



# Guidelines for Unsolicited Proposals

Second Edition: July 2016



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**The Partnerships Framework**

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INVEST  
CANBERRA



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Enquiries about this publication should be directed to:

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

Executive Director  
Infrastructure Finance and Advisory Division  
Chief Minister, Treasury and Economic  
Development Directorate  
ACT Government

Executive Director  
Innovation, Trade and Investment  
Chief Minister, Treasury and Economic  
Development Directorate  
ACT Government

# Contents

<b>Foreword by the Treasurer</b> .....	<b>i</b>
<b>1. Introduction</b> .....	<b>1</b>
1.1 Background.....	1
1.2 Review of Unsolicited Proposals Guidelines.....	2
1.3 What is an Unsolicited Proposal? .....	2
1.4 Purpose of the Document.....	2
1.5 Structure of the Guidelines.....	3
<b>2. Guiding Principles</b> .....	<b>5</b>
2.1 Overview.....	5
2.2 Why Submit an Unsolicited Proposal?.....	5
2.3 Guiding Principles .....	6
2.4 Objectives .....	6
2.5 The ACT’s ‘Six Ways’ Framework.....	9
<b>3. Phased Process</b> .....	<b>11</b>
3.1 Overview .....	11
3.2 Submitting an Unsolicited Proposal.....	11
3.3 Concept Submission (Phase 1).....	13
3.4 Detailed Submission (Phase 2) .....	15
3.5 Tender Approach (Phase 3) .....	18
3.6 ACT ‘Six Ways’ Framework Tender Approaches.....	19
<b>4. Governance</b> .....	<b>27</b>
4.1 Overview.....	27
4.2 Roles and Responsibilities .....	27
4.3 Probity .....	28
<b>5. Communication and Consultation</b> .....	<b>29</b>
5.1 Overview.....	29

5.2	Roles and Responsibilities .....	29
5.3	Intergovernmental consultation.....	29
5.4	Chief Minister .....	29
5.5	Cabinet.....	30
5.6	Specific.....	30
5.7	Community and Public.....	30
5.8	Reporting and Public Disclosure .....	30
<b>6.</b>	<b>Submission Checklist .....</b>	<b>31</b>
6.1	General Requirements.....	31
6.2	Concept Submission Requirements.....	31
6.3	Detailed Submission Requirements.....	32
	<b>APPENDICES .....</b>	<b>35</b>
	<b>Appendix A: Glossary .....</b>	<b>37</b>
	<b>Appendix B: References .....</b>	<b>39</b>
	<b>Appendix C: Letter of Interest Template .....</b>	<b>41</b>
	<b>Appendix D: Declaration to Abide by Process.....</b>	<b>43</b>

## Foreword by the Treasurer

The ACT Government is committed to improving the facilitation of infrastructure, service delivery and private sector investment within the Territory. By introducing this policy, the ACT Government is creating a clear pathway for prospective bidders to submit innovative and unique ideas that align with the ACT Government's strategic agenda.

It is important genuine Unsolicited Proposals, which cannot be managed by normal procurement processes, have an alternative process that is both efficient and effective for prospective bidders and Government.

The *Guidelines for Unsolicited Proposals* provides a transparent framework for both proponents and Government to inform themselves with respect to the treatment of Unsolicited Proposals for public infrastructure, service delivery and private sector investment in the Territory.

The document's main objective is to provide consistency and clarity to any parties involved in an Unsolicited Proposal submission, both private and public sectors alike, on how submissions are evaluated and tendered in order to meet the ACT Government's principles of ensuring public interest, delivering value for money, and achieving appropriate delivery.

The Guidelines will ensure accountability and fairness are maintained throughout the Government's consideration of Unsolicited Proposals, while also maximising value for money to the Territory and staying within the ACT Government's affordability envelope.

Andrew Barr MLA  
ACT Chief Minister

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# 1. Introduction

## 1.1 Background

Developing a strong and resilient economy in the Australian Capital Territory (“ACT”), requires an appropriate level of investment to be maintained for economic infrastructure such as transport links to allow the movement of resources, communications to support the spread of information and utility networks to provide basic services for businesses and households.

Investment in social infrastructure such as hospitals, education, recreation and cultural facilities is also needed to support the provision of health services, enhanced learning opportunities, and to build sustainable communities.

Historically, the ACT Government has relied on traditional procurement methods to deliver these capital and service requirements. While traditional approaches work well for simple and low risk infrastructure procurements, they do not always provide the incentives to innovate, improve service delivery or realise whole of life value for money outcomes.

The ACT Government has implemented more modern and sophisticated approaches towards capital project delivery and greater engagement with the private sector – this can be seen in *The Capital Framework*<sup>1</sup>.

*The Partnerships Framework*<sup>2</sup> has been developed as an extension of *The Capital Framework*, to further engage with the private sector through potentially complex arrangements for capital and service delivery projects expected to provide significant economic and financial benefits to the Territory.

*The Partnerships Framework* consists of two separate policy guidance documents:

- *The Partnerships Framework – Guidelines for Public Private Partnerships*; and
- *The Partnerships Framework – Guidelines for Unsolicited Proposals*.

This policy document constitutes the *Guidelines for Unsolicited Proposals*. It responds to the ACT Government’s recognition of the need to address Unsolicited Proposals made by private industry to Government in a concise and transparent manner. This approach is consistent with approaches in other jurisdictions.

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<sup>1</sup> ACT Government (2016), *The Capital Framework*, <http://www.procurement.act.gov.au/about/capital-framework>

<sup>2</sup> ACT Government (2016), *The Partnerships Framework*, <http://apps.treasury.act.gov.au/infrastructure-finance-and-advisory/ppp>

## 1.2 Review of Unsolicited Proposals Guidelines

As anticipated in Section 1.3 of the original version of these Guidelines (First Edition, January 2014), this Edition follows the commitment to perform a review approximately two years from their initial release.

This Second Edition replaces the previous First Revision (May 2015) and Invest Canberra's *Investment Proposal Guidelines for Investors* (2014). New proposals received through Invest Canberra will be assessed through these Guidelines from 1 July 2016. Existing proposals will continue to be evaluated through the legacy frameworks.

It is anticipated that these guidelines will be reviewed approximately every two years.

## 1.3 What is an Unsolicited Proposal?

For the purposes of this policy, the ACT Government defines an Unsolicited Proposal as an approach to Government by a Proponent with a proposal not requested by the Government that entails the:

1. Construction and/or financing of public infrastructure;
2. Transfer of assets between the public and private sector in relation to the provision of public infrastructure;
3. Divestment and outsourcing of Government assets and/or services; or
4. Business partnerships and collaboration with considered entrepreneurship.

An Unsolicited Proposal may also entail particular regulatory arrangements.

As a general guide, this framework is orientated towards projects with a minimum value of \$10 million, but may also apply to smaller projects.

## 1.4 Purpose of the Document

The ACT Government has defined key strategic and operational priorities for advancing the economic and social needs of the Territory.

There may be opportunities for a partnership between the ACT Government and the private sector that may not be at the forefront of the Government's strategic priorities or infrastructure agenda. Similarly, some business activities that would normally be conducted by the private sector may nonetheless require Government support of some form. As a result, the private sector may submit a proposal to the ACT Government that is not in direct response to a request of the Government. Other types of organisation, such as not-for-profits, may also submit Unsolicited Proposals.

The *Guidelines for Unsolicited Proposals* policy document sets out the requirements for the ACT Government and Proponents when developing and evaluating Unsolicited Proposals. It aims to provide consistency and certainty to the market on how Unsolicited Proposals will be assessed against key principles of the ACT Government in meeting its strategic objectives and provide value for money.

## *Public Infrastructure and Infrastructure PPPs versus Other Investment Projects*

Public infrastructure and infrastructure PPP projects are defined as those involving the delivery of a facility to the public and where the provision of the facility will be funded in part or in full by the ACT Government. Such proposals will be dealt with through the process set out by *The Partnerships Framework – Guidelines for Unsolicited Proposals for Public Infrastructure and Public Private Partnerships*.

The *Guidelines for Unsolicited Proposals* is an ACT Government policy document and it is designed to be consistent with the *Government Procurement Act (2001)*. Where appropriate, processes within *The Capital Framework* and *The Partnerships Framework* will be applied to promote standardisation and consistency with respect to capital project planning and delivery in the ACT.

The ACT Government would like to acknowledge that this document draws on existing guidelines in New South Wales, South Australia and Queensland Governments in addition to other sources.

**Appendix A** provides a glossary of terms used in this document.

**Appendix B** provides the list of the references that have been consulted during the development of this document.

## 1.5 Structure of the Guidelines

This document constitutes the Guidelines for Unsolicited Proposals in the ACT and has been released in 2016 as a Second Edition.

The remainder of this document structure is as follows:

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

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## 2. Guiding Principles

### 2.1 Overview

This section outlines the rationale for organisations to submit an Unsolicited Proposal. It also provides further detail with respect to the guiding principles, objectives and frameworks the ACT Government adopts when evaluating the merit of an Unsolicited Proposal.

### 2.2 Why Submit an Unsolicited Proposal?

The ACT Government recognises the valuable ideas and innovations the private sector can generate and the real and tangible benefits which can flow to the ACT economy. By having a process to manage Unsolicited Proposals, the Government can ensure value to the community can be delivered from genuinely unique ideas.

Where a mutually beneficial outcome between a Proponent, ACT Government and the Territory can be demonstrated, the ACT Government intends the successful bidders receive a fair return for their efforts, particularly for genuinely unique ideas.

**This would require a Proponent to bring one or more of the following:**

1. **A unique proposition not currently under ACT Government consideration;**
2. **A unique and/or emerging technology;**
3. **A unique service offering;**
4. **A considered innovation or entrepreneurship with benefits to the Territory; and/or**
5. **A divestment, outsourcing or restructure of government services or assets.**

While the ACT Government encourages the submission of genuinely innovative and unique Unsolicited Proposals, it may reject proposals which are not consistent with the tests for **public interest, appropriate risk allocation, and/or value for money** which are set out in this policy document.

The following do not constitute an Unsolicited Proposal and, generally, will not be considered under this framework:

- Proponents seeking to directly purchase or acquire ACT Government land. Unless the proposal presents a unique opportunity to Government, the Government is unlikely to enter into such an arrangement without an open tender process. Standard land sale proposals will be referred to the Office of the Coordinator General for Urban Renewal, Economic Development Division in accordance with the *ACT Planning and Development Act 2007*.
- Proponents with an existing government licence to provide goods or services seeking to bypass a future tender process.
- Proposals for significant extensions to existing contracts, or the next stage of a staged project on the basis that the contractor is already on-site or has some other claimed advantages, absent of other uniqueness criteria.
- Proposals seeking to develop land that is not owned by the Government or the proponent.
- Proposals that identify the proponent's skills or workforce capability as the only unique characteristic are unlikely to progress to Stage 2.

- Proposals to provide widely available goods or services to government.
- Proposals for consultancy services.
- Proposals for projects where the tender process has formally commenced or for which planning has commenced, whether published or not.
- Proposals seeking grants e.g. scientific research.

