



# GUIDELINES FOR UNSOLICITED PROPOSALS EDITION 3.2

MAY 2026



CHIEF MINISTER, TREASURY AND  
ECONOMIC DEVELOPMENT DIRECTORATE

## GUIDELINES FOR UNSOLICITED PROPOSALS

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**CONTENTS** ..... I

**FOREWORD** ..... III

**1. INTRODUCTION** ..... 1

    1.1 BACKGROUND ..... 1

    1.2 PURPOSE OF THIS DOCUMENT ..... 2

    1.3 SUMMARY OF THE PROCESS ..... 2

    1.4 STRUCTURE OF THE GUIDELINES ..... 3

**2. GUIDING PRINCIPLES** ..... 4

    2.1 OVERVIEW ..... 4

    2.2 WHAT IS AN UNSOLICITED PROPOSAL? ..... 4

**3. PHASED PROCESS** ..... 7

    3.1 OVERVIEW ..... 7

    3.2 SUBMITTING AN UNSOLICITED PROPOSAL ..... 7

    3.3 CONCEPT SUBMISSION (PHASE 1) ..... 8

    3.4 DETAILED SUBMISSION (PHASE 2) ..... 10

    3.5 TENDER (PHASE 3) ..... 13

**4. GOVERNANCE** ..... 17

    4.1 OVERVIEW ..... 17

    4.2 ROLES AND RESPONSIBILITIES ..... 17

    4.3 PROBITY ..... 17

**5. COMMUNICATION AND CONSULTATION** ..... 19

    5.1 OVERVIEW ..... 19

    5.2 REPORTING AND PUBLIC DISCLOSURE ..... 19

    5.3 PUBLIC CONSULTATION ..... 19

    5.4 ROLES AND RESPONSIBILITIES ..... 19

    5.5 INTRA-GOVERNMENTAL CONSULTATION ..... 20

**5.6 RELEVANT MINISTER AND CABINET .....20**

**APPENDICES ..... 21**

Appendix A: Glossary ..... 21

Appendix B: Sources ..... 24

Appendix C: Covering Letter Template..... 25

Appendix D: Declaration to Abide by Process ..... 26

Appendix E: Concept Submission ..... 27

Appendix F: Public Declaration..... 35

Appendix G: Examples of hypothetical proposals and  
possible Tender Models..... 36

## FOREWORD

The ACT Government is committed to improving the facilitation of infrastructure development, service delivery and private sector investment within the Territory. By introducing this policy on Unsolicited Proposals, the Government has created a clear pathway for prospective bidders to submit innovative and unique ideas that align with its strategic objectives and to have them considered within a fair and transparent framework.

It is important that genuine Unsolicited Proposals, which normal procurement processes cannot manage, have a process under which the Government can consider them in a manner that is both efficient and effective for prospective bidders and Government.

These *Guidelines for Unsolicited Proposals* provide a transparent framework for both prospective bidders and Government to inform themselves on the treatment of Unsolicited Proposals for public infrastructure, service delivery and private sector investment in the Territory.

This document's main objective is to provide consistency and clarity to any parties involved in an Unsolicited Proposal submission, both private and public sectors alike. It describes how the Government evaluates submissions and, if appropriate, determines the process for reaching contractual agreement on their implementation in order to meet the Government's principles of acting in the public interest, delivering value for money, and achieving appropriate delivery.

These *Guidelines* will ensure the maintenance of accountability and fairness throughout the Government's process of consideration of Unsolicited Proposals, while also maximising value for money to the Territory and staying within the Government's affordability envelope.

This Edition 3.2 of these *Guidelines*:

- Allows the Under Treasurer to reject a proposal during Phase 1, should it be deemed to not constitute an Unsolicited Proposals as stated under section 2.2 of the Guidelines

## 1. INTRODUCTION

### 1.1 BACKGROUND

The ACT Government is committed to improving the facilitation of infrastructure and service delivery within the Territory in order to meet its service delivery needs and to develop a strong and resilient local economy. This intent covers both infrastructure that supports economic development and growth, and infrastructure that enhances and sustains social outcomes for the general public.

In order to support this objective, the Government has implemented the *Capital Framework* to provide a platform for more progressive and sophisticated approaches towards capital project delivery in the ACT. The *Capital Framework* supports capital projects of any type, complexity or cost through rigorous internal government processes for assessing the case for new investment projects in the ACT and, among other matters, determining their most appropriate delivery model.

The Government has developed the *Guidelines for Public Private Partnerships* and the *Guidelines for Unsolicited Proposals* as an extension to the *Capital Framework* for projects where the Government engages with the private sector to a greater degree than under traditional Government procurement methods, through arrangements such as Public Private Partnerships and unsolicited proposals. These *Guidelines* aim to support private sector investment in social and economic infrastructure and related services where the ACT Government can demonstrate clearly the value for money of such investment.

These *Guidelines for Unsolicited Proposals* (**Guidelines**) provide a viable framework for prospective bidders (Proponents) to submit innovative and unique ideas (Unsolicited Proposals) that:

- do not fit readily within the Government's normal procurement processes
- provide value for money for the Territory
- align with the Government's strategic objectives.

The *Guidelines* provide a transparent framework for the treatment of Unsolicited Proposals in the Territory, giving consistency and clarity to both Proponents and Government. They ensure the maintenance of accountability, transparency and fairness throughout the process of the Government's consideration of Unsolicited Proposals, while maximising value for money to the Territory.

These *Guidelines* have been maintained and updated as required since their initial release, as summarised below:

| Edition                       | Release Date   |
|-------------------------------|----------------|
| First Edition                 | January 2014   |
| Second Edition                | July 2016      |
| Second Edition (Updated)      | September 2016 |
| Third Edition                 | March 2018     |
| Fourth Edition (Edition 3.1)  | March 2020     |
| Current Edition (Edition 3.2) | May 2026       |

Responsibility for administering the *Guidelines for Public Private Partnerships* lies with Infrastructure and Commercial Advice (ICA) of the Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

## 1.2 PURPOSE OF THIS DOCUMENT

These *Guidelines* set out guiding principles for Ministers, ACT public sector officers and Proponents when developing and evaluating Unsolicited Proposals. They aim to provide consistency and confidence to the market on how the Government will assess Unsolicited Proposals against its key principles of meeting its strategic objectives and providing value for money.

These *Guidelines* do not provide an alternative to the *Government Procurement Act 2001* (the *Act*) and the related *Government Procurement Regulation 2007* (the *Regulation*) where this *Act* and *Regulation* apply. As described further in Section 3.4.4, the *Act* and *Regulation* require the Government to undertake competitive open tender procurement procedures, with very limited exceptions. The Government also needs to comply with common law principles of fairness and transparency in procurement.

Where appropriate, the Government will apply processes within the *Capital Framework* and the *Guidelines for Public Private Partnerships* to promote standardisation and consistency in capital project planning and delivery.

These *Guidelines* are a general statement of intent on how the Government will treat Unsolicited Proposals, rather than a binding process. Unsolicited Proposals can take various forms and, therefore, the Government may develop an alternative process tailored to its specific Unsolicited Proposal should it deem this to be appropriate and in the best interests of the Territory.

These *Guidelines* do not replace or circumvent any due process of the Government or its agencies. All Proposals will be subject to the requisite legislative, regulatory and policy requirements afforded to all other development within the Territory. In particular, these *Guidelines* do not prevail over or circumvent any statutory process relating to the direct sale of land in the ACT. Unsolicited Proposals that also include land sales will continue to be subject to the provisions of the *Planning and Development Act 2007*.

The ACT Government gratefully acknowledges that this document draws on existing guidelines published by other Australian jurisdictions, in addition to other sources.

