

Department of Treasury and Finance

UNSOLICITED PROPOSALS

POLICY AND GUIDELINES

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1. Introduction

The Tasmanian Government is committed to implementing a clear policy and framework for the consideration of unsolicited proposals for economic and social infrastructure and associated service delivery.

This Policy and Guideline indicates a willingness on the part of government to partner with the private sector to deliver innovative infrastructure and associated service delivery outcomes and provides a gateway for the private sector to deal directly with government on unique proposals.

The aim of this Policy and Guideline is to provide a transparent and consistent assessment process to allow Government to fairly consider unsolicited proposals received from the private sector, and to determine whether they align with government's strategic priorities and provide a benefit to the public.

It should be noted that the Tasmanian Government procures infrastructure and associated services under its Procurement Treasurer's Instructions, which provide for an open competitive process to achieve the best value for money. In the majority of cases, this is the preferred approach for procurement to achieve the best return for Tasmania and to ensure all proponents wishing to conduct business with the Government are given a fair and reasonable opportunity to do so.

2. Application of the Policy

The *Unsolicited Proposals: Policy and Guidelines* applies to the General Government Sector and applies to unsolicited proposals that have a minimum private investment contribution of \$10 million or the creation of a minimum of 100 direct jobs in Tasmania.

3. Definition of unsolicited proposal

An unsolicited proposal is a unique or innovative proposal initiated by the private sector and made to government to deliver outcomes that are desirable to government and which are not suitable to progress through standard competitive procurement processes. It involves private sector businesses approaching government for approval and support for the project, which could take the form of financial support, or other forms of support such as regulatory or social support, or the provision of government assets.

4. Objectives

The following objectives will guide the Government's process for considering unsolicited proposals:

- promoting the development of innovative ideas with the private sector where appropriate;
- ensuring an open, transparent and fair process that involves a high standard of probity and public accountability;
- ensuring value for money for Government is achieved;
- ensuring the benefits of the project for the Government are measurable and can be maximised; and
- ensuring the proponent's Intellectual Property (IP) is respected and that proponents are fairly compensated as part of the process.

5. Probity

The assessment of unsolicited proposals must be fair, open, demonstrate the highest levels of probity and be consistent with the public interest. The assessment of proposals will be conducted through the application of established probity principles that aim to ensure the integrity of the decision making processes. In particular, the Government will aim to ensure the process is:

- impartial;
- accountable and transparent, with any conflicts of interest managed appropriately;
- confidential; and
- obtains value for money.

To this end, a probity plan will be established in Stage One of the assessment process and updated at each stage as required, and a probity adviser will be appointed during Stage Two.

6. Governance

The Coordinator-General is responsible for receiving unsolicited proposals and for coordinating the assessment process. The Coordinator-General will participate on and establish an Assessment Panel comprising representatives from the Department of Treasury and Finance, Department of State Growth and the Department of Premier and Cabinet, along with the relevant portfolio agency(ies), to undertake the assessment of the proposal and provide a recommendation to the Government through Cabinet.

Cabinet is responsible for initial approval at Stage One and for final approval, including the entering into of the contract.

The Coordinator-General is able to issue administrative instructions to clarify the requirements for the assessment under this Policy and Guideline. Any such administrative instructions must be entirely consistent with this Policy and Guideline.

7. Resource Commitments

As the proponent and Government work through the assessment and development of the proposal, there will likely be a requirement for the commitment of resources by both parties, including financial costs borne by the proponent for the more detailed development of the proposal in Stage Two.

The Government may consider reimbursement or partial reimbursement of the costs incurred by the proponent during the process. However, the reimbursement of costs will only relate to Stage Two of the process where the proponent and the Assessment Panel are required to work together to further develop the proposal prior to exclusive negotiations.

8. Evaluation Criteria

8.1 GUIDING PRINCIPLES

The Government has adopted principles to guide its consideration of unsolicited proposals in Tasmania. These are that:

1. the proposal is unique and innovative and cannot be reasonably delivered by another proponent or achieve the same (or greater) value for money outcome through a competitive process within acceptable timeframes;
2. the proposal aligns with the Government's policies and strategic objectives;
3. the proposal represents value for money for the investment required by Government and provides benefits to the Government and the broader Tasmanian community;
4. there is a demonstrated need and appetite for the project from the perspective of both the Government and the broader public interest; and
5. the proposal is financially, economically, socially and technically feasible.

