

# Unsolicited proposals

Guidelines for submission and assessment



**Auckland  
Council**

*Te Kaurihere o Tāmaki Makaurau*





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## Mayor's message

Since its establishment in 2010, Auckland Council has shown Aucklanders, the rest of New Zealand and the world that it is an organisation with a bold vision, and the ability to transform that vision into reality.

While Auckland Council is responsible for delivering a range of services for our city, we know we are not the sole arbiters of what makes Auckland a world class city. You as Aucklanders will have a range of ideas and solutions which can contribute to making Auckland a better place to live and do business in.

This guide outlines the approach to developing and assessing ideas put forward through non-Council channels. We welcome ideas from private individuals, companies, not-for-profit entities and non-council agencies that are outside the council's normal processes. We want ideas, big or small, that will help both Council and city work better for Aucklanders.

We've already had some great success through our unsolicited proposal programme. One such idea was the Harbour Bridge lighting. Through a partnership with Vector, we now have a great landmark that can be lit up on the many occasions our city celebrates.

If you have an idea for what we can do to make Auckland a better place, please let us know Together we can make Auckland a world class city!



A handwritten signature in blue ink that reads "Phil Goff". The signature is written in a cursive, flowing style.

Phil Goff  
**MAYOR OF AUCKLAND**

# 1 Introduction

## 1.1 Purpose and scope of this guide

Auckland Council's common purpose is to make Auckland the world's most liveable city and deliver Aucklanders great value for money.

To achieve this, Auckland Council wants to encourage the development of innovative ideas and solutions that will help realise the region's potential.

To identify opportunities in this space, we use two methods to review information from the market.

1. **Council-initiated procurement processes.** This is the primary form of procurement and is based on a tendering process that delivers value for money in a fair and transparent manner. This form of procurement activity is driven by the council's strategic and transactional planning processes, and is not covered by this guide.

2. **Unsolicited proposals**, which are not initiated by the council and not solicited through channels related to the process described in 1.

This includes proposals by private individuals, companies, not-for-profit entities and non-council agencies that are outside the council's normal planning and procurement processes but may offer opportunities for real value. These proposals are covered by this guide.

The unsolicited proposals process is not a substitute for standard procurement practices by Auckland Council and is just one of the forms of direct procurement open to public-sector agencies.

## 1.2 Applicability

These guidelines are applicable to any Auckland Council Group organisation managing any unsolicited proposal, unless the organisation has existing governance and guidelines in place.

However, if resources and assets covered in the unsolicited proposal impact more than one organisation, the Auckland Council Group guidelines and governance should take precedence.

Auckland Council Group includes:

- ✓ Auckland Council
- ✓ Auckland Council Investments Limited
- ✓ Panuku Development Auckland Limited
- ✓ Auckland Tourism, Events and Economic Development Limited
- ✓ Auckland Transport
- ✓ Regional Facilities Auckland
- ✓ Watercare Services Limited.

These guidelines are not a substitute for processes or governance required

by legislation. And legislative requirements will be incorporated into the unsolicited proposals process on a case-by-case basis depending on the council assets or resources involved.

### **1.3 References**

Auckland Council's approach to managing unsolicited proposals is based on review of best-practice public-sector processes, including references from the New Zealand Treasury, the Office of the Auditor-General New Zealand, the Ministry of Business, Innovation and Employment, the Government of New South Wales, the Government of South Australia, the Department of Defence (Australia), and the Public-Private Infrastructure Advisory Facility.

## 2 Guiding principles

### 2.1 Uniqueness

For proposals to progress through the assessment process, uniqueness needs to apply to both the proposal and/or the initiator of the proposal.

Public-sector trends show that many unsolicited proposals are assessed as being insufficiently unique to merit a deviation from normal planning and procurement requirements.

The key points to consider are:

- ✓ whether the proposal can be readily delivered by competitors. If it can, then what, if any, justification would the council have for not seeking value through a competitive tender process? What benefits would the council or Auckland gain?
- ✓ whether the initiator owns something that would limit the council from contracting with other parties. This includes intellectual property, real property, software or technology – anything that offers unique benefits, unique financial arrangements and other demonstrably unique elements
- ✓ whether there are other attributes that may not necessarily stand alone as unique but when combined create a unique proposal. This could include innovative ideas, such as financial arrangements or a unique ability to deliver a strategic outcome. It is possible that the council may initiate market testing of

a proposal that has merit but is not unique or not sufficiently unique.