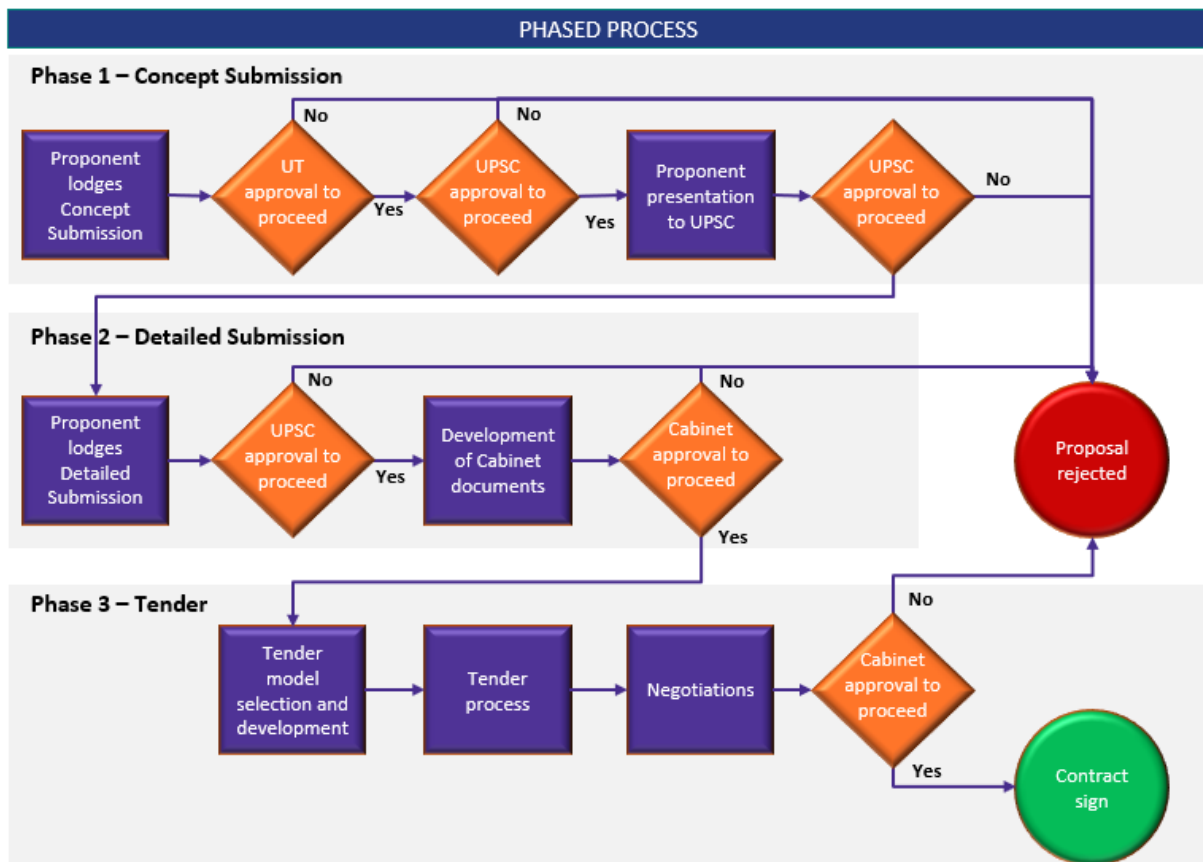
## 1.3 SUMMARY OF THE PROCESS

The process described in these *Guidelines* covers three Phases:

- Phase 1 – Concept Submission
- Phase 2 – Detailed Submission
- Phase 3 – Tender

Figure 1 below shows a high-level summary of the process, which Section 3 below describes in more detail.

Figure 1: Phased Process



## 1.4 STRUCTURE OF THE GUIDELINES

The structure of this document is as follows:

- **Guiding Principles** – This section provides the overarching rationale and principles to drive and test the identification, assessment and approval of Unsolicited Proposals
- **Phased Process** – This section provides a description of the phases involved in the submission, filtering and evaluation of Unsolicited Proposals
- **Governance** – This section provides guidance to ACT public sector officers on appropriate levels of resourcing, responsibility delegation and scheduling, as well as maintaining acceptable probity standards when considering Unsolicited Proposals
- **Communication and Consultation** – This section provides guidance to relevant stakeholders on the roles, responsibilities and expectations of consultation on Unsolicited Proposals.

## 2. GUIDING PRINCIPLES

### 2.1 OVERVIEW

This section outlines the rationale for a Proponent to submit an Unsolicited Proposal. It also provides further detail on the guiding principles, objectives and frameworks that the ACT Government intends generally to follow when evaluating the merit of an Unsolicited Proposal. As noted in Section 1.2 above, there may be circumstances in which the Government follows an alternative process.

### 2.2 WHAT IS AN UNSOLICITED PROPOSAL?

For the purposes of this policy, an Unsolicited Proposal is an approach by a Proponent with a proposal, not requested or otherwise solicited by the Government or its agencies, that normally entails one or more of the following:

- the construction and/or financing of public infrastructure
- the transfer of assets between the public and private sector in relation to the provision of public infrastructure
- the divestment and/or outsourcing of public assets and/or services
- business partnerships and collaboration between the public and private sectors that involve considered entrepreneurship.

An Unsolicited Proposal may also entail particular regulatory arrangements.

#### Evaluation criteria:

A successful Unsolicited Proposal is likely to be of a high standard and well developed, and to address substantively some or all of the following evaluation criteria:

- **Public Interest** – satisfying a community need or otherwise providing a clear and measurable benefit to the residents of the ACT, either directly or indirectly via the Government
- **Appropriate for Government investment** – not displacing private sector activity, crowding-out private sector investment, or contravening competitive neutrality principles
- **Strategic priority** – taking into account the Government’s strategic objectives
- **Justification for direct negotiation** – demonstrating that the public interest is best served by the Government negotiating directly with the Proponent, rather than by engaging in an open, competitive process
- **Value for Money** – delivering an outcome to the Territory that it can determine is value-for-money in the absence of a competitive market
- **Affordability** – being affordable within the Government’s Budget, funding priorities and fiscal strategy
- **Appropriate risk and cost allocation** – the proposed allocation of costs and risks between the Proponent and other parties is acceptable to the Government
- **Feasibility** – being technically, commercially and practically feasible
- **Capacity and capability** – the Proponent demonstrating that it has the financial and technical capacity, capability and experience to deliver the proposed outcome successfully.

In considering whether a Proposal is “appropriate for Government investment”, the Government generally will favour ideas that align with its current strategic objectives. However, the Government recognises that there may be Proposals of interest to it beyond the current focus of Government, and will consider such Proposals on a case-by-case basis. Proponents can find the Government’s strategic objectives as at the date of publication of this Edition 3.2 of the *Guidelines* in the following documents:

# GUIDELINES FOR UNSOLICITED PROPOSALS

- [ACT Budget](#)
- [Built for CBR – Infrastructure Plan](#)
- [Engaging with Government](#)

The Government updates its strategic priorities from time to time to reflect changes in the Territory's overall environment.

The Government will not meet or reimburse costs incurred by Proponents in the preparation, development and processing of an Unsolicited Proposal.

## Excluding criteria:

The following types of proposal typically do not constitute Unsolicited Proposals under these *Guidelines* and, generally, the Government will not consider them under this framework.

- Proponents seeking to purchase or acquire unleased Territory land directly. Unless the proposal presents a unique opportunity, the Government is unlikely to enter into such an arrangement without an open tender process. It will instead refer direct land sale proposals to the Strategic Projects and Direct Sales unit in the City and Environment Directorate (CED), which manages direct land sales in accordance with the requirements of the *Planning Act 2023*. More details on the direct sale of land, including eligibility criteria and the process to apply, can be found under [Direct Sales](#) on CED's website.
- Proponents seeking to sell land to the Territory. The Land Acquisition Directions set out under the *City Renewal Authority and Suburban Land Agency Act 2017* describe the acquisition process and requirements for the City Renewal Authority (CRA) and the Suburban Land Agency (SLA). Other Government agencies, such as Housing ACT and individual Directorates, have their own processes for land acquisition.
- Proponents with an existing licence to provide goods or services to the Government or its agencies who are seeking to bypass a future tender process.
- Proposals for significant extensions to existing contracts, or for the next stage of a staged project, on the basis that the contractor is already on-site or has some other claimed advantages, in the absence of other criteria that justify the use of these *Guidelines*.
- Proposals seeking to develop land that neither the Territory nor the Proponent owns.
- Proposals to provide widely available goods or services, including consultancy services, to the Government or its agencies.
- Proposals for projects for which the tender process has formally commenced or for which planning has commenced, whether published or not.
- Proposals merely seeking grants to fund organisational projects, e.g. scientific research.
- Proposals seeking funding for start-up enterprises and organisations, as it is unlikely that they would satisfy the criteria of the Proponent having an appropriate capacity and capability.
- Proposals involving matters outside the ACT or that are the responsibility of a jurisdiction other than the ACT Government.
- Proposals with a total value below \$10 million are unlikely to be considered Unsolicited Proposals, although the Government may decide to apply the framework for smaller projects on a case by case basis.