## 2.3 Guiding Principles

The ACT Government has adopted eight principles to guide its consideration of Unsolicited Proposals in the Territory. These are to:

1. Encourage unique and innovative opportunities and ideas from industry that deliver value for money for the Territory;
2. Acknowledge that value for money needs to balance whole of life value and economic opportunity against risk and the impacts to industry, society and the environment;
3. Ensure the Unsolicited Proposals process is not used as an avenue to circumvent due process, statutory requirements, or existing ACT Government procedures;
4. Balance rewarding genuinely unique, collaborative and innovative proposals against contestable value;
5. Focus primarily on ideas that align with current ACT Government Strategic Priorities, but recognise there may be opportunities that add value beyond the current focus of Government;
6. Recognise the opportunity to take advantage of Unsolicited Proposals will often require a timely response, yet not at the expense of transparency and due diligence;
7. Be cognisant of and sensitive about the communication of decisions to the market and public, particularly where market sensitive information is involved; and
8. Treat proposals as cabinet in confidence and commercial in confidence until otherwise mutually agreed.

## 2.4 Objectives

The ACT Government has adopted five broad objectives when reviewing Unsolicited Proposals. They aim to ensure net benefits are delivered to the Territory and to reduce unnecessary work for both the Proponent and the ACT Government.

The broad objectives are:

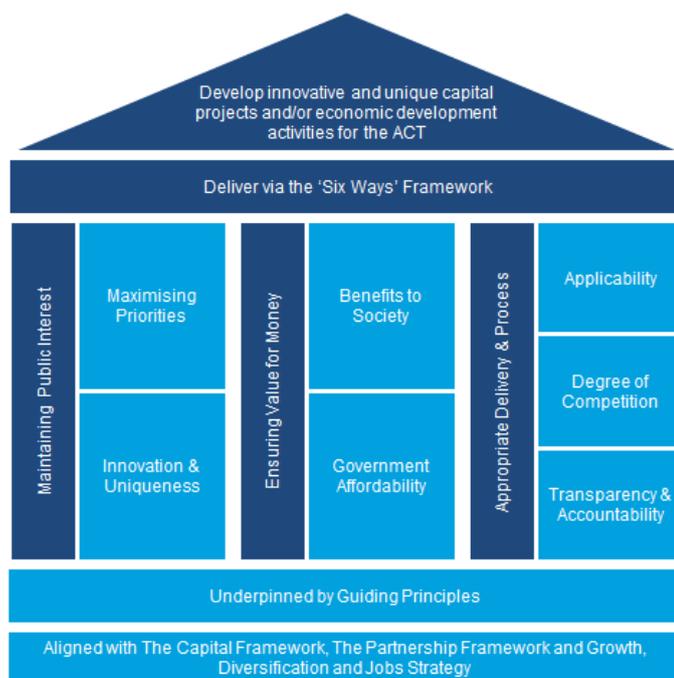
1. **Upholding Public Interest** to ensure infrastructure and/or economic development projects serve to benefit the ACT public at large from a social, economic and environmental perspective, as reflected in the Government's infrastructure and economic agendas.
2. **Creating Value for Money** to ensure the project presented by the Unsolicited Proposal generates net economic benefits to the ACT.
3. **Ensuring Affordability** through using a delivery method that is both reasonable and cost-effective to the ACT Government when compared to alternative options for delivery (i.e. the delivery of the project is within the affordability envelope of the ACT Government's current fiscal circumstances).
4. **Economic Diversification** – To ensure the future of the ACT is founded on a robust and dynamic economy and where the business sector is confident in leading that future through action, independently from government.

5. **Ensuring Appropriate Delivery** of the arrangement between Government and the Proponent in terms of applicability, transparent process, accountability, competition and contestability, commercial viability and risk sharing.

These objectives may guide discussion but do not represent assessment criteria and are not part of a formal evaluation process.

**Figure 1** illustrates the ACT Government’s framework for identifying and evaluating Unsolicited Proposals in a consistent and responsive way.

**Figure 1 – Framework for Evaluating Unsolicited Proposals**



### 2.4.1 Upholding Public Interest

Just as public interest is considered in all government projects, public interest is a key consideration in ACT Government’s evaluation of an Unsolicited Proposal.

The following public interest questions may be considered in determining whether to progress a proposal:

1. Does the proposal align with the ACT Government’s strategic objectives?
2. Does the project help facilitate the economic growth and development of the Territory?
3. Will the proposal produce net benefits (financial and/or economic) for the Territory?
4. Will the proposal have a positive or negative sustained impact on the community and/or environment?

It is also expected that Proponents will describe the innovative or unique impacts on public interest as a result of their submission. That is, the Proponent will need to demonstrate how its idea is differentiated from other offerings in terms of benefiting the general public.

The following factors will be considered on a **case-by-case basis** when assessing unsolicited proposals:

- Intellectual property and moral rights;
- Genuinely innovative ideas;
- Ownership of software or technology offering a unique benefit;
- Unique financial arrangements;
- Unique ability to deliver a strategic outcome; and/or
- Other demonstrably unique elements which claim to deliver significant cost savings or productivity improvements.

The ACT Government reserves the right not to proceed with any Unsolicited Proposal in its unfettered discretion.

### 2.4.2 Value for Money

Demonstrating value for money represents a key consideration for all decisions involving the allocation of public resources.

Unsolicited Proposals may be subject to standardised and rigorous methods that estimate benefits and costs to both Government and the public. To the extent relevant, this assessment will be in accordance with *The Capital Framework* in the ACT.

In all cases the Proponent will need to provide sufficient evidence that the project delivers value for money to the ACT by quantifying the net benefits to the ACT and the potential project risks faced by Government and the Proponent.

As Unsolicited Proposals may contain elements of innovation or uniqueness which may be difficult to estimate based on conventional methods, detailed description and quantification (where possible) of unique benefits will be considered by the ACT Government (where relevant).

### 2.4.3 Ensuring Affordability

Any Unsolicited Proposal seeking to place risks, costs or payment obligations on Government must, if pursued, be subject to a detailed financial appraisal from the ACT Government's perspective.

This will be essential for Government to determine the net financial cost of the proposal and the subsequent impact on its affordability envelope.

As a guide, proponents should take account of:

- The ACT Government's current and forecast fiscal circumstances;
- Potential risks faced by Government and the Proponent; and
- Appropriateness of return on investment obtained by Proponent given project risks.

### 2.4.4 Ensuring Appropriate Delivery

In addition to demonstrating consistency with the public interest and value for money, project delivery processes must also be examined.

As many Unsolicited Proposals will involve Government partnering with the private sector – appropriate consideration will need to be given to *The Partnerships Framework*, which will remain the overarching guidelines for this document.

The following points will need to be presented to the ACT Government:

- Proponent’s preferred commercial approach under the ACT’s ‘Six Ways’ Framework;
- The role, responsibilities and contribution required of the ACT Government in delivering the proposal;
- Where relevant; proposed delivery model including planning, design and construction and operations arrangements (as required);
- Demonstrated capability and capacity for the Proponent to deliver, including in terms of technical issues; and
- Appropriateness of the proposed risk allocation between the Proponent and Government.

Government will consider the uniqueness of the proposed delivery approach in terms of the ability of other third parties to provide similar benefits, and whether the proposal could create a monopoly position which could impair existing markets or disbenefits the community.

To test the impact of the market, the ACT Government reserves the right to undertake a competitive bidding process in its unfettered discretion.

## 2.5 The ACT’s ‘Six Ways’ Framework

The ACT Government is committed to implementing a framework that responds to the changing circumstances and opportunities that Unsolicited Proposals can create.

The ACT’s ‘Six Ways’ Framework aims to both incentivise the Proponents to submit Unsolicited Proposals, and provide the ACT Government with a range of procurement mechanisms to deliver effective outcomes fit-for-purpose to each proposal and the Territory.

Proponents are required to identify a preferred commercial tender model as per the ‘Six Ways’, including reasoning for the selection. The ACT Government will take the Proponent’s preferred selection into consideration but reserves the right to select a final procurement process that it considers to be in the overall best interest of the Territory.

**Table 1** overleaf identifies six tender approaches as options for the ACT Government.

**Table 1 – Definitions of the ACT preferred commercial tender models**

Type	Definition	Applicability
<b>Swiss Challenge</b>	Following an unsolicited approach, an open bidding process is conducted. If unsuccessful, the Proponent has the option to match the winning bid and win the project	<ul style="list-style-type: none"> <li>• Submission likely to be unique</li> <li>• Default preferred model</li> </ul>
<b>Bid Premium</b>	The Proponent receives a bonus in an otherwise fair and open bidding process. Typically, this is done by adding a premium to the original Proponent’s technical or financial offer when bids are evaluated.	<ul style="list-style-type: none"> <li>• Unique submission</li> <li>• Acknowledges first mover advantage of Proponent</li> </ul>
<b>Developer Fee</b>	The project or bid development costs of the original Proponent are reimbursed by the winning bidder.	<ul style="list-style-type: none"> <li>• Unique submission</li> <li>• Perceived potential for market alternative</li> </ul>
<b>Open Book</b>	ACT Government signs with the Proponent for a two stage open book process where the Proponent receives a defined rate of return to develop bid criteria and material for the tender, followed by a second stage where the Proponent is then allowed to bid for the project.	<ul style="list-style-type: none"> <li>• Submission likely to be unique</li> <li>• Perceived potential for market alternative</li> </ul>
<b>Development Manager</b>	The Proponent develops the project and conducts the bidding process on behalf of the ACT Government. The Proponent cannot bid for the project but receives a development fee from the winning bidder	<ul style="list-style-type: none"> <li>• Submission likely unique</li> <li>• Niche model for Proponents lacking full infrastructure life-cycle delivery capability</li> </ul>
<b>Negotiation Exclusivity</b>	If the Proponent’s proposal progresses to a detailed proposal stage, ACT Government enters into direct negotiations with the Proponent, and work cooperatively to develop a proposal amenable to both parties	<ul style="list-style-type: none"> <li>• Unique submission</li> <li>• A market alternative does not exist</li> </ul>

Source: *Public Private Infrastructure Advisory Facility, 2012*

Further information on the ACT preferred commercial tender models can be seen in **Figure 6 to Figure 11** in **Section 3.5**.

## 3. Phased Process

### 3.1 Overview

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

- Pre submission meeting with Chief Minister, Treasury and Economic Development Directorate (“CMTEDD”) as requested by the proponent;
- Initial submission requirements to CMTEDD;
- Filtering of initial submissions and assessment of shortlisted proposals by way of presentation and strategic review by an Unsolicited Proposals Steering Committee (“UPSC”);
- Comprehensive assessment of a more detailed submission following a successful presentation and strategic review, requiring Cabinet approval; and
- Procurement of approved detailed submissions, requiring Cabinet approval.

### 3.2 Submitting an Unsolicited Proposal

In lodging submissions, proponents should consider the Guiding Principles and Objectives covered in **Section 2**. This is to ensure sufficient consideration and diligence has been carried out to determine if the submission is an appropriate fit for the ACT Government’s agenda and the ACT community.