These principles are used to assess proposals throughout the process to ensure net benefits are delivered to the Tasmanian community. Specific and more detailed Evaluation Criteria relevant to a particular proposal will be developed and applied at later stages in the process, as discussed below under the assessment process. The detailed Evaluation Criteria will be a refinement of these guiding principles.

8.1.1 Strategic objectives and government policy

The proposal will be assessed against its ability to support or deliver on strategic objectives and whether it is consistent with Government's plans, priorities and policies. Importantly, this includes whether it upholds the public interest and delivers a public benefit such as facilitating economic and state growth, what level (if any) of sustained impact it will have on the community and whether it has a positive and significant impact on local jobs.

8.1.2 Value for Money

The Assessment Panel will consider whether the proposal delivers value for money to the Tasmanian community. It will consider the net economic benefits of the proposal, whole of life costs and revenue, quality, risk borne by Government, benefits gained and qualitative and whole of Government outcomes including timely achievement of objectives.

8.1.3 Need and appetite

The Assessment Panel will consider whether there is a demonstrated need and Government (and the broader public) appetite for the proposal or whether its financial and administrative resources would be better focused elsewhere. It will also ask whether the proposal is consistent with Government's plans and priorities and whether the proposal would require Government to re-prioritise and/or re-allocate funding (and whether any such re-allocation is appropriate).

8.1.4 Financially, economically, socially and technically feasible

The Assessment Panel will consider whether the proposal can be appropriately funded and from which source this funding would be available. If the proposal moves to Stage Two of the process, a detailed financial appraisal will be required to be undertaken.

The Assessment Panel will also consider whether the:

- proposed delivery model including planning, design and construction and operations arrangements is feasible (within a reasonable timeframe and appropriate level of risk) as well as being consistent with the Government's objectives; and
- Proponents/parties to the proposed project are capable of delivering the project and the proposed contractual structure will enable the delivery of the outcomes.

9. The assessment process

A three stage process will guide the assessment of unsolicited proposals:

- **Stage One:** The proponent submits an unsolicited proposal for preliminary consideration and assessment against guiding principles;
- **Stage Two:** The Assessment Panel and proponent work together to develop a full proposal and a detailed evaluation and assessment is undertaken, including a detailed financial assessment; and
- **Stage Three:** The Government awards the contract and the parties deliver the project.

If at any stage during the process approval is not obtained to move to the next stage, the Government and proponent will (consistent with any agreements reached throughout the various stages), decide on protection of relevant IP and costs of both parties.

Further, if at any stage during the process the proposal (in full or any components) is deemed to be a Government procurement, the Assessment Panel must seek relevant approvals or exemptions from either the Treasurer or the relevant Head of Agency from the procurement requirements under the Treasurer's Instructions. It should be noted that this process cannot be used to bypass existing procurement processes already underway.

9.1 STAGE ONE

All proponents are strongly encouraged to discuss their proposal with the Office of the Coordinator-General, on a confidential basis, in order to gauge the suitability of the proposal and discuss key requirements under the Policy and Guideline prior to making their submission.

9.1.1 Submission of proposal

The proponent will submit an unsolicited proposal to Government. All proposals are to be directed to the Office of the Coordinator-General, Department of State Growth, and must include key information to facilitate a preliminary assessment of the proposal.

Proposals are to be sent to:

Office of the Coordinator-General

Level 1 Cornwall Square, 12-16 St John Street, Launceston

PO Box 1186, Launceston, TAS 7250 Australia

Phone: +61 3 6777 2786

Email: cg@cg.tas.gov.au

Proposals will not be considered until all relevant information is provided. Relevant information includes:

- identification and supportive information relating to all of the parties associated with the proposal;
- an outline of the proposal, including sufficient detail of the costs and benefits, to demonstrate that the proposal is viable and able to be appropriately resourced;
- an explanation of how the proposal meets the guiding principles;
- the unique or innovative aspects of the proposal;

- the proposed benefits to the State, including how the proposal is in the public interest;
- the desired delivery method;
- the required government support and financial commitments, including the expected capital cost, the financial capacity of the provider and other funding sources (if applicable); and
- a discussion of areas considered to be unique intellectual property.