## **2.2.1 Ensuring Appropriate Delivery**

A Proponent ideally should present some or all of the following in its Proposal:

- the roles, responsibilities and contributions required of the Government and its agencies in delivering the Proposal

## GUIDELINES FOR UNSOLICITED PROPOSALS

- where relevant, the proposed delivery model for the Proposal, including planning, design and construction and operations arrangements (as required)
- the demonstrated capability and capacity of the Proponent to deliver the Proposal, including in terms of technical issues
- the appropriateness of the proposed risk allocation between the Proponent and the Territory.

A Proponent ideally should nominate its preferred commercial Tender Model from those listed in Section 3.5 below and provide reasoning for the preference identified.

The evaluation of Unsolicited Proposals may take into consideration:

- the uniqueness of the proposed delivery approach in terms of the ability of other third parties to provide similar benefits
- whether the Proposal could create a commercial environment (e.g. a monopoly position) that could impair existing markets or impose economic costs on the Territory.

The evaluation process will take into consideration the Proponent's preferred commercial Tender Model, but the Government reserves the right to select a final Tender Model that it considers to be in the overall best interest of the Territory.

### 2.2.2 Value for Money

The achievement of value for money is a core requirement of any procurement or divestment activity undertaken by the Government, and is an absolute requirement of the *Government Procurement Act 2001*<sup>1</sup>. The related *Government Procurement Regulation 2007* requires an open tender for procurements with an estimated value of \$500,000 or more<sup>2</sup>. The Government may exempt specific procurements from the requirement for a open tender if it is satisfied, on reasonable grounds, that the benefit of the exemption outweighs the benefit of compliance<sup>3</sup>. However, the Government still must pursue value for money through the alternative procurement method. Hence, in considering the appropriate Tender Model for a Proposal, it will need to be satisfied that this Tender Model will result in better value for money than would a public tender. Section 3.5 below discusses this issue in more detail.

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<sup>1</sup> See Section 8 of the *Act*

<sup>2</sup> See Section 8 of the *Regulation*

<sup>3</sup> See Section 9 of the *Regulation*

# 3. PHASED PROCESS

## 3.1 OVERVIEW

This section outlines the Phased Process through which the ACT Government will identify, assess and approve Unsolicited Proposals.

Responsibility for managing this Phased Process lies with the Infrastructure and Commercial Advice (ICA) of the Chief Minister, Treasury and Economic Development Directorate (CMTEDD), under the overall direction of the Unsolicited Proposal Steering Committee (UPSC), consisting of senior officers of the ACT public service (see Section 4.2.1 below for further information on the UPSC). ICA officers will liaise with officers from Directorates and agencies with an interest in the Unsolicited Proposal as appropriate.

The process involves:

- A Pre-Proposal Meeting as requested by the Proponent with ICA and other relevant ACT public sector officers if applicable.
- Phase 1 – Concept Submission
- Phase 2 – Detailed Submission
- Phase 3 – Tender (requiring Cabinet approval).

## 3.2 SUBMITTING AN UNSOLICITED PROPOSAL

The Government will consider an Unsolicited Proposal to have commenced formally the process described in these *Guidelines* from the Proponent lodging a Concept Submission with ICA as described further below. Appendices C, D, E and F contain details of and templates for Concept Submissions. The Government will treat submissions to agencies other than ICA as preliminary and such submissions will provide no benefit to Proponents under these *Guidelines* until ICA receives them.

A Proponent must include within its Concept Submission a 'Declaration to Abide by Process' (see Appendix D), which includes an agreement not to contact or discuss with Ministers, Ministerial staff and Government officers the Unsolicited Proposal. **Any approach of this nature will constitute a breach of this Declaration and may result in the exclusion of the Proposal from further consideration under these *Guidelines*.**

Anything submitted by a Proponent as part of its Unsolicited Proposal may be subject to disclosure under the *Freedom of Information Act 2016*.

The Proponent has the right to withdraw its Proposal at any point during the Phased Process.

### 3.2.1 Pre-Proposal Meetings

The Government strongly encourages prospective Proponents to request a Pre-Proposal Meeting with ICA representatives. Depending on the nature of the Proposal, ICA may invite representatives of Directorates and other agencies with an interest in the Proposal to attend this meeting as well. Proponents should submit requests for a Pre-Proposal Meeting by email to:

[unsolicitedproposal@act.gov.au](mailto:unsolicitedproposal@act.gov.au)

Pre-Proposal Meetings enable the clarification of the expectations of both the Government and the Proponent in relation to the specific Concept Submission for an Unsolicited Proposal. They also assist in guiding proposals that do not meet the definition of an Unsolicited Proposal to an appropriate alternative mechanism for their consideration.

A Pre-Proposal Meeting is an opportunity for the Proponent to raise its concept with the Government, enabling it to consider the feasibility of the concept before the Proponent devotes significant resources to developing a detailed Unsolicited Proposal. In addition, as the information provided in Phases 1 and 2 generally will be the basis of assessment of a Proposal, the Pre-Proposal Meeting is an opportunity for prospective Proponents to obtain advice on how best to present their Proposals.

However, should the Government become aware of information that materially affects a Proposal, either during a Pre-Proposal Meeting or at any other time prior to the Government concluding its assessment, the Government may take into account such information regardless of whether it was part of the formal Unsolicited Proposal. Examples include information calling into question:

- the uniqueness of the Proposal
- the feasibility of the Proposal
- the capability or capacity of the Proponent to undertake the Proposal.

### 3.3 CONCEPT SUBMISSION (PHASE 1)

Phase 1 provides the opportunity to present a concept to the most senior levels of the ACT public service through a transparent process and in an efficient manner.

The Proponent's submission will require the following documentation:

1. Covering Letter (**Appendix C**)
2. Signed Declaration to Abide by Process (**Appendix D**)
3. Concept Submission (**Appendix E**).
4. Signed Public Declaration (**Appendix F**)

Proponents should make their submission of an Unsolicited Proposal via email to:

[unsolicitedproposal@act.gov.au](mailto:unsolicitedproposal@act.gov.au)

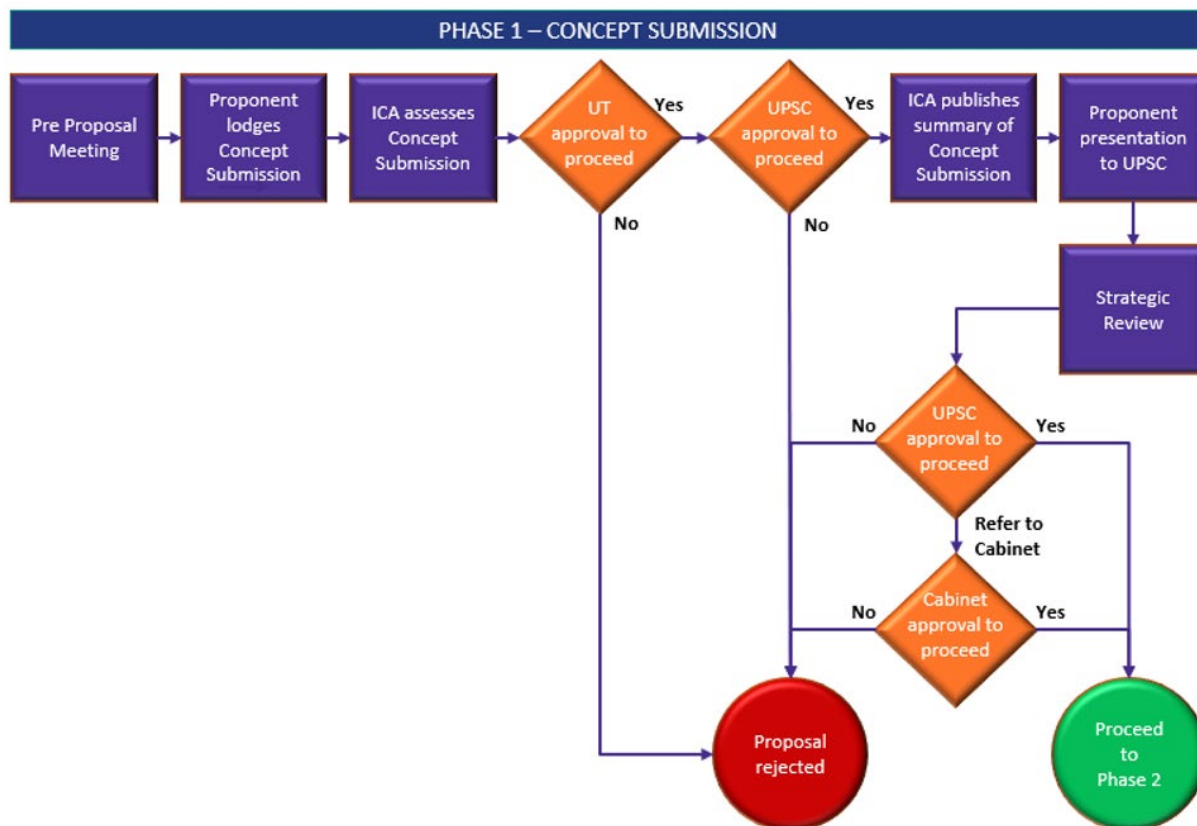
The recommended format for a Concept Submission is a brief and concise overview that the Government can assess in accordance with the principles, objectives and processes set out in these *Guidelines*. Appendix E contains a template for the information requirements Concept Submission, though there is no restriction on a Proponent using an alternative format if appropriate for its Proposal.

