



**BYRON
SHIRE
COUNCIL**

DRAFT Guidelines

Unsolicited Proposals

2023

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		Revision of Guidelines in accordance with OLG Circular 18-12 and the Unsolicited Proposal Guide for Submission and Assessment model framework.

Further Document Information and Relationships

List here the related strategies, procedures, references, policy or other documents that have a bearing on this Procedure and that may be useful reference material for users of this Procedure.

Related Legislation*	Local Government Act 1993 and associated Regulations Crown Lands Management Act 2016
Related Policies	Unsolicited Proposals Policy Procurement and Purchasing Policy Business Ethics Statement Byron Shire Council Code of Conduct Public Private Partnership Guidelines 2022 (Office of Local Government)
Related Procedures/ Protocols, Statements, documents	Unsolicited Proposal Guide for Submission and Assessment – NSW Government (May 2022) Guidelines on Direct Negotiations , The Independent Commission Against Corruption (2018)

**Note: Any reference to Legislation will be updated in the Procedure as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.*

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1 Introduction

Delivering better services for the community is a key priority for Byron Shire Council. Council recognises that, when it comes to tackling our most pressing issues, it may not be able to solve them alone. Byron Shire Council aims to foster collaboration and develop partnerships with the private and non-government sectors to harness the innovation and capital available to deliver better outcomes for the community.

Council has adopted an Unsolicited Proposals Policy, confirming its commitment to encouraging innovative collaborations and partnerships with the private and non-government sector to achieve positive social, environmental, and economic outcomes, whilst also achieving positive financial and governance outcomes for Council.

All proposals shall be consistent with Council's Community Strategic Plan which sets out the Byron Shire community's main priorities and aspirations.

In order to provide services to the community, Council procures products and services by two broad means:

1. Solicited Proposals – Council initiated procurement whereby Council requests proposals from the open market. This is the predominant form of procurement and is based on competition through tendering in order to achieve value for money in a fair and transparent manner. This form of procurement is not covered by these Guidelines.
2. Unsolicited Proposals – Proposals submitted by a proponent whereby Council has not requested proposals but a proponent has an idea they want to “pitch” to Council. The focus of unsolicited proposals is on unique and innovative projects or services. Such proposals are by definition outside the normal planning and procurement processes of Council but may offer opportunities for value for community. These proposals are administered under these Guidelines.

These Guidelines set out the processes to be followed by proponents and Council when submitting and assessing proposals.

2 Audience

The intended audience for this document are the proponents who may wish to submit a proposal to Council, the general community and stakeholders external to Council.

3 Objectives

These Guidelines outline a transparent and streamlined process to facilitate Council, non-government sectors and the community working well together to develop and deliver innovative ideas, services and new infrastructure in a timely and efficient manner.

The key objectives of these Guidelines are to:

1. Provide transparency and accountability;
2. Provide consistency and certainty to proponents seeking to deal with Council;
3. Set out the key steps for assessing proposals;
4. Set out the information that will be made available to the community about proposals.

4 Scope

These Guidelines apply to all unsolicited proposals and to all areas of Council.

5 Definitions

Unsolicited Proposal	Approach to Council from a Proponent with a proposal to deal directly with Council over a commercial proposition, where Council has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.
Solicited Proposal	A proposal submitted by a proponent in response to a formal written request from Council to develop a partnership.
Non-Government Sector	Any individual, company, joint venture, consortium, or non-government organisation.
Proponent	Any non-government entity seeking to do business with Council.

6 Probity

The assessment of Unsolicited Proposals must be fair, open and demonstrate the highest levels of probity consistent with the public interest. The assessment of Unsolicited Proposals will be conducted through the application of established probity principles that aim to assure all parties of the integrity of the decision-making processes. These principles are outlined in this section.

Maintaining impartiality

Fair and impartial treatment will be a feature of each stage of the assessment process. The process will feature a clearly defined separation of duties and personnel between the assessment and approval functions.

Maintaining accountability and transparency

Accountability and transparency are related concepts. The demonstration of both is crucial to the integrity of the assessment.

Accountability requires that all participants be held accountable for their actions. The assessment process will identify responsibilities, provide feedback mechanisms and require that all activities and decision making be appropriately documented.