Types of proposals that are not considered unique and/or proposals that are unlikely to be progressed include:

- ✓ those where initiators are seeking to directly purchase or acquire a council-owned asset. Unless the proposal presents a unique opportunity to the council, standard land-transaction proposals will be referred to the appropriate department or council-controlled organisation
- ✓ those where initiators with an existing council contract to provide goods or services are seeking to bypass a future tendering process
- ✓ proposals for significant extensions to existing contracts or the next stage of a staged project on the basis that the initial supplier already has some advantage, but no other unique elements
- ✓ proposals seeking to develop land that is not owned by the council or the initiator
- ✓ proposals that do not contain a commercial or social proposition for the council
- ✓ in general, proposals that identify the initiator's skills or workforce capability as the only unique characteristic. Superior expertise or experience in a particular field is not sufficient for the council to justify

bypassing an open tender. For example, a proposal to deliver niche services to a community would need to demonstrate that the claimed skills could not be procured or developed elsewhere in the market

- proposals to provide widely available goods or services to the council. This includes proposals for the council to purchase standard office products, software development or other readily available services. The standard procurement process is to run an open tender
- proposals that seek to change council policy and have no associated project
- proposals solely for consultancy services, unless the consultancy work is to deliver a unique opportunity to the council
- proposals for projects where the tender process has formally commenced, whether published or not
- proposals that are early concepts or lack detail
- proposals seeking grants e.g. scientific research
- proposals where the claim to uniqueness is trivial e.g. a view from a particular site.

## **2.2 Strategic alignment with council outcomes**

Is the proposal consistent with the outcomes of council plans (including the Auckland Plan, the Auckland Unitary Plan, and the current long-term plan and local board plans)?

Consideration will be given to whether the council would be required to reprioritise and reallocate funding (this may be positive or negative impact).

## **2.3 Additional assessment criteria**

The council uses a stepped approach to assess unsolicited proposals.

In Step 1 the core assessment criteria are uniqueness and strategic alignment with council outcomes. From Step 2 onwards, the following additional assessment criteria will be taken into account.

### **2.3.1 Value for money – optimising outcomes**

For an unsolicited proposal to be considered by the council, the proposal must contain an economic assessment that demonstrates best value for money over whole of life, and captures all benefits and costs to all parties involved. An economic assessment should also take into account costs and benefits that may not be reflected in monetary transactions. An economic benefit is considered to be any gain in the welfare of society arising from the investment proposal.

There are various assessment tools that can be used for ranking competing investment options, with differing levels of complexity. The expectation is that for relatively simple proposals, cost-benefit analysis (CBA) is sufficient as an approach to measuring value for money. However, for more complex proposals a robust economic analysis

should be conducted to consider the multiple aspects of social and/or economic outcomes and costs.

Evaluation of value for money may consider the following.

### **Benefits**

- ✓ What benefits does the proposal offer and are there facts or evidence to support this?
- ✓ Does the proposal clearly demonstrate that these benefits will be achieved?
- ✓ Can these benefits be quantified?
- ✓ Are the benefits significant, e.g. do they create a step change in addressing an issue?

### **Quality**

- ✓ Will there be a substantial improvement over the current product or service and any less-innovative alternatives, for example, direct improvements such as faster processing or reduced waste, or longer-term results such as increased revenue?
- ✓ Is the proposed solution sustainable in the short, medium and long term?

### **Total cost of ownership**

- ✓ How does the whole-of-life cost or total cost of ownership compare with any alternative solutions or the current practice? For example, what are the costs of maintenance, consumables, etc.?
- ✓ Are there alternative, less-innovative options with lower or similar costs that fulfil the same need as the proposal? If so, in what

way do those options differ from the proposal?

### **Risks**

- ✓ How do the risks of the proposed solution compare with existing risks, or risks associated with other less-innovative solutions in the market?
- ✓ Will implementation require a lot of effort for little gain?

Different stakeholder groups will derive different benefits (and disadvantages) from a proposal and will have different perspectives on the value added.

The council's expectation is that the assessment of the unsolicited proposal will be undertaken from a regional economic perspective rather than the narrower perspective of an agency, programme or project.

#### **2.3.2 Return on investment**

Is the proposed return on investment proportionate to the initiator's risk and industry dynamics?

#### **2.3.3 Capability and capacity**

Does the initiator have the experience, capability and capacity to carry out the proposal?

#### **2.3.4 Affordability**

Does the proposal require council or central government funding? Would the council need to purchase services? Are these funds available or budgeted for and if not what source would be proposed?

### **2.3.5 Risk allocation**

What risks are to be borne by the initiator and by the council? Where risks can be quantified and valued they should be included in the value for money criteria.

Guidance on detailed assessment criteria will be provided for proposals that proceed to later steps of the process.

## 3 Roles and responsibilities

### 3.1 The initiator

The initiator is required to:

- ✓ draft an Initial Submission (see Appendix 2 for template) and meet with Auckland Council's Procurement department to discuss its unique characteristics and other key principles, prior to formally lodging the submission
- ✓ formally lodge an Initial Submission with the Unsolicited Proposals Steering Committee if the proposal proceeds to Step 2. This involves completing the Initial Submission template with support from the council's Procurement department and attaching any other relevant information
- ✓ enter into a Participation Agreement if the proposal proceeds to Step 3
- ✓ provide a Detailed Proposal at the conclusion of Step 3
- ✓ provide a Binding Offer at the conclusion of Step 4.

### 3.2 Auckland Council Group

Proposals will be formally submitted to the council for approval prior to any progression of a proposal to Step 3 or 4, and prior to any agreement being signed.