9.1.2 Preliminary assessment

Once the Office of the Coordinator–General has received all required information from the proponent and is satisfied that it meets the basic eligibility requirements, an Assessment Panel will be established based on the type of proposal and its requirements, which will comprise representatives from relevant agencies.

The Panel will assess the proposal against the guiding principles and submit the initial recommendation to Cabinet for approval. The Cabinet submission will recommend either that the proposal is viable and should move to Stage Two to undergo a full evaluation or that the proposal should not proceed. If it is recommended that the proposal should move to Stage Two, the Panel may also recommend to Government that it enters into an exclusive negotiation with the proponent.

If it is recommended that the proposal proceed, the Cabinet submission will include:

- a detailed probity plan;
- the detailed Evaluation Criteria against which the proposal will be evaluated – this will be based on the type of proposal received, but will be consistent with the guiding principles; and
- the broad terms and conditions to be included in the Memorandum of Understanding to be developed with the proponent, including any funding requirements from the Government. The MOU will be developed in conjunction with Crown Law, including Crown Law input to the broad terms and conditions submitted to Cabinet.

9.2 STAGE TWO

9.2.1 Memorandum of Understanding

Following initial Cabinet approval, a MOU will be developed by Crown Law in conjunction with the Assessment Panel. The MOU will include:

- all core issues identified in the Cabinet approval;
- the detailed Evaluation Criteria (including a process for determining value for money and the proposal's local impact on jobs), which will be consistent with the Guiding Principles; and
- probity, process and protocols for negotiation.

The MOU will also involve development in conjunction with the proponent and may include other components such as:

- a process for identifying and treating intellectual property rights;
- a process for determining project costs;
- timeframes for completion of the negotiation and assessment requirements;
- rights and obligations of each of the parties;
- information requirements;

- potential outcomes;
- confidentiality and approval requirements; and
- management of conflict of interest.

9.2.2 Detailed Submission

Following the development and signing of the MOU, the proponent and the Assessment Panel will work together to further develop the proposal and final recommendation, and to develop a project plan to be submitted to Cabinet. Depending upon the nature of the proposal, this may require a degree of preliminary negotiation on key issues, however, this will be covered by the MOU. The probity plan will also be reviewed and updated as required, and a probity adviser will be appointed for the duration of the process.

This stage involves further assessment against the guiding principles and associated specific evaluation criteria as outlined in the Cabinet submission referred to above. It will also involve further consideration of the feasibility of the project, how it will be delivered and whether it represents value for money for Government. There is no presumption that at the end of the negotiation process a proposal will be agreed.

It is expected that the proposal will be fully developed at the end of this stage, including the commercial and financial aspects, with only a limited number of issues outstanding.

At the end of this stage the Government may decide to negotiate a final offer with the proponent, not proceed with the proposal or contemplate another approach, including a competitive process or the purchase of the proponents IP, where possible.

9.2.3 Approval Requirements

Value for Money

A value for money evaluation will be required to assess whether value for money is being achieved for Government and to ensure that the proposal and its financial impact are considered in relation to the State Budget. As such, a full financial analysis by the Assessment Panel will be carried out during this stage, with appropriate considerations as part of the normal Budget process.

Cabinet Submission

Following endorsement by the Assessment Panel, the detailed submission will be provided to Cabinet for approval.