All initial submissions relating to an Unsolicited Proposal under this framework must be made through the Infrastructure Finance and Advisory Division (“IFAD”) or Invest Canberra within CMTEDD. CMTEDD will take the lead role in the receipt, coordination and consideration of Unsolicited Proposals.

Proposals with a significant land component will be assessed to determine if they should be considered as either an Unsolicited Proposal or through an alternative pathway such as the direct land sale in accordance with the *ACT Planning and Development Act 2007*.

Note: These Guidelines do not prevail over or circumvent any statutory process relating to the direct sale of land in the ACT. Proposals considered an Unsolicited Proposal which also include land sales, will continue to be subject to the provisions of the *ACT Planning and Development Act 2007*. The timing and facilitation of such processes will be determined on a **case-by-case basis** in consultation with the Office of the Coordinator-General.

**Submissions or discussions with Ministers prior or post lodgement represent a breach of agreed process. An approach to Ministers will constitute a breach of the Declaration to Abide by Process (Appendix D) and may result in exclusion from further consideration under this process. Submissions to other agencies in the ACT Government will be treated as preliminary and will provide no benefit to the Proponent under these guidelines.**

By not submitting an Unsolicited Proposal in accordance with this process, Proponents will lose the benefits afforded by this formalised framework.

#### 3.2.1 Pre-proposal meetings

The Government encourages prospective Proponents to request a pre-proposal meeting with CMTEDD representatives. Pre-proposal meetings aim to ensure awareness of the expectations of both the

Government and the Proponent and ensure those Proposals not considered to meet the definition of an Unsolicited Proposal in accordance with these Guidelines are appropriately redirected in a timely manner.

### 3.2.2 Initial concept submission

The initial submission will require the following documentation:

1. Letter of Interest (**Appendix C**);
2. Signed Declaration to Abide by Process (**Appendix D**); and
3. Concept Submission.

The initial submission for an Unsolicited Proposal should be submitted via email to:

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

Further information regarding Unsolicited Proposals is available at:

<http://apps.treasury.act.gov.au/infrastructure-finance-and-advisory/unsolicited-proposals>

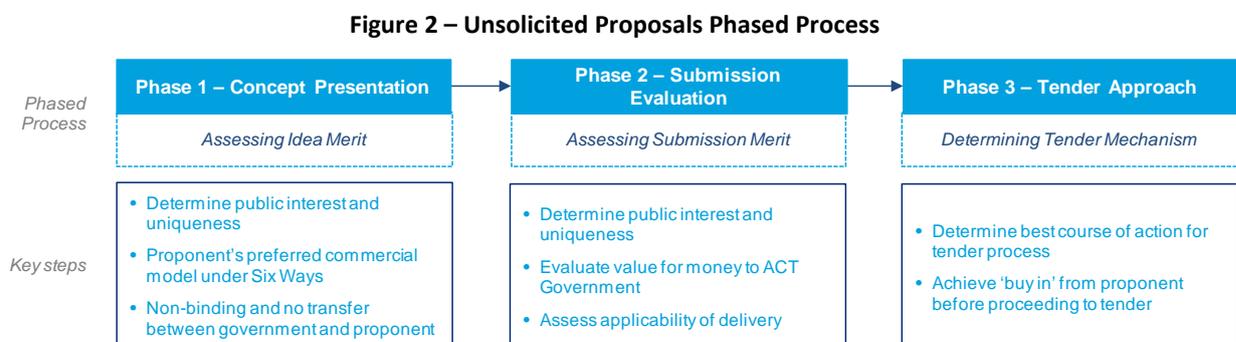
The Government will then:

- Acknowledge receipt and determine if the Proponent will be invited to present its Concept Submission to the UPSC; and
- Notify the Proponent within two calendar months from the presentation on the status of the Unsolicited Proposal submission, in particular, as to whether Government wants to proceed, requires further information to make a decision, or suggests that a revised proposal be resubmitted.

As the UPSC meets on an ad-hoc basis as required, there may be a delay between the initial submission and consideration of the proposal.

Where applicable and appropriate, these guidelines are consistent with, and follow planning, evaluation and procurement processes set out in, *The Capital Framework* and *The Partnerships Framework*. The submission of a business case should be consistent with those documents including any relevant and applicable policy.

**Figure 2** below provides an illustration of the Phased Process at a high level.

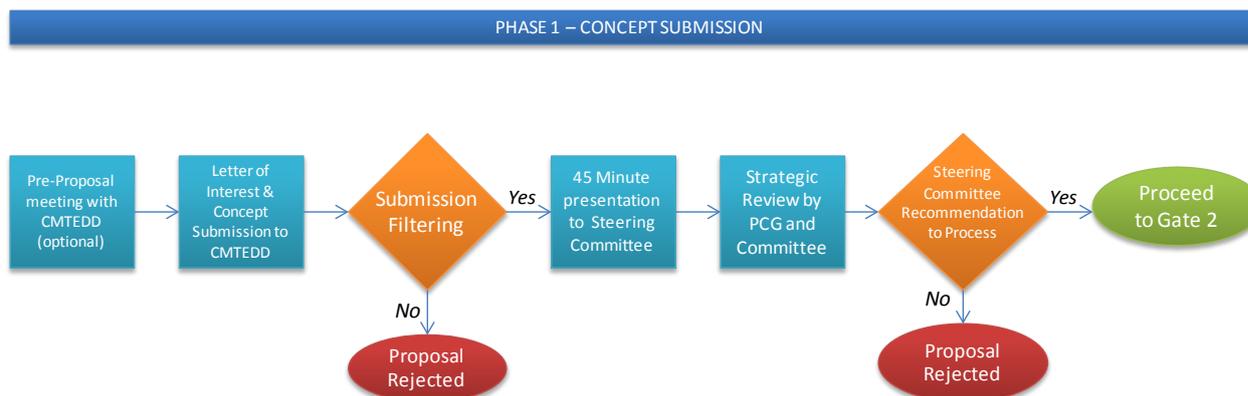


### 3.3 Concept Submission (Phase 1)

The recommended format for Concept Submissions is a brief and concise proposal overview that can be assessed in accordance with the principles, objectives and processes set out in this document. A submission checklist for information requirements can be found in **Section 6**.

The estimated lead time from the initial submission to the presentation to the UPSC will be based on the complexity of the Proposal and the need for clarifications and further correspondence. More information can be found in **Section 4.2.2**. **Figure 3** illustrates the steps taken during the first phase.

**Figure 3 – Concept Submission Process (Phase 1)**



#### 3.3.1 Assessing Concept Submissions

The Infrastructure Finance and Advisory Division within CMTEDD will perform a preliminary review of the Concept Submission to support the UPSC in their decision whether to seek a 45 minute presentation from the Proponent. IFAD will continue to provide support and advice to the UPSC throughout the Phased Process.

The initial assessment at this Concept Phase primarily serves to reduce any unnecessary effort and resources for both the Government and Proponents. In considering whether a proposal proceeds consideration may be given as to whether the submission:

1. Conflicts with a stated Government policy position;
2. Should or can be managed by an existing Government process or procedure;
3. Is unique in its value offering to justify a dedicated process;
4. Inhibits or stifles competition in the Territory;
5. Requires a change or impact to Government in a way that can be considered to be too complex or inhibits Government's ability to complete its responsibilities in a timely manner; and
6. Has been rejected before and whether any material change to the submission has occurred since.

It should be noted that the criteria should be considered holistically and depend on the current Government position and environment, as well as any broader reform that may be occurring nationally. That is, on a **case-by-case basis**, some criteria may hold greater significance than others with respect to a submission and the environment in which it is submitted.

Following initial consideration by the UPSC, Proponents may be invited to present their concept to the UPSC. CMTEDD may also request further clarification and/or additional information as part of the Proponent's presentation. The UPSC will determine ahead of the presentation whether:

- Additional attendance by other Directors General whose directorates are materially impacted by the Unsolicited Proposal will be required;
- Advice and or input from other Directors General whose directorates are broadly impacted by the Unsolicited Proposal be required; and/or
- Advice and or input from Strategic Board will be required for Unsolicited Proposals that have a whole-of-government impact.

The UPSC may also determine in its discretion whether the proposal is an Unsolicited Proposal or should be dealt with through another, more appropriate, mechanism.

In the event that a Concept Submission is made where a similar submission is already being considered under the Phased Process the UPSC shall determine an appropriate course of action on a **case-by-case basis**.

### 3.3.2 Presentation and Strategic Review

Following approval from the UPSC, Proponents will be invited to present to the UPSC for approximately 45 minutes. The presentation should reflect the Concept Submission in addition to any clarification or information sought by CMTEDD during the assessment process.

Following the presentation, a qualitative strategic review will be undertaken to determine the Concept Submission's alignment to the principles and objectives set out in **Section 2**, and the current ACT Government environment. The UPSC may request for the establishment of a whole-of-government Project Control Group ("PCG") to provide advice and/or recommendations to the UPSC.

All concept submissions assessed initially by CMTEDD will be reported to the UPSC. The UPSC will make the final determination as to whether the proposal will progress to a further stage.

In addition to setting out the project's merit and viability to the Territory, the Concept Submission should also select and explain a preferred commercial model under the ACT's 'Six Ways' Framework for progressing their proposal. The six commercial models were described in **Table 1**. Further detail on the process for each model is provided in **Section 3.5**.

Following the presentation and strategic review, the Government will seek to notify the Proponent on the outcome within two calendar months

### 3.3.3 Decision at Phase 1

Upon reviewing the Proposal and advice from the PCG/CMTEDD, the UPSC will decide whether the submission proceeds to Phase 2. Alternatively, the UPSC may request the Proponent to provide further clarification and/or additional information to assist in their determination.

The Proponent and the Territory reserve the right to withdraw its submission at any point during this stage. Phase 1 provides Proponents with an opportunity to present their concepts to the highest level of the ACT Public Service through a transparent process and in a succinct manner.

It should be noted that no restrictions will be placed on Government following the presentation since there is no intellectual property transfer at this stage. Any material submitted as part of the Concept Submission will be at the Proponent’s own risk.