Projects requiring capital and/or recurrent funding require the approval of council. The required approval

process will be described to the initiator.

#### 3.2.1 Auckland Council's Procurement department

The Procurement department will take the lead role in the receipt and coordination of unsolicited proposals made to Auckland Council Group. This will include appointing the Proposal Manager and, as appropriate, chairing the Steering Committee. Involvement of relevant internal business units, CCOs and external agencies will be managed by the Procurement department.

#### 3.2.2 Unsolicited Proposals Steering Committee

The Unsolicited Proposals Steering Committee comprises senior representatives of the following council-controlled organisations:

- ✓ Auckland Council
- ✓ Panuku Development Auckland
- ✓ ATEED
- ✓ Watercare
- ✓ Auckland Transport
- ✓ Regional Facilities Auckland.

Representatives of other agencies may be required to provide resources and input to assist the steering committee with decision-making. Membership of the steering committee may change from time to time.

The steering committee is responsible for:

- ✓ reviewing recommendations made by the proposal manager or assessment panel at Step 2 and agreeing the proposed course of action
- ✓ confirming the unique elements of the proposal and agreeing the approach to managing intellectual property
- ✓ approving the governance plan to be applied to Step 3
- ✓ approving the makeup of the assessment panel
- ✓ agreeing feedback to be provided to the initiator
- ✓ defining the reference project
- ✓ confirming the approach to assessing value for money – typically Open Book, but alternative methods may also be used. This will be defined on a case-by-case basis
- ✓ providing policy and interagency input to deliberations
- ✓ monitoring progress of assessments
- ✓ considering recommendations from the assessment panel during Step 3
- ✓ endorsing negotiation conditions prior to Step 4
- ✓ reviewing recommendations at the conclusion of Step 4
- ✓ making recommendations to the Tenders and Procurement Committee.

### **3.2.3 Tenders and Procurement Committee and Chief Executive**

The council's Tenders and Procurement Committee is responsible for approving unsolicited proposals to proceed from Step 3 (Detailed Proposal) to Step 4 (Negotiations) and also approving the final Binding Offer where the total value is \$20 million or greater. For unsolicited proposals less than \$20 million, Auckland Council's Chief Executive, or relevant CCO Chief Executive, will approve to proceed.

Recommendations to the Tenders and Procurement Committee or Chief Executive will come from the Unsolicited Proposals Steering Committee prior to a decision being made.

### **3.2.4 Proposal manager**

A proposal manager will be appointed by the Unsolicited Proposals Steering Committee to receive and progress consideration of unsolicited proposals. The proposal manager has the following responsibilities (unless otherwise agreed):

- ✓ receive an assigned unsolicited proposal
- ✓ undertake an initial compliance check
- ✓ facilitate the assessment panel and/or steering committee
- ✓ act as point of contact for initiators
- ✓ facilitate interactions between the initiator and the council

- ✓ facilitate the preparation of information provided to the initiator
- ✓ coordinate assessment, including input from advisers
- ✓ coordinate preparation of assessment reports
- ✓ provide assistance to the council staff responsible for assessing an unsolicited proposal.

### 3.2.5 Assessment panel

An assessment panel, comprising appropriately qualified representatives, will be established to undertake the assessment of an unsolicited proposal. The involvement of the assessment panel during Steps 2 and 3 will vary depending on the nature of the proposal. The members will be approved by the steering committee.

The assessment panel will:

- ✓ report to the steering committee
- ✓ participate in meetings with the initiator where appropriate
- ✓ assess the Initial Submission and Detailed Proposal against the assessment criteria
- ✓ prepare recommendations to be made to the steering committee
- ✓ prepare assessment reports as required by the steering committee
- ✓ consider issues raised by the steering committee
- ✓ prepare a proposed schedule of items for negotiation during Step 4 (to be approved by the steering

committee and/or the Tenders and Procurement Committee if required).

### 3.2.6 Advisers

Advisers may be appointed to provide expert advice on project scoping and assessment to the assessment panel and steering committee. This may include legal, financial, technical, commercial and environmental advice.

Other advisers may be appointed where specialist input is required. Advisers are to follow all project governance and probity requirements.

### 3.2.7 Probity adviser

A probity adviser may be appointed for large-scale projects or where probity risk is considered sufficient to warrant appointment. If appointed, the role of the probity adviser is to monitor and report on the application of the probity fundamentals during the assessment process. Probity advisers are usually appointed at Steps 3 and 4 of the assessment process.

