



Unsolicited Proposals Guidelines

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Unsolicited Proposals Guidelines

UNSOLICITED PROPOSALS

1. PURPOSE

These guidelines provide precise guiding procedures for institutions dealing with unsolicited proposals¹. The guideline has been drafted in order to provide SADC member states with a framework within which unsolicited proposals may be considered. It explains how unsolicited proposals should be dealt with by institutions through setting out procedures that must be followed. These procedures will result in an environment where advantage can be taken of the private sector's capacity to conceptualise, package and develop projects whilst ensuring and protecting public policy objectives at the same time. These guidelines define the parameters of an unsolicited proposal and provide a consistent approach of dealing with unsolicited proposals for both government and the private sector.

2. CRITERIA FOR CONSIDERATION OF AN UNSOLICITED PROPOSAL

2.1 Institutions are not obliged to consider and reimburse the cost of feasibility study or any cost related to an unsolicited proposal but may consider such a proposal only if it meets the following requirements:

- (a) A comprehensive and relevant project feasibility study has established a clear business case; and
- (b) The product or service involves an innovative design; or
- (c) The product or service involves an innovative approach to project development and management; or
- (d) The product or service presents a new and cost-effective method of service delivery.
- (e) The product or Service is part of government strategic objectives or priorities as stated in the National Development Plan
- (f) The product or service contributes to capacitating and subcontracting to local owned companies to transfer skills as indicated in the Citizen Economic Empowerment (CEE) Policies,

2.2 The unsolicited proposal **must contain the following information** in terms of the proponent:

¹ An unsolicited proposal is a proposal received by government or public entity outside its normal procurement process

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- (a) The proponent²'s name, address, identification or registration number (if a corporation), VAT registration number and the contact details of its authorised representative;
- (b) Identification of any confidential or proprietary data not to be made public;
- (c) The names of other government and public entities that have received a similar unsolicited proposal;
- (d) The proponent's current Receiver of Revenue Tax Clearance Certificate and in the case where the proponent is a consortium or joint venture, a current Receiver of Revenue Tax Clearance Certificate for each member thereof;
- (e) A declaration of interest containing the particulars set out in the Corruption and Economic Crime Act or any Act related,
- (f) A declaration of the proponents past supply chain practices containing the particulars set out in procurement Act
- (g) A declaration from the proponent to the effect that the offering of the unsolicited proposal was not as a result of any non- public information obtained from officials of the relevant institution or any other institution.

2.3 The unsolicited proposal must set out the following information in terms of the product or service offered:

- (a) A summarized title and abstract (approximately one page) of the proposed product or service;
- (b) A statement of the objectives, approach and scope of the proposed product or service;
- (c) A statement describing how the proposal is demonstrably innovative and supported by evidence that the proponent is the sole provider of the innovation;
- (d) A statement of the anticipated benefits or cost advantages to the institution including the proposed price or total estimated cost for providing the product or service in sufficient detail to allow a meaningful evaluation by the institution;

² A proponent means any person, whether natural or juristic, that submits an unsolicited proposal to an institution.

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(e) A statement on how the proponent plans to subcontract a certain level of the project to the local owned company(s) for local capacity building and transfer of skills in accordance to the empowerment policies

(f) A statement showing how the proposed project supports the institution's strategic growth and development plan and its other objectives; and

(g) The period of time for which the proposal is valid for consideration, which may be between six and twelve months.

3. SIMULTANEOUS PROPOSALS

3.1 In cases where more than one proposal is received for the same, or a similar project at the same location, before the tender is awarded the following shall apply:

(a) If the projects are materially the same technically and in price, a first come first serve approach will be adopted, and the second proposal will be returned to its proponent.

4. UNACCEPTABLE UNSOLICITED PROPOSALS

4.1 The Accounting Officer must reject the unsolicited proposal if the proposal-

(a) Relates to products or services which are generally available;

(b) Does not fall within the institution's powers and functions;

(c) Does not comply substantially with paragraph 2;

(d) Has not been submitted by a duly authorised representative of the proponent; or

(e) Contravenes the provisions of any laws of procurement

4.2 If the Accounting Officer decides to reject the unsolicited proposal, he or she must—

(a) Notify the authorised representative of the proponent by registered post, at the address referred to in paragraph 2.2 (a), that the institution has rejected the unsolicited proposal;

(b) Ensure that the institution does not make use of any of the Intellectual Property or Proprietary Data in the unsolicited proposal (Accounting Officer should sign a non-disclosure agreement with the proponent); and

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(c) Return to the proponent by registered mail to the address referred to in paragraph 2.2 (a), all documents received in the unsolicited proposal including any copies of these documents.

5. EVALUATION OF COMPLIANT UNSOLICITED PROPOSALS

5.1 If the Accounting Officer decides to consider the unsolicited proposal, he or she must send a registered letter to the address referred to in paragraph 2.2 (a) Confirming the decision to consider the unsolicited proposal.

5.2 The unsolicited proposal must be considered as appropriate in terms of the following –

5.2.1 Public Private Partnership compliant unsolicited proposal.

5.2.1.1 If the unsolicited proposal is a PPP, the Accounting Officer must comply with the requirements of the PPP Policy and the Guidelines relevant thereto, as read with paragraph 6.1 of this guideline.