In addition to setting out the Proposal's merit and viability, the Concept Submission also should include (and explain the rationale for) the Proponent's preferred commercial Tender Model for progressing the Proposal. Section 3.5 below provides further detail on these models.

The duration from the formal submission of a Proposal to its potential presentation to the UPSC will vary, depending on the complexity of the Proposal and the need for clarifications and further correspondence. However, Government will aim to advise the Proponent whether the UPSC would like to receive a presentation within three months of receiving the formal Concept Submission.

Figure 2 illustrates the steps taken during the Phase 1.

**Figure 2 : Concept Submission Process (Phase 1)**



**3.3.1 Assessing Concept Submissions**

ICA officers will acknowledge receipt of the Proposal and perform an eligibility assessment against the excluding criteria as a basis for a recommendation to the Under Treasurer on whether the proposal constitutes an Unsolicited Proposal under Section 2.2 of these Guidelines.

If the proposal is determined to constitute an Unsolicited Proposal, ICA officers, in liaison with officers from other Directorates and agencies with an interest in the Proposal, will perform a preliminary review of the Concept Submission against the evaluation criteria to support the UPSC in its decision on whether to seek a 45-minute presentation from the Proponent. ICA will continue to provide support and advice to the UPSC throughout the Phased Process.

This initial assessment primarily serves to ensure that neither the Proponent nor the Government expends resources unduly for an Unsolicited Proposal that does not warrant further consideration. In considering whether a Proposal proceeds to a UPSC presentation, ICA officers will consider some or all of:

- whether the Submission meets the evaluation criteria identified in Section 2 – Guiding Principles
- the Territory’s current economic and financial position
- community expectations
- broader reforms that may be occurring nationally
- any other factors they deem relevant to the Proposal.

During this process, ICA may also request further clarification and/or additional information for the Proponent to include within its presentation.

The UPSC may also determine, at its absolute discretion, whether the Government should deal with the Proposal through another, more appropriate mechanism, or not to consider it further.

### 3.3.2 Presentation and Strategic Review

Following its initial assessment and review, should the UPSC consider that a Proposal warrants further consideration, it will invite the Proponent to present its Proposal to the UPSC for approximately 45 minutes. The presentation should reflect the Concept Submission and any clarification or information sought by ICA during the assessment process.

When a Proposal reaches this stage, the Government will publish summary information on it based on the details provided in the Proponent's Public Declaration (Appendix F), as described further in Section 5.2 below. By lodging a Concept Submission, the Proponent accepts that there will be no restriction on the Government publishing this summary information, as there is no Intellectual Property transfer to the Government at this stage. Any material submitted as part of the Concept Submission will be at the Proponent's own risk of public disclosure. However, the Government recognises that some such material may be confidential and will treat it as 'Commercial-in-Confidence' as appropriate.

Following the presentation, the UPSC will undertake an assessment of whether the Concept Submission aligns with the principles and objectives set out in Section 2 above. At this stage, the UPSC may still request the Proponent to provide further clarification and/or additional information to assist in its review.

### 3.3.3 Phase 1 Decision

Following its review of the Proposal, the UPSC will decide, at its absolute discretion, that:

- a. the Government will not consider the Unsolicited Proposal any further, or
- b. the Unsolicited Proposal will proceed to Phase 2 – Detailed Submission, or
- c. features of the Unsolicited Proposal warrant consideration by Cabinet before determining whether it will proceed to Phase 2.

The UPSC will notify the Proponent of this decision within two calendar months of the presentation to the UPSC, unless there are particular circumstances that require a longer review period.

In the event that neither the UPSC nor Cabinet approves a Proposal proceeding to Phase 2, the Government generally will not consider it further until 18 months have elapsed since the lodgement of the Concept Submission, unless the Proponent makes substantial changes to the Proposal.

## 3.4 DETAILED SUBMISSION (PHASE 2)

The intent of Phase 2 is to permit the Government to assess the Proposal based on a detailed Business Case and other information submitted by the Proponent, following the approval for the Proposal to proceed to Phase 2 and a subsequent invitation to the Proponent to do so.

The Proponent needs to develop this Business Case fully such that it is robust and, together with other information provided by the Proponent, provides sufficient information to enable the Government to assess and make a definitive decision on the merits of the Proposal and whether it should proceed to Phase 3 – Tender. The Detailed Submission should provide a comprehensive and compelling case to support the Unsolicited Proposal and, where possible, provide quantified supporting evidence to allow for a robust evaluation by the UPSC against the guiding principles and objectives described in these *Guidelines*.

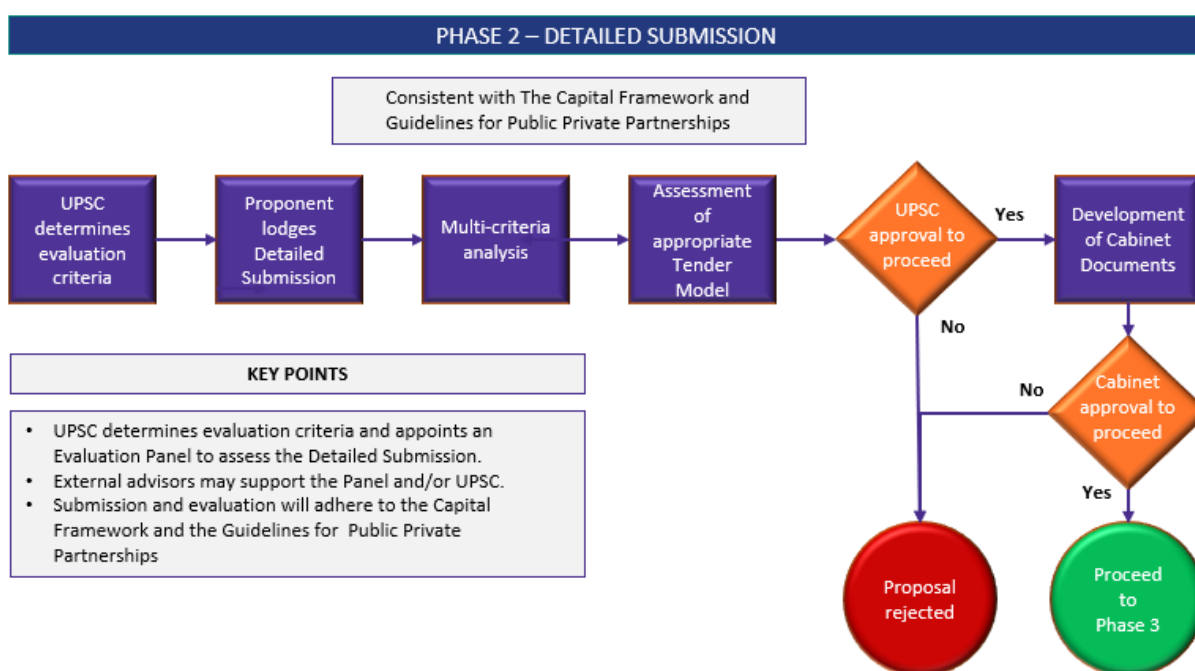
## GUIDELINES FOR UNSOLICITED PROPOSALS

The Government and its agencies recognise that this detailed Business Case may include the Proponent's Intellectual Property, and will take all reasonable steps to protect such Intellectual Property including treating documents as 'Commercial-in-Confidence' during its assessment of the Detailed Submission.

At the commencement of Phase 2, Government will advise the Proponent of its estimated timeframe for completion. The duration of Phase 2 will vary between Proposals, but is likely to take at least 6 – 12 months from the lodging of the Detailed Submission to the decision by the UPSC whether to recommend to Cabinet that it proceed to Phase 3 – Tender.