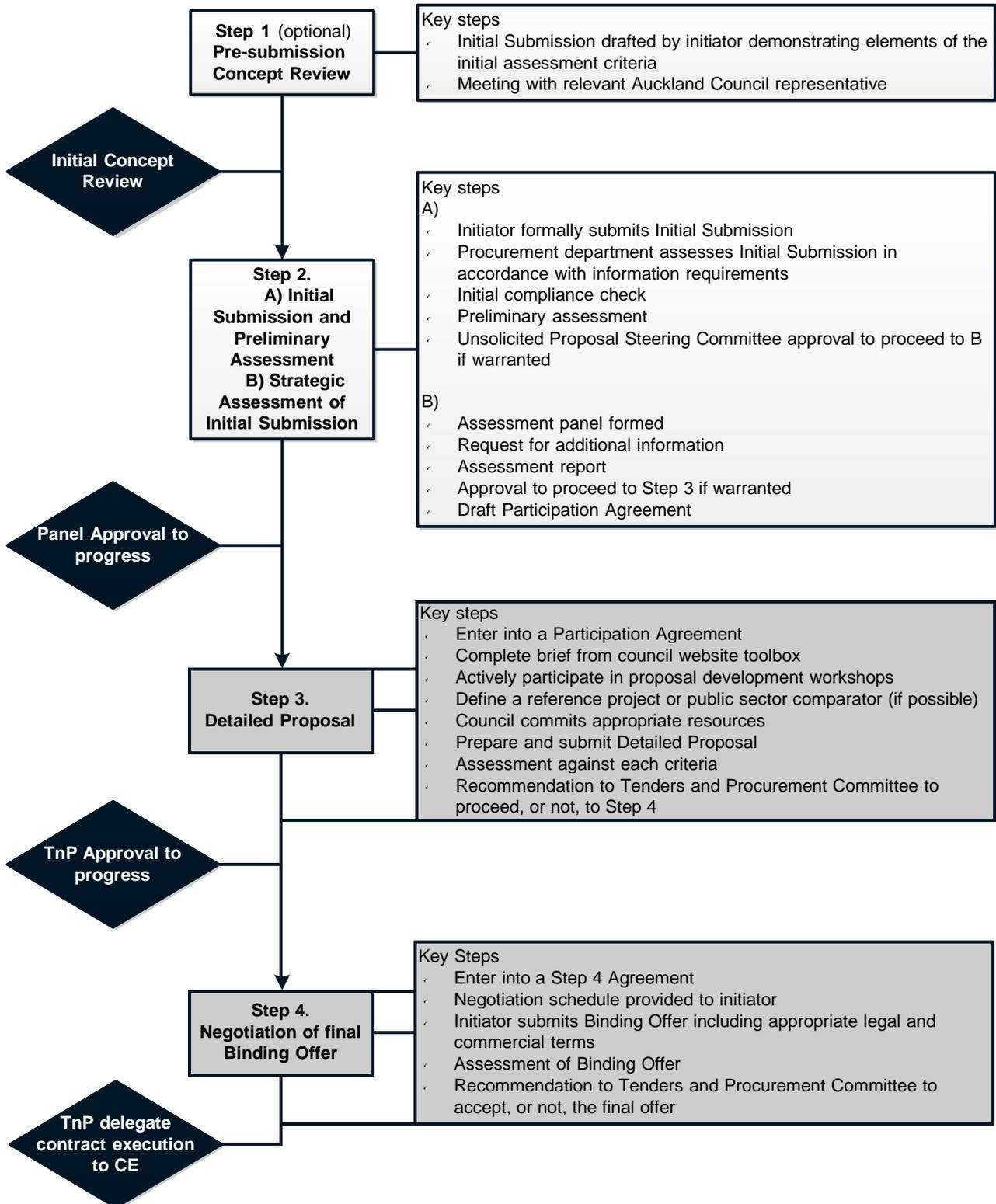
The probity adviser will report to the chair of the steering committee and will be available to initiators to discuss probity-related matters.

Depending on the scale and risk of the project, the probity adviser may be a council staff member, or an external appointment. In the absence of a probity adviser, this role will be undertaken by the proposal manager.

Initiators are able to request the appointment of a probity adviser.

## 4 The approach

### 4.1 Overview of the assessment process



## 4.2 Detail on process steps

### 4.2.1 Step 1 – Pre-submission concept review

In Step 1 a pre-submission review can be undertaken with relevant Auckland Council and council-controlled organisation representation to provide initial guidance and assessment on whether the submission constitutes an unsolicited proposal and if it contains sufficient grounds to justify uniqueness and therefore proceed to a Step 2 assessment.

#### Timing

This initial meeting represents the first step in assessing the merits of each unsolicited proposal and should be held before the initial proposal is formally submitted.

#### Initiator responsibilities

In order for this meeting to be helpful, the proposal needs to be developed to a stage where the key inputs and outcomes have been identified, key assumptions and requirements of the council are clear, and other key elements have been identified. In particular, the unique ability of the initiator to deliver the proposal should be demonstrated and documented.

The initiator is required to prepare a draft Initial Submission (see Appendix 1 for template), and to complete the pre-lodgement meeting checklist (Appendix 2) prior to the meeting.

It is recognised that there may be numerous discussions at many levels between the initiator and council

stakeholders in order to ascertain the council's needs and to better understand the business environment. These are outside the scope of this guide.

