

	Unsolicited Proposal Policy	
	Policy Category: <i>(Follow corporate standard to be developed)</i>	
	Policy No.: FA-PUR-0002	Implementing Procedure No.: n/a
Approving Authority: <i>Council</i>		Effective Date: <i>February 15th, 2012</i>
Approved or Last Reviewed Date: <i>April 14, 2021</i>		Next Review Year: <i>April 14, 2026 or when required</i>
Area(s) this policy applies to: <i>City wide</i>		Owner Department: <i>Finance Department</i>
Related Policy(s): <i>N/A</i>		

Note: Questions regarding this Policy should be directed to the City's Sr. Manager, Procurement & Accounts Payable

Purpose Statement *(Outline why the organization is issuing the policy and its desired effect or outcome of the policy)*

The purpose of this Policy is to enable the City to receive and consider Unsolicited Proposals from Vendors, which may present unique, innovative, beneficial or valuable ideas for the City's consideration.

This Policy sets out the policies and procedures concerning the submission, receipt, evaluation and acceptance or rejection of Unsolicited Proposals in a manner that ensures transparency, fairness and best value to the City, as well as the protection of Vendors' proprietary and/or confidential information.

Applicability and Scope Statement *(Who and what this policy applies to and/or affects)*

This Policy applies to all Unsolicited Proposals received by the City, and to all City employees and elected officials.

Background *(Indicate any reasons, history, and intent that led to the creation of the policy)*

Recommended by the Executive Leadership Team ("ELT") to document and standardize the Unsolicited Proposal process.

Definitions *(If applicable, define any terminology or interpret meanings of a general term)*

"CAO" means the City's Chief Administrative Officer, or his or her designate.

"ELT" means the Executive Leadership Team; (or the successor thereto).



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“Council” means Council of The Corporation of the City of Markham.

“Evaluation Committee” means the evaluation committee with the appropriate expertise appointed by ELT to evaluate an Unsolicited Proposal.

“Sr. Manager, Procurement & Accounts Payable” means the City’s Sr. Manager, Procurement & Accounts Payable, or his or her designate.

“City” means The Corporation of the City of Markham, and shall include from time to time any officer or agent of the City who has been authorized to act on its behalf.

“Unsolicited Proposal” means a written proposal submitted to the City on the initiative of a Vendor for the purpose of obtaining a Contract with the City.

“Vendor” means the private or public sector, consortium, or proponent providing the Unsolicited Proposal.

Policy Statements *(Detail the specific regulations, requirements, or modifications to organizational behaviour to be addressed by this policy)*

INCURRED COSTS

All costs incurred by the Vendor in connection with the Unsolicited Proposal are incurred at the Vendor’s own expense. The City will not be liable for, nor reimburse, the Vendor for any costs incurred in the preparation, submission or presentation of any Unsolicited Proposal. The City will not be liable for any costs or damages incurred by the Vendor or any third party in connection with the rejection or non-acceptance of any Unsolicited Proposal.

ELIGIBILITY

Unsolicited Proposals will be evaluated solely on the merits of the Unsolicited Proposal documents and not the perceived or actual suitability of the Vendor.



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An Unsolicited Proposal will be rejected if the Unsolicited Proposal does not meet the following eligibility criteria:

- The proposed project must not be similar in scope to a current or planned competitive procurement process. Notwithstanding the foregoing, if the proposed project suggests a different scope, style or approach that may improve the City's position in any way, the procurement process may be suspended or cancelled (in accordance with the "Process" provisions set out below) in order to allow the proposed project to be considered.
- The goods or services referenced in the proposed project must not be readily available from other sources, unless a unique or added benefit is being proposed.
- The proposed project must align with the City's funding ability.
- The proposed project must align with the City's priorities, objectives, or interests.
- The proposed project must demonstrate a unique or innovative idea, or be deemed to be of sufficient value, benefit or in the best interests of the City.
- The Unsolicited Proposal must not require substantial assistance from the City to complete the Unsolicited Proposal documents.
- The Unsolicited Proposal must not conflict with the procurement principles or general conditions of the City's *Purchasing By-Law*, including without limitation, those general conditions related to disqualified vendors or vendors pursuing a claim against the City.

