

Unsolicited Proposals Information for Proponents

Guidelines for navigating the
Department for Environment and Water's
unsolicited proposals process

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**Government
of South Australia**

Department for
Environment and Water

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1. Introduction

The Department for Environment and Water (DEW) is committed to supporting the South Australian Government in delivering on its economic, social and environmental priorities and maximising job creation opportunities for South Australians.

This Unsolicited Proposals Information for Proponents document aligns with the Government's framework for unsolicited proposals and should be read with the Department of Treasury and Finance (DTF) Guidelines for Assessment of Unsolicited Proposals, available at www.treasury.sa.gov.au/Growing-South-Australia/unsolicited-proposals

2. Exclusive negotiations

The Government's default position is to request business proposals via an existing procurement, tender or market-based process to ensure that the best value for money solution can be competitively identified. However, Government also recognises that there may be circumstances where it is beneficial in dealing exclusively with one party.

Government may, at its absolute discretion, negotiate with a party that presents an unsolicited proposal where it considers it is appropriate and the proposal meets the criteria. A party or entity that submits an unsolicited proposal is referred to as a 'proponent'. An exclusive negotiation with a proponent will be solely limited to that proponent for the purposes of developing the specific unsolicited proposal, and exclusive negotiations can only be guaranteed for a limited period of time.

3. What is an unsolicited proposal?

An unsolicited proposal is a proposal that is submitted to Government without being formally requested and which does not fit into an existing process. Unsolicited proposals can cover a broad range of activities and may seek:

- delivery of services to or on behalf of Government;
- provision of infrastructure development;
- access to or lease or purchase of Government assets or land; or
- financial, regulatory or other Government support to undertake a specific activity.

Unsolicited proposals submitted to DEW may include a request for funding or access, lease or purchase of assets or land owned by the Minister for Environment and Water (e.g. Crown or national park land) or under the care, control and management of a Crown agency.

Depending on the nature of the unsolicited proposal and its project value to Government, proposals will generally be assessed and managed by DEW or DTF in accordance with the following thresholds:

Project value with Government*	Proposals with infrastructure	Proposals without infrastructure
Less than \$1 million	DEW	DEW
\$1 million to \$3 million	DEW	DTF
More than \$3 million	DTF	DTF

* Please note that these thresholds refer to the estimated value of the project's transaction with Government rather than the total project cost.

4. Who can submit an unsolicited proposal?

Any non-government entity can lodge an unsolicited proposal to Government, for example a business, not-for-profit organisation, consortium or individual.

Proposals submitted by local government (councils) are not considered 'unsolicited proposals' as they are not a private entity and are therefore outside of the scope of the unsolicited proposals process.

5. Government objectives

To ensure consistency and transparency across Government, DEW assesses unsolicited proposals in accordance with the following Government objectives:

- Ensuring the benefits of the project are maximised for South Australians;
- Promoting the development of unique, innovative ideas by the private and community sector to support economic development, jobs creation and meeting community needs;
- Ensuring an open, transparent and fair process that involves a high standard of probity and public accountability;
- Ensuring value for money for DEW and Government is achieved; and
- Ensuring that the private party's intellectual property is respected.

6. Lodging an unsolicited proposal

Proponents are encouraged to email the DEW Unsolicited Proposals mailbox on DEW.UnsolicitedProposals@sa.gov.au to make arrangements to discuss their proposal concept prior to lodgement. This will assist in identifying whether the proposal meets the definition of an unsolicited proposal and whether it should be lodged with DEW or DTF (depending on the proposal's transactional value with Government).

DEW may also recommend conducting a pre-lodgement meeting with proponents to discuss any other information or requirements prior to the proponent committing significant resources to the development of their proposal.

To lodge an unsolicited proposal with DEW, please complete the Application Form, available at www.environment.sa.gov.au/get-involved/unsolicited-proposals and email it to DEW.UnsolicitedProposals@sa.gov.au

Should your proposal seek to access, lease or purchase Government assets or land, DEW recommends using the following online tools to obtain land title references, maps and geographical information:

- NatureMaps: Visit <https://data.environment.sa.gov.au/NatureMaps/Pages/default.aspx>
- South Australian Property and Planning Atlas (SAPPA) (formerly called Property Location Browser): Visit <https://www.sa.gov.au/topics/planning-and-property/buying-and-selling/researching-a-property/property-location-browser>
- South Australian Integrated Land Information System (SAILIS): Visit <https://sailis.lssa.com.au/home/auth/login> (please note fees may apply)

7. Fees and charges

Proponents will not be charged fees to lodge an unsolicited proposal or have it assessed by DEW. However, if the proposal results in a transaction that would incur a regulated fee or charge, these will be applicable at the time of the relevant transaction (for example, lease application and preparation regulated fees).