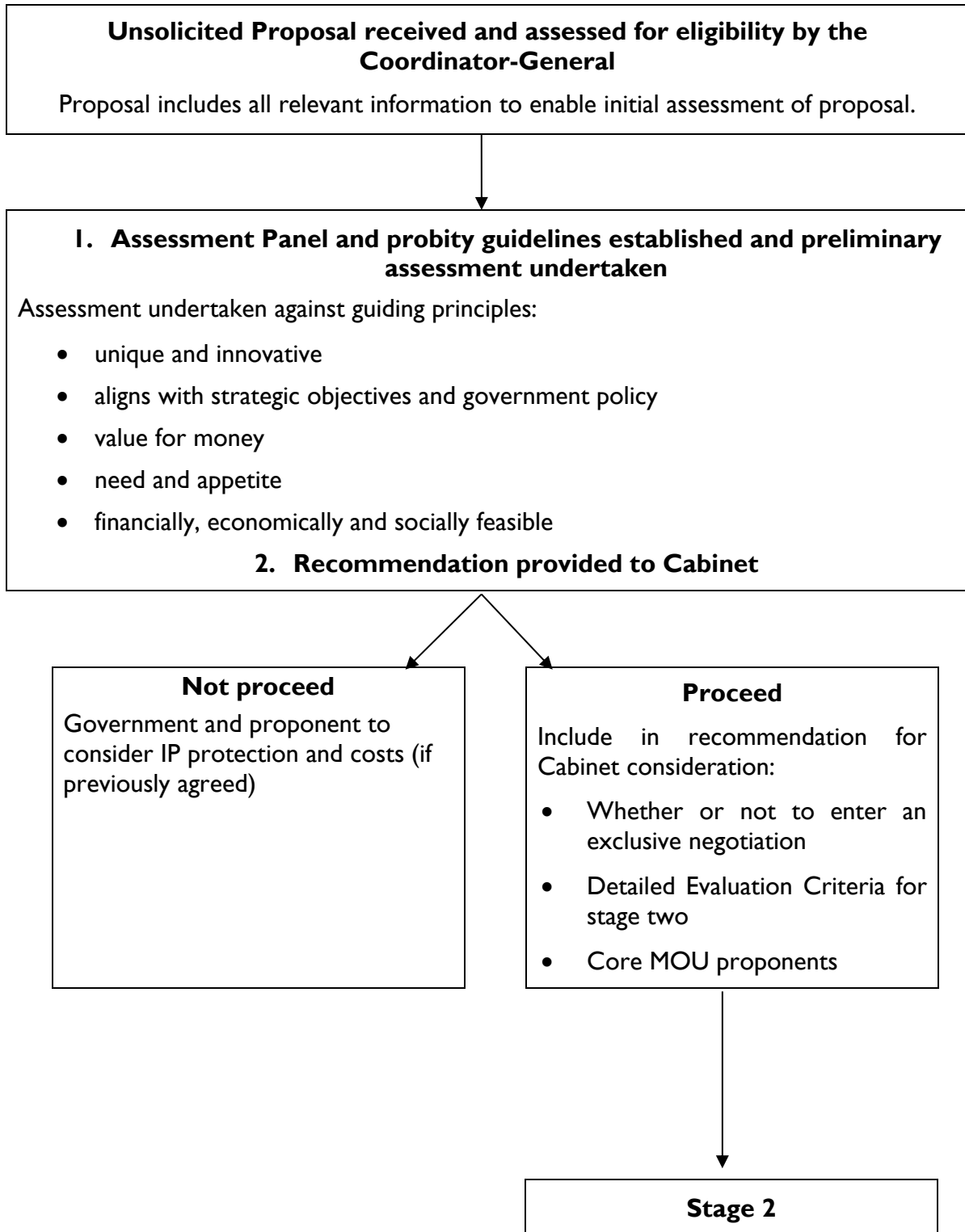
9.3 STAGE THREE

If Cabinet approval is received, stage three involves the proponent and Government entering into binding contractual arrangements to deliver the agreed proposal.

