurement (Auditor General's Good Practice Guide (June 2008)).

2 When An Unsolicited Proposal Will Be Considered

2.1 Generally

AT's general approach to procurement is to test the market and so it will only be in limited circumstances that Unsolicited Proposals submitted by business or an individual (a Proponent) are entertained.

For an Unsolicited Proposal to be considered it will typically need to have one or more of the following attributes:

- Unique elements
- Demonstrate innovation
- Provide a solution to a need that is not otherwise available in the market
- Support the long term market development and other needs of AT

The proposal will also need to align with AT's plans, objectives and strategic direction.

2.2 The Approach

AT allows for a layered approach that is flexible and adaptive.

- **Pre-Submission Concept Review – *Optional*:** A prospective Proponent may meet with AT to test a concept before dedicating significant resources in the development of an Initial Submission. Before meeting, a prospective Proponent should provide an initial version of the Information Requirements (as set out in section 2.3.2 below).
- **Stage 1 - Initial Submission and Assessment:** Following receipt of the formal Information Requirements AT may:
 - conduct a preliminary assessment and request further information as required
 - reserve the right to request the Proponent to “unbundle” parts of its offer, for instance, in the interests of market liquidity or where parts of the offer are not considered to be unique or innovative or sufficiently connected to the unique or innovative aspects of the Proposal
 - if it passes the preliminary assessment, AT may conduct a strategic assessment of the proposal and request further information as required
 - in the event that an Initial Submission is considered by AT to be more detailed than what Stage 1 requires, that will not disqualify the Unsolicited Proposal or prevent AT from proceeding to consider the Unsolicited Proposal further should AT, in its sole discretion, decide to do.
- **Stage 2 - Detailed Proposal and Merit Assessment:** Upon progression to Stage 2:
 - AT and the Proponent may enter into an agreement (Participation Agreement) with the Proponent, setting out a framework for engagement

- AT may issue a request for proposal inviting the Proponent to prepare a Detailed Proposal
- The Proponent will develop a Detailed Proposal
- AT may undertake a merit assessment of the Detailed Proposal against the set Assessment Criteria as set out in section 3.1 below.
- AT may make a recommendation to decision-makers whether the Detailed Proposal is worthy of progression or not
- **Stage 3 - Best and Final Offer and Negotiations:** Upon progression to Stage 3:
 - The Proponent will prepare a BAFO capable of acceptance
 - AT may conclude negotiations and recommend that the BAFO is accepted or not accepted.

2.3 Information Requirements

2.3.1 Pre-submission Concept Review (*Optional*)

Before requesting a pre-lodgement meeting with AT, a prospective Proponent should provide AT with a version of the Information Requirements.

2.3.2 Stage 1 - Information Requirements

An Unsolicited Proposal should contain sufficient information to allow AT to undertake an initial assessment of a proposal and include:

- The Proponent's details, including:
 - Name and composition of team
 - Contact details
 - Profile
 - Company name and number
- Description of the proposal
- Details on the benefits that the proposal will provide and how that aligns with AT's priorities and strategic direction
- How the proposal will provide value for money
- Verifiable evidence supporting the unique attributes and innovative elements of the proposal
- Intellectual property interests relevant to the proposal
- Other property interests relevant to the proposal (e.g. land)
- Costs
- Period that the proposal is open for consideration
- What parts of the proposal are considered trade secrets, commercially sensitive and confidential (bearing in mind AT's commitment to transparency and official information requests)
- Any other information considered relevant to the preliminary assessment of the Unsolicited Proposal

The preliminary Information Requirements are listed at Appendix 1 and may be used as a checklist when conducting a preliminary review and assessing the completeness of an Unsolicited Proposal.

AT may request further information, such as but not limited to:

- Delivery dates and key milestones
- Resource commitment or support from AT
- Risk matrix
- Preferred contractual structure

Proponents will want to be succinct and provide precise information to enable a meaningful assessment to be undertaken by AT with ease.