Transparency refers to the preparedness to open a project and its processes to scrutiny, debate and possible criticism. This also involves providing reasons for all decisions taken and the provision of appropriate information to relevant stakeholders.

Relevant summary information regarding proposals under consideration will be made publicly available via a register on Council's website. Further information may be published as appropriate.

Managing conflicts of interest

In support of the public interest, transparency and accountability, Byron Shire Council requires the identification, management and monitoring of conflicts of interest consistent with Council's Codes of Conduct, Business Ethics Policy, and Local Government Act.

As defined in the Codes of Conduct, a conflict of interest exists where a reasonable and informed person would perceive that public duties could be influenced by private interests. Proponents are required to disclose any current, past or possible future relationships or connections that could unfairly influence or be seen to unfairly influence the integrity of any stage in the process.

Councillors and Council staff are also required to disclose any conflicts of interest in accordance with Council's Codes of Conduct. Council will ensure that there is a clearly defined separation of duties and personnel between the assessment of proposals and any Council approval functions.

Proponents are required to disclose any actual, potential or perceived conflict of interest promptly in a timely manner. Disclosure of conflicts of interest allows Council to deal with the conflict appropriately. Council endeavours to ensure that proponents are not disadvantaged by disclosing any conflicts of interest.

Maintaining confidentiality

In the assessment of Unsolicited Proposals there is need for high levels of accountability and transparency. However, there is also a need for some information to be kept confidential, at least for a specified period of time. This is important to provide participants with confidence in the integrity of the process.

Council will rely on the information proponents provide that clearly identifies all the information for which proponents claim commercial in confidence or intellectual property protection. This information identified by proponents in their proposal will be kept confidential to the extent possible by law.

Proponents must be aware that Council and proponents are required to comply with legislation relating to making information publicly available. For example, Council and its contractors must comply with the requirements of the Government Information (Public Access) Act. Proponents should make themselves familiar with the circumstances under which Council can be legally compelled to make information publicly available before submitting a proposal to Council.

Where an unsolicited proposal includes intellectual property or commercial in confidence information, Council is able to design a competitive request for proposal process without having to rely on or publish the commercial in confidence or intellectual property of the original proponent. This means that maintenance of confidentiality of commercial in confidence or intellectual property information is not justification for Council not using a competitive, open-market process.

Obtaining Value for Money

Obtaining value for money for the life cycle of the goods/services is the essential test against which any procurement outcome must be justified. This is achieved by fostering an environment in which proponents can put forward innovative proposals with the confidence they will be assessed on their merits and where Council appropriately considers overall value for money.

6.1 Unsolicited Proposals

Council is open to receiving unsolicited proposals that comply with the requirements of these Guidelines. Proponents should only submit unsolicited proposals for products or services that Council would not generally seek out for its normal operations. Council is particularly interested in proposals for unique or innovative products and services.

The unsolicited proposal process is not a substitute for routine, competitive procurement by Council. Should an unsolicited proposal be of interest to Byron Shire Council, then a competitive process may commence to seek proposals from the open market.

Any proponent wanting to supply routine goods and/or services to Council should compete via Council's usual procurement process. Proponents should register at <https://www.vendorpanel.com.au/MarketPlace.aspx> to receive notification of opportunities to supply goods and/or services to Council.

6.2 Procurement Processes

These Guidelines detail the process that will be undertaken from receipt of an unsolicited proposal to the making of a decision by Council as to whether to proceed with direct negotiations.

While direct negotiation with a proponent in response to an Unsolicited Proposal may be pursued in justifying circumstances, Council's usual procurement approach is to test the market. This generally results in the demonstrable achievement of value-for-money outcomes and provides fair and equal opportunities for private sector participants to do business with Council.

Council will consider directly negotiating with an individual or organisation that presents an Unsolicited Proposal where circumstances justify this approach and at its absolute discretion. Council must be able to demonstrate to the community that it is obtaining best value from the use of its resources. Where there is doubt as to a proposal's uniqueness, Council can do this by seeking proposals from the open market for the proposed goods or services.

It is recognised that outcomes of any resultant contract should be mutually beneficial for the proponent and Byron Shire Council.

Further, Council recognises the rights of proponents to derive benefit from unique ideas. The approach to identification, recognition and protection of intellectual property and commercial in confidence information is detailed in this document.