### Figure 3: Detailed Submission Process (Phase 2)

The Phase 2 assessment is the responsibility of the UPSC, advised by officers from ICA and other Directorates and agencies with an interest in the Proposal and, if necessary, specialist external advisors.



The decision on whether to proceed beyond Phase 2 is the responsibility of Cabinet, informed by a recommendation from the UPSC following its assessment.

#### 3.4.1 Content of the Detailed Submission

The invitation to make a Detailed Submission will set out in detail specific requirements for that Submission and will indicate how the Government intends to assess it. The requirements set by the UPSC will be on a case-by-case basis. However, the paragraphs below and Appendix E provide a general guide for Proponents.

The Detailed Submission should include the following, to the extent that they are relevant to the Proposal:

- Objectives of the Proposal
- Unique elements of the Proposal:
  - Intellectual Property or genuinely innovative ideas
  - Ownership of real property
  - Ownership of software or technology offering a unique benefits
  - Unique financial arrangement

- Unique ability to deliver a strategic outcome
- Other demonstrably unique elements
- Other justifications that the public interest is best served by the Government negotiating directly with the Proponent, rather than by engaging in an open, competitive process
- Nature and extent of anticipated outcomes
- Alignment with relevant Government policy
- Proposed requirements of the Government and its agencies, such as:
  - Transfer or sale of Territory assets
  - Cash contribution
  - Services from Government agencies
  - Deferment of taxes and charges
- Preferred Tender Model.

### 3.4.2 Public Interest

The Proponent most likely will need to demonstrate in its Detailed Submission, to a greater degree of rigour and detail than in Phase 1, that the Proposal is in the public interest as well as meeting necessary legislative/regulatory amendments. The UPSC may require the Proponent to address any particular issues relating to the public interest identified in Phase 1.

In demonstrating that the Proposal is in the public interest, the UPSC may require the Proponent to conduct public or stakeholder consultations. Section 5 below provides details of requirements for the consultation process. The UPSC and/or Cabinet may consider the findings of consultations in making the decision on whether the Proposal should proceed to Phase 3 – Tender.

### 3.4.3 Value for Money

The Government will need to determine that a Proposal represents value for money for the Territory. To assist in this determination, the Detailed Submission should include, to the extent that they are relevant to the Proposal, descriptions of:

- the proposed commercial proposition, including full financial details
- the net economic benefits/costs of the Proposal to the ACT community over the whole of life of the Proposal
- the net financial benefits/cost of the Proposal to the Territory
- the required use of Territory assets, facilities, equipment, materials, personnel, resources and land
- the Proponent's financial and commercial capacity to deliver the Proposal, including return on investment.

The UPSC may also require the following to assist in its assessment:

- an economic appraisal using a whole-of-life evaluation approach to determine value for money (i.e. capturing all benefits and costs to the Territory)
- a financial appraisal to determine affordability and cash flow position for whole-of-government and the return of investment for the Proponent
- a risk assessment including quantification (where possible) and proposed mitigation strategies.

The Proponent may also estimate any benefits that will result from any innovative or unique elements that the Proposal provides for which conventional appraisal methods do not account. The UPSC may consider such benefits on a case-by-case basis and separately from the standard approach to cost-benefit analysis.

### 3.4.4 Appropriate Delivery

The Detailed Submission is likely to include the following:

- the Proponent's preferred Tender Model and its reasoning for that preference
- further organisation and governance details:
  - description of the Proponent's organisation, trade or business
  - previous experience in delivery of similar projects;
  - past performance in operating similar projects
  - facilities and resources to be used (e.g. land owned by Proponent)
- timescales, critical paths or deadlines
- technical challenges and a discussion of how the Proponent will address them
- requirements of the Government to participate in the project.

The *Government Procurement Act 2001* and related *Government Procurement Regulation 2007* require the Government to undertake competitive open tender procurement procedures for activities covered by them, with very limited exceptions, as described in Section 2.2.2 above. This *Act* and *Regulation* cover all acquisitions and disposals of goods, services, works and property (subject to some specific exemptions for land). The Government also needs to comply with common law principles of fairness and transparency in procurement.

If the Proponent prefers the Government to use a different Tender Model to a public tender, it needs to provide sound justification for consideration by the UPSC. The Government reserves the right to undertake an open, competitive bidding process for the Proposal, at its absolute discretion.

### 3.4.5 Phase 2 Decision

Once the UPSC has completed its evaluation of the Detailed Submission, it will decide, at its absolute discretion, either:

- a. that the Government will not consider the Unsolicited Proposal any further, or
- b. that the Proposal merits consideration by Cabinet for a decision on whether it should proceed to Phase 3 - Tender.

The ultimate decision to proceed with a Proposal is the responsibility of Cabinet, informed by the recommendation of the UPSC. The relevant Minister will present the relevant Cabinet Submission. Therefore the UPSC normally will assign the preparation of the Cabinet Submission to Treasury, which will consult with the other members of the UPSC and relevant Government agencies as appropriate.

The time taken for a decision on whether a Proposal proceeds to Phase 3 may vary considerably, depending on the nature and complexity of the Proposal. Government will aim to reach a decision by the time advised at the start of Phase 2, unless there are particular circumstances that requires additional time for consideration. Government will contact the Proponent regularly to ensure it is appropriately informed of the timeline for consideration.

In the event that either the UPSC or Cabinet ends the assessment of a Proposal, the Government generally will not consider it further until 18 months have elapsed since the lodgement of the Detailed Submission, unless the Proponent makes substantial changes to the Proposal.

## 3.5 TENDER (PHASE 3)

Phase 3 covers the formal procurement of the Proposal up to the execution of a binding contract for its implementation. It includes the:

- selection and development of an appropriate Tender Model

## GUIDELINES FOR UNSOLICITED PROPOSALS

- tender process itself
- negotiation of the contract for implementing the Proposal
- execution of this contract.

At the commencement of Phase 2, Government will advise the Proponent of its estimated timeframe for completion. The duration of Phase 3 will vary between Proposals. During this Phase, there is likely to be considerable interaction between the Proponent, ICA and the Directorates and agencies affected by the Proposal.

### 3.5.1 Tender Model Selection

Although the Proponent may nominate its preferred Tender Model in its Detailed Submission, and the Government will take into account the Proponent's preference, the Government reserves the right to select a final Tender Model that it considers to be in the best overall interests of the Territory. It may do so as part of its Phase 2 decision on the Proposal proceeding to Phase 3, or separately following further development of the Proposal at the start of or during Phase 3.

The Government may consult the Government Procurement Board during Phase 2 on its views on the Tender Model.

Table 1 below provides summary descriptions of the Government's preferred alternative Tender Models. However, Unsolicited Proposals can have various forms and the Government reserves the right to adapt these models or to develop an alternative model as appropriate for individual Proposals, at its absolute discretion. In determining the appropriate Tender Model for the Proposal, the Government may require public or stakeholder consultations. Section 5 below provides details of requirements for the consultation process.

The Government will seek to ensure that, in any Tender Model involving a competitive tender process, it provides the same information to all bidders and gives bidders other than the Proponent adequate time to take account of that information in developing their bids.

**Table 1: The Government's Preferred Commercial Tender Models**

| Tender Model               | Description  | Applicability   |
|----------------------------|--|---|
| <b>Open Tender</b>         | The Government undertakes a fully competitive public tender process.   | <ul style="list-style-type: none"><li>• Default preferred model</li><li>• Proposal is not unique</li></ul>  |
| <b>Developer Fee</b>       | The Government undertakes a competitive tender process and the winning bidder, if it is not the Proponent, reimburses the Proponent's pre-agreed development costs.  | <ul style="list-style-type: none"><li>• Proposal likely to be unique, but there is the potential for market alternatives</li><li>• Perceived potential for market alternative</li></ul> |
| <b>Development Manager</b> | The Proponent acts as a development manager for the Territory, conducting one or more transparent procurement processes for different components of the implementation of its Proposal, and receiving a pre-agreed return. | <ul style="list-style-type: none"><li>• Proposal likely unique</li><li>• Niche model for Proponents potentially lacking full life-cycle delivery capability</li></ul>                   |

| Tender Model                    | Description  | Applicability   |
|---------------------------------|--|---|
| <b>Contestable Negotiations</b> | The Territory enters into direct negotiations with the Proponent, and works cooperatively with it to develop the Proposal so that it is acceptable to both parties. The Territory normally will seek opportunities for elements of the Proposal to be contestable. | <ul style="list-style-type: none"> <li>• Unique submission</li> <li>• A complete market alternative does not exist</li> </ul> |

The sections below provide further details of these Tender Models, and Appendix G provides some examples of hypothetical proposals and the Tender Model that the Government might select for each.