DEW can assist with the identification of fees and charges, however it is ultimately the proponent's responsibility to be aware of and account for any regulatory fees and charges that may apply.

8. Assessment criteria to enter exclusive negotiations

In order for DEW to enter into exclusive negotiations with a proponent, the unsolicited proposal must satisfactorily meet the following five criteria.

8.1 No competing proposals

Unsolicited proposals will not be accepted if the same or similar proposals are already under consideration by DEW. This includes existing or planned procurement or market-based processes.

8.2 Community need and DEW/Government priority

You must demonstrate how your proposal will create economic activity and employment, meet unmet community needs or how it has other unique qualities with tangible outcomes for South Australians that align or assist with the achievement of Government strategic priorities. For information about Government's strategic priorities, visit www.premier.sa.gov.au/our-plan/delivering-for-south-australia

8.3 Uniqueness of the proposal

You must explain how your proposal is an original idea, has unique assets or characteristics, why the proposal cannot be delivered by another party in the near future or what advantage is to be gained from DEW granting an exclusive mandate to deal with you over a standard procurement or market-based process.

8.4 Value for money

You must clearly identify what you require from DEW or Government to enable your proposal (e.g. land or assets, or changes to legislation) and explain how your proposal will benefit South Australians, how it is sustainable and how it is fairly priced in comparison to other similar projects. If you require DEW to provide funding or accept a degree of risk, you will need to clarify these needs so DEW can consider whether the benefits of the proposal are likely to outweigh the costs and risks to Government.

8.5 Capacity and capability of the proponent

You must demonstrate that you have the capacity, capability and skills to successfully deliver the desired outcomes of your proposal. You will need to provide information about your organisation's financial capacity, commercial and trading history, any prior dealings with DEW or Government, experience and competencies in delivering similar projects and any third parties upon which you will be relying. You should also explain how the proposal will meet any relevant commercial or industry standards, where applicable.

9. Assessment stages

DEW assesses unsolicited proposals in three stages. Stages 2 and 3 may be conducted concurrently at DEW's sole discretion. Please note that DEW reserves the right to end consideration of the proposal, go to a competitive market-based process or withdraw from exclusive negotiations at any stage of the process.

9.1 Stage 1: Initial proposal

The DEW Unsolicited Proposals Executive Officer will acknowledge receipt of your proposal within two (2) business days.

They will ensure that your Application Form and any supporting documentation is complete and will assess whether your proposal satisfactorily meets the five criteria listed above and is viable under any relevant legislation or policy. They may also contact you to seek further information.

A Stage 1 Assessment report will be submitted to the DEW Unsolicited Proposals Governance Committee (Governance Committee) to enable a determination on whether your proposal:

- Meets the criteria and should proceed to Stage 2;
- Is not suitable for consideration on an exclusive basis but may be suitable for a competitive market process; or
- Does not meet the criteria or is not otherwise suitable for further consideration and should not proceed.

DEW will seek to ensure that the first stage of the process takes no more than 45 days (commencing from when DEW has determined that sufficient information has been provided to enable assessment) and that you are notified in writing of the outcome of Stage 1.

Please note that Governance Committee endorsement to proceed to Stage 2 is not necessarily an approval of your proposal. Proposals may be subject to legislative and/or Chief Executive, Ministerial or Cabinet approvals. Proposals are not approved until you are advised by DEW in writing that all relevant authorities have given the required approval.

9.2 Stage 2: Exclusive negotiation and detailed proposal

In Stage 2, DEW will conduct a detailed assessment of the feasibility of your proposal, including how it will be delivered and whether it represents value for money for DEW or Government.