6.3 Approval Requirements

Neither the solicited or unsolicited proposal process replaces any applicable environmental, planning assessment or other approval requirements.

If Council decides to proceed to an open-market process for a product or service to which an unsolicited proposal relates, that must not be interpreted as any form of support for planning approvals or as a fetter on any of the discretionary powers and functions that Council exercises.

6.4 Resource Commitments

In order for an Unsolicited Proposal to progress, Council and the Proponent will be required to commit resources. The staged approach to assessment as detailed in the Procedure seeks to balance resource input to each stage in order to reduce the potential for unnecessary expenditure. While this Policy sets out information and processes to minimise costs for Proponents, Council will not reimburse costs associated with Unsolicited Proposals.

6.5 Governance Arrangements

In the spirit of collaboration and efficiency, governance arrangements will include an appointed Proposal Manager, a Proposal Working Group, a staged approach to assessment, negotiation and contracting, and regular reporting to Council's Executive Team (ET). Those arrangements seek to encourage an approach that allows input from a range of relevant parts of Council in understanding and assessing an Unsolicited Proposal.

Once a proposal reaches Stage 2 of the assessment process the proposal will be reported to Council for decision, at which time Council may establish additional appropriate governance arrangements such as the engagement of an External Probity Advisory.

Unsolicited Proposals will take into account relevant processes and approval requirements as provided in the Local Government Act 1993 in relation to procurement and PPPs (where relevant).

The Stage 2 Participation Agreement will outline whether the proposal will be subject to an approval process outlined in another procurement policy document and/or a project assurance mechanism.

6.6 Assessment Process and Criteria

The following four stage process has been developed to guide the evaluation of unsolicited proposals:

Stage	Action/Responsible Officer	Decision Maker
Stage 1A: Submission and initial compliance check	Manager Corporate Services supported by EA CCS	Report to ET for Initial Decision & Working Group Formation
Stage 1B: Preliminary assessment of unsolicited proposal	Proposal Working Group (to be established by ET)	ET
Stage 2: Detailed Proposal and Comprehensive Assessment	Proposal Working Group External Probity Adviser appointed (if required)	Council
Stage 3: Strategic Assessment and Final Decision	Proposal Working Group External Probity Adviser appointed (if required)	Council
Stage 4: Contract Negotiation	Proposal Manager External Probity Adviser	Council (or GM under delegation)

These stages are described in further detail in Section 8 of this Guide.

6.7 Keeping the Community Informed

Council maintains an Unsolicited Proposal Register on its website. It contains the following details:

- Brief description of unsolicited proposals received by Council and the date the proposal was received.
- Outcome of each stage and information whether the proposal will proceed further.
- Final outcome of the process.

7 Guiding Principles of Submitting Proposals

7.1 Optimise Outcomes

By their nature, unsolicited proposals are unlikely to be a current focus of Council. In order for a proposal to be considered by Council the proposal must be consistent with the objectives of Byron Shire Community Strategic Plan. Proposed outcomes must always be in the best interest of the Byron Shire community as well as offer benefits to Byron Shire Council.

7.2 Uniqueness of Proposals

Proponents should only submit unsolicited proposals for products or services that Council would not generally seek out for its normal operations. Council is particularly interested in proposals for unique or innovative products and services.

Proponents should consider the following questions when determining if their proposal is unique:

- Is any other proponent potentially able to deliver the same or similar goods or services?
- Does the proponent own something (e.g., intellectual property, real property, or other unique assets) that make the proposal unique?
- Does the proposal include genuinely innovative ideas that are otherwise unlikely to be defined and put to market? For example, alternatives to providing a council service that constitutes a significant departure from traditional service delivery.

Types of proposals that are not considered unique include:

- Proponents seeking to directly purchase, lease, use or otherwise acquire a Council-owned or Council-managed property or asset.
- Proposals for significant extensions or variations to existing contracts, leases, or other arrangements on the basis that the contractor is already involved and has unique pre-existing knowledge or some other claimed advantage.
- Proposals that identify the proponent's skills or workforce capability as the only unique characteristic.
- Proposals to provide otherwise available goods or services to Council.
- Proposals whose claim to uniqueness is trivial e.g. a "unique" view from a particular site.