#### Council responsibilities

Where the council is of the view that uniqueness criteria are not met, it will communicate this to the initiator. In such circumstances the council reserves the right to not advance assessment of the proposal to Step 2.

#### Feedback

As required, initiators will be provided with written feedback on whether their submission has progressed to Step 2, or reasons for a decision not to proceed with a proposal.

### 4.2.2 Step 2 – Initial assessment

Step 2 includes a comprehensive initial assessment of the proposal to identify the potential benefit to the council that could result from further consideration and development of the proposal with the initiator. The outcome is advice to the initiator of progression to Step 3, or that the council will not be proceeding further.

#### Public interest and transparency

For reasons of public interest and transparency, details of unsolicited proposals that progress to Step 2 will be published on the Auckland Council website.

These details will include the name of the initiator and a brief description of

the proposal. In accordance with the Local Government Official Information and Meetings Act 1987, the council will not publish commercially confidential details or other information that may disadvantage the commercial position of the initiator. Any responses to requests from the public for more information on a proposal will also be governed by the Act.

If the initiator believes that publishing any notification would be detrimental to the progression of the proposal or create a commercial disadvantage, they may request that the council withhold all details of the proposal from the public. The council will consider any such requests, and, if warranted, not publish details of the proposal until Step 3.

Non-publication of details of the proposal does not imply obligations of confidentiality on the council or limit the council's ability to act in relation to the proposal subject matter.

Step 2 is divided into two parts.

#### **4.2.2.1 Part A – Submission and preliminary assessment**

##### **Initiator responsibilities**

- ✓ Preparing an Initial Submission (template available from the council website or Appendix 2 of this guide).
- ✓ Identification of unique elements of the proposal.
- ✓ Forwarding the Initial Submission to [unsolicitedproposals@aucklandcouncil.govt.nz](mailto:unsolicitedproposals@aucklandcouncil.govt.nz).

- ✓ Responding to requests for further information. The information requested will depend on the size and complexity of the proposed project.

##### **Council responsibilities**

- ✓ Promptly acknowledging receipt of the Initial Submission.
- ✓ Undertaking an initial compliance check to ensure the required information has been provided.
- ✓ Requesting further information from the initiator if required. This may involve meetings with the initiator in order to clarify the council's requirements.
- ✓ Undertaking a preliminary assessment that will be based on the potential for the proposal to satisfactorily meet the assessment criteria.
- ✓ Preparing a preliminary assessment report for review and approval by the steering committee.
- ✓ Steering committee approval to progress to Step 2 Part B, if warranted.
- ✓ Notification of the preliminary assessment outcome to the initiator.

##### **Feedback**

Initiators will be provided with written feedback on whether their submission has progressed to Step 2 Part B, or reasons for a decision not to proceed with a proposal.

#### **4.2.2.2 Part B – Formal assessment**

##### **Initiator responsibilities**

Responding to requests for further information. The information requested will depend on the size and complexity of the proposed project

##### **Council responsibilities**

- ✓ Establishment of the Assessment Panel.
- ✓ Requesting further information from the initiator if required. This may involve meetings with the initiator in order to clarify the council's requirements.
- ✓ Undertaking a formal assessment that will be based on the potential for a subsequent Detailed Proposal to satisfactorily meet each of the assessment criteria if progressed to Step 3.
- ✓ Preparing an assessment report for review and approval by the steering committee.
- ✓ Preparing a draft Participation Agreement for all proposals deemed appropriate to progress to Step 3.
- ✓ Notification of initial assessment outcome to the initiator.
- ✓ Approval to progress to Step 3, if warranted.

##### **Feedback**

Initiators with proposals considered suitable to proceed to Step 3 for further consideration will be provided with:

- ✓ a summary of the assessment findings
- ✓ the proposed process and toolkit for the further development and consideration of a Detailed Proposal, including governance arrangements
- ✓ guidance regarding value, scope, appropriate target return on investment parameters, timing, risk and other limitations affecting the Detailed Proposal in order to avoid unnecessary costs for the initiator
- ✓ a draft Participation Agreement.

Written feedback providing reasons for a decision not to proceed with a proposal will be provided where relevant.

#### **4.2.3 Step 3 – Detailed Proposal**

Step 3 requires the initiator and the council to work cooperatively in further consideration of the feasibility of the proposal, how it will be delivered and whether it represents value for money for the council. Confidentiality, communication and probity rules will be established, and a probity adviser appointed if applicable. The outcome is advice to the initiator of progression to Step 4, or that the council will not be proceeding further.

##### **Initiator responsibilities**

- ✓ Enter into a Participation Agreement.
- ✓ Attend the establishment meeting.
- ✓ Participate in proposal development workshops.

- ✓ Prepare and submit a Detailed Proposal, in a form previously agreed with the council, which addresses each of the council's assessment criteria. This may include draft commercial terms for the council's consideration, if appropriate.