A Case Manager will be assigned to coordinate the Stage 2 Assessment process and will contact you to establish the terms and conditions of your participation. This may include meeting with you to:

- Obtain more information about your proposal;
- Inform you about communication protocols, community engagement and any public consultations that may be required;
- Obtain information about and manage any conflicts of interest or confidential information;
- Inform you of your obligations, including whether you need to complete an Industry Participation Plan; and
- Inform you of the estimated timeframes for Stage 2 Assessment.

As the proponent, it is your responsibility to develop a detailed business proposal, provide all supporting information to enable DEW's assessment against the five criteria and address any relevant legislative requirements, risks or issues raised by the Governance Committee.

The Case Manager will coordinate any assessments in relation to your proposal that may be required by DEW. Depending on the nature of your proposal, the Case Manager may liaise with other Government agencies or third parties about your proposal. This may include a business viability assessment through the South Australian Government Financing Authority (SAFA). This will be undertaken on a strict, need-to-know basis and in accordance with confidentiality protocols.

The Case Manager will submit a Stage 2 Assessment report to the Governance Committee to enable a determination on whether your proposal:

- Meets the criteria and should proceed to Stage 3;
- Is not suitable for consideration on an exclusive basis but may be suitable for a competitive market process; or
- Does not meet the criteria or is not otherwise suitable for further consideration and should not proceed.

You will be advised in writing of the outcome of Stage 2 Assessment. Depending on the nature of your proposal, additional advice may need to be prepared for the Minister and/or Cabinet to determine whether the proposal should proceed to Stage 3.

Governance Committee endorsement to proceed to Stage 3 is not necessarily an approval of your proposal. Proposals may be subject to legislative and/or require Chief Executive, Ministerial or Cabinet approvals. Proposals are not approved until you are advised by DEW in writing that all relevant authorities have given the required approval.

9.3 Stage 3: Contract negotiation

In Stage 3, DEW, the proponent and any other relevant parties will negotiate the final legal, financial, commercial or technical terms of your proposal and prepare to execute any formal project tenure, contract or other documentation.

During this process, the Case Manager (or another DEW officer appointed to manage negotiations) may contact you to discuss:

- Any protocols or processes required for this stage; and
- Negotiations, contract development and any ongoing contract or project management arrangements (including key milestones) that will apply if your proposal is approved.

All contracts and documents will be comprehensively reviewed and submitted to the Governance Committee to enable a determination on whether your proposal should:

- Be approved and all contracts/documents executed;
- Be approved and specific conditions included in the contracts/documents to be executed;
- Not be approved, but may proceed through a competitive market process; or
- Not be approved and consideration of the proposal concluded.

Governance Committee endorsement to proceed is not necessarily an approval of your proposal. In some cases, the Minister and/or Cabinet must issue final approval on a proposal. If required, the Governance Committee will forward its recommendations to the Minister and/or Cabinet to determine if your proposal should:

- Be approved and all contracts/documents executed;
- Be approved and specific conditions included in the contacts/documents to be executed;
- Not be approved, but may proceed through a competitive market process; or
- Not be approved and consideration of the proposal concluded.

You will be advised in writing on the outcome of Stage 3.

10. Terms and Conditions

10.1 No approval

DEW is not obliged to accept any unsolicited proposal.

No approval of an unsolicited proposal is implied by the receipt of an unsolicited proposal by DEW/Government or at any time throughout the assessment or negotiation process.

All proposals are subject to DEW/Government approval processes and may be subject to legislative requirements and/or approval by the relevant Minister or Cabinet.

DEW maintains absolute discretion to directly negotiate with a party (the proponent) lodging an unsolicited proposal.

DEW reserves the right to end consideration of an unsolicited proposal, go to a competitive market process or withdraw its interest or offer on notice at any stage of the process.

10.2 Communications, community engagement and media

Proponents may be required to develop a communications or community engagement plan consistent with the nature of the unsolicited proposal.

Proponents should consult with the DEW Unsolicited Proposals Executive Officer or assigned Case Manager and seek approval prior to conducting community engagements or media announcements.

Proponents should seek prior approval of any media materials and not make media releases or respond to media enquiries about the proposal without DEW's prior written approval.

10.3 No lobbying

Lobbying about the unsolicited proposal by proponents (or associates) is strictly prohibited at all times. If DEW determines that a proponent has violated this condition, it may in its absolute discretion disqualify a proposal from further consideration.