A favourable evaluation of an Unsolicited Proposal does not, in itself, imply the intention to award a contract to the Vendor. No legal obligation regarding the procurement of any goods or services shall be created between the Vendor and the City unless and until a formal, binding contract is executed by the City.

STAFF GUIDELINES

All inquiries regarding this Policy and all Unsolicited Proposals received by the City shall be directed to the Sr. Manager, Procurement & Accounts Payable, who will act as the sole point of contact for Vendors. City employees are precluded from engaging in the following activities with respect to the Unsolicited Proposal:

- providing advice or suggestions to the Vendor with respect to the content of the Unsolicited Proposal documents or the design of the proposed project;
- providing recommendations or advice to the Vendor on the selection of suppliers, materials or resources;
- collecting or analysing data on behalf of the Vendor;



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- assisting the Vendor in refining or preparing any proposal documentation.

OWNERSHIP AND DISCLOSURE OF UNSOLICITED PROPOSAL INFORMATION

Unsolicited Proposals submitted to the City, along with all correspondence, documentation and information provided to the City by the Vendor in connection with the Unsolicited Proposal, once received by the City:

- (a) shall become the property of the City and (subject to information marked as proprietary and/or confidential information of the Vendor) may be used by the City for any purpose whatsoever, without obtaining the prior consent of the Vendor and without further obligation to the Vendor; and
- (b) shall be subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended ("**MFIPPA**"), and may be released pursuant to that Act.

In accordance with the requirements of MFIPPA, Vendors are advised to identify in their Unsolicited Proposal, and any correspondence, documentation and information provided to the City by the Vendor in connection with the Unsolicited Proposal, any specific scientific, technical, commercial, proprietary, or similar confidential information, the disclosure of which could cause them injury, which may or may not be protected from disclosure pursuant to the MFIPPA. Unsolicited Proposals shall not be marked confidential in their entirety; only proprietary information or other confidential information shall be marked as confidential.

PROCESS

STEP 1. RECEIPT OF THE UNSOLICITED PROPOSAL

1.1 The Unsolicited Proposal shall only be submitted to the Sr. Manager, Procurement & Accounts Payable.

1.2 Prior to any evaluation of the Unsolicited Proposal, the Sr. Manager, Procurement & Accounts Payable must obtain from the Vendor a signed "**Vendor Declaration**" (in the form attached to this Policy as "Appendix A"), confirming (among other things) that the Vendor has read, understands and agrees to be bound by this Policy with respect to the Unsolicited Proposal.

1.3 Unsolicited Proposals must contain the following minimum information to permit evaluation in an objective and timely manner:



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- Profile on the Vendor (including corporate history) and contact information
- Technical, commercial, managerial, and financial capability of the Vendor
- Team members involved in the proposed project
- Members of proposed consortium (if applicable)
- Overview of the proposed project, deliverables and proposed benefit /value to the City
- Level of support required from the City (Staff and financial) to finalize the proposed project
- Timelines
- Funding sources (if applicable)
- Risk sharing allocations

1.4 Upon receipt of a signed Vendor Declaration, the minimum information set out above, and any other information or clarification reasonably requested by the City (including, without limitation, reference letters, audited financial statements), the Sr. Manager, Procurement & Accounts Payable will forward the Unsolicited Proposal to the Evaluation Committee for evaluation. The Sr. Manager, Procurement & Accounts Payable will also serve as a liaison for all communications between the Evaluation Committee and the Vendor.

1.5 If the Vendor fails to provide a signed Vendor Declaration, the minimum information set out above and/or any other information or clarification reasonably requested by the City (as determined in the sole opinion of the Sr. Manager, Procurement & Accounts Payable), the Vendor will be advised that no further action will be taken in relation to the Unsolicited Proposal.

1.6 Unsolicited Proposals received by the City will be valid for a minimum of six (6) months, unless otherwise specified in the Unsolicited Proposal or agreed to in writing by the City and the Vendor.



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STEP 2. EVALUATION OF THE UNSOLICITED PROPOSAL

2.1 The Evaluation Committee will:

- Evaluate the Unsolicited Proposal in accordance with the Eligibility Criteria.
- Evaluate the Vendor's technical, commercial, managerial and financial capability to determine whether the Vendor's capabilities are adequate for undertaking the proposed project.
- Evaluate the level of support required from the City (staff and financial) to finalize the proposed project.
- Weigh the technical, commercial, managerial and financial aspects of the proposed project and determine if the scale and scope of the proposed project is consistent with the funding ability, or the priorities, objectives, or interests of the City.
- Determine whether the proposed sharing of risks is acceptable to the City.
- Prepare a detailed report of the evaluation, with recommendations.