Following its selection of the Tender Model, the Government will develop a detailed Tender Plan for the conduct of Phase 3. As part of compliance with the *Government Procurement Act 2001* and *Government Procurement Regulation 2007*, the Government will refer the detailed Tender Plan to the Government Procurement Board for its review and advice.

### 3.5.2 Open Tender

As noted in Section 3.4.4 above, the *Government Procurement Act 2001* requires the Government to undertake competitive public tender procurement procedures for activities covered by it, with very limited exceptions. The criteria that the Government may consider in determining whether to select an Open Tender model for the Proposal include:

- the Proposal not being unique
- there being legitimate competition to the Proponent
- the Government considering that it is in the best interests of the Territory to have an Open Tender.

The Government would run any Open Tender within the provisions of relevant legislation and its applicable policies and guidelines, including the *Capital Framework* and the *Guidelines for Public Private Partnerships*.

The Government may consider an appropriate incentive mechanism for the Proponent to participate in the Open Tender if this is in the best interests of the Territory.

The Proponent has the right to withdraw its Proposal at this stage, and the Government and its agencies will take all reasonable steps to protect the genuine Intellectual Property of the Proponent. However, should the Proponent withdraw its Proposal, the Government reserves the right to proceed with an Open Tender for the concept of the Proposal, if it deems this to be in the best interests of the Territory.

### 3.5.3 Developer Fee

The Developer Fee approach recognises that the Proponent is entitled to some reimbursement of its costs or compensation should it be unsuccessful in a competitive bidding process. Generally, the successful bidder (if not the Proponent) will pay this fee directly to the Proponent on contract signature. The Government will advise bidders of the amount of the fee in the bid documents.

The Government will determine the amount of the fee at its absolute discretion, but will take into account such factors as:

- the Proponent's cost of developing its Proposal
- the value of the Proponent's Intellectual Property contained within its Proposal

- the nature and size of the project
- the number of bidders involved.

The content of the Proponent's submission will be a major consideration in determining the amount of the fee, but the Government may also consider the context of the Proposal.

Where the fee relates directly to the Proponent's Intellectual Property, its amount will reflect the Proponent transferring this Intellectual Property to the Government and, subsequently, to a successful alternative bidder.

### **3.5.4 Development Manager**

Under a Development Manager approach, the Proponent develops the project and conducts the bidding process on behalf of the Government, as its procurement manager. The Proponent cannot bid for the project but receives a development fee from the winning bidder.

This is a niche approach available to a Proponent who may lack the full capability to deliver its Proposal (which might involve, for example, a major capital project) but is still entitled to compensation for an idea, concept or design that is unique. It is also appropriate where the Government does not have sufficient capability or resources to develop the technical specifications for a tender process, while ensuring that the approach remains compliant with the *Government Procurement Act 2001*. The determination of the amount of the fee paid to the Proponent by the successful bidder will follow the same process as that under the Developer Fee approach.

### **3.5.5 Contestable Negotiations**

In the Contestable Negotiations approach, the Government or one of its agencies enters into direct negotiations in good faith with the Proponent, and both parties work cooperatively to develop the Proposal to be acceptable to both parties.

Although this is a relatively straightforward process, it offers the least amount of competitive tension and procedural transparency. As such, the Government is likely to use it only if the Proponent's Proposal is clearly unique and innovative. However, other factors, including timeliness, procurement costs and value for money, may form part of any decision to undertake direct negotiations.

The Government will seek opportunities for elements of the Proposal to be contestable. For example, although the Government may give the Proponent exclusive rights to develop the Proposal, it may require there to be a competitive open tender for construction works.

# 4. GOVERNANCE

## 4.1 OVERVIEW

This section provides guidance on the governance, resourcing, delegation and proper conduct throughout the evaluation and tendering of Unsolicited Proposals. This guidance does not represent a contract or any form of implied contract between the ACT Government and prospective Proponents.

## 4.2 ROLES AND RESPONSIBILITIES

The UPSC may consider and determine several factors in its approach to the governance of Proposals. These factors may include:

- the identification of any Intellectual Property and how the Government will manage it
- the decision making and approval processes appropriate to the Proposal, including any necessary statutory approvals
- the roles and responsibilities of individuals and committees involved in assessment and decision making
- a timetable for completing various elements of the assessment.

### 4.2.1 Unsolicited Proposals Steering Committee

The UPSC consists of the following three core members, who meet on an 'as-required' basis:

- The Head of Service, ACT Public Service;
- The Under Treasurer; and
- The Director-General of the City and Environment Directorate.

Where appropriate, core members can invite additional members to the UPSC.

Where appropriate, other senior officers may deputise for UPSC members or actively participate in the UPSC where an Unsolicited Proposal relates to their Directorate or agency.

The UPSC may also elect to refer to the Government's Strategic Board for advice and input if the Unsolicited Proposal affects multiple directorates.

UPSC decision must be unanimous in order for an Unsolicited Proposal to proceed to the next stage.

### 4.2.2 Government Procurement Board

The Government Procurement Board was established under the *Government Procurement Act 2001*. Its functions include reviewing and giving advice on procurement proposals and activities referred to the board, and reviewing procurement proposals of territory entities, all in accordance with the *Government Procurement Regulations 2007*.

## 4.3 PROBITY

The Government and the ACT public service seek to conduct their dealings with private industry with integrity and procedural transparency. The identification and evaluation of any Unsolicited Proposals must be fair, open and demonstrate probity, consistent with the public interest.

The following probity principles apply throughout the Phased Process:

- upholding professional integrity
- maintaining impartiality

## GUIDELINES FOR UNSOLICITED PROPOSALS

- maintaining accountability and process transparency
- avoiding conflicts of interest
- maintaining confidentiality, except where these *Guidelines* provide otherwise
- undertaking evaluations and assessments within robust governance arrangements.

Although the Government and its employees will take all reasonable steps to protect the genuine Intellectual Property of the Proponent during the Phased Process, Proponents should be mindful that they submit their Proposals at their own risk. The Government generally will only recognise the need to protect Intellectual Property once it invites the Proponent to lodge a Detailed Submission following the assessment of its Concept Submission in Phase 1. Anything submitted by a Proponent as part of its Unsolicited Proposal may be subject to disclosure under the *Freedom of Information Act 2016*.

The Proponent has the right to withdraw its Proposal at any point during the Phased Process, including if the Government decides on a Tender Model different to that preferred by the Proponent. However, in such circumstances, the Government reserves the right to proceed with a Proposal's objectives without the involvement of the Proponent, but also without the use of the Proponent's genuine Intellectual Property, should it deem this to be in the best interests of the Territory.

# 5. COMMUNICATION AND CONSULTATION

## 5.1 OVERVIEW

This section provides guidance on the communication of and consultation on Unsolicited Proposals. It also provides guidance to the Proponent, the general public and other relevant stakeholders on the roles, responsibilities and expectations relating to consultation during the Phased Process.

## 5.2 REPORTING AND PUBLIC DISCLOSURE

If the UPSC decides to invite a Proponent to present its Proposal within the Phase 1 process, the Government will publish on the CMTEDD website summary information on the Proposal based on the details provided in the Proponent's Public Declaration (Appendix F).

These details include the:

- name of the Proposal
- name of the Proponent
- summary of the Proposal
- date of the Concept Submission
- Media Contact of the Proponent
- signed acknowledgement from the Proponent that the Proposal is not a Government proposal, is not necessarily supported by the Government and has been lodged under the Government's *Guidelines for Unsolicited Proposals*.

The Government will not publish details of Proposals that do not proceed to a Phase 1 presentation.

Proposals proceeding to Phase 2 may subsequently be subject to additional disclosures, at the absolute discretion of Cabinet.

Anything submitted by a Proponent as part of its Unsolicited Proposal may be subject to disclosure under the *Freedom of Information Act 2016*.

## 5.3 PUBLIC CONSULTATION

Public consultation on a Proposal may occur within any Phase of the assessment process (i.e. either before or after Cabinet has considered the merits of that Proposal). Cabinet must provide prior approval for all public consultation processes for a Proposal.