10.4 Information sharing

Proponents commit to the open sharing of information required for DEW/Government to properly assess the proposal.

10.5 Proponent primary contact

If there is more than one party to a proposal, proponents must nominate a primary contact person to communicate with the Case Manager. The Case Manager will not discuss the unsolicited proposal with any other person or any consultants engaged by the proponent.

10.6 Intellectual property

While all reasonable steps will be taken to protect the intellectual property of the proponent, the proponent should be mindful that it participates in the unsolicited proposals assessment processes as set out in this Unsolicited Proposals Information for Proponents document at its own risk.

DEW/Government reserves the right to disclose some or all of the contents of the submission to any consultant or advisor as part of consideration of the proposal or as a consequence of questions raised in Parliament or if required by law. By lodging an unsolicited proposal, proponents license the state to reproduce, for the purpose of the assessment process, the whole or any portion of the proposal, despite any copyright or intellectual property right that may exist in the proposal.

10.7 Freedom of information

The *Freedom of Information Act 1991* (FOI Act) applies to information provided by a proponent. Proponents should note that the FOI Act allows members of the public rights of access to documents of the State and any State participants.

All or part of the information provided by proponents may be disclosed to third parties if there is a requirement to do so under the FOI Act. Any information that is commercially sensitive or confidential should be marked "commercial and confidential". This must not be used unless genuinely applicable. Marking information "commercial and confidential" may not necessarily prevent disclosure of the information in accordance with the FOI Act. Any decision to release will be determined by the requirements of the FOI Act. Proponents will not be entitled to make any claim in relation to any actions taken in relation to or under the FOI Act.

10.8 Conflicts of interest

Proponents must inform DEW of any circumstances or relationships that do or could constitute an actual, potential or perceived conflict of interest and if any conflicts are declared or arise, how the proponent will manage the conflicts.

10.9 No legal relationship

By lodging an unsolicited proposal, proponents acknowledge that:

- No contract exists or is implied between proponents and DEW/Government/the State until contracts are fully executed and approved; and
- DEW/Government/the State has no contractual or other legal obligation to proponents with respect to the consideration, evaluation, acceptance or rejection of proposals or the failure to consider, evaluate or accept proposals.

10.10 Change in information or circumstance

Proponents must inform DEW promptly in writing of any material change to any information lodged with or about the unsolicited proposal and any material change in circumstance that may affect the truth, completeness or accuracy of the information provided in or in connection with the proposal, including any change in the proponent's capability or capacity to deliver the proposal.