2.3.3 Stage 2 and beyond

Upon progression to Stage 2, AT may prepare a request for proposal inviting the Proponent to prepare a Detailed Proposal and the Proponent will prepare a Detailed Proposal. The specific information requirements required will vary on a case-by-case basis.

2.4 When an unsolicited proposal is unlikely to be considered

AT is unlikely to consider an unsolicited proposal when:

- it involves land disposals
- similar goods, services or works are readily available in the market
- a competitive process is already underway for the goods, services or works
- it involves a contract extension and the proposal would be circumventing standard competitive processes.

2.5 Consideration of Uniqueness

Uniqueness is a concept that is not easy to define. Examples of uniqueness include but are not limited to:

- A new use for a concept that already exists
- Where a proponent owns intellectual property, real property or other unique assets that would limit AT from contracting with other parties if it were to openly tender.
- Where the collective or combined attributes create a unique proposal or place the proponent in a unique position to make the proposal. This may include innovative ideas including technical solutions and financial or commercial arrangements that are otherwise unlikely to be otherwise available.

3 Assessment

3.1 Assessment Criteria

AT may assess proposals against the following Assessment Criteria:

- Uniqueness - demonstration of the unique benefits of the proposal and the unique ability of the Proponent to deliver the proposal
- Availability on the open-market
- Value for Money - including economic benefit, service delivery, whole-of-life costs, timely achievement of objectives and qualitative outcomes
- Impact - including the opportunity cost, consistency with our plans, objectives and strategic direction, and on our priorities

- Capability and Capacity - having regard to the Proponent's financial strength, track record, capability and capacity and reliance on others.
- Return on investment - is it proportionate in the circumstances?
- Affordability - does the proposal require AT or government funding, are the funds available or would it require a reallocation of funding or a project finance solution?
- Risk allocation - what risks are borne by which party? Quantifiable and measurable risks may also be assessed under value for money criteria
- Strategic fit - whether the proposal is aligned with the strategic direction and objectives of AT

In applying the Assessment Criteria, AT may also consider whether:

- the proposal meets a current or future need
- responding to the current or future need is a priority
- it wishes to proceed with the proposal

Additional Assessment Criteria relevant to a particular proposal may also be developed during Stage 2.

3.2 Assessment Process

AT may:

- Appoint a Proposal Manager to manage and lead the review and assessment of a proposal
- Establish an Assessment Panel, including the Proposal Manager
- Establish a Steering Group, to receive the Assessment Panel's report and recommendations

The composition of the Assessment Panel and the Steering Group will be proportionate to the scale, impact and complexity of the proposal and members may be drawn from multiple agencies. The particular arrangements will be detailed in the Governance Plan (set out in section 6.1 below).

4 Resources

Preparing and assessing Unsolicited Proposals make demands on resources of Proponents and AT. AT may allocate and will require that the Proponent allocate appropriate resources to each stage of the process.

5 Probity

The process and the assessment of an Unsolicited Proposal will adhere to fundamental public sector probity principles. AT may develop a Probity Plan (specific to the particular proposal based on AT precedents).

6 Governance

Consideration of an Unsolicited Proposal could be a multi-agency task. AT may seek the input and representation, if appropriate, of other agencies.

6.1 Governance Plan

A Governance Plan may be developed before an Unsolicited Proposal progresses to Stage 2. The Governance Plan will respond proportionately to the Unsolicited Proposal, to the scale of the project, its impact and interface with other agencies.