### **Council responsibilities**

- ✓ Enter into a Participation Agreement.
- ✓ Facilitate an establishment meeting in order to:
  - provide feedback to the initiator regarding risks and concerns with the Initial Submission
  - provide guidance to the initiator regarding council requirements
  - agree the approach to managing proposal development workshops
  - advise initiator of the relevant assessment criteria
  - agree the format for the Detailed Proposal, including the information and level of detail required
  - commence discussions concerning the acceptable commercial and legal terms, with a view to developing draft commercial and legal terms that will form the basis of a final binding offer.
- ✓ Commit appropriately experienced and qualified resources to participate in the Step 3 process.
- ✓ Prepare an internal Governance Plan.
- ✓ Define a reference project that accurately reflects the scope of the proposal.

- ✓ Investigate benchmarking and prepare the public sector comparator for the reference project, where appropriate.
- ✓ Where appropriate, undertake investigation of alternative use for any in-scope council-owned assets.
- ✓ Participate in proposal development workshops. Where appropriate, the council may establish commercial and/or technical teams to guide and liaise with the initiator. These teams will provide information to the assessment panel that will in turn report to the steering committee.
- ✓ Provide further information to the initiator to assist with proposal development.
- ✓ Receive the Detailed Proposal
- ✓ Undertake assessment of the Detailed Proposal (by the assessment panel) against each of the assessment criteria.
- ✓ Request further information from the initiator as required.
- ✓ Prepare an assessment report (by the assessment panel) and make recommendations to the steering committee.
- ✓ Make recommendations to the Tenders and Procurement Committee or relevant CE delegation.

### **Feedback**

Initiators progressing to Step 4 will be provided with a draft Step 4 agreement and a schedule of items and issues to be negotiated (this may be provided separately to the Step 4 Agreement). Written feedback providing reasons for

a decision not to proceed with a proposal will also be provided where relevant.

#### **4.2.4 Step 4 – Negotiation of final binding offer**

This stage involves the finalisation of all outstanding issues with a view to entering into a binding agreement, should the council accept the final offer.

##### **Initiator responsibilities**

- ✓ Enter into a Stage 4 agreement.
- ✓ Participate in the negotiation process.
- ✓ Submit a binding offer, including appropriate legal and commercial terms.

##### **Council responsibilities**

- ✓ Enter into a Step 4 agreement.
- ✓ Inform the initiator of the process and protocols for negotiation.
- ✓ Provide the initiator with a schedule of items for negotiation.
- ✓ Prepare an internal governance/negotiation plan.
- ✓ Commit appropriately qualified resources to complete negotiations, including legal, financial and technical advisers where required.
- ✓ Undertake a comprehensive assessment of the binding offer.
- ✓ Define the appropriate contract management arrangements to monitor and ensure contracted outcomes are delivered.
- ✓ Make recommendations to the Tenders and Procurement Committee or relevant CE delegation.

##### **Feedback**

Notification of recommendation and ongoing procedures will be provided. Written feedback providing reasons for a decision not to proceed with a proposal will also be provided where relevant.

#### **4.3 Reasons for declining an unsolicited proposal**

Reasons for the council declining to proceed with an unsolicited proposal at any stage in the assessment process may include:

- ✓ there is little or no council need for the proposed good or service
- ✓ a related procurement or research activity is already in progress
- ✓ the proposal is not competitive or affordable compared to options that are within council capability or future plans
- ✓ the proposal is not new, because the suggestions or ideas are already in the public domain or are already known to the council
- ✓ there is insufficient information to properly assess the proposal after reasonable steps have been taken to obtain clarification from the initiator.

## 5 General terms and conditions

The council may take into account any other factors or considerations that it deems relevant to the assessment of an unsolicited proposal, including any factor that may arise as a consequence of:

- the nature and content of the proposal
- applicable local-body policy
- economic, social, legal or other events.

### 5.1 No legal relationship

By making an unsolicited proposal, the initiator acknowledges that:

- no contract exists or will be implied between the council and the initiator unless and until suitable documentation is executed with the council
- the council has no contractual or other legal obligation to the initiator with respect to the consideration, the evaluation, the acceptance or the rejection of any submission or the failure to consider, evaluate or accept any submission.

### 5.2 Local Government Official Information and Meetings Act

The Local Government Official Information and Meetings Act (LGOIMA) applies to the information provided by an initiator in its submission. Initiators should note that

the LGOIMA allows members of the public rights of access to information about what council does – our books have to be open and freely available when requested, to the extent required by the Act. Any information that is commercially sensitive or confidential must be marked "commercial and confidential". This special notation must not be used unless the information is genuinely confidential.

The withholding of commercial and confidential information by council under LGOIMA (if possible) does not imply obligations of confidentiality on the council or limit the council's ability to act in relation to the proposal subject matter. Confidentiality obligations (if any) must be recorded in the Participation Agreement or other written agreement.

### 5.3 Probity

The initiator must not offer any incentive to, or otherwise attempt to, influence any person who is either directly or indirectly involved in an assessment or negotiation process. If the council determines that the initiator has violated this condition, the council may, in its sole and absolute discretion, disqualify the relevant initiator's submission from further consideration.