2.2 At any time during the evaluation process, the Evaluation Committee may request clarifications or additional information regarding the Unsolicited Proposal or the Vendor (at the Vendor's sole cost).

2.3 Based on the report of the Evaluation Committee, the City (in accordance with the **"Delegated Authority"** provisions set out below) may in its sole discretion:

- (a) reject the Unsolicited Proposal and advise the Vendor that no further action will be taken in relation to the Unsolicited Proposal;
- (b) proceed in accordance with the steps set out below (as applicable).

STEP 3. UNSOLICITED PROPOSAL - NOT SIMILAR TO ANY CURRENT OR PLANNED PROCUREMENT PROCESS

3.1 If it is determined that the Unsolicited Proposal is not similar to any current or planned procurement process, the following steps will be followed:

- If required, the Vendor will be requested to provide a more detailed proposal or any other information or clarification reasonably requested by the City (at the Vendor's sole cost and without any obligation on the part of the City to proceed in accordance with the steps set out below).



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- If the Unsolicited Proposal meets the **“Non-Competitive Procurement”** criteria set out in the City’s *Purchasing By-Law*, the City may commence negotiations with the Vendor without a competitive process. Acceptance of the Unsolicited Proposal and/or any proposed contract resulting from negotiations between the Vendor and the City shall be in accordance with the “Delegated Authority” provisions set out below. If the Unsolicited Proposal and/or any proposed contract resulting from negotiations between the Vendor and the City is not accepted by the City, the Vendor will be advised that no further action will be taken in relation to the Unsolicited Proposal.
- If the Unsolicited Proposal does not meet the “Non-Competitive Procurement” criteria set out in the City’s *Purchasing By-Law*, any further consideration of the Unsolicited Proposal must be pursuant to a competitive procurement process and a decision may be made by the City (in accordance with the “Delegated Authority” provisions set out below) to proceed with the “Counter Proposal” option set out in Step 5 below. If the decision is made by the City not to proceed with the “Counter Proposal” option, the Vendor will be advised that no further action will be taken in relation to the Unsolicited Proposal

STEP 4. UNSOLICITED PROPOSAL - SIMILAR TO A CURRENT OR PLANNED PROCUREMENT PROCESS

4.1 If it is determined that the Unsolicited Proposal is similar to any current or planned procurement process of the City, but the proposed project suggests a different scope, style or approach that may improve the City’s position in any way (in the sole opinion of the City), the following steps will be followed:

- The Vendor will be advised that (in light of the existence of a similar current or planned procurement process) any further consideration of the Vendor must be pursuant to such current or planned procurement process. Notwithstanding the foregoing, if the current or planned procurement process follows a related pre-qualification process through which only pre-qualified vendors are permitted to respond to the current or planned procurement process, the Vendor will not be permitted to participate in the current or planned procurement process, and will be advised that no further action will be taken in relation to the Unsolicited Proposal
- If required by the City, the Vendor will be requested to provide a more detailed proposal or any other information or clarification reasonably requested by the City (at the Vendor’s sole cost and without any obligation on the part of the City to proceed in accordance with the steps set out below).
- If the similar procurement process has been advertised, a decision may be made by the City (in accordance with the “Delegated Authority” provisions set out below) to:



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- (a) suspend the process and issue an addendum that includes information contained in the Unsolicited Proposal; or
 - (b) if the Unsolicited Proposal proposes a significantly different approach that the City would like to consider, cancel the process so that the City may issue a Request For Information ("RFI") or a substantially revised procurement process that includes information contained in the Unsolicited Proposal.
- If the similar procurement process has not been advertised, a decision may be made by the City (in accordance with the "Delegated Authority" provisions set out below) to include information contained in the Unsolicited Proposal in the planned procurement process.
 - If the City requires vendor information marked as proprietary and/or confidential be included in the current or planned procurement process or RFI, the Vendor will be required (to the satisfaction of the City's Legal Department) to agree in writing the extent to which such proprietary and/or confidential information will be included in the current or planned procurement process or RFI. If the Vendor fails to satisfy the foregoing requirement, such proprietary and/or confidential information of the Vendor, will remain confidential and will not be disclosed.
 - Subsequent to any decision made by the City in accordance with this Section 4.1, the Vendor will be advised that no further action will be taken in relation to the Unsolicited Proposal.