5.2.2 Non-Public Private Partnership compliant unsolicited proposals.

5.2.2.1 If the unsolicited proposal is not a PPP, the institution must undertake a comprehensive evaluation of the unsolicited proposal, which must include the following:

(a) A feasibility study that evaluates the costs and benefits of procuring the product or service from the proponent, including, as appropriate, an assessment of --

(i) Any unique, innovative, researched or meritorious methods, approaches or concepts demonstrated in the unsolicited proposal;

(ii) The overall scientific, technical, or socio- economic merit of the unsolicited proposal;

(iii) The potential contribution of the unsolicited proposal to the institution's strategic objectives as identified in its strategic growth and development plan;

(iv) An assessment of whether the proposed cost of the project is realistic, affordable and

(v) Any other fact which, in the opinion of the institution is relevant to the particular unsolicited proposal.

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(b) If at the conclusion of the feasibility study the institution determines that the criteria set out in paragraph 2 are met, the institution must proceed with the processes to develop and execute an unsolicited bid agreement as set out in paragraph 5.2.3 below.

(c) If the institution determines that the criteria set out in paragraph 2 are not met, the institution must follow the procedures set out in paragraph 4.2 above.

5.2.3 Unsolicited proposal agreement.

5.2.3.1 If the institution decides to proceed with the unsolicited proposal, the Accounting Officer must negotiate an unsolicited proposal agreement with the proponent. The sole purpose of the unsolicited proposal agreement is to guide the process in terms of this guideline between the institution and the proponent, in order to, establish, amongst other matters –

(a) The methodology for determining any costs to be reimbursed to the proponent, should the procurement processes set out in paragraph 6 below result in an award for the product or service being made to a party other than the proponent;

(b) The procedure for further developing the project and responding to issues raised by the institution;

(c) The allocation of responsibility for developing bid documents in accordance with the institution's supply chain management systems/procurement systems, provided that development of the document must always be under the supervision of the institution;

(d) The information in the unsolicited proposal must be treated as confidential; and

(e) The purchase of Intellectual Property rights, if any.

(f) In a case of budget constraints, the Accounting Officer must negotiate with the proponent to defer the project to a later stage. If the proponent agrees, the Accounting Officer will proceed to procurement and if the proponent does not agree the Accounting Officer must follow paragraph 5.2.5

5.2.4 Calculation of costs. 5.2.4.1 In calculating costs for the purposes of paragraph 5.2.3.1 (a), the institution and the proponent must restrict their consideration to direct auditable costs incurred by the proponent in developing technical and other materials relevant to meeting the criteria set out in paragraph 2, above.

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5.2.5 If the institution and the proponent cannot reach consensus, then-

(a) The institution will not be responsible for any costs which the proponent has incurred in preparing and submitting the unsolicited proposal;

(b) The institution may not implement the project proposed in the unsolicited proposal for the current or next financial year and may not utilise at any time the proprietary information provided by the proponent as part of its unsolicited proposal.

(c) The Accounting Officer is required to sign a non-disclosure agreement indicating that confidential and proprietary data will not be made public.

6. PROCUREMENT

6.1 If the unsolicited proposal agreement is concluded, then the procuring entity must prepare and issue bid documents.

6.1.1 The process to be followed when procuring a service shall include:

(a) The preparation of a Request for Qualification (RFQF) to test the market for the existence of other private entities capable of providing the product or service;

(b) The preparation of a draft contract for the provision of the product or service should there be no adequate response to the RFQF;

(c) The preparation of a Request for Proposals (RFP) with a draft contract should there be one or more adequate responses to the RFQF;

(d) Conducting a competitive bidding process in terms of the institution's supply chain management system/procurement system among the firms qualified in the RFQF and the proponent; and

(e) Reimbursing the proponent should the proponent not be awarded the contract for the provision of the product or service at the conclusion of the competitive bidding process. The quantum of reimbursement shall be those audited costs of the proponent from the point in time where the Accounting Officer was solicited by the proponent to the conclusion of the competitive process, in terms of the unsolicited proposal agreement.

6.2 The foregoing bid processes must -

(a) Be developed by the institution;

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(b) Disclose that the bid originated from an unsolicited proposal; and

(c) Provide the agreed costs and terms of payment to the proponent, and require that all bidders, save for the proponent, make allowance for these costs and pay such costs to the proponent directly, if their bid is successful. Only the successful bidder will be required to reimburse the proponent.

7. USE OF EXTERNAL CONSULTANTS

7.1 After receiving an unsolicited proposal and before either accepting or rejecting the proposal in accordance with paragraphs 4 or 5 the institution may seek advice from independent consultants or experts, provided that -

(a) An appropriate undertaking be obtained from any such person that any confidential material or information provided by the proponent will not be disclosed to anyone other than an employee or agent of such a third party who will, in turn, treat the information or material as confidential and give an undertaking to do so; and

(b) The cost of obtaining independent advice will be incurred by the institution, unless the proponent withdraws the proposal prior to entering into an unsolicited proposal agreement, in which event the proponent will be liable to the institution for these costs.

8. USE OF UNSOLICITED PROPOSAL

8.1 In the course of implementing this guideline, or in the bid process provided for in its supply chain management system/procurement system, the institution may not -

(a) Use any data, concept, idea, or other part of a unsolicited proposal as the basis or part of the basis, for a solicitation or in negotiations with any other firm unless the project proceeds to procurement in terms of paragraph 6 and the proponent is notified of and agrees to the intended use; provided that, this prohibition does not preclude the use of any data, concept or idea in the proposal that also is, or becomes, available from another source without restriction; or

(b) Disclose information identified in the unsolicited proposal agreement as confidential.

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9. REPORTING

9.1 Accounting Officers must report all concluded unsolicited proposal agreements in the annual report of their respective institutions.

9.2 The Auditor-General may audit such agreements.

10. RECORDS

10.1 All institutions must submit a copy of a concluded unsolicited proposal contract to the Office Auditor-General.

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16. STEPS TO FOLLOW UPON RECEIPT OF AN UNSOLICITED BID OR PROPOSAL