### 5.4 Change in circumstance

Initiators must inform the council promptly in writing of any material change to any of the information contained in the initiator's submission, and of any material change in circumstance that may affect the truth,

completeness or accuracy of any information provided in, or in connection with, the submission.

### **5.5 Costs**

All risk and costs of preparing, lodging, developing and negotiating a proposal are to be borne by the initiator. No initiator will have any recourse against the council in relation to the council's decision to not proceed with a proposal under these guidelines.

### **5.6 Reliance on information**

By lodging a submission, the initiator warrants and represents to the council that the information contained in its submission is true, accurate and complete as at the date on which it is lodged, and may be relied upon in its assessment.

### **5.7 Conflict of interest**

The initiator shall:

- ✓ declare any actual or potential conflict of interest of any initiator participant
- ✓ comply with all laws in force in New Zealand
- ✓ not make any news releases or responses to media enquiries and questions pertaining to this process without the council's written approval.

### **5.8 Acceptance of a proposal**

The council is not obliged to accept any proposal.

No acceptance of a response, nor any invitation to negotiate or to make an

offer, will be effective to constitute a contract or to create any legitimate expectation on the part of the initiator unless a formal written contract is executed by both parties.

### **5.9 No contract or estoppel**

No contracts, contractual rights, estoppels or expectations, express or implied, shall arise, or be deemed to arise, out of the process set out in these guidelines, and council's subsequent ability to act in relation to the proposal's subject matter shall not be limited. Any obligations of confidentiality must be agreed in writing.

### **5.10 Other rights**

The council reserves the right, in its sole and absolute discretion, at any time during the process to:

- ✓ require additional information from the initiator
- ✓ perform security and/or financial checks and procedures in relation to each initiator and each party with an interest in the initiator
- ✓ change its requirements, including, at any stage, adding to or amending the information, terms, procedures, evaluation process and protocols set out in these guidelines
- ✓ change the basis on which initiators may, or are required to, participate in the process
- ✓ publish the names of initiators
- ✓ clarify any aspect of a proposal
- ✓ discontinue negotiations at any time with any initiator

- ✓ subsequently initiate any other procurement process for the same or similar requirements
- ✓ seek the advice of external consultants to assist the council in the evaluation or review of responses
- ✓ make enquiries of any person, company, organisation or consortium to ascertain information about the proposal, the initiator and any matter related to the response
- ✓ revert to standard procurement processes for delivery of the project
- ✓ allow the initiator to change their submission.

## 6 Appendices

### 6.1 Appendix 1 – Glossary of terms

#### **Assessment criteria**

The criteria upon which proposals will be assessed

#### **Assessment panel**

A panel of council representatives established to assess an unsolicited proposal, which may include specialist advisers

#### **Auckland Council Group (council)**

In the context of this guide, this includes (as applicable) Auckland Council, Auckland Council Investments Limited, Development Auckland Limited, Auckland Tourism, Events and Economic Development Limited, Auckland Transport, Regional Facilities Auckland, and Watercare Services Limited

#### **Binding offer**

A formal proposal submitted by the initiator at the conclusion of Step 4, which is capable of acceptance by the council

#### **Council website**

[www.aucklandcouncil.govt.nz](http://www.aucklandcouncil.govt.nz)

#### **Detailed Proposal**

A submission by an initiator to the council at the conclusion of Step 3

#### **Establishment meeting**

The first meeting between the council and the initiator held at the commencement of Step 3

#### **Initial Submission**

A submission by the initiator during Step 2 that briefly describes the proposal in accordance with the initial submission template

#### **Initial Submission template**

Information to be prepared by the initiator in preparation for a pre-lodgement meeting with Auckland Council's Procurement department

#### **Initiator**

The person or organisation that submits an unsolicited proposal

#### **Intellectual property**

Inventions, original designs and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks; also 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

#### **Open book**

Approach to negotiating a final binding offer where the council works with the initiator, who receives a return but must provide full transparency so value for money can be assured

#### **Participation agreement**

An agreement signed by the council and the initiator at the commencement of Step 3

#### **Proposal development workshop**

Interactive meetings held between the council and the initiator with the aim of progressing proposal development

**Proposal manager**

The person with responsibility for coordinating council input for the receipt and assessment of an unsolicited proposal

**Public sector comparator**

An estimate of the hypothetical whole-of-life cost for council to undertake the project using traditional procurement methods

**Reference project**

The defined scope of the project incorporating vision, objectives, physical and service aspects, deliverables and timeframe

**Step 4 agreement**

An agreement signed by the council and the initiator at the commencement of Step 4

**Steering committee**

A committee of senior council representatives with responsibility for

oversight of the council's consideration of unsolicited proposals, which may include independent chair/members

**Unsolicited proposal**

A proposal put forward to the council to build and/or finance infrastructure, and/or provide goods or services, where the council has not requested the proposal

**Value for money**

The overall value to the council, considering factors such as:

- whole-of-life cost and revenue
- quality
- risk borne by the council
- benefits gained
- impact on the council's strategic outcomes.