Council will not consider the following types of unsolicited proposals:

- Proponents with existing Council contracts or arrangements to provide goods or services seeking to bypass a future competitive process for those same goods or services.
- Proposals seeking to develop land that is not owned by (or vested to) Council or by the proponent.
- Proposals that do not contain a commercial proposition for Council.
- Proposals seeking only to change Council policy that have no associated project.
- Proposals to supply routine goods or services to Council.
- Proposals that are early concepts or lack detail.

- Proposals seeking grants, loans, bank guarantees or investment etc. from Council.
- Proposals seeking Council support for a “pilot” program.
- Proposals seeking to stop or suspend another Council process e.g. a compulsory acquisition.
- Proposals seeking an exclusive mandate, an exclusive opportunity or exclusive rights over a Council or community asset for a period of time so the Proponent can develop a feasibility study, “test something”, or undertake similar activities.

Some practical examples of proposals that are NOT unique:

- A proponent has a product or service that is available elsewhere and they want to use an area of Council land to “trial” it in Byron Shire for a period of time. It may be innovative and bring new benefits to the Shire, but it is not a unique proposal because more than one proponent could deliver it and it seeks exclusive use of public land for what is a business venture. Council could instead run a competitive process to identify all potential suppliers who would like to compete for use of the public land to achieve the best value outcome for the community.
- A proponent has an innovative model to achieve Quadruple Bottom Line (QBL) outcomes in a particular service area (e.g. affordable housing or services to support vulnerable members of the community). The service model may be innovative, but there may be more than one provider who could achieve the same, or even better, QBL outcomes using other methodologies, so the unsolicited proposal would not be unique.
- A proponent has an innovative product or service (e.g. a new software program or a new method of providing a service). If there are similar or alternative products or services available, then the proposal is not unique.

Whether Council assesses an unsolicited proposal as being unique or not, Council may run a competitive process to test the market. This is because the uniqueness of a proposal can be openly and transparently demonstrated to the community through the results of a competitive process to seek proposals.

8 Procedure

This section outlines a four-stage assessment process for the consideration of Unsolicited Proposals. It is recognised that the nominated stages may be refined in order to most effectively manage the assessment of any particular proposal. For example, each stage may include a number of milestones to be achieved in order to prevent unnecessary expenditure and to provide confidence for the Proponent to continue. Any milestones or changes to the stages will be discussed and agreed with the Proponent.

Unsolicited proposals will initially be assessed against the assessment criteria listed in the table below. Proponents will need to submit ALL information requested in the Unsolicited Proposal Form for their proposal to be assessed.

The Unsolicited Proposal Form can be found on Council's website at www.byron.nsw.gov.au/Business/Doing-business-with-us/Partner-with-us

The decision whether or not to proceed with any unsolicited proposal will be at Council's sole discretion and Council's decision will be final.

8.1 Stage 1A – Submission and compliance check

Proponents provide a written proposal to Council addressing the Unsolicited Proposal Form. Additional details and supporting information can be provided at the proponent's discretion.

Council staff will conduct a compliance check to ensure that all requested information has been provided in sufficient detail to enable a preliminary assessment of the idea to be completed.

If the proponent has not provided the required information, they will be advised in writing that Council will not consider the proposal further at this stage. The proponent may resubmit their proposal in the future with the additional information included.

8.2 Stage 1B Preliminary Assessment

Council will undertake a Preliminary Assessment of the proposal to determine if the submission constitutes an unsolicited proposal and if sufficient reasons exist to justify direct dealing.

Council reserves the right to further consider, or not consider, Unsolicited Proposals beyond this stage at its absolute discretion.

The following outcomes may result from this stage:

- The Submission is not considered suitable for further consideration. In this case, the Proposal Working Group will recommend a course of action, for example:
 - Inform Proponent that the submission will not be considered further.
 - Refer Proponent to another procurement process.
 - Refer to relevant agency to investigate the opportunity and/or undertake the relevant procurement process (eg Public Private Partnership or tender processes).

Proponents will be provided with written feedback on whether their Submission has progressed to Stage 2 or reasons for the decision to not progress to Stage 2. In the event that the proposal is referred to an alternative process, as described above, details will be provided.