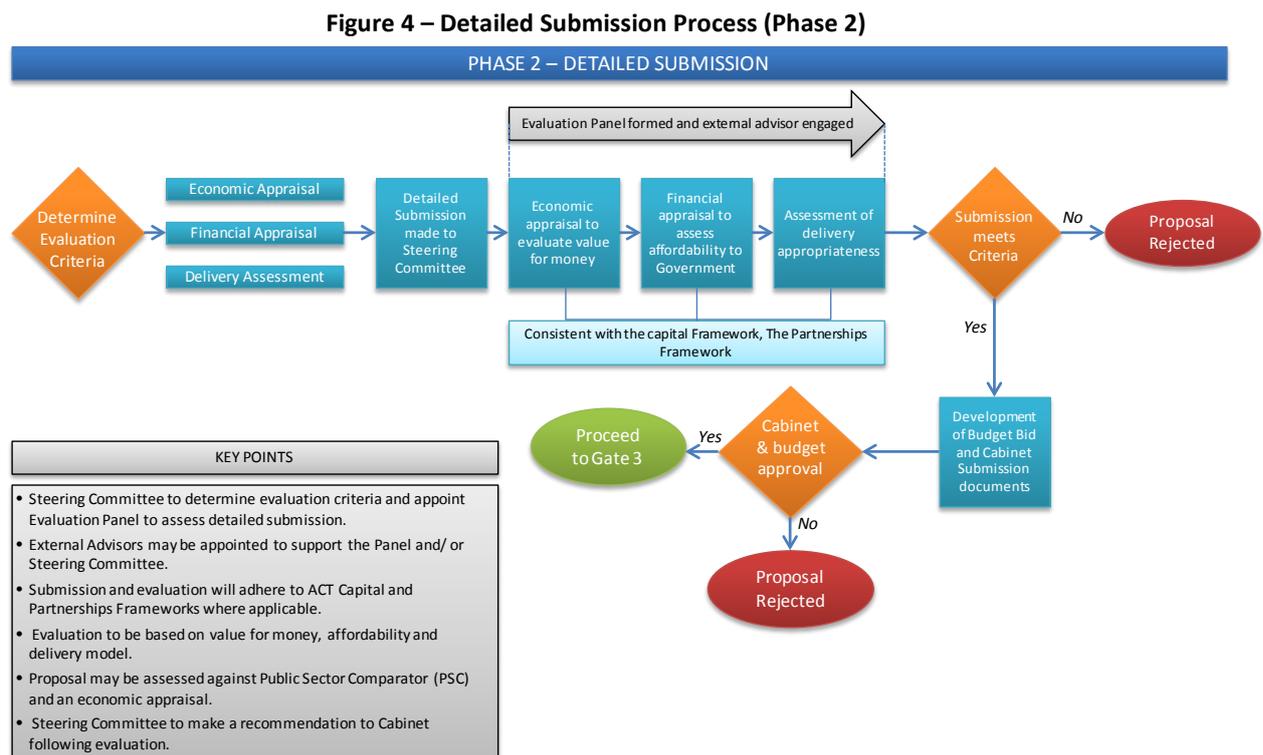
In the event that the proposal is rejected, the Government will generally not consider the proposal further until 18 months have elapsed since the Concept Submission, unless substantial material changes are made to the proposal.

### 3.4 Detailed Submission (Phase 2)

Phase 2 is intended for Proponents to fully develop their submissions into detailed business cases to support the Government’s requirement to justify the use of public funds.

Following a successful Concept Submission, the Proponent will be invited to submit a detailed submission as part of Phase 2. The invitation for detailed submission will set out in detail the requirements of the detailed bid and its assessment. The expected lead time for the completion of Phase 2 may vary between proposals.

**Figure 4** provides a guide to the anticipated process between the Proponent and ACT Government UPSC during evaluation of the Unsolicited Proposal.



The recommended format for Detailed Submissions is a robust business case that can be assessed in accordance with the principles, objectives and processes set out in this document. As a guide for proponents, a submission checklist for information requirements can be found in **Section 6**.

The UPSC may seek to employ external advisors to support in the evaluation of the submission. For any Unsolicited Proposal external advisors may be appointed to provide commercial, legal, technical and other advice to Government.

### 3.4.1 Public Interest

The UPSC will consider the proposal in terms of the public interest in the Territory. The Proponent will need to demonstrate that the proposal is in the public interest with a greater degree of rigour and detail than at Phase 1. The Proponent may also be required to address any particular issues relating to the public interest identified by the UPSC or Cabinet at Phase 1.

It should be noted that the UPSC and/or Cabinet may also require the Proponent to conduct public or stakeholder consultation and the findings of these consultations may be considered by the UPSC and/or Cabinet in their decision making. This is generally not anticipated to occur until after Cabinet have undertaken their Phase 3 considerations. Refer to Section 5.

### 3.4.2 Value for Money

The Proponent will need to further demonstrate their proposal represents the best way forward for both parties in terms of value for money. Detailed submissions may include the following for assessment by the UPSC:

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

The Proponent will need to estimate any incremental benefits or costs of a preferred option and any alternative options against a base case. Where appropriate, Proponents will be assessed against their ability to demonstrate value for money consistent with *The Capital Framework* and *The Partnerships Framework*.

The Proponent may also estimate any benefits as a result of any innovative or unique elements that the proposal provides for which conventional appraisal methods do not account. However, these will be considered by the UPSC on a **case-by-case basis** and treated separately to the standard approach.

### 3.4.3 Appropriate Delivery

The UPSC will also assess the reasonableness and appropriateness of the proposed tender and the technical feasibility of the delivery of the Unsolicited Proposal.

It should be noted that the ACT Government has a default position for competitive open tender using traditional procurement procedures. Therefore, any reason to do otherwise will require sound justification as well as consideration to alternative tender approaches.

The Steering Committee will also determine the Proponent's proposed delivery approach in terms of:

- Demonstrated capability and capacity for the Proponent to deliver;
- Appropriateness of identified risks and their proposed allocation;

- Whether other third parties would be able to provide a similar approach; and
- Whether it will reduce value for money or impair existing markets.

#### 3.4.4 Decision at Phase 2

The UPSC will employ an evaluation process to inform its decision making. The evaluation will contextualise and assess the outcomes from the Proponent's submission against the principles and objectives set out in this document. The USPC may elect to evaluate the proposal through an appointed Tender Evaluation Team with specific evaluation criteria. The UPSC may seek to convene an Evaluation Panel to provide advice as to whether the proposal should proceed to Phase 3.

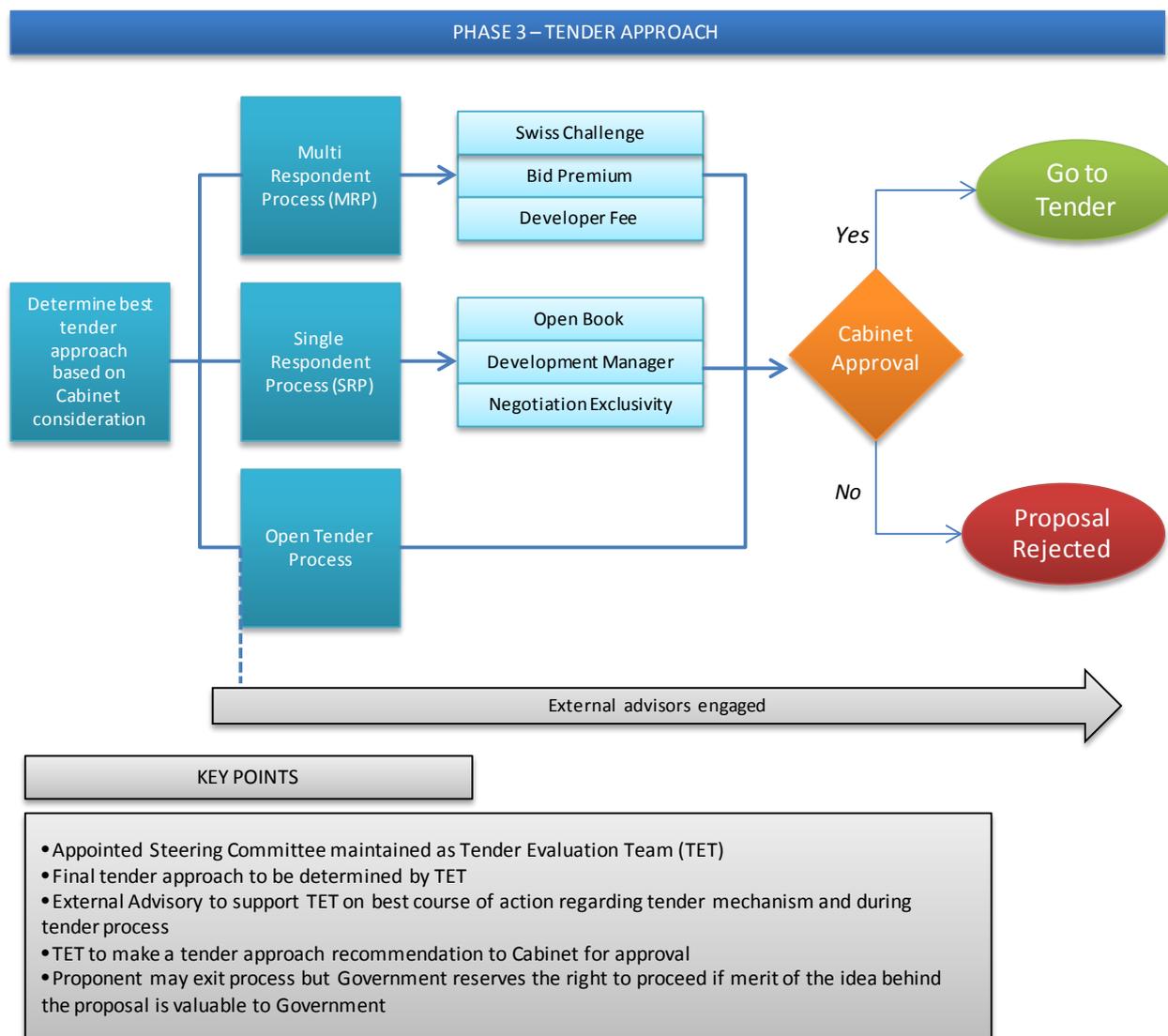
Once the evaluation of the Detailed Submission has been completed, the UPSC will provide its recommendation to Cabinet on whether to proceed to Phase 3. This will involve the development of the required proposal for funding and Cabinet Submission documentation as part of the ACT's budget process.

The Proponent reserves the right to withdraw its submission at this stage. It should be noted that, in Phase 2, Government will take all reasonable steps to protect genuine intellectual property of the Proponent.

In the event that the proposal is rejected, the Government will not consider the proposal further until 18 months have elapsed since the Detailed Submission, as a guide, or unless substantial material changes have been made to the Unsolicited Proposal by the Proponent. The anticipated time for assessment of proposals from initial submission to Phase 3 considerations may be in the order of 12 to 24 months.

### 3.5 Tender Approach (Phase 3)

**Figure 5 – Tender Approach Process (Phase 3)**



Following Phase 3 approval by Cabinet, the Government will proceed under the recommended Six Ways Model, resulting in one of the following:

1. **Multi Respondent Process (“MRP”)** – Under an MRP approach, the Proponent and ACT Government will have the following commercial tender approaches available to choose from: Swiss Challenge, Bid Premium and Developer Fee (as identified in Table 1).

MRP tender models incorporate a competitive tender process but each model also provides a different approach towards giving the Proponent an advantage as acknowledgement for originating the Unsolicited Proposal.

MRP tender approaches are more appropriate for projects where the UPSC has decided that the Proponent’s submission holds sufficient merit in terms of innovation but are uncertain of its uniqueness which can be verified by testing the market.

The ACT Government reserves the right not to accept the Proponent’s preferred MRP tender approach if it is deemed to compromise competition.

2. **Single Respondent Process (“SRP”)** – Under the SRP approach, the Proponent and ACT Government will have the following models available to choose from: Open Book, Development Manager and Negotiation Exclusivity (as identified in Table 1).

