

Guidelines for unsolicited proposals

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Contents

Document change status	3
Introduction	4
When should an unsolicited proposal not be given further consideration?	4
What information should be included in a proposal?	4
How will DHA respond to unsolicited proposals?	5
Guiding principles	5
Governance.....	6
Processing unsolicited proposals	6
Unsuccessful proposals	7
Additional considerations	7
Attachment A—Flowchart	8

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Unsolicited proposals will be assessed objectively and on the basis of fact and evidence.

Introduction

Unsolicited proposals can be received from suppliers, contractors and business entities that may not necessarily be a DHA related party. Specifically, in relation to provisioning activities, DHA may receive unsolicited proposals in relation to the acquisition, lease or sale of land/property. DHA is able to receive and consider unsolicited proposals and through this guide, all proposals will be assessed in a structured, objective, transparent and fair manner.

It should be stressed, that unsolicited proposals are the exception to the rule where open and fair competition is actively endorsed. It is at DHA's absolute discretion whether or not to enter into negotiations with a party that presents an unsolicited proposal.

DHA would like to acknowledge that this document draws on the New Zealand Government's Unsolicited Unique Proposals guidelines of May 2013.

Any outcome should always be considered to be in the best interest of DHA.

When should an unsolicited proposal not be given further consideration?

Proposals should not be considered when they:

- > do not meet DHA's relevant legislation and or service mandate/purpose
- > are covered by an existing procurement
- > are promotional or advertising materials, such as special pricing, modifying or extending an existing contract
- > the goods or services are readily available in the marketplace
- > are an advance proposal for a known requirement, for which a competitive process is planned and/or should be conducted.

Unsolicited proposals should not be detrimental to open competition.

What information should be included in a proposal?

An unsolicited proposal must contain relevant information to enable DHA to assess whether or not DHA should consider the proposal. The level of detail required will vary depending on the nature and complexity of the proposal.

The proposal the supplier submits will be the basis of DHA's decision whether or not to progress the proposal. It is in the supplier's best interest to provide relevant information to enable DHA to conduct an assessment.

How unique and innovative is the proposal? Is anyone else able to replicate it?

To enable DHA to consider the unsolicited proposal in an objective and timely manner, proposals should include as much of the following information as possible:

- > details of the party making the proposal, including:
 - o proposer's name and contact name if different
 - o contact details
 - o a brief profile, e.g. the type of business and the nature of the business
- > a description of the nature of the proposal
- > an explanation of the benefits the proposal will deliver to the goals of DHA or the government in general
- > how they can authenticate the innovative or unique elements of the proposal
- > all ownership issues, such as real property and intellectual property rights
- > any information the proposer does not want disclosed outside of the evaluation process, i.e. information that is commercially sensitive
- > the period of time that the proposal is valid, with a suggested minimum of three (3) months
- > names of other government agencies approached
- > the costs in sufficient detail to enable meaningful evaluation.

How will DHA respond to unsolicited proposals?

When DHA receives an unsolicited proposal we will ensure the proposal is dealt with in a way that ensures:

- > transparency, fairness and best value for money over the whole of life of the project
- > protection of the proposer's commercially sensitive information and intellectual property rights.

Value for money over whole of life—has a discounted cash flow approach been adopted?

Guiding principles

The following guiding principles will be taken into account when assessing an unsolicited proposal.

- > Does the proposal meet a current or future need—is it aligned with DHA's strategic objectives?
- > Does the proposal have attributes that are innovative and unique to the proposer—can the proposal be readily delivered for directly comparable commercial outcomes by other third parties who potentially could be compromised if not offered the same opportunity?
- > Has the proposal been market tested—should DHA source alternative proposals?
- > Does the proposal provide optimal value for money or significant benefit—economic, social and/or environmental? A whole of life evaluation approach should be adopted.
- > Is there an opportunity cost to DHA?

Due diligence—can the proposer deliver?

- > Is the proposal technically and financially feasible?
- > Is sufficient information contained in the proposal to make an informed decision—is any clarification and/or additional information required?
- > Are any mandated time frames within the proposal achievable?
- > Are there any perceived or real conflicts of interest—have they been declared and is there a need to remove any conflicted individuals?
- > Has a risk analysis been completed?
- > Has any due diligence been undertaken on the proposer—do they have the experience, capability and capacity?

With regard to the potential acquisition of land/development sites, DHA has established processes for the consideration of such acquisitions and would apply these processes in relation to any such unsolicited proposal.

Governance

All unsolicited proposals will be subject to a formal assessment based upon the guiding principles. It will be undertaken by the Senior Executive Committee, comprising representatives from DHA's primary business lines.

Any requests for further information from the proposer must be formally documented. Conversely, it is recognised that some form of negotiation may be required around commercial and legal terms before an unsolicited proposal is accepted. This should be undertaken within specific guidelines set by the Senior Executive Committee.

All unsolicited proposals will be treated confidentially and handled in strict accord with the *Freedom of Information Act 1982* and the *Privacy Act 1988*.

While the *Commonwealth Procurement Rules* (Rules) do not specifically apply to DHA, they are relied upon when undertaking procurement of goods or services. Any procurement outside of the Rules must be justified with reasons for same fully documented.

Approval delegations—who has the appropriate authority to approve?

Approval for any unsolicited proposal must be consistent with *Section 65 Financial Delegations*, including where necessary by the Board.

Processing unsolicited proposals

DHA will broadly follow the steps below when processing an unsolicited proposal:

1. Is the proposal unsolicited?
2. Have all the guiding principles been considered?
3. Can the proposal proceed?
4. Write a business case seeking approval to proceed from the Senior Executive Committee.
5. Develop a negotiation plan.
6. Conduct negotiations and subject to successful negotiations, seek approval to formally agree the transaction. Approval to be consistent with financial delegations and at DHA's discretion, may require escalation to the DHA Board.
7. Draft contract for goods and or services.

The flowchart at Attachment A provides an overview of the process.

Unsuccessful proposals

If the proposal is deemed unsuccessful, the proposer must be informed in writing of this decision and offered a debrief.

The reason for declining the proposal could be as simple as the subject matter of the proposal not being a current priority for DHA. Sometimes some of the ideas in an unsolicited proposal may challenge the thinking within DHA, stimulating discussion and leading to better definition of their need. If this occurs, care should be exercised not to copy, use or give away the proposer's intellectual property without their permission.

Additional considerations

Aspects that should be taken into consideration during all stages of the assessment include:

Timeliness

The time it takes to assess unsolicited proposals will vary, depending on factors like the complexity of the proposal. The assessment should be completed as promptly as possible.

Communication

Regular communication with the proposer is encouraged to inform them about progress on the assessment.

Documentation

Accurate records must be kept at each stage of the process. Documentation should demonstrate that:

- > all decisions are made on the basis of facts, evidence and knowledge of the market
- > the market research that led to the understanding that the proposal was unique
- > a business case and/or procurement plan has been completed
- > approval was obtained at the appropriate level.

Feedback to the proposer is important—both positive and negative.

Keeping good records assists transparency and in justifying the final outcome.

Attachment A

Unsolicited proposals process flowchart