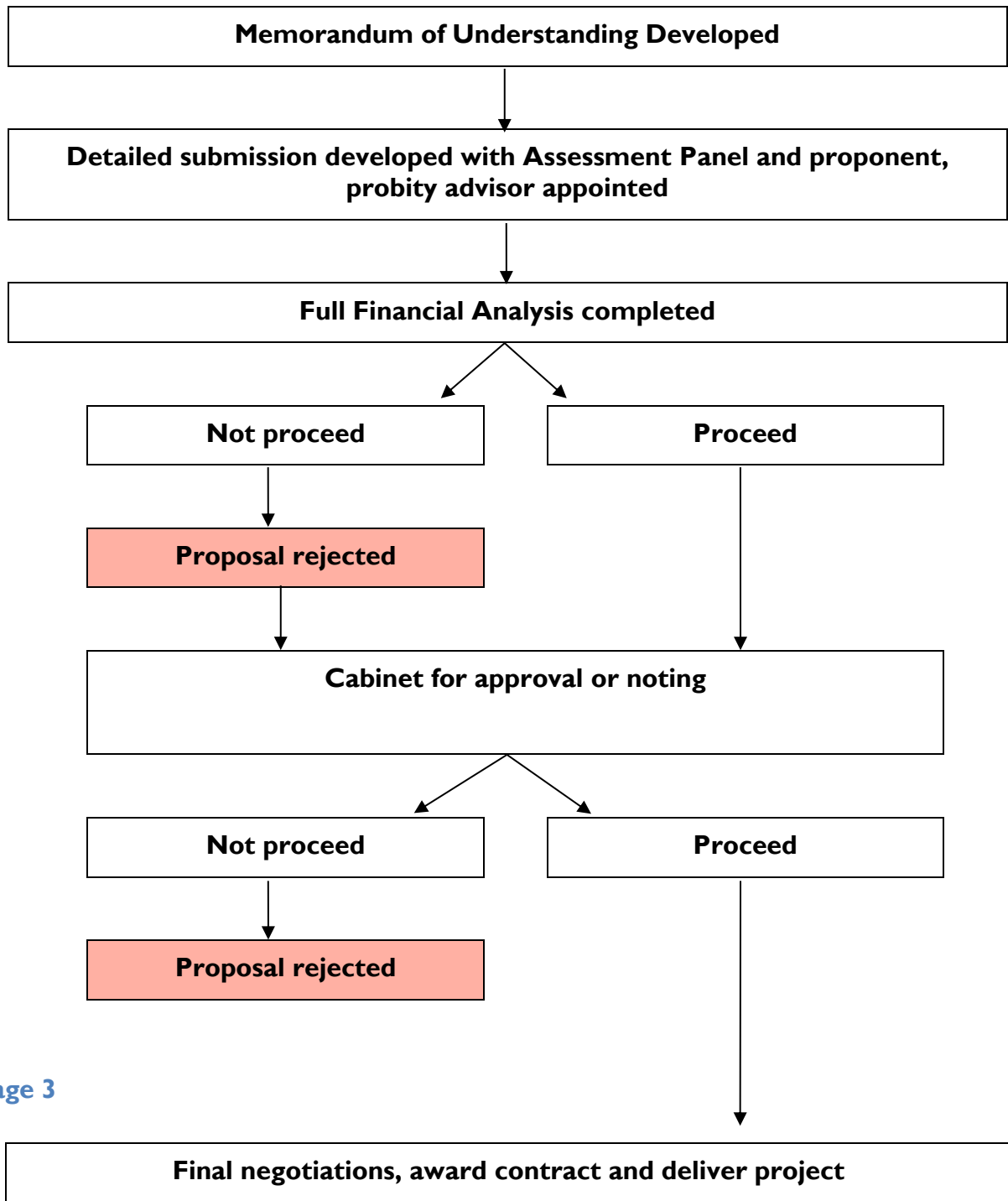
A copy of the contract and supporting documents is to be made available (on request) to the Auditor-General to conduct a review of the process within two years of execution of binding contractual arrangements.

10. Flowchart - Process for considering unsolicited proposals

Stage I



Stage 2



Stage 3

11. References

The Tasmanian Government would like to acknowledge that this document draws on existing guidelines in Victoria, New South Wales, and the Australian Capital Territory Governments in addition to other sources.

References include:

State Government Victoria, Department of Treasury and Finance (February 2014), *Unsolicited Proposal Guideline*

NSW Government (February 2014), *Unsolicited Proposals: Guide for Submission and Assessment*

ACT Government (January 2014), *Guidelines for Unsolicited Proposals*

City of Toronto (2007), *Unsolicited Quotations or Proposals*

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

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