A Governance Plan would generally:

- Confirm where AT has departed from standard procurement practice and the processes put in place to mitigate adverse effects
- Describe the decision making and approvals processes (including having regard to financial delegations, internal, inter-agency and statutory approvals)
- Document roles and responsibilities of people / panels / committees involved in the assessment, evaluation and approval of the proposal (including identifying the Proposal Manager, composition of Assessment Panel and the Steering Group)
- Include a timetable and key milestones
- Identify probity arrangements

Development of the Governance Plan will have regard to good public procurement practice and policy. This may include reference to the policies and guidance of multiple agencies if a multi-agency process is required, such as:

- AT, including its procurement model, policy and strategy
- Council and/or its family of council organisations
- NZTA, including its contract procedures manual
- NZ Treasury and the National Infrastructure Unit, to include Guidance for Public Private Partnerships in New Zealand
- Office of the Auditor General

7 Participation Agreement

A Participation Agreement provides the framework for AT and the Proponent to proceed through Stage 2, to ensure that each party is working towards an agreed set of objectives. It would generally include:

- Acknowledgement that a value for money outcome is required
- Assessment Criteria and Additional Assessment Criteria
- Communications framework
- Agreement on costs
- Resource commitments
- A description of the treatment of Intellectual Property
- A framework to guide interactive tender and clarification meetings and processes
- Probity arrangements, including how to manage conflicts of interest and confidentiality
- Commitment to an open approach to discussions
- Timetable and key milestones
- Approval requirements

8 Process

8.1 Pre-lodgement scoping session - optional

If a prospective Proponent informally approaches AT about a potential unsolicited proposal, then this approach should be recorded and acknowledged and the prospective Proponent's attention drawn to this guide. The draft letter in Appendix 2 may assist.

8.1.1 Proponent Responsibilities

If a prospective Proponent wishes to hold a pre-lodgement scoping session with AT, then it will be responsible for:

- Providing AT with Preliminary Information
- Identifying the unique and innovative elements of the proposal
- Responding to requests for further information
- Being available to meet with AT

8.1.2 AT Responsibilities

If AT decides, at its sole discretion, to consider a prospective Proponent's initial approach it will be responsible for:

- Acknowledging receipt of and consider the Preliminary Information
- Nominating a single point of contact
- If the concept is of preliminary interest, meeting with the Proponent
- Providing the Proponent with an early indication of whether the concept is of sufficient interest to AT
- Informing the Proponent of the process for submitting an Unsolicited Proposal
- Opening and maintaining a Tender File (as set out in section 10.1 below)
- Appoint a Proposal Manager

8.1.3 Possible Outcomes

The following may occur:

- A pre-lodgement meeting between AT and a prospective Proponent may be held
- A proposal concept may or may not be considered suitable for progression to Stage 1

8.2 Stage 1 - Initial Submission and Assessment

8.2.1 Proponent Responsibilities

Proponents will be responsible for sending their Unsolicited Proposal:

- Clearly marked "Unsolicited Proposal"
- To [*dedicated email address or e-portal*]
- In the prescribed form
- Responding to requests for clarification

8.2.2 AT Responsibilities

AT will be responsible for :

- receiving an Unsolicited Proposal in a way that is aligned with its procurement / tender management processes, (see Appendix 3):
- assessing the proposal and seek clarification if necessary

- informing the Proponent of the outcome of an assessment (whether it is approved to proceed to Stage 2 or not)
- providing feedback on the proposal

8.2.3 Possible Outcomes

The following may occur:

- An Unsolicited Proposal may be submitted
- A proposal may or may not be considered suitable for progression to Stage 2

8.3 Stage 2 - Detailed Proposal and Merit Assessment

8.3.1 Proponent Responsibilities

If a Proponent progresses to Stage 2, it will be responsible for:

- Entering into Participation Agreement with AT
- Preparing a Detailed Proposal
- Its participation in dialogue and clarifications

8.3.2 AT Responsibilities

AT will be responsible for:

- Preparing and entering into a Participation Agreement with the Proponent
- Preparing a request for proposal inviting the Proponent to prepare a Detailed Proposal
- Assessing the Detailed Proposal
- Following the defined approvals process, preparing supporting documentation as required (which may include investment proposal / business case)
- Its participation in dialogue and clarifications