STEP 5. COUNTER PROPOSAL OPTION

5.1 If the "Counter Proposal" option is approved (in accordance with the "Delegated Authority" provisions set out below), the Sr. Manager, Procurement & Accounts Payable will release to the market an invitation for competing counter proposals, in a transparent, fair and equitable manner, in accordance with the principles contained in the City's *Purchasing By-Law*.

5.2 The Sr. Manager, Procurement & Accounts Payable will use a "Counter Proposal Request For Proposal (CPRFP)" format, and ensure (to the extent reasonably possible) that the original Evaluation Committee evaluates all counter proposals received.

5.3 The Vendor will be required (to the satisfaction of the City's Legal Department) to agree in writing to be bound by the terms and conditions of the CPRFP process. If the Vendor fails to satisfy this requirement, the Vendor will be advised that no further action will be taken in relation to the Unsolicited Proposal.

5.4 In the event that the City requires vendor information marked as proprietary and/or confidential be included in the CPRFP process (sufficient to provide reasonable and transparent disclosure of material information), the Vendor will be required (to the satisfaction of the City's Legal Department) to agree in writing the extent to which such proprietary and/or confidential information will be included in the CPRFP process. If the Vendor fails to satisfy this requirement, the Vendor will be advised that no further action will be taken in relation to the Unsolicited Proposal.



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5.5 If the CPRFP results in no counter proposal(s) being received, or if the counter proposal(s) received are evaluated by the Evaluation Committee and determined (in the sole opinion of the Evaluation Committee) to be equal to or inferior to the original Unsolicited Proposal, a recommendation may be made by the Evaluation Committee to award a contract to the Vendor based on the Unsolicited Proposal or to commence negotiations with the Vendor based on the Unsolicited Proposal. Approval of the Unsolicited Proposal and/or any proposed contract resulting from negotiations between the Vendor and the City shall be in accordance with the “Delegated Authority” provisions set out below.

5.6 If the CPRFP results in one or more counter proposals being received and, if the counter proposal(s) are evaluated by the Evaluation Committee and determined (in the sole opinion of the Evaluation Committee) to be superior to the original Unsolicited Proposal, the City will proceed to determine the successful proponent through a final procurement phase known as “Best and Final Offer” (BAFO). The BAFO process will be conducted as follows:

- (a) The City will invite the Vendor and the proponent(s) submitting the superior counter proposal to engage in a BAFO phase. The invitation to participate in the BAFO phase will provide the following to all participants:
 - i. the general concepts of the counter proposal(s) that were considered superior to the original Unsolicited Proposal, while maintaining the confidentiality of any proprietary and/ or confidential information contained in the counter proposal(s); and
 - ii. the pre-established evaluation criteria or the “basis of award” to be used to determine the successful Vendor.
- (b) Offers received in response to the BAFO invitation will be reviewed by the Evaluation Committee and evaluated in accordance with pre-established criteria, or alternatively, in accordance with the “basis of award” provision identified through the BAFO process. The successful Vendor will be the proponent offering “best value” to the City.
- (c) In all cases, the basis of award will be “best value” to the City (in the sole opinion of the City).

Roles and Responsibilities *(Outline roles and responsibilities of those involved in the implementation of the policy)*

It is the responsibility of all City employees and elected officials to adhere to this policy in connection with the receipt of Unsolicited Proposals.

DELEGATED AUTHORITY

- The CAO will have delegated authority for all decisions pursuant to this Policy in connection with Unsolicited Proposals, where the value of the revenue, cost or benefit is not expected to exceed \$350,000.00.



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Notwithstanding the foregoing, where funding for the proposed project set out in the Unsolicited Proposal is required, and Council did not previously approve funding for the subject matter of the Unsolicited Proposal or any similar project, a report must be presented to Council for approval to obtain the required funds.

- Council will make all decisions required pursuant to this Policy in connection with Unsolicited Proposals, where the value of the revenue, cost or benefit is expected to be \$350,000.00 or greater.