SRP tender approaches are better suited for projects where it is clear that the Proponent has a strong degree of innovation and uniqueness in the market and therefore at least one part of the tender process is directly dealt with the Proponent.

The ACT Government reserves the right not to accept the Proponent’s preferred SRP tender approach if it is deemed to compromise competition.

3. **Open Tender Process (“OTP”)** – The Proponent has an offering that may have legitimate competition and an Open Tender Process is recommended.

The conclusion of Phase 2 has resulted in the UPSC deciding that a conventional open tender process is the best way forward to determine the validity of the Unsolicited Proposal. This may occur due to the UPSC being unconvinced by the merits of the proposal in terms of legitimate uniqueness and innovation despite having likely benefits to Government and the ACT community.

The ACT Government may consider appropriate incentive mechanisms for the Proponent to ensure continued participation in the Phased Process if the proposal is considered by the UPSC to be in the interest of the Territory.

It should be noted that the difference between an SRP and MRP approach is that in an MRP, an open tender process remains the core mechanism for determining a preferred bidder. For SRP tenders, the Proponent remains the sole party, at either one point during process (i.e. Open Book) or the entire process (i.e. Negotiation Exclusivity), in negotiating with the ACT Government.

### 3.5.1 Decision at Phase 3

Following the selection of a tender process by the UPSC in agreement with the Proponent, a formal recommendation will be made to Cabinet for approval to proceed to the Transaction Phase.

It should be noted that while the Proponent reserves the right to withdraw its submission at this stage and that Government will take all reasonable steps to protect genuine intellectual property of the Proponent, the ACT Government reserves the right to proceed to tender should it be deemed in the best interest of the Territory.

Should the Transaction Phase involve a further procurement process, the UPSC may appoint a Phase 3 Tender Evaluation Team (“TET”) and the evaluation criteria established at this Phase will be at the discretion of the UPSC.

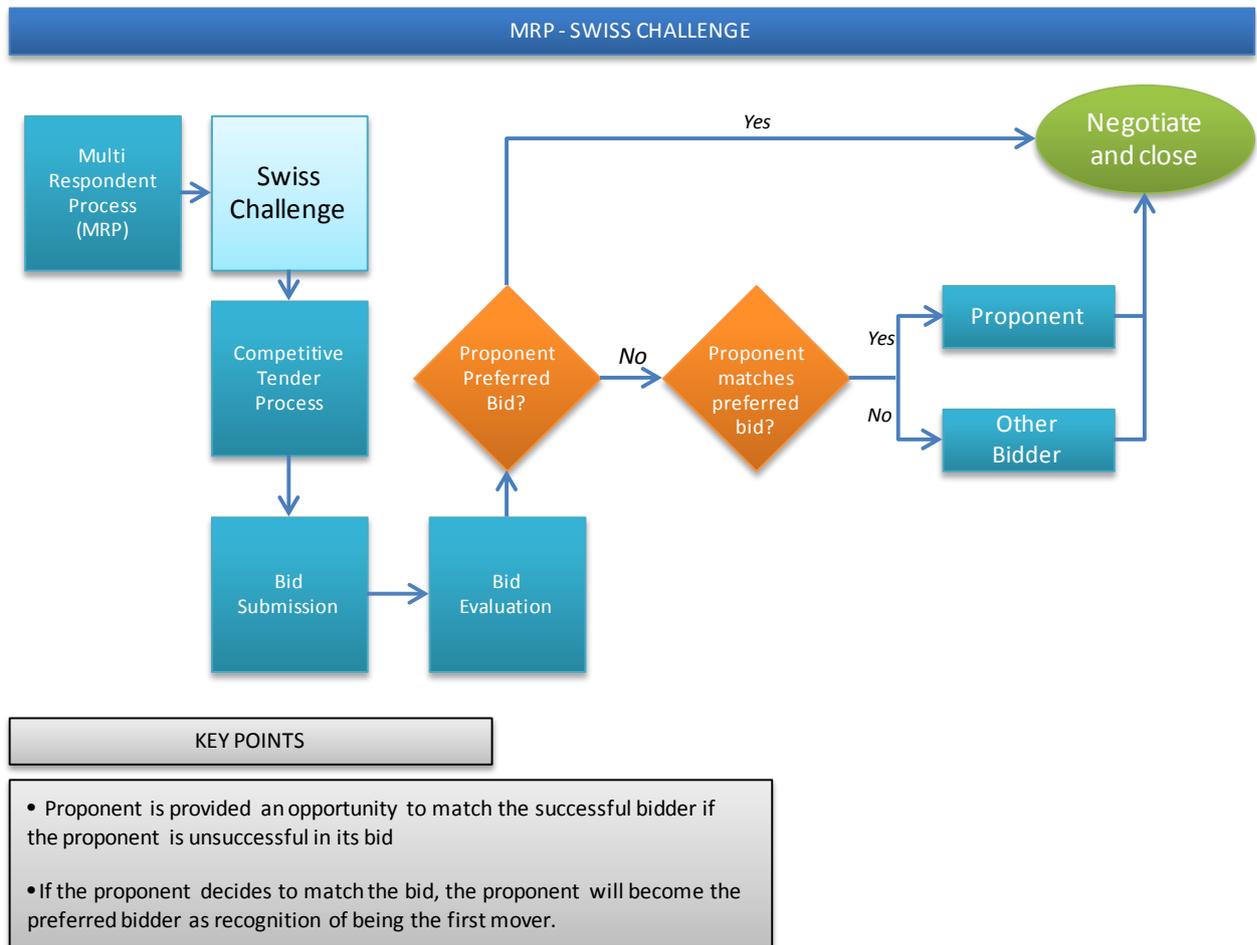
## 3.6 ACT ‘Six Ways’ Framework Tender Approaches

Unsolicited Proposals that are at an advanced stage of consideration by the ACT Government, prior to the implementation of this policy guidance document, will not be considered under the ‘Six Ways’

Framework. However, the ACT Government may decide to apply this framework to other Unsolicited Proposals that have already been submitted to Government. This will be decided on a **case-by-case basis**.

Cabinet approval will be required before a preferred 'Six Ways' commercial model proceed to the Transaction Phase (which may involve further procurement processes). **Figure 6 to Figure 11 below** provides an overview as to how the six different commercial tender models may work in a tender process. The actual process may vary on a case by case basis.

**Figure 6 – MRP: Swiss Challenge Tender Approach**



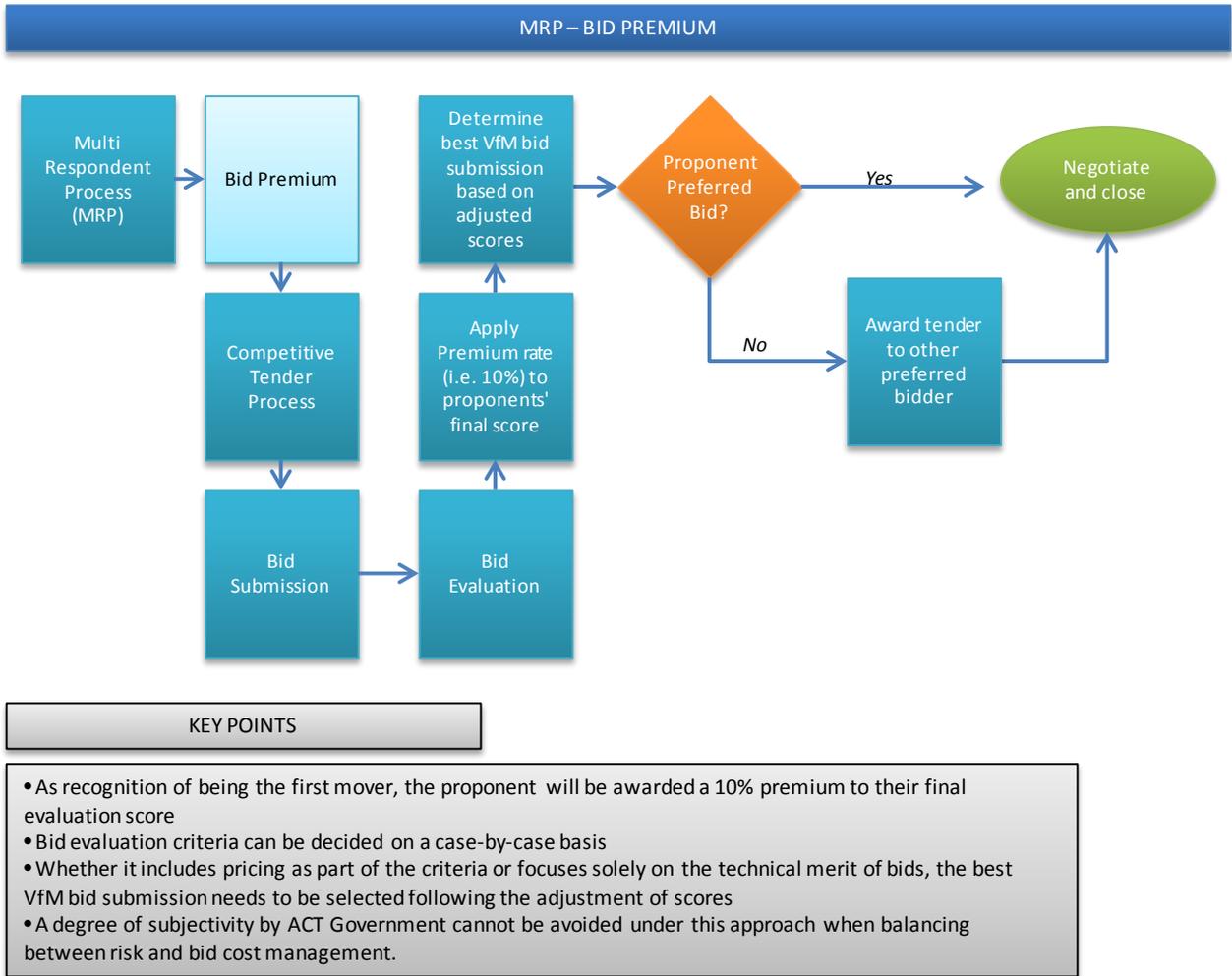
The Swiss Challenge (**Figure 6**) is in essence an open tender process. However, if unsuccessful, the Proponent has the option to match the winning bid\* and win the project. This approach provides a balance between maintaining a degree of competitive tension in the market and providing the Proponent an advantage when submitting an Unsolicited Proposal.

It provides increased objectivity, if the ACT Government is uncertain as to the uniqueness of the Unsolicited Proposal, by allowing the market to decide the most appropriate party to deliver on the project.

The Proponent will need to balance project risk and cost appropriately which may increase the chances of an overall enhanced value for money outcome for the ACT Government irrespective of the preferred bidder.

\*On terms that are equivalently attractive and acceptable to Government.