8.3 Stage 2 Assessment

For Council to undertake a comprehensive assessment of the proposal to identify the potential benefit to Council of further consideration and development with the Proponent.

8.3.1 Value

Council will assess the value that a proposal offers against its potential to deliver environmental, social and economic outcomes for Council and the Byron Shire community.

The proposal should demonstrate that the project can deliver value to Council in a manner that is efficient, high quality, innovative and cost-effective whilst also have regard to the allocation, management and mitigation of risk.

When demonstrating the benefits of their proposal, proponents are advised to clearly state the key objectives of the proposal and what the proposal sets out to achieve in terms of environmental, social and/or economic outcomes. Any proposed benefits should be able to be clearly quantified using a robust methodology.

8.3.2 Assessment Criteria

Unsolicited proposals will initially be assessed against the criteria detailed below. Proponents should note that Council may use external experts to assist with assessment of proposals.

Criteria	Explanation
Uniqueness	<p>Demonstration of unique benefits of the proposal and the unique ability of the proponent to deliver the proposal. In particular the following are to be demonstrated:</p> <ul style="list-style-type: none"> Can this proposal be readily delivered by competitors? If the answer is yes, then what, if any, justification would Council have to give to the community for not seeking best value through a competitive tender process? What benefits would the Council gain? Are the benefits and outcomes of the proposal unlikely to be obtained via a standard competitive procurement process? Does the proponent own something that would limit Council from contracting with other parties if Council went to tender? This would include intellectual property, real property and other unique assets. Are there other attributes which may not necessarily stand alone as unique but, when combined, create a "unique" proposal? This may include genuinely innovative ideas, including financial arrangements or a unique ability to deliver a strategic outcome. It is possible that Council might agree to initiate market testing of a new proposal that has merit but is not unique. <p>Note that while a proposal may contain unique characteristics such as design or technology, this may represent one option among a range of technologies or solutions available to Council.</p> <p>Where the uniqueness of the proposal is not immediately apparent, Council reserves the right to test the market to satisfy itself as to this criteria.</p>
	<p>Does the proposal deliver Value for Money to Council?</p> <p>What are the net economic benefits of the proposal (the status quo should be defined)?</p>

	<p>Is the proposal seeking to purchase/use a Council asset at less than its value in exchange for other services?</p> <p>Does the proposal provide time and/or financial benefits/savings that would not otherwise be achieved?</p> <p>A proposal provides Value for Money if it achieves the required project outcomes and objectives in an efficient, high quality, innovative and cost- effective way with appropriate regard to the allocation, management and mitigation of risks.</p> <p>While Value for Money will be tested appropriately in the context of each specific proposal, factors that will be given consideration are likely to include:</p> <ul style="list-style-type: none"> • Quality of all aspects of the proposal, including: achievable timetable, clearly stated proposal objectives and outcomes, design, community impacts, detailed proposal documentation and appropriate commercial and/or contractual agreements (including any key performance targets), and a clearly set- out process for obtaining any planning or other required approvals. • Innovation in service delivery, infrastructure design, construction methodologies, and maintenance. • Competitively tendering aspects of the proposal where feasible or likely to yield value for money. • Cost efficient delivery of Council policy targets. • Optimal risk allocation (refer to criterion below). <p>Evaluation of Value for Money may also include, but not be limited to the following quantitative analysis:</p> <ul style="list-style-type: none"> • Interrogation of the Proponent's financial models to determine the reasonableness of any capital, land acquisition, service and maintenance cost estimates and, if relevant, revenue estimates (including the appropriateness of any user fees or prices and estimates of quantity levels). • This evaluation may include the use of independent experts or valuers, benchmarking analysis, sensitivity testing, and where appropriate, the use of comparative financial models like Public Sector Comparators or Shadow Bid Models, based on a Reference Project. • Return on Investment (refer to criterion below). <p>Note: A high level indicative Value for Money assessment will occur at Stage 1. A more detailed assessment of Value for Money will occur at Stage 2 and beyond.</p>
Whole of Council Impact	<p>Does the proposal meet a project or service need?</p> <p>What is the overall strategic merit of the proposal?</p> <p>What is the opportunity cost for Council if it were to proceed with the proposal?</p> <p>Is the proposal consistent with the Council's plans and priorities?</p> <p>Does the proposal have the potential to achieve planning approval, taking into account relevant planning and environmental controls?</p>