11. Key definitions

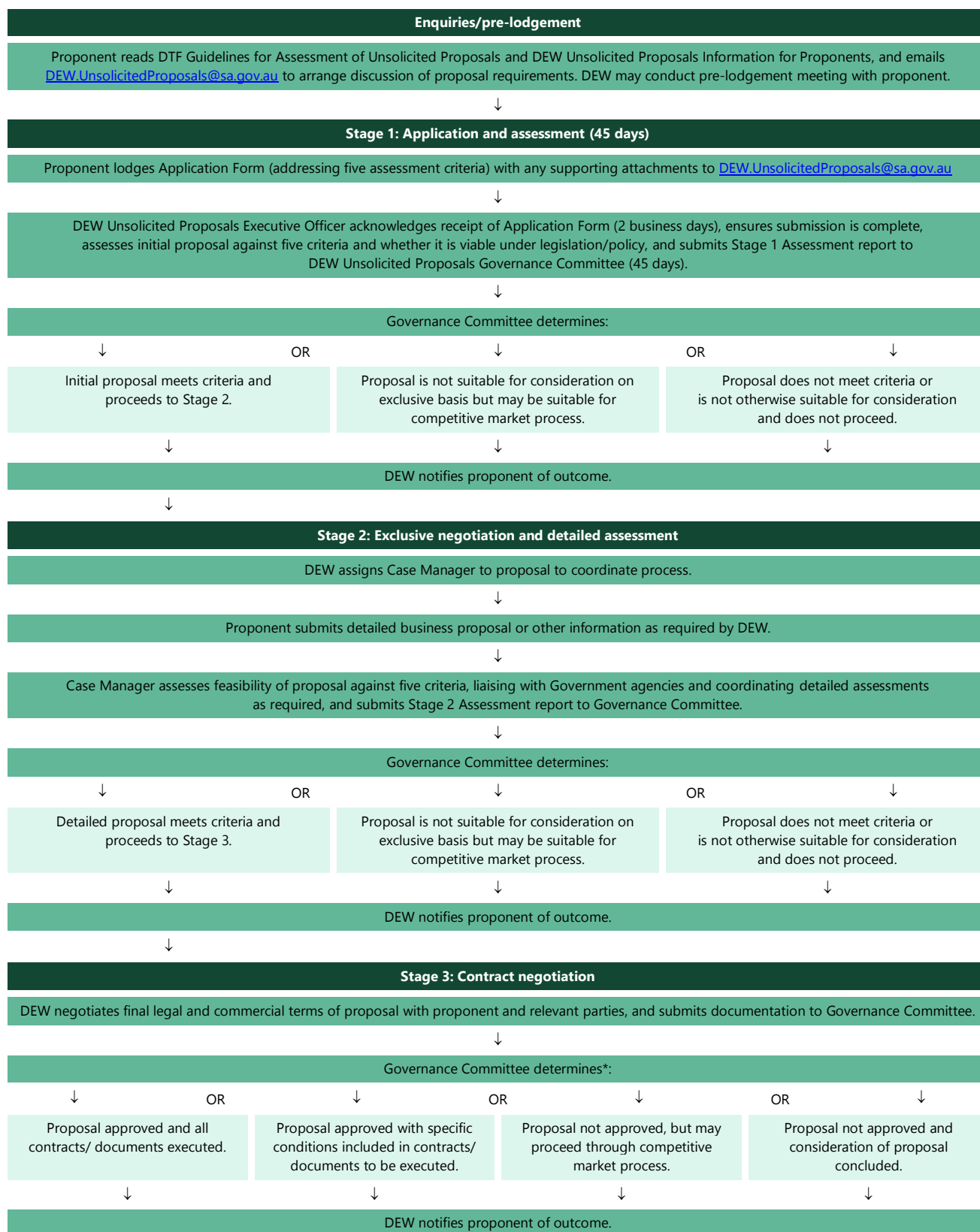
Detailed business proposal	A fully developed and robust document that clearly describes the proposed project, addresses each of the five assessment criteria and provides all supporting information to enable assessment by the Governance Committee.
DEW or the Department	The Department for Environment and Water.
Executive Officer	The Department for Environment and Water Unsolicited Proposals Executive Officer supports the Governance Committee and is the point of contact for all DEW unsolicited proposals and enquiries.
Governance Committee	The Department for Environment and Water Unsolicited Proposals Governance Committee provides high-level governance, guidance and leadership over the management and assessment of unsolicited proposals case managed by DEW.
Lobbying	Attempting to influence business leaders, DEW or Government to create legislation or conduct an activity for the outcome desired by the person lobbying. For example, attempting to influence the outcome of unsolicited proposals assessments.
Minister	The Minister for Environment and Water.
Probity	The integrity, openness, honesty and transparency of a particular process. Probity also relates to standards of behaviour such as maintaining confidentiality, declaring conflicts of interest, process integrity, individual accountability and proper communication and information management.
Proponent	The party (company, business, organisation, entity, person or persons) who lodges an unsolicited proposal to DEW or Government for assessment.
Unsolicited proposal	A proposal submitted to DEW or Government by a private entity (either for-profit or not-for-profit) without Government making a formal request through an existing procurement, tender or other open market-based process.

12. Contact

For further information, please visit www.environment.sa.gov.au/get-involved/unsolicited-proposals

To discuss your proposal concept, lodge an Application Form or for general enquiries or assistance, please contact the DEW Unsolicited Proposals Executive Officer by phone (08) 8204 1218 or email DEW.UnsolicitedProposals@sa.gov.au

13. Unsolicited Proposals process flowchart



* In some cases, the Governance Committee will forward its recommendations to the Minister and/or Cabinet for final approval and execution.

** DEW reserves the right to end consideration of the unsolicited proposal, go to a competitive market-based process or withdraw from exclusive negotiations at any stage of the process.

Published by:
Department for Environment and Water
Government of South Australia
May 2020

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