**Figure 7 – MRP: Bid Premium Tender Approach**

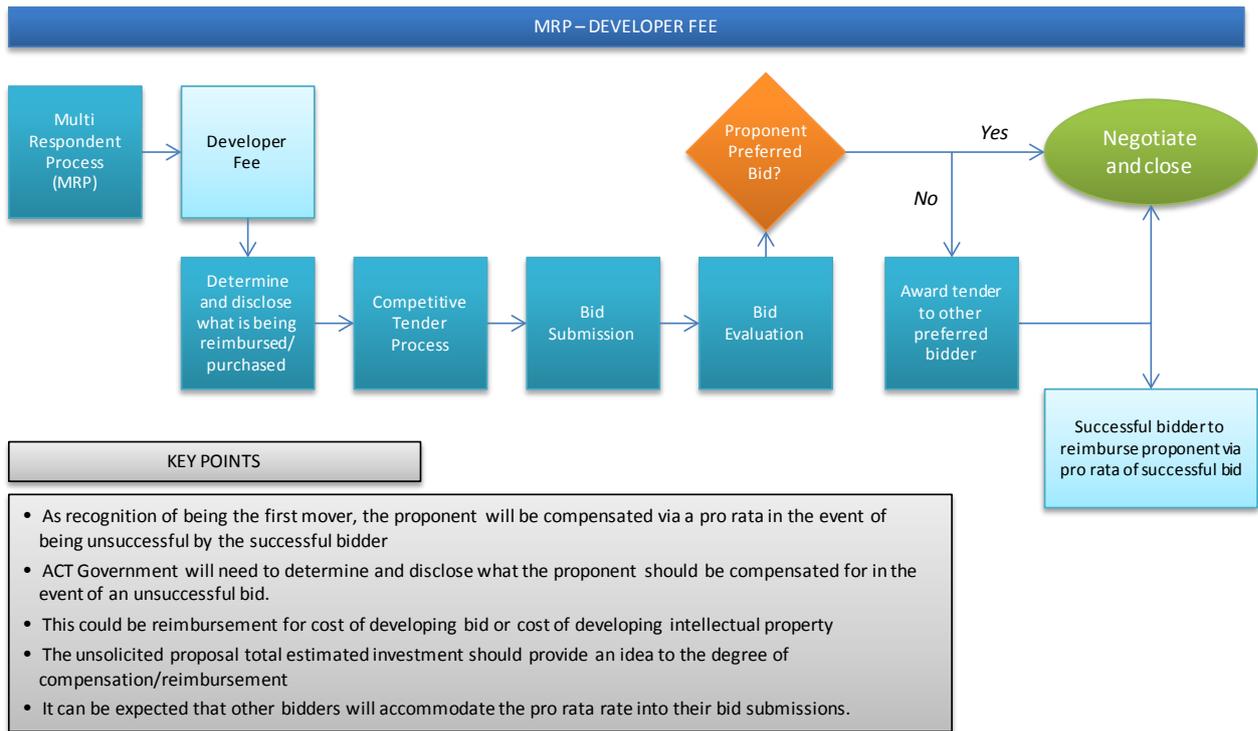


Under the Bid Premium approach (**Figure 7**); the original Proponent receives a bonus in an otherwise fair and open bidding process. This is achieved by awarding a premium (e.g. 10%) to the Proponent’s final evaluation score.

The bid evaluation criteria for bid submissions will be determined by the UPSC and actual weighting will be developed on a **case-by-case basis**. It should be noted that this particular approach allows for flexibility in terms of scoring the financial or pricing aspects of the evaluation. That is, if it is decided that bids will only be scored based on their technical merit, attention will still need to be paid to the costs being proposed.

This introduces a degree of subjectivity on behalf of the ACT Government. However, it is focused on affordability for Government in an otherwise transparent process.

**Figure 8 – MRP: Developer Fee Tender Approach**



Under a Developer Fee approach (**Figure 8**), the ACT Government recognises that the Proponent should be reimbursed or compensated in some form should the Proponent be unsuccessful in the bidding process. Generally speaking, this will be in the form of a pro rata applied to the successful party’s bid that will be paid for by the successful bidder.

In terms of bid cost reimbursement, the amount to be reimbursed or compensated will need to be determined and disclosed to the market before the tender process begins. The ACT Government may consider whether it is the cost of developing the bid, or the price of the intellectual property providing a significant solution offering, that is being reimbursed. This will also vary by the type and size of the project, and the number of bidders involved.

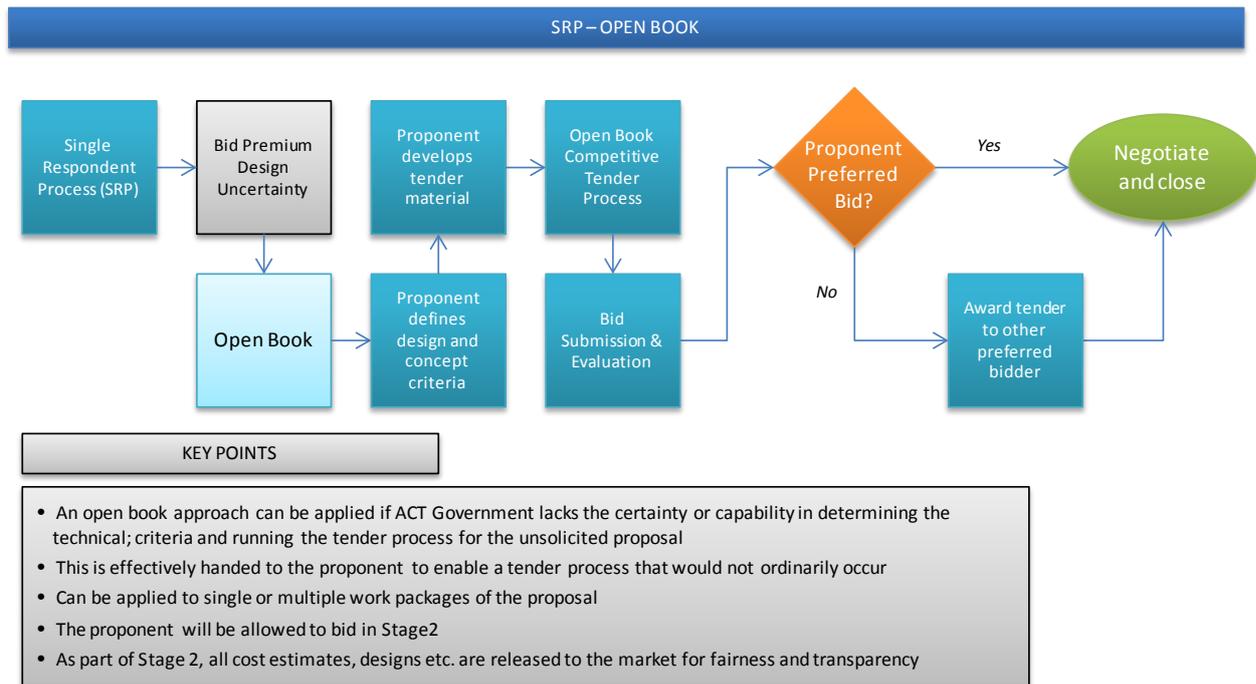
The Proponent’s Unsolicited Proposal submission will be key in addressing this, but the ACT Government may consider the context of the proposal.

For example, in the case of a larger infrastructure proposal in excess of \$100 million, the Proponent may receive a smaller pro rata reimbursement because, while the idea may be unique, the delivery capability in the market may not be and, therefore, the Proponent may be reimbursed for the development of the bid.

Where reimbursement is in direct relation to the intellectual property of the Proponent, the fee should reflect an appropriate compensation to allow Government to own and subsequently transfer the intellectual property to a successful alternative bidder.

On the other hand, a high pro rata share may be appropriate if the idea and delivery capability are both unique, but the ACT Government would like to establish whether the market is able to provide another solution offering that meets the same objectives of the Proponent’s proposal. In this case, the successful bidder may need to compensate the Proponent in developing its intellectual property.

**Figure 9 – SRP: Open Book Tender Approach**

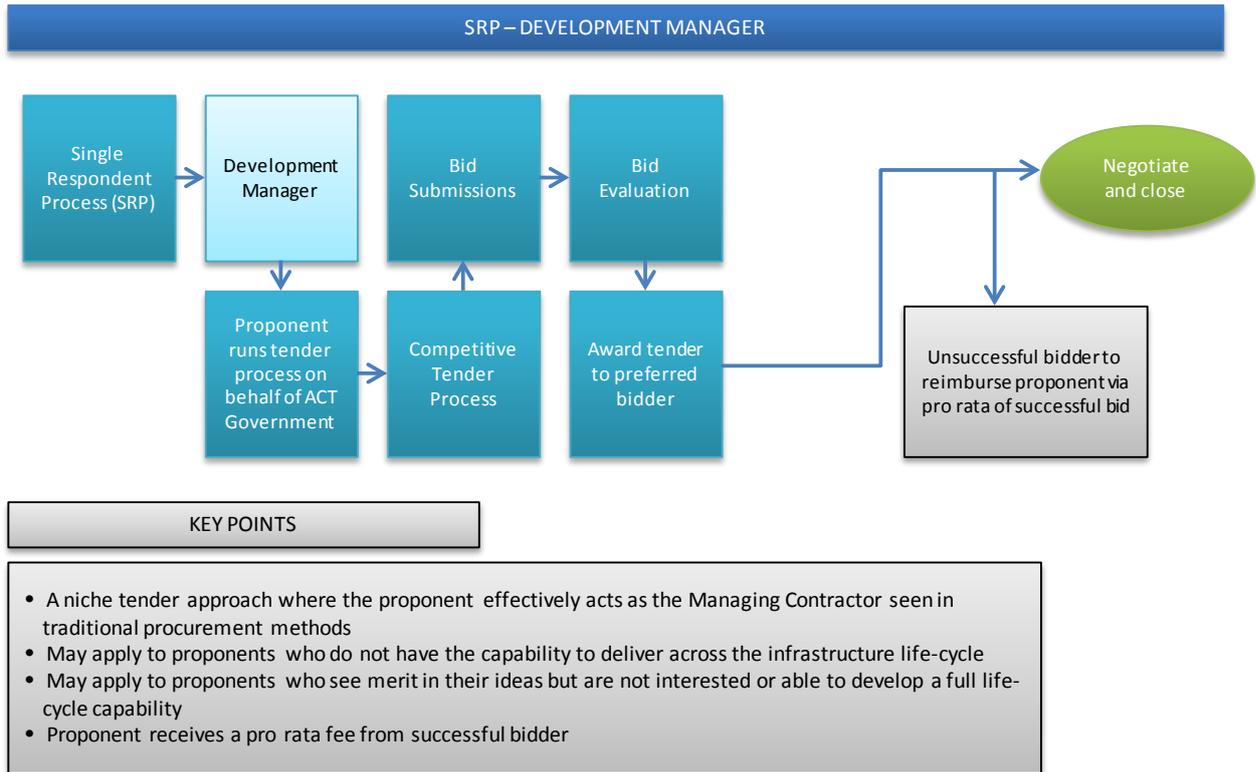


The Open Book tender approach (**Figure 9**) may be conducted as a two-staged approach. It may be appropriate where the ACT Government does not have sufficient capability or resources in developing the technical criteria for the tender process. That is, the Proponent is initially contracted in the first instance to overcome any design or technical uncertainties by developing the technical and tender documentation in the first stage. The objective of this approach is to enable the right to bid for the Proponent.