8.3.3 Possible Outcomes

The following may occur:

- A request for proposal may be issued and a Detailed Proposal submitted in response
- A proposal may or may not be considered suitable for progression to Stage 3

8.4 Stage 3 - BAFO and Negotiations

8.4.1 Proponent Responsibilities

If a Proponent progresses to Stage 3, it will be responsible for:

- Concluding negotiations
- Preparing a BAFO capable of acceptance

8.4.2 AT Responsibilities

If a Proponent progresses to Stage 3, AT will be responsible for:

- Concluding negotiations
- Assessing the BAFO
- Following the defined approvals process, preparing supporting documentation as required (which may include investment proposal / business case)

8.4.3 Possible Outcomes

The following may occur:

- A BAFO may be submitted and assessed
- A contract may or may not be entered into

9 Probity

AT will put in place checks to:

- Ensure the Proponent and other potential suppliers are treated fairly
- Avoid misconduct and the perception of misconduct
- Declare and manage any conflicts of interest

10 General - Records, Resources, Discretion and Official Information Requests

10.1 Records

AT will keep adequate records at each stage of the process and will open a Tender File upon commencement of Stage 1. The records would generally:

- Show that an appropriate process has been observed
- Document the basis of all decisions
- Show market research has been verified
- Confirm that a business case, investment proposal and/or procurement plan has been prepared
- Demonstrate decisions have been made at an appropriate level
- Include minutes of meetings
- Show that AT identified and appropriately managed potential conflicts of interest

10.2 Resources

AT will generally not reimburse costs incurred by a Proponent in the development of an Unsolicited Proposal. Departure from this position will be considered on a case-by-case basis and recorded in the Participation Agreement.

10.3 No Obligation and Discretion

AT is under no obligation to consider an Unsolicited Proposal and may withdraw its consideration, if any, at any time prior to entering a binding contract.

Subject to clause 10.4:

- AT reserves the right to competitively tender for the goods, works or services (or any part) the subject of the Unsolicited Proposal at any stage.
- AT reserves the right to bundle / unbundle and carve-out elements of the Unsolicited Proposal.

10.4 Transparency and Official Information

AT operates with transparency, as one of its principles but recognises that intellectual property and commercially sensitive information are important in the competitive advantage of a business and should be guarded carefully. Proponent's should be prepared for public release of part of or all of an Unsolicited Proposal.

Unsolicited Proposals are subject to official information requests submitted pursuant to the Local Government Official Information and Meeting Act 1987. This legislation provides limited grounds on which to withhold requested information and therefore Proponents should be prepared for public release of part of or all of an Unsolicited Proposal.

As such, Proponents are encouraged to clearly identify trade secrets and commercially sensitive information. This does not in itself protect information from disclosure, but will flag to AT which elements of a proposal may require more careful scrutiny further to receipt of an official information request or release in the interests of openness and transparency.

AT will use its best endeavours to preserve the confidentiality of all confidential information and will not disclose information that is intellectual property, proprietary, commercial-in-confidence or otherwise confidential contained in the Unsolicited Proposal.

Interim

Appendix 1 - Information Requirements

1. The Proponent's details, including:
 - Name and composition of team
 - Contact details
 - Profile
 - Company name
2. Description of the proposal
3. Details on the benefits that the proposal will provide and how that aligns with AT's priorities and strategic direction
4. How the proposal will provide value for money
5. Verifiable evidence supporting the unique attributes and innovative elements of the proposal
6. Intellectual property interests relevant to the proposal
7. Other property interests relevant to the proposal (e.g. land)
8. Costs
9. Period that the proposal is open for consideration
10. What parts of the proposal are considered trade secrets, commercially sensitive and confidential (bearing in mind AT's commitment to transparency and official information requests)
11. Any other information considered relevant to the preliminary assessment of the Unsolicited Proposal