

Unsolicited proposal guideline for suppliers

Power and Water Corporation's
Procurement Framework

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Introduction

An *unsolicited proposal* may be received by Power and Water from a private entity (the *potential supplier*) that is not in response to an *approach to market* or active *procurement* activity. The proposal is submitted by the *potential supplier* without formally being requested by Power and Water, and may provide detail that there is a current or future need, or that they have a solution to a problem that is not recognised by Power and Water, and wish to engage into a *contract* or formal arrangement to deliver goods, works or services. This type of proposal is considered an *unsolicited proposal*.

Potential suppliers are encouraged to put forward new and innovative ideas and solutions, and can be assured that when submitting an *unsolicited proposal*, Power and Water will ensure that the process will be conducted with ethical and fair treatment to parties involved, ensure probity, public accountability and transparency is maintained throughout the process. This guideline will give certainty to *potential suppliers* that their *unsolicited proposals*' intellectual property rights will be protected.

In conjunction with Power and Water's '[Procurement Sourcing Rules](#)', this guideline defines the framework for submitting and assessing *unsolicited proposals*, with due consideration to Principles 3 and 4 of Power and Water's six procurement principles. These six principles are:

1. Value for Territory

Value for Territory is the principle underlying all *procurement* activity at Power and Water. This delivers an optimum combination of quality, quantity, risk mitigation, timeliness and whole-of-life cost effectiveness.

2. Ethical and fair treatment

Ethical and fair treatment is ensured through an open and competitive tendering process, equal opportunity for *suppliers*, clear and easy to understand *assessment criteria* and methodology, timely tender assessment, an effective complaints process and clear communication.

3. Probity, accountability and transparency

Integrity of the *procurement* process is ensured by adherence to Power and Water's Code of Conduct, confidentiality of all commercial information and accountability for decisions.

4. Sustainable and skilled industry partners

Ensuring that Power and Water has industry partners with the capability and capacity to assist in delivering the corporation's evolving needs.

5. Environmental protection

Environmental protection supports Power and Water's objective of adopting best practices to promote and protect the environment and minimise environmental harm.

6. Promotion of Power and Water's objectives

The ultimate objective of *procurement* is to add value to Power and Water in fulfilling its vision and goals. This includes operating efficiently and maximising the return to the Northern Territory community.

Terms and phrases written in *italics* are defined in the '[Jargon Buster](#)'.

Submitting unsolicited proposals to Power and Water

Considering unsolicited proposals

Unsolicited proposals will only be considered by Power and Water when they meet one or more of the following criteria:

- are unique - are not (readily) obtainable in the market.
- are exceptional and provide clear value for money benefit to Power and Water
- are unavailable from other *potential suppliers*
- address a significant need
- are not advance proposals for a requirement that has already been identified
- have sufficient detail to enable Power and Water to undertake a rigorous technical and financial assessment
- have not been developed using finance provided by the Northern Territory Government.

A solution looking for a problem, an answer looking for a question

The opportunity to put forward unsolicited proposals must not be used by potential suppliers as an opportunity to circumvent Power and Water's Procurement Sourcing Rules.

Power and Water wants to encourage potential suppliers to put forward good ideas and innovative solutions, however it is equally as important that these ideas and solutions are assessed objectively and on the basis of sound 'Business Case' analysis – and not as an answer looking for a question

Sometimes ideas from an unsolicited and unique proposal may challenge traditional thinking and stimulate discussion that leads to a better understanding of Power and Water's actual needs.

Prescribed financial thresholds for proposals

Where *potential suppliers* are considering submitting an *unsolicited proposal* to Power and Water, the following financial threshold must be met in order for the *unsolicited proposal* to be considered and assessed:

- ≥ \$500,000 (excl. GST) for both infrastructure and non-infrastructure proposals.

Information required within proposals

An *unsolicited proposal* must contain enough information to enable Power and Water to assess whether it deserves further consideration. The level of detail will depend on the nature and complexity of the proposal but it must contain enough information for a technical and financial analysis to be completed by Power and Water.

Apart from the normal information that would allow Power and Water to establish the legitimacy of the *potential supplier* and their proposal, additional information that may be needed includes:

- a description on how the *potential supplier* can or proposes to verify the innovative and unique elements of the/their proposal
- all ownership interests including intellectual property rights, and in the case of access to land, details of property rights and ownership information
- identifying any information in the proposal that is commercial in confidence
- the names of other agencies or buyers the proposal has been sent to

- the length and nature of any purchase agreement the *potential supplier* is seeking
- the length of time the proposal is valid
- all the costs in adequate detail that allows a complete evaluation to be carried out.