Following this, an open tender may be conducted by Government in the second stage where the Proponent will be allowed to bid in an open and fair process. All documentation developed in the first stage will be made available to all interested and qualified bidders.

The approach provides a mechanism for the Proponent to enable an opportunity to bid and win a project that the ACT Government may not ordinarily have considered.

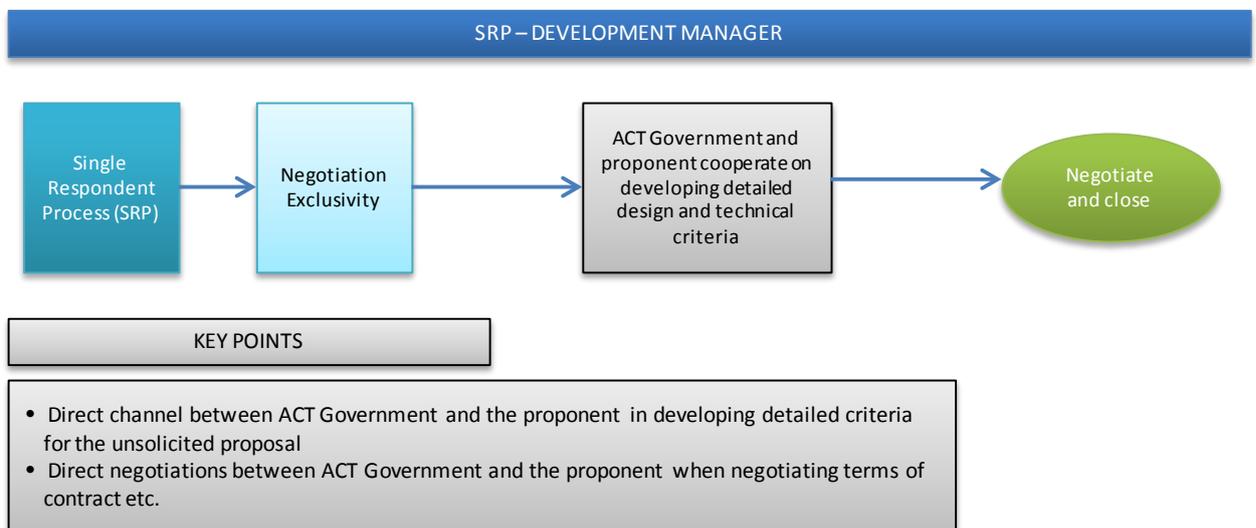
**Figure 10 – SRP: Development Manager Tender Approach**



Under a Development Manager approach (**Figure 10**), the Proponent develops the project and conducts the bidding process on behalf of the ACT Government. The Proponent cannot bid for the project but receives a development fee from the winning bidder.

This can be considered a niche approach available to Proponents who may lack the full capability in delivering on major capital projects but still want to be compensated for an idea, concept or design that is unique. It is also appropriate where the ACT Government may not have sufficient capability or resources for developing the technical criteria for the tender process, while ensuring that the approach remains compliant with the *Government Procurement Act (2001)*. The determination of reimbursement to the Proponent by the successful bidder follows the same steps as under the Developer Fee approach.

**Figure 11 – SRP: Negotiation Exclusivity Tender Approach**



In a Negotiation Exclusivity approach (**Figure 11**), the ACT Government enters into direction negotiations in good faith with the Proponent, and both work cooperatively to develop a proposal amenable to both parties.

While a relatively straightforward process, it offers the least amount of competitive tension and procedural transparency. As such, it will likely only be used by the Government if the Proponent's proposal is undoubtedly unique and innovative in the market. However, other factors, including timeliness, procurement costs and value for money may form part of any decision to proceed under exclusive negotiations.

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## 4. Governance

### 4.1 Overview

This section briefly provides guidance with respect to the resourcing, delegation and proper conduct throughout the governance, evaluation and tendering of Unsolicited Proposals. This guidance does not represent a contract or form of implied contract for prospective proponents.

### 4.2 Roles and Responsibilities

To develop and evaluate Unsolicited Proposals, both the Government and the Proponent will need to commit resources. A staged approach should be applied, similar to standard procurement processes in other Australian states, where the costs of bidding may be borne by the Proponent subject to circumstances.

A UPSC tasked with the purpose of overseeing the evaluation and tendering of Unsolicited Proposals was established in 2014 to ensure that submissions abide consistently with the guiding principles outlined in this document.

The UPSC may consider a range of broad issues in their approach to the governance of Proposals. This may include:

- Identify intellectual property and how it will be managed;
- Describe decision making and approval processes, including required statutory approvals;
- Document roles and responsibilities of persons/committees involved in the assessment and decision making; and
- Propose a timetable for completion of elements of the assessment.

At the discretion of the UPSC, nominated Unsolicited Proposals may be directed to an Executive Director level sub-committee for advice back to the UPSC. This is to ensure the UPSC workload is manageable and reflects that the flow of Unsolicited Proposals into Government cannot be predicted.

The UPSC (or their nominees) may convene a Project Control Group (“PCG”), Evaluation Panel (“Panel”) or Tender Evaluation Team (“TET”) at either Phase 1, Phase 2 and/or Phase 3 respectively. These groups will provide advice to the UPSC to assist them in determining whether a Proposal should progress to a subsequent phase. These groups will consist of subject matter experts from respective Directorates and may include representatives from communications and the Office of the Coordinator-General as required.

As the delegate for Unsolicited Proposals, the UPSC may elect to accept or reject the advice of the PCG, Panel or TET.

As required, the UPSC or TET may appoint specialist external advisors in areas of legal, financial, technical, planning, industrial relations and communications, to supplement existing capabilities.

#### 4.2.1 Unsolicited Proposals Steering Committee

The UPSC will comprise three core members who will meet on an as-required basis:

- The Head of Service, ACT Public Service;

- The Under Treasurer;
- Director General of Economic Development; and
- Where appropriate, the relevant Directors General given the subject area of the Unsolicited Proposal.

The UPSC may also elect to refer to the Strategic Board for advice and input if the Unsolicited Proposal affects multiple directorates. The Committee will also be responsible for reporting to Cabinet on the status of Unsolicited Proposals being considered under the Phased Process on a periodic basis. This includes submissions that have been both successful and unsuccessful.

#### 4.2.2 Initial Presentation

As part of Phase 1, Proponents who are successful during the initial review process will present to the UPSC at an agreed time. The UPSC may also be advised by IFAD as to a preliminary evaluation of the initial submission.

Initial presentations should be kept to a 45 minute duration.

### 4.3 Probity

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

The following probity principles are relevant throughout the Phased Process:

- Uphold professional integrity;
- Maintain impartiality;
- Maintain accountability and process transparency;
- Avoid conflicts of interest;
- Maintain confidentiality; and
- Undertake evaluation with robust governance arrangements.

While the ACT Government will take all reasonable steps to protect genuine intellectual property of the Proponent, at any point during the Phased Process, the Proponent should be mindful that it is presenting its submission at its own risk.

The ACT Government reserves the right to proceed with the proposal's objectives, that is, without the Proponent, should it be deemed in the best interest to the Territory.

The ACT Government will only recognise the need to protect intellectual property if the Proponent is invited to submit a detailed proposal following the Concept Submission in Phase 1.

## 5. Communication and Consultation

### 5.1 Overview

This section provides guidance with respect to the communication of and consultation on Unsolicited Proposals. It also provides guidance to the Proponent, the general public and other relevant stakeholders as to the roles, responsibilities and expectations of consultation during the Unsolicited Proposal process.

### 5.2 Roles and Responsibilities

In order to develop and evaluate Unsolicited Proposals, both the Government and the Proponent will need to understand their responsibilities regarding consultation. The communications of specific proposals may be performed **on a case-by-case** basis. Generally, however, no public consultation will occur until Phase 3 following approval by Cabinet.

IFAD and Invest Canberra may undertake consultation with internal stakeholders in accordance with these Guidelines and at the discretion of the UPSC. Government may also be required to consult with external stakeholders, including the general public, with interest in a specific proposal at the discretion of the UPSC.

Prior to a Cabinet approval to move to Phase 3, the ACT Government will develop a Communications Strategy to accompany the Cabinet Submission. The Strategy will be developed in accordance with ACT Government policy and endorsed by the UPSC.

A representative from the CMTEDD Communications team will also be consulted with throughout each Phase and will sit on the Phase 1 PCG.

The Unsolicited Proposal process does not replace or circumvent any due process within the ACT Government. All proposals will be subject to the requisite legislative, regulatory and policy requirements afforded to all other development within the ACT, including the need for community consultation. These activities will be performed in accordance with relevant policy during or subsequent to the Unsolicited Proposal process.

### 5.3 Intergovernmental consultation

Consultation and communication within the ACT Government is intrinsic to the Unsolicited Proposal process. This may occur through the PCG, the UPSC and/or the Evaluation Teams. Consultation may also occur through involvement of respective Directors General and as required **on a case-by-case basis**.

### 5.4 Chief Minister

It is anticipated the Chief Minister will be updated at the following points:

- As a half-yearly briefing of the status of Unsolicited Proposals, both those proceeding and those terminated;
- Upon request on an as-needs basis;
- Via the Chair of the UPSC (the ACT Head of Service) during regular weekly updates when issues of significance or urgency arise; or
- When a specific proposal has reached Phase 3, to seek approval to prepare a Cabinet Submission.

## 5.5 Cabinet

Cabinet will be consulted, following endorsement from the Chief Minister, when seeking approval for a proposal to commence Phase 3. Cabinet may also be consulted at the discretion of the Chief Minister throughout the process as necessary.

## 5.6 Specific

Stakeholders other than the general public may be consulted as early as Phase 2 at the discretion of the UPSC. Such stakeholders may include other market or industry participants, not-for-profit organisations or representative bodies. The Government may also liaise with other jurisdictions **on a case-by-case basis**.

## 5.7 Community and Public

Community and public consultation may occur following Cabinet approval at the commencement of Phase 3 and in accordance with the endorsed Communications Strategy. Community consultation will comprise part of this Strategy.

The communications component of the Strategy may, among other items, outline the roles and responsibilities of the Government and of the Proponent, provide a stakeholder and risk analysis, and state clear objectives and strategies for the consultation process.

## 5.8 Reporting and Public Disclosure

All proposals received under the Unsolicited Proposals framework will be treated as commercial in confidence. Those proposals terminating at Phase 1 will be disclosed via aggregated data on the CMTEDD website. Details of proposals not proceeding to a Phase 1 presentation will not be published on the CMTEDD website.

Proposals proceeding to Phase 2 will be subject to high level disclosure.

- Name or organisation of proponent
- Subject of proposal
- Date received
- Current status

Proposals proceeding to Phase 3 following Cabinet evaluation will be subject to stakeholder, community, and public consultation as required and relevant to the nature of the proposal.

## 6. Submission Checklist

The checklist below provides guidance for the issues Proponents can cover when submitting an Unsolicited Proposal.