## 6.2 Appendix 2 – Initial submission template

This form is to be completed by organisations (must be a registered organisation) presenting an unsolicited proposal to Auckland Council. Please ensure all sections of this form are adequately addressed. Information may be presented in the form of cross-referenced addenda if preferred.

An initial version of this schedule should be prepared prior to the formal meeting with the unsolicited proposal review panel.

<b>Organisation name</b>			
<b>Address</b>		<b>Type of organisation</b>	[Profit / non-profit, educational, small business, etc.]
<b>Contact person(s) details for evaluation purposes</b>		<b>Date of submission</b>	

<b>Concise title and abstract of proposal</b>
<p><b>Short Title</b></p> <p>Abstract [approximately 200 words]</p>

<b>Proposal details</b>
<ul style="list-style-type: none"> <li>i. Objectives of the proposal</li> <li>ii. Method of approach</li> <li>iii. Nature and extent of anticipated outcomes</li> <li>iv. Benefits the proposal will bring to the Auckland region and/or Auckland Council</li> </ul>

## Assessment criteria

Please provide a brief description of how the proposal would meet each of the assessment criteria. Refer to Section 2 of the guidelines for a detailed description of criteria and items to be addressed.

### 1. Uniqueness

What are the unique elements of the proposal that would provide justification for the council entering into direct negotiations? Unique elements may include characteristics such as:

- intellectual property or genuinely innovative ideas
- ownership of real property
- ownership of software or technology offering a unique benefit
- unique financial arrangements
- unique ability to deliver strategic outcome
- other demonstrably unique elements.

### 2. Strategic alignment

### 3. Additional assessment considerations – to be referenced if proposal is progressed to Step 3

- Value for money
- Whole-of-council impact
- Return on investment
- Capability and capacity
- Affordability
- Risk allocation

## Financial and commercial details

Please provide a brief description of the financial and commercial details of the proposal and your organisation's financial capacity to deliver the proposal. Clearly explain what the proposed commercial proposition is for the council to consider.

## Council's costs and requirements

Please provide details of costs to Auckland Council

Clearly explain what the proposal requires of the council (i.e. what is being sought from the council). This may include legislative/regulatory amendments, finance or the use of council assets, facilities, equipment, materials, personnel, resources and land. What would be the cost to the council of providing this?

## Risks

Please provide a list of risks to your organisation and to the council.

## Organisation

Please provide a brief description of:

- i. Your organisation
- ii. Your organisation's experience in delivering similar projects and/or operating a similar services or facilities
- iii. Facilities to be used (e.g. land owned by your organisation or by the council)

## Intellectual property

If applicable please provide a description of:

- i. inventory of each item of intellectual property
- ii. nature of the intellectual property claimed (e.g. copyright, patent, etc.)
- iii. the owner(s) of the intellectual property claimed
- iv. registration details (where applicable)
- v. details of any items for which confidentiality is wholly or partly claimed. (Note, council will not be bound by confidentiality obligations until agreed in writing. You may wish to withhold sensitive information until a later stage of the unsolicited proposals process.)

## Other statements

For example, please detail any applicable organisational conflicts of interest and environmental impacts.

## Council and CCO points of contact

If applicable, please provide names and contact information of any other Auckland Council or council-controlled organisation (CCO) representatives **already** engaged regarding this proposal.

Preferred contractual arrangements			
<b>Period of time for which the proposal is valid</b>	Minimum six months	<b>Proposed duration of the arrangement</b>	

This proposal is to be signed by someone authorised to represent and contractually bind your organisation.

<b>Name</b>	
<b>Position</b>	
<b>Signature</b>	
<b>Date</b>	

### 6.3 Appendix 3 – Pre-lodgement meeting checklist

The following checklist should be completed prior to a formal meeting with Auckland Council.

		YES	NO
1	Have you completed the initial submission requirements?		
2	Are you the only party that could deliver the proposal?		
3	Have you documented why the product and/or service you are proposing (or similar) cannot be delivered by a competitor?		
4	Do you own any intellectual or real property required for your proposal?		
5	Have you documented your ownership of any intellectual or real property required for your proposal?		
6	Does your proposal contain unique elements that could not be replicated by others, other than related intellectual or real property?		
7	Does your proposal contain unique elements that would require the council to contract with your company if the council went to tender?		
8	Have you documented the unique elements (other than related intellectual or real property) of your proposal that could not be replicated by others, and which provide tangible benefits to Auckland Council?		
9	<p>If you answered “NO” to any questions, have you documented in the initial submission the basis on which you believe the council should consider your proposal, given that it is likely it does not meet the basic uniqueness criteria as set out in the unsolicited proposal guidelines.</p> <p>Note: in some cases the council may recognise merit in your proposal, but want to ask the market to confirm value for money. Please discuss this in the initial lodgement meeting.</p>		



Email [unsolicitedproposals@aucklandcouncil.govt.nz](mailto:unsolicitedproposals@aucklandcouncil.govt.nz)  
for guidance on this document