Public consultation involves seeking the views of stakeholders outside the Government and its agencies, including the general public, on aspects of the Proposal. It would not involve the release of the Proponent's Intellectual Property without the express approval of the Proponent, unless required by law.

## 5.4 ROLES AND RESPONSIBILITIES

Public consultation may be either:

- entirely the responsibility of the Proponent
- led by government officers; or
- led by the Proponent with participation by Government officers.

Cabinet, informed by the recommendation of the UPSC, will determine the consultation method and the allocation of responsibilities. The Proponent must abide by all consultation requirements of the Government.

The Government may undertake consultation with both internal stakeholders and external stakeholders, including the general public, who have an interest in the Proposal, in accordance with these *Guidelines* and at its absolute discretion.

### 5.5 INTRA-GOVERNMENTAL CONSULTATION

Consultation and communication among Government agencies is intrinsic to the Unsolicited Proposal process and will take place as required on a case-by-case basis.

### 5.6 RELEVANT MINISTER AND CABINET

CMTEDD will inform the relevant Minister and draft briefings to Cabinet:

- of any Concept Submissions that are considered as Unsolicited Proposals;
- quarterly on the status of all decisions made by the UPSC on Unsolicited Proposals whether or not to progress to the next Phase of the Phased Process;
- in advance of any submission of a Proposal to Cabinet for a decision on its progression through the Phased Process and on any other significant matters such as public consultation and the choice of a Tender Model; and
- at any other time on an as-required basis.

## APPENDICES

### Appendix A: Glossary

| Term                                  | Definition   |
|---------------------------------------|--|
| <b>ACT</b>                            | The Australian Capital Territory   |
| <b>Cabinet</b>                        | Cabinet is the peak decision-making body of Ministers of the ACT Government. Cabinet usually meets weekly to discuss matters that have significant implications for the Territory, communities, business and individuals.  |
| <b>CMTEDD</b>                         | The Chief Minister, Treasury and Economic Development Directorate of the Government  |
| <b>Concept Submission</b>             | The initial formal document submitted to the Government that provides a description of the concept of an Unsolicited Proposal for consideration by the Unsolicited Proposals Steering Committee, as further described in Section 3.3 and Appendix E. Lodging a Concept Submission with ICA marks the formal commencement of Phase 1 of the Phased Process under these <i>Guidelines</i> .                      |
| <b>Covering Letter</b>                | Covering letter attached to the initial submission made by the Proponent to initiate the Phased Process for Unsolicited Proposals, substantially in the form shown in Appendix C.  |
| <b>Detailed Submission</b>            | A fully developed and robust detailed business case supporting an Unsolicited Proposal, submitted by the Proponent following a decision that the Unsolicited Proposal should progress to Phase 2 of the Phased Process under these <i>Guidelines</i> .   |
| <b>Directors General</b>              | Respective service heads of Government directorates.   |
| <b>Economic Appraisal</b>             | A systematic means of analysing all the costs and benefits of various ways to meet a project objective. It shows: <ul style="list-style-type: none"> <li>• whether the benefits of a project exceeds its costs</li> <li>• which, among the range of options to achieve an objective, has the highest net benefit</li> <li>• which option is the most cost effective, where benefits are equivalent.</li> </ul> |
| <b>Expression of Interest (“Eoi”)</b> | A formal document expressing interest in delivering a project, normally including details of the provider’s experience and capability in meeting the requirements of the project.  |

| Term                         | Definition  |
|------------------------------|---|
| <b>Financial Appraisal</b>   | <p>A method used to evaluate the financial viability of a proposed project. It assesses the extent to which a project will generate revenues sufficient to meet its financial obligations, as measured by the Net Present Value (“NPV”) (where applicable) of its cash flows. The method takes account of all revenues resulting from, and expenditures incurred under, the project and the whole of Government.</p> <p>It assesses:</p> <ul style="list-style-type: none"> <li>• project cash flows</li> <li>• sensitivity of financial projections to key project risks</li> <li>• adequacy of estimated investment costs</li> <li>• the financial impact of alternative projects.</li> </ul> |
| <b>Government</b>            | The Government of the Australian Capital Territory  |
| <b>Head of Service</b>       | The Head of the ACT public service and Director General of the Chief Minister, Treasury and Economic Development Directorate.   |
| <b>ICA</b>                   | The Infrastructure and Commercial Advice of the Chief Minister, Treasury and Economic Development Directorate.  |
| <b>Intellectual Property</b> | Inventions, original designs and practical applications of good ideas protected by law through copyright, patents, registered designs, circuit layout rights and trademarks. It also includes trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by common law and through additional contractual obligations such as Confidentiality Agreements.   |
| <b>Phased Process</b>        | The Government’s three-phase process for validating, evaluating and awarding projects initiated by Unsolicited Proposals.   |
| <b>Pre-Proposal Meeting</b>  | A meeting between the Proponent and ICA officers held before the formal submission of an Unsolicited Proposal by the Proponent  |
| <b>Proponent</b>             | Any person or organisation that submits the Unsolicited Proposal, except for Government agencies and directorates.  |
| <b>Proposal</b>              | See Unsolicited Proposal below.   |
| <b>Strategic Board</b>       | The Strategic Board is the senior management team for the ACT public service. The Head of Service chairs the Strategic Board, and its other members are the Under Treasurer and the Directors-General of each of the Directorates.  |

| Term                                     | Definition   |
|--|--|
| <b>Tender Model</b>                      | One of the alternative processes for the procurement of the works, goods and/or services that are the subject of the Proposal, as described in Section 3.5.  |
| <b>Territory</b>                         | <ul style="list-style-type: none"> <li>• when used in a geographical sense, means the Australian Capital Territory</li> <li>• when used in any other sense, means the body politic established by Section 7 of the <i>Australian Capital Territory (Self Government) Act 1988 (Commonwealth of Australia)</i>.</li> </ul>  |
| <b>Unsolicited Proposal, or Proposal</b> | <p>An approach by a Proponent with a proposal, not requested or otherwise solicited by the Government or its agencies, that entails:</p> <ul style="list-style-type: none"> <li>• the construction and/or financing of public infrastructure</li> <li>• the transfer of assets between the public and private sector in relation to the provision of public infrastructure</li> <li>• the divestment and/or outsourcing of public assets and/or services</li> <li>• business partnerships and collaboration between the public and private sectors that involve considered entrepreneurship</li> </ul> <p>as described in Section 2.2.</p> |

## Appendix B: Sources

The ACT Government gratefully acknowledges the following documents as sources for much of the information in these *Guidelines*.

Asian Development Bank & GHD Pty Ltd (2012), *Final Draft – Policy Brief Unsolicited Proposals*

Government of South Australia Department of Treasury and Finance, *Guidelines for Assessment of Unsolicited Proposals*

Hodges, J, Dellacha, D (2007), *Unsolicited Infrastructure Proposals: How Some Countries Introduce Competition and Transparency – Working Paper No. 1*, Public Private Infrastructure Advisory Facility

Nova Scotia Procurement (2009), *Procurement Process: Submission & Evaluation of Unsolicited Proposals*

NSW Government (2017), *Unsolicited Proposals – Guide for Submission and Assessment*

Public Private Infrastructure Advisory Facility (2012), *Note 6 – Unsolicited Proposals*

Queensland Government Treasury (2017), *Market Led Proposal Guidelines*

## Appendix C: Covering Letter Template

[Date]

Head of ACT Public Service  
Chief Minister, Treasury and Economic Development Directorate  
GPO Box 158  
Canberra ACT 2601

RE: UNSOLICITED PROPOSAL – [SUBJECT]

Dear Sir/Madam,

[Letter to contain brief detail of the following:

- Introduction to the Proponent
- Proposal idea/concept
- Total estimated investment for the Proposal
- Value proposition to the Territory
- Contact details.]

Yours faithfully

[Signature]  
[Name & Title]  
[Organisation]

## Appendix D: Declaration to Abide by Process

|                       |                            |
|-----------------------|----------------------------|
| <b>Date</b>           |                            |
| <b>Name</b>           |                            |
| <b>Organisation</b>   |                            |
| <b>To</b>             | Head of ACT Public Service |
| <b>In relation to</b> |                            |

**Declaration**

I, \_\_\_\_\_, [insert full name] of  
 \_\_\_\_\_ [Insert organisation and address]

agree and acknowledge that I abide by the process outlined in this document, including the following:

- that I am not transferring any Intellectual Property to the Territory in this Concept Submission, and that any material presented will be at my risk of public disclosure
- that I will not make any approach regarding the Unsolicited Proposal to Ministers, Ministerial staff or other officers within the ACT Government prior to, during and after the Phased Process
- that, in the event that the ACT Government rejects my Unsolicited Proposal, I will not make any further approach to the ACT Government regarding it until at least 18 months have transpired since the date of this Concept Submission.