It is recommended that these requirements be presented at a higher level as part of Phase 1 (Concept Submission), and developed in further detail for Phase 2 (Detailed Submission). It should be noted that this list should not be regarded as exhaustive.

### 6.1 General Requirements

The following information requirements will be required for both the Concept Submission (Phase 1) and Detailed Submission (Phase 2):

- Organisation name and type
- Contact details for evaluation purposes
- Identification of proprietary data relevant to the proposal
- Title and abstract of proposal
- Total estimated proposal value.

### 6.2 Concept Submission Requirements

It is recommended that the submission be kept concise and brief in the form of a proposal overview to allow the ACT Government to respond in a timely manner, and stay within a 45 minute presentation should it progress pass the filtering process.

The following document limits apply to the Concept Submission:

- Word Processing (e.g. MS Word) – up to 30 A4 pages (portrait)
- Presentation Processing (e.g. MS PowerPoint) – up to 30 slides (landscape)
- No less than 10 point font
- Normal document margins

In addition to the general requirements, the list below provides additional information requirements for the Concept Submission (Phase 1):

- Letter of Interest (**Appendix C**)
- Signed Declaration to Abide by Process (**Appendix D**)
- Concept objectives
  - What are the proposal's objectives?
  - Does the proposal involve the direct sale of unleased ACT land?
  - Does the proposal require access to a Government owned asset?
- Case for change
  - What problem and/or opportunity is the proposal trying to address?
  - What evidence is there to support this?
  - Why does this need to be addressed now?
- Strategic alignment
  - How does the proposal meet the principles and objectives outlined in this policy document?
  - How does this proposal align with current and broader ACT Government policy and objectives?

- Benefits and costs
  - How will this proposal benefit the Territory?
  - What are the likely benefits and costs of this proposal?
  - Consider economic, financial, social and environmental impacts to the Government and the Territory
- Risks
  - What are the key risks of the proposal?
  - How can they be managed within reason?
- Preferred 'Six Ways' Framework arrangement
  - What is the preferred tender approach under the ACT's 'Six Ways' Framework?
  - Provide a reason as to why the preferred approach was selected
- Government requirements
  - What will be required of the ACT Government to implement this proposal?

### 6.3 Detailed Submission Requirements

In addition to the general requirements, the following list provides additional information requirements for the Detailed Submission (Phase 2).

It is recommended that the Detailed Submission be in the form of a fully developed business case. It should provide a comprehensive and compelling case to support the Unsolicited Proposal, and where possible, provide quantified supporting evidence to allow for a robust evaluation by the UPSC against the guiding principles and objectives.

#### 6.3.1 Public Interest Requirements

The requirements are as follows:

- Objectives of the proposal
- Unique elements of the proposal
  - Intellectual property or genuinely innovative ideas
  - Ownership of real property
  - Ownership of software or technology offering a unique benefits
  - Unique financial arrangement
  - Unique ability to deliver a strategic outcome
  - Other demonstrably unique elements
- Method of approach
- Nature and extent of anticipated outcomes
- Alignment with relevant Government policies
- Proposed requirements of the ACT Government
  - Transfer of government assets
  - Direct sale of land
  - Cash contribution
  - Services from Government
  - Deferral of taxes and charges.

### 6.3.2 Value for Money Requirements

The requirements are as follows:

- Net economic benefits/costs of the proposal to the ACT community (whole of life)
- Net financial benefits/cost of the proposal to ACT government (whole of government)
  - Legislative/regulatory amendments
  - Finance or the use of government assets, facilities, equipment, materials, personnel, resources and land
- Description of financial and commercial details and the Proponent's financial capacity to deliver, including return on investment
- Provide a description of the proposed commercial proposition.

### 6.3.3 Appropriate Delivery Requirements

The requirements are as follows:

- Preferred arrangement under the ACT's 'Six Ways' Framework and reasoning
- Further organisation and governance detail
  - Description of your organisation, trade or business
  - Previous experience in delivery of similar projects
  - Past performance in operating similar projects
  - Facilities and resources to be used (e.g. land owned by Proponent)
- Timescales, critical paths or deadlines
- Technical challenges and discussion of how those technical challenges will be addressed
- Requirements of the ACT Government to participate in the project.

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## APPENDICES

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## Appendix A: Glossary

Term	Definition
<b>Advisor</b>	The Unsolicited Proposals Steering Committee (“UPSC”) may contract an external party(ies) on a range of issues including commercial, technical and other issues.
<b>Assessment Criteria</b>	Criteria upon which the Unsolicited Proposal will be assessed as determined by the Unsolicited Proposals Steering Committee on a <b>case by case</b> basis.
<b>Binding Offer</b>	A formal proposal submitted by the Proponent at the conclusion of the process which is capable of acceptance by government
<b>Cabinet</b>	<p>Cabinet is the peak decision-making body of the ACT Government. Cabinet usually meets weekly to discuss matters that have significant implications for the Territory, communities, business and individuals.</p> <p>It makes critical decisions on topics such as law reform, significant policy initiatives, release of discussion papers, and intergovernmental agreements, as well as important appointments to government boards and committees.</p>
<b>Concept Submission</b>	Initial submission to government for consideration by the Unsolicited Proposals Steering Committee
<b>Detailed Submission</b>	A more detailed submission following approval at the Concept Phase 1.
<b>Directors General (“DG”)</b>	Respective service heads within ACT Government directorates.
<b>Economic Appraisal</b>	<p>A systematic means of analysing all the costs and benefits of various ways in which a project objective can be met. It shows:</p> <ul style="list-style-type: none"> <li>• Whether the benefits of a project exceeds its costs</li> <li>• Which among the range of options to achieve an objective; has the highest net benefit; and</li> <li>• Which option is the most cost effective, where benefits are equivalent.</li> </ul> <p>The preferred approach for Government project for an economic appraisal is Cost Benefit Analysis (“CBA”) and whole of life cost estimates.</p>
<b>Evaluation Panel</b>	A panel of government representatives established to oversee and assess an Unsolicited Proposal. Also referred to as Unsolicited Proposals Steering Committee in Phase 2.
<b>Financial Appraisal</b>	<p>A method used to evaluate the financial viability of a proposed project. It assesses the extent to which a project will generate revenues sufficient to meet its financial obligations as measured by the Net Present Value (“NPV”) (where applicable) of its cash flows. All revenues resulting from and expenditures incurred under the project and whole of Government are taken into account.</p> <p>It assesses:</p> <ul style="list-style-type: none"> <li>• Project cash flows;</li> <li>• Sensitivity of financial projections to key project risks;</li> <li>• Adequacy of estimated investment costs; and</li> <li>• Financial impact of alternative projects.</li> </ul>
<b>Government</b>	The ACT Government
<b>Head of Service (“HOS”)</b>	The head of ACT Public Service
<b>Intellectual Property</b>	Inventions, original designs and practical applications of good ideas protected by stature law

Term	Definition
("IP")	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 Confidential Agreements.
Letter of Interest ("LOI")	Covering letter attached to the initial submission made by the Proponent to initiate the ACT Government's Phased Process for Unsolicited Proposals.
Multi Respondent Process ("MRP")	The ACT Government and the Proponent agree on one of the following six commercial tender models (the Six Ways) to progress the proposal: Swiss Challenge, Bid Premium, and Developer Fee.
Open Tender Process ("OTP")	A conventional competitive open tender process initiated with either: <ul style="list-style-type: none"> <li>• One-stage process (Request for Proposal, RFP); or</li> <li>• Two-staged process (Expression of Interest, EOI followed by a Request for Proposal, RFP).</li> </ul>
Phased Process	ACT Government's three phase process to validating, evaluating and awarding projects that are initiated by Unsolicited Proposals.
Proponent	Any person or organisation that submits the Unsolicited Proposal except for Government agencies and departments.
Project Control Group ("PCG")	Phase 1 or Phase 2 sub-committee formed from a whole of government perspective to advise the UPSC on a proposal.
Public Sector Comparator ("PSC")	A financial model for estimating the hypothetical whole-of-life cost for government to undertake the project using existing procurement methods. Typically used in the evaluation of PPP and PPP-like offers.
Reference Project	The defined scope of the project incorporating vision, objectives, physical and service deliverables, and timeframe
Single Respondent Process ("SRP")	SRP tender approaches involve at least one part of the tender process that is directly dealt with the Proponent – as a single tenderer. A SRP is better suited for projects where it is clear that the Proponent has a strong degree of innovation and uniqueness in the market.  The following approaches are SRPs: Open Book, Development Manager and Negotiation Exclusivity.
Strategic Board	The Strategic Board is the senior management team for the ACT Public Service. The Board is chaired by the Head of Service, and comprises the Head of Service, the eight Directors-General and the Under Treasurer.  The Board is the peak ACT Public forum for debate and delivery on cross-cutting and strategic issues. It takes a whole of government, single agency and strategic approach to its role.
Tender Evaluation Team ("TET")	A panel of government representatives established to oversee and assess an Unsolicited Proposal. Also referred to as Unsolicited Proposals Steering Committee in Phase 3.
Territory 'Six Ways' Framework ("Six Ways")	Six commercial tender models that have been adopted from Public Private Infrastructure Advisory Facility references for the purposes of retaining flexibility and appropriate incentives when going to tender with an Unsolicited Proposal.
Transaction Phase	Transaction Phase may involve, subject to the delivery model, procurement phase followed by contract negotiations and execution. Note, public, community and stakeholder consultations may occur during the Transaction Phase.

## Appendix B: References

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

Government of South Australia State Procurement Board (2010), *Unsolicited Proposals Policy*

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

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

NSW Government (2012), *Unsolicited Proposals – Guide for Submission and Assessment*

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

Queensland Government Department of Infrastructure and Planning (2008), *Public Private Partnerships Guidance Material – Overview*

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## Appendix C: Letter of Interest Template

[Date]

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

Your Ref:

Our Ref:

**RE: UNSOLICITED PROPOSAL – LETTER OF INTEREST – [SUBJECT]**

Dear Sir/Madam,

[Letter to contain brief detail of the following:

- Individual/organisation introduction;
- Proposal idea/concept;
- Total estimated investment for the project;
- Value proposition to the ACT Government & Territory; and
- Contact details.]

Yours faithfully,

[Signature]

[Name & Title]

[Organisation]

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## Appendix D: Declaration to Abide by Process

<b>Date</b>	
<b>Name</b>	
<b>Organisation</b>	
<b>To</b>	
<b>In relation to the</b>	

### Declaration

I, \_\_\_\_\_, [insert full name]

\_\_\_\_\_  
 [Insert organisation and address] agree and acknowledge that I abide by the process outlined in this document including the following:

- No intellectual property transfer to ACT Government at the Concept Submission, any material presented will be at my discretion;
- No approaches will be made to Ministers or other officers within the ACT Government prior, during and after the Phased Process relating to an Unsolicited Proposal; and
- In the event of a rejected proposal, no further approaches are made to CMTEDD regarding the Unsolicited Proposal until at least 18 months have transpired since the Concept Submission.

### Executed as a Deed

Signed, seal and delivered

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

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Guidelines for Unsolicited Proposals