

Unsolicited Proposals

Guidelines for Submission and Assessment



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1 Introduction

1.1 Purpose and Scope of this Guide

From time to time, suppliers may approach Christchurch City Council (“Council”) with a proposal to meet a perceived need of Council, without being asked by Council to do so. This is an unsolicited proposal.

This document sets out general guidance for how such unsolicited proposals may be submitted and managed by Council.

1.2 Why consider Unsolicited Proposals?

As a territorial local authority the Council is required to fulfil the purpose of local government as specified in the Local Government Act 2002.

The purpose of local government is:

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

Under the Local Government Act, **good-quality**, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are:

- (a) efficient;
- (b) effective; and
- (c) appropriate to present and anticipated future circumstances.

To help achieve this purpose, the Council encourages innovative ideas and solutions from the private and community sectors to be put forward as business solutions even though the Council may not have identified a present need for the solution offered.

The Council wants to maximise the value provided to our community and sometimes unsolicited proposals can assist with this.

1.3 What is an Unsolicited Proposal?

An unsolicited proposal is a proposal that is:

- (a) unique; and
- (b) not requested by Council (i.e. it has not been initiated as a result of competitive tendering process initiated by Council).

The unsolicited proposals process is not a substitute for Council's normal competitive procurement practice. The framework outlined in this guide is aimed at ensuring that Council still applies general good procurement practice in the event it receives an unsolicited proposal.

Council will generally adopt a stepped process for consideration of unsolicited proposals. A summary of that process is set out in section 6 of this guide. A flowchart of the process is included at section 7.

1.4 References

Council's approach to managing unsolicited proposals is based on review of best practice public sector processes, including references from the New Zealand Treasury, the Office of the Auditor General New Zealand, the Ministry of Business Innovation and Employment and Auckland Council.

2 General Criteria for Assessment of an Unsolicited Proposal

In deciding whether or not an unsolicited proposal should progress through the process, Council will consider the proposal against the general criteria discussed below.

2.1 When an Unsolicited Proposal will be given further consideration

The Council will generally only give serious consideration to exceptional proposals.

These are unsolicited proposals that demonstrate unique concepts or benefits that cannot otherwise be obtained in the marketplace or that are only able to be provided by a single supplier, e.g. as a result of IP or capability issues.

Three key criteria must be met by any unsolicited proposal. Such proposals must:

- be unique;
- align with Council community outcomes and strategic priorities; and
- demonstrate value for money to Council.

Each key criteria is explained further below. If the three key criteria cannot be demonstrated an unsolicited proposal will not progress.

2.2 Key Criteria - Uniqueness

An unsolicited proposal must be sufficiently unique so that a direct sourcing approach is justified. This is because when spending public funds councils must use a competitive process wherever possible.

To be unique, something must be the only one of a kind; unlike anything else. While it may be very difficult to demonstrate that something is "one of a kind", the initiator must be able to provide some facts and evidence that their idea is original.

In order to judge whether or not the proposal is truly unique, Council will consider factors such as how innovative the proposal is and whether there are any other products or concepts in the market that meet the perceived need.

In addition to information provided in the initiator's proposal, Council will undertake its own research and investigations into how unique the proposal is.

Proposals generally not considered unique

Types of proposals that are not considered unique and/or proposals that are unlikely to be progressed include:

- those where the initiator is seeking to directly purchase or acquire a Council-owned asset;
- those where an initiator with an existing Council contract to provide goods and services is 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 initial supplier already has some advantage, but no other unique elements;
- proposals seeking to develop land that is not owned by the Council or the initiator;
- proposals that do not contain a commercial or social proposition for the Council;
- in general, proposals that identify the initiator's skills or workforce capability as the only unique characteristic.;
- proposals solely for consultancy services unless the consultancy work is to deliver a unique opportunity to the Council; or
- proposals seeking grants e.g. scientific grants.

Unsolicited proposals will not be considered by Council when they:

- are promotional or advertising materials, such as special pricing, modifying or extending an existing contract;
- are goods or services readily available in the marketplace; or
- are an advance proposal for a known requirement, for which a competitive process is planned.

2.3 Key Criteria - Alignment with Community Outcomes and Strategic Priorities

An unsolicited proposal must be consistent with the Council's community outcomes and strategic priorities and the current annual and long terms plans.

Accordingly, initiators should demonstrate how their proposal will:

- create additional economic activity and/ or social wellbeing for Christchurch residents;
- meet unmet community needs; and/or
- assist with the achievement of the Council's community outcomes and strategic priorities.

2.4 Key criteria - Value for Money – Optimising Outcomes

For an unsolicited proposal to be considered by the Council, the proposal must contain an economic assessment that demonstrates best value for money over whole of life, and captures the benefits and costs to all parties involved. An economic assessment should also take into account non-monetary costs and benefits.

“Best value for money over whole of life” is a measure of quality that assesses the monetary cost of the product or service against the quality and/or benefits of that product or service, taking into account subjective factors such as fitness for purpose, along with whole-of life costs such as installation, training, maintenance, disposal and wastage.

2.5 Other Factors

The Council in its discretion may take into account any other factors or considerations that it deems relevant to the unsolicited proposal including any factor that may arise as a consequence of:

- the nature and content of the proposal; and/or
- economic, social, legal or other events.

3 Probity and Ethical Conduct

Council procurement must take place in an open and fair environment to ensure all potential suppliers are given impartial and equitable treatment. This applies equally to unsolicited proposals.