The *potential supplier* should also be prepared to provide answers to any additional questions that would allow Power and Water to adequately assess the proposal and reach a considered opinion on whether to accept the proposal.

Uniqueness of the proposal

As part of the proposal, the *potential supplier* should provide adequate information and demonstrate how the proposal is unique and will cater to an identified need or requirement that may assist Power and Water in delivering our services more efficiently, or provide additional benefits to the community. The proposal should include information on its uniqueness, such as does the *potential supplier* have ownership or contractual rights that positions their proposal in a favourable manner to deliver, and to which competitors do not currently have?

Non-competing Proposal

Upon receipt of the *unsolicited proposal*, Power and Water will perform an assessment to ensure that the proposal does not already share a commonality with future pre-planned *procurement* activities or strategic priorities.

Value for Territory

The proposal should include information on:

- pricing and the expected total cost of ownership of a proposal
- how the proposal and its pricing achieves value for money, and importantly, how the proposal encompasses value for Territory and its economic impacts and benefits to the Northern Territory
- risks and mitigation strategies, and the responsibilities of both parties for each of these areas of consideration
- what input, requirements and expected costs will be sought from Power and Water in order to facilitate the implementation of the proposal.

Capacity and Capability of the Potential Supplier

The proposal will demonstrate that the *potential supplier* has the relevant historic technical/financial capacity and capability to successfully deliver the objectives of the proposal. *Potential suppliers* should include relevant commercial and trading history, appropriate financial reports and evidence of expertise in the field relating to the *unsolicited proposal*. Where there are any arrangements with third parties, including third party suppliers and sub-contractors, the *potential supplier* shall also include this information in its proposal.

Reserving the right to decline/withdraw

Both Power and Water, and the *potential supplier* retain the rights to decline/withdraw its proposal or offer at any stage of the *unsolicited proposal* process with appropriate advanced notice.

Where a decline does occur, Power and Water may decide to request proposals from the open market or decide that the proposal is no longer in line with current priorities. Whatever action is ultimately taken,

Power and Water assures all *potential suppliers* that any information shared during the process will remain commercial in confidence, and intellectual property received with an *unsolicited proposal* will be respected.

Where are proposals submitted?

Before investing significant resources, time and money into preparing an *unsolicited proposal*, it is recommended that *potential suppliers* make initial contact with one of Power and Water's Category Manager's first to discuss their proposal. This will assist *potential suppliers* in ensuring that their proposals adequately understand and address the requirements of submitting a proposal to Power and Water.

If you would like to meet with Power and Water's, it is recommended that you provide a short summary or briefing of the *unsolicited proposal*, including information on what is being requested from Power and Water. The Category Managers can be contacted via email at industryengagement@powerwater.com.au.

All *unsolicited proposals* must be submitted to Power and Water through the following online [web link](#). Your proposal must include company/organisation and primary contact details.

Governance and assessment of proposals

Stages of assessment

The formal review and assessment process of an *unsolicited proposal* will commence through a three stage process.

Stage 1 – Initial Assessment

Once an initial *unsolicited proposal* is submitted, it will be reviewed and forwarded to relevant areas of the Corporation in order for a preliminary technical assessment to be completed. The preliminary assessment will be undertaken to ensure that information requested in Section 2 is included in the *unsolicited proposal*, assessing the proposal for merit, and that the proposal is of further interest to Power and Water.

If it is determined that the *unsolicited proposal* meets the essential criteria and is of further interest to Power and Water, the proposal will move to stage two and the *potential supplier* will be notified in writing.

Stage 2 – Exclusive Direct Negotiations

At this stage, the proposal will be reviewed with detailed consideration on its feasibility. The negotiation process with a *potential supplier* will be undertaken directly in an exclusive process, however Power and Water will not be precluded from engaging with other parties during the assessment and investigations of the proposal, as Power and Water may be required to ascertain whether there are competing proposals or alternative Value for Territory options that could be considered through an *open approach to market*.

The decision by Power and Water to further consider an *unsolicited proposal* will not signify any commitment or obligation to the *potential supplier* on behalf of Power and Water Corporation.