	<p>Does the proposal contribute to meeting the objectives of State Plans and Regional Plans?</p> <p>Consideration will be given to whether the proposal would require Council to reprioritise and reallocate funding.</p>
Return on Investment	<p>Is the proposed Return on Investment to the proponent proportionate to the proponent's risks, and industry standards? Where feasible, the proposed rate of return may be subject to independent review or benchmarking.</p>
Capability and Capacity	<p>Does the proponent have the experience, capability and capacity to carry out the proposal? What reliance is there on third parties?</p> <p>Where appropriate, the Proponent should provide referees in relation to working with government (e.g. local, state or Commonwealth governments).</p>
Affordability	<p>Does the proposal require Council funding, or for Council to purchase proposed services? Does Council have these funds available or budgeted and if not what source would be proposed?</p> <p>Where State funding is required, Council may undertake or require the Proponent to undertake a (Preliminary) Business Case and/or an economic appraisal at Stage 2 (where appropriate). Regardless of the outcome of the Business Case/economic appraisal, the proposal still needs to be affordable in the context of the Council's other priorities, and to be considered as part of Council's Budget process.</p>
Risk Allocation	<p>What risks are to be borne by the proponent and by Council? Appropriate risk allocation and quantification may also be considered under the Value for Money criterion.</p> <p>Does the proposal require Environmental and Planning Approvals? If so, has the process been appropriately considered, including whether Council or Proponent bears the risks associated in obtaining the approvals.</p>

8.4 Determination of Outcome

Following evaluation of the proposal, the proposal working group will make a recommendation to the Executive Team about whether or not the proposal should proceed to the next stage. If the proposal involves matters that are beyond staff delegation, then the internal working group will report its recommendations to a meeting of Council and a resolution of Council will be required to determine whether the proposal will proceed or not.

8.5 Notification of Outcome

Following the assessment of an unsolicited proposal, the proponent will be notified in writing of the outcome.

8.6 Contract Execution

Following final approval of a successful proposal, Council will negotiate terms and enter into a contract with the successful proponent.

9 Roles and Responsibilities

9.1 Proponent

The Proponent is required to:

- Prepare an outline Submission and meet with Council to discuss its unique characteristics and other key principles, prior to lodgement of a formal submission. This involves the Proponent completing an initial Schedule of Information Requirements.
- Prepare and lodge with Council an Initial Submission for Stage 1 Assessment. This involves the Proponent completing the Schedule of Information Requirements and attaching any other relevant information.
- Enter into a Participation Agreement if recommended to proceed to Stage 2.
- Provide a Detailed Proposal at the conclusion of Stage 2.
- Provide a Binding Offer at the conclusion of Stage 3.

9.2 Council

Proposals will be submitted to Council for approval prior to any progression of a proposal to Stage 2 or 3, prior to the signing of any agreement, and prior to provision of any Council funding. The required approval process will be described to the proponent.

Additional Council approvals may be required for any changes to previously approved commercial terms or Council funding.

9.3 Proposal Working Group

For certain proposals the Council may direct a Proposal Working Group be established to oversee assessment of that proposal.

The Working Group to comprise of:

- a. **Core members** - Manager Corporate Services and Proposal Manager.
- b. **Additional members** depending on the nature of the application, could include relevant manager, land use planner, business analyst, development planning officer, place manager etc
- c. **Administration Support** – EA CCS will provide administrative support and coordination: eg. prepares initial correspondence, updates the register, and assembles the working group

9.4 Proposal Manager

Council's Proposal Manager will be appointed by Council to receive and progress consideration of the Unsolicited Proposal. The Proposal Manager has the following responsibilities, unless otherwise documented in the Governance Plan:

- Receive the Unsolicited Proposal
- Undertake an initial compliance check
- Facilitate the Assessment Panel and/or Working Group (as appropriate)
- Act as contact point for Proponents
- Facilitate interactions between the Proponent and Council
- Facilitate the preparation of information provided to the Proponent
- Coordinate assessment, including input from advisers
- Coordinate preparation of Assessment Reports
- Provide assistance to Council agencies with a responsibility for assessing Unsolicited Proposals.