**Executed as a Deed**

Signed, seal and delivered

|                               |  |
|-------------------------------|--|
| <b>Signature of Declarant</b> |  |
| <b>Name of Declarant</b>      |  |
| <b>Signature of Witness</b>   |  |
| <b>Name of Witness</b>        |  |

## Appendix E: Concept Submission

Proponents should provide the information requested below in their Concept Submission of their Unsolicited Proposal. Proponents may either complete this form in the gaps below or use their own document with company branding, etc. If using a separate document, Proponents should ensure that they provide the information sought below. The Proponent may include additional information that it sees as beneficial.

Prospective proponents may also find it useful to complete a draft version of this form as a framework for discussions in the Pre-Proposal Meeting with ICA officers.

|  |  |   |  |
|--|--|---|--|
| <b>Title and abstract of Proposal (maximum 200 words)</b>                    |  |   |  |
|  |  |   |  |
| <b>Proponent:<br/>(Name of Company/<br/>Consortium/<br/>Individual etc.)</b> |  | <b>Address:</b>   |  |
| <b>Identity:</b>   | [Individual, sole trader, company, etc.] | <b>Type of Organisation/<br/>Consortium:</b>                                | [profit / non-profit, educational, small business, etc.] |
| <b>Contact person(s):</b>  | Name:<br>Phone:<br>Email:                | <b>Date of Submission:</b>  |  |
| <b>Preferred Commercial Tender Model</b>                                     |  | [Open Tender, Developer Fee, Development Manager, Contestable Negotiations] |  |

**GUIDELINES FOR UNSOLICITED PROPOSALS**

**Proposal Details** – Briefly include information on the Proposal objectives, Proposal methodology, anticipated outcomes and the benefits the Proposal will bring to citizens of the ACT. (maximum 500 words)

|  |
|--|
| <p><b>Proposal Details</b> – Briefly include information on the Proposal objectives, Proposal methodology, anticipated outcomes and the benefits the Proposal will bring to citizens of the ACT. (maximum 500 words)</p> |
|  |



**GUIDELINES FOR UNSOLICITED PROPOSALS**

|  |
|--|
|  |
| <b>Justification for direct negotiation</b> – demonstrating that the public interest is best served by the Government negotiating directly with the Proponent, rather than by engaging in an open, competitive process |
|  |
| <b>Value for Money</b> – delivering an outcome to the Territory that it can determine is value-for-money in the absence of a competitive market  |
|  |
| <b>Affordability</b> – being affordable within the Government’s Budget, funding priorities and fiscal strategy   |
|  |

**GUIDELINES FOR UNSOLICITED PROPOSALS**

|  |
|--|
|  |
| <b>Appropriate risk and cost allocation</b> – the proposed allocation of costs and risks between the Proponent and other parties is acceptable to the Government                       |
|  |
| <b>Feasibility</b> – being technically, commercially and practically feasible  |
|  |
| <b>Capacity and capability</b> – the Proponent demonstrating that it has the financial and technical capacity, capability and experience to deliver the proposed outcome successfully. |
|  |

**GUIDELINES FOR UNSOLICITED PROPOSALS**

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|  |
|--|
| <b>Further information</b>   |
| <b>Financial and commercial details</b> – Please provide a brief description of the financial and commercial details of the Proposal and the Proponent’s financial capacity to deliver the Proposal. Clearly explain the proposed commercial proposition.  |
|  |
| <b>Costs and requirements of Government</b> – This section may include legislative/regulatory amendments, finance or the use of Government assets, facilities, equipment, materials, personnel, resources and land. What would be the cost of Government providing these resources? (e.g. What is the value of Government land required for the Proposal?) |
|  |
| <b>Risks – for both the Proponent and Government</b> – This section should contain a comprehensive description of the risks relating to the Proposal, together with proposed mitigation measures.  |
|  |

|  |
|--|
|  |
| <b>Intellectual Property details</b>   |
| <p>If applicable, please provide a description of the following:</p> <ul style="list-style-type: none"><li>• Inventory of each item of Intellectual Property</li><li>• Nature of the Intellectual Property claimed (e.g. copyright, patent, etc.)</li><li>• The owner(s) of the Intellectual Property claimed</li><li>• Registration details (where applicable)</li><li>• Details of any items for which confidentiality is wholly or partly claimed</li></ul> |

|  |
|--|
| <b>Competing Proposals</b>   |
| <p>Demonstrate how the Proposal enjoys advantages over other potential proponents such that the Government could not reasonably expect a better value for money outcome from a competitive tender process.</p> |

|   |
|---|
| <b>Previous contact with the Government</b>   |
| <p>Provide the name, agency and contact details of anyone within the Government (including the ACT public service and Government agencies) with whom previous discussions about this project have occurred.</p> |

**GUIDELINES FOR UNSOLICITED PROPOSALS**

|  |
|--|
|  |
| <b>Expiry</b>  |
| Advise of any time period over which the Proposal will remain valid, which should be a minimum of six months |
| <b>Other Statements</b>  |
| For example, please detail any applicable organisational conflict of interest and environmental impacts.     |

This Proposal is to be signed by a representative of the Proponent authorised to represent and contractually bind the Proponent.

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix F: Public Declaration

The ACT Government may publish the details provided below on its Treasury website. The Government is not in a position to comment on a Concept Submission or the related Unsolicited Proposal at the time of its lodgement.

Anything submitted by a Proponent as part of its Unsolicited Proposal may be subject to disclosure under the *Freedom of Information Act 2016*.

|  |  |
|--|--|
| <b>Date</b>  |  |
| <b>Proponent</b>                                     |  |
| <b>Media Contact of Proponent</b>                    |  |
| <b>Name of Proposal</b>                              |  |
| <b>Summary of Proposal (please keep to 50 words)</b> |  |

### Declaration

I, \_\_\_\_\_, [insert full name and title] of  
 \_\_\_\_\_ [Insert organisation and address]

acknowledge that the ACT Government may publish the details provided above on its website.

### Executed as a Deed

Signed, seal and delivered

|                               |  |
|-------------------------------|--|
| <b>Signature of Declarant</b> |  |
| <b>Name of Declarant</b>      |  |
| <b>Signature of Witness</b>   |  |
| <b>Name of Witness</b>        |  |

# Appendix G: Examples of hypothetical proposals and possible Tender Models

## Example 1

The Proposal involves the provision of new technology that will result in substantial cost savings for the Government, and have no adverse social or environmental impacts. The Government is not aware of any other parties that could provide similar technology with similar benefits. The Proponent's proposed role is as licensor and operator of the technology. It would need another party to construct the necessary infrastructure.

The Government's likely Tender Model is Contestable Negotiations. The Government will run a public tender for the contestable parts of the Proposal: the construction of the necessary infrastructure.

## Example 2

The Proposal involves the provision of a new economic infrastructure project (i.e. for which user charges will make up a substantial part of the funding). The Proponent owns a complementary infrastructure project and can operate the two projects together to result in substantial cost savings and/or additional revenue over those that would result from separate ownership of the new project. The Proponent's proposed role is developer, owner and operator of the infrastructure. It would need other parties to undertake detailed design, construction and provision of debt finance.

The Government's likely Tender Model is Contestable Negotiations. There would be public tenders for the contestable parts of the Proposal: the design and construction of the infrastructure and the provision of debt finance.

## Example 3

The Proposal involves the provision of new infrastructure that will be of clear benefit to the Territory. The Proponent has undertaken substantial work in developing the Proposal, including preparing a detailed design for it. The Proponent's proposed role is to undertake the entire project: design, construction, finance, operation and maintenance.

However, the Proponent does not have any particular competitive advantage in undertaking the project, other than having proposed it initially. Several other parties could undertake the entire project and possibly be more competitive than would be the Proponent.

The Government's likely Tender Model is the Developer Fee. There would be a public tender for the project. The Proponent would be able to bid. If it were unsuccessful in its bid, the winning bidder would pay it a pre-agreed fee in recognition of the Intellectual Property and detailed work it had undertaken on its original Proposal.



**ACT**  
Government

Chief Minister, Treasury and Economic  
Development Directorate

May 2026