Power and Water may request the *potential supplier* to clarify, or provide additional information relevant to their proposal in order to appropriately review and consider. Power and Water may seek additional input from Northern Territory Government agencies, or third parties, in order to further understand the proposal, terms and conditions and any financial and economic impacts the proposal may include.

Once Power and Water has completed its assessment of the proposal, a response will be prepared, notifying the *potential supplier* in writing:

- the outcome of the stage 2
- whether the proposal is suitable to proceed to stage 3
- whether the proposal is not considered suitable for further consideration on an exclusive basis, but rather through an *open approach to market*
- that the proposal is not suitable for further consideration by Power and Water and is now closed.

Stage 3 – Contract Negotiation and Closure:

The final stage of the *unsolicited proposal* assessment will allow final negotiations by Power and Water, and the *potential supplier*, of legal and commercial terms, before preparing and executing formal acceptance documentation.

Key processes within stage 3 may include:

- advise the *potential supplier* of the process and requirements for developing the final *contract*
- final negotiations and clarifications
- drafting of formal *contract* and contract management documentation (including key objectives and milestones).

At the conclusion of the *contract* negotiation process, Power and Water may:

- agree to the terms included in the contract documentation and provide approval for the *contract* to be executed
- agree to the contract documentation, with specific alternative conditions
- not agree to the contractual documentation but pursue the proposal through an alternative arrangement, including a competitive public tender process (note: disclosure of intellectual property provided will not occur)
- not agree to the contract documentation and close the *unsolicited proposal* assessment process.

Probity

Referencing Principle 3 of Power and Water's six [Key Procurement Principles](#), *potential suppliers* can be assured that *unsolicited proposals* are assessed in accordance with this principle in regards to probity. Power and Water may engage the services of a probity advisor to ensure:

- that decisions are made in accordance with Power and Water's Procurement Framework and Procurement Sourcing Rules
- that decisions deliver the best outcomes for the Corporation
- that public service integrity is maintained
- commercially sensitive and confidential information is protected
- that any perceived conflict of interest, bias and/or misconduct is eliminated.

General terms and conditions

Power and Water may take into account any other factors or considerations that it considers relevant to the assessment of an *unsolicited proposal*, including any that may arise as a result of the nature and content of the proposal.

No legal relationship

By making an *unsolicited proposal*, a proponent acknowledges that no *contract* exists or will be implied between Power and Water and the *potential supplier* unless and until contract documentation is executed by Power and Water.

Freedom of Information

The *Information Act (NT)* applies to the information provided by a *potential supplier* in its proposal. Any information that is commercially sensitive or confidential should be marked "commercial and confidential". *Potential suppliers* should be aware that under the *Information Act (NT)*, Power and Water as a Government Owned Corporation is a public sector organisation for personal information only, and therefore a person cannot apply to Power and Water for access to information that is not personal information.

Change in circumstances

Potential suppliers must inform Power and Water in writing of any material change to any information contained in the *unsolicited proposal*, and any material change in circumstance that may affect the accuracy of any information provided in the proposal.

Costs associated with proposal

All risks and associated costs are to be borne by the *potential supplier* in the development, lodgement and negotiation of an *unsolicited proposal*, and the *potential supplier* will not have any recourse or state of claim against a decision by Power and Water to no longer proceed with an *unsolicited proposal*.

Other rights

Power and Water reserves the right, at any time during the consideration of an *unsolicited proposal* to:

- require additional information from a *potential supplier*
- perform security and financial checks in relation to the *potential supplier*
- publish the names of a *potential supplier*
- clarify any aspect of the proposal
- discontinue negotiations at any time with the *potential supplier*
- commence any procurement process for the same or similar requirements to the *unsolicited proposal*
- seek advice and assistance from third parties, including external consultants to support Power and Water in its review and consideration
- allow a *potential supplier* to change, alter or clarify its proposal.

Change management and continuous improvement

Review

The requirements of this guideline shall be reviewed and updated periodically for its ongoing effectiveness. This guideline will be reviewed, at a minimum, every three years or in the event of any significant change in

our vision, values, long term goals, risk appetite, policy statement business model or organisational structure, or related systems or processes.

Document history

Date of issue	Version	Prepared by	Description of changes
1/11/2019	1.2	M Abe	Updated inline with Procurement Sourcing Rule Update – 1 November 2019
24/08/2023	2.0	M Abe	Migrated to new branding - Removed references to 'new' framework and excess/duplicated words and updated from Industry Engagement Officer to Category Manager

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