3.1 Probity

An initiator must not offer any incentive to, or otherwise attempt to, influence any person who is either directly or indirectly involved in an assessment or negotiation process. If the Council determines that an initiator has violated this condition, the Council may, in its sole and absolute discretion, decline to consider the proposal further.

For major, complex or high-risk proposals, a probity auditor may be appointed by Council to provide guidance and probity assurance.

3.2 Conflict of Interest

A conflict of interest arises where the interests (financial or otherwise) or relationship of an individual or organisation involved in the proposal could reasonably compromise, or appear to compromise, their judgement or actions when performing their duties in relation to the proposal. Council will take steps to ensure that any conflict of interest with respect to its own personnel and advisors is disclosed and appropriately managed.

An initiator of an unsolicited proposal must comply with all laws in force in New Zealand regarding probity in procurement. When requested by Council the initiator must declare any actual or potential conflict of interest in the form provided by the Council.

4 What information should be included in an Unsolicited Proposal?

An unsolicited proposal must contain enough information to enable Council to assess whether or not the proposal deserves further consideration. The level of detail will vary depending on the nature and complexity of the proposal.

It is in the initiator's best interest to provide sufficient information for Council to complete a reasonable assessment of the proposal against the key criteria described at section 2 above.

An unsolicited proposal should be completed in the form attached as Appendix 1.

Any proposal should include the following:

- Details of party making the proposal, including:
 - Full legal name and company/business number;
 - Contact details; and
 - Brief business profile;
- Brief but thorough description of the nature of the proposal;
- Explanation of the benefits that the proposal will deliver to the goals of Council;
- How the initiator can authenticate the innovative or unique elements of its proposal;
- Declaration of all ownership interests in the subject matter of the proposal (i.e. real property rights or intellectual property rights);
- Identification of content of the proposal which is commercially sensitive;
- Period for which the proposal is valid;
- Identification to whom else the proposal has been sent to (i.e. other territorial authorities or government agencies);
- Costs in sufficient detail for Council to undertake an initial meaningful evaluation;
- Identification of any support the initiator requires from the Council to execute the proposal, if appropriate.

5 Public Interest and Transparency

5.1 Local Government Official Information and Meetings Act 1987 (LGOIMA)

Initiators should be aware that the LGOIMA allows members of the public rights of access to information about what Council does and Council's records have to be open and freely available when requested, to the extent required by the Act. The LGOIMA applies to the information provided by an initiator in a proposal. Any responses to requests from the public for more information on a proposal will also be governed by the LGOIMA.

Accordingly, any information in an unsolicited proposal that is commercially sensitive or confidential must be clearly marked "commercial and confidential". This special notation must not be used unless the information is genuinely confidential.

The withholding of commercial and confidential information by the Council under LGOIMA (if possible) does not imply obligations of confidentiality on the Council or limit the Council's ability to act in relation to the proposal subject matter. Confidentiality obligations (if any) must be recorded in the Participation Agreement or other written agreement.

If an initiator requires Council to enter into a non-disclosure or other agreement prior to the Participation Agreement then this must be clearly communicated to and agreed with Council.

5.2 Publication

Where a contract is concluded between an initiator and Council as a result of an unsolicited proposal, Council may post a Contract Award Notice on the Christchurch City Council website.

6 Overview of the Assessment Process

6.1 Stepped process

Council will generally adopt a stepped process for consideration of unsolicited proposals. A summary of that process is set out below. A flowchart of the process is included at section 7.

Step 1 **Has the Unsolicited Proposal Been Received by the Procurement & Contracts Team?**

In not, any proposals received by any other unit within Council must be forwarded to the Procurement & Contracts team

Step 2 **Is the Proposal Unsolicited?**

If not, this guide is not relevant and a proposal should be assessed in accordance with the process that solicited it.

Step 3 **Does the Proposal meet a current or future need?**

If yes, proceed to Step 4

If not, proposal should not proceed. Council to advise initiator proposal will not proceed further. Give reasons.

Step 4 **Is the Proposal Unique?**

If unsure, Council should undertake its own due diligence and investigations.

If yes, proceed to consider against other key criteria (Step 5 and Step 6).

If it does not meet the unique criteria, proposal should not proceed. Council to advise initiator proposal will not proceed further. Give reasons.

Step 5 Does the Proposal align with Council’s Community Outcomes and Strategic Priorities?

If yes, proceed to consider against other key criteria.

If not, proposal should not proceed. Council to advise initiator proposal will not proceed further. Give reasons.

Step 6 Does the Proposal demonstrate Value for Money?

If yes, complete Departure Request. Once departure approved, proceed to Step 7.

If no, proposal should not proceed. Council to advise initiator proposal will not proceed further. Give reasons.

Step 7 Does Council want to proceed to purchase?

If yes, prepare business case for internal approval to proceed to further investigation and assessment.

If not, Council to advise initiator proposal will not proceed further. Give reasons.

Step 8 If Business Plan approved?

Is yes, proceed to Step 9.

If not, Council to advise initiator proposal will not proceed further. Give reasons.

Step 9 Undertake Due Diligence and other investigations

If satisfied with due diligence and Council considers it wishes to proceed with proposal Council to, proceed to Step 10.

If not satisfied with due diligence Council to advise initiator, proposal will not proceed further. Give reasons.

Step 10 Prepare Participation Agreement

Council and initiator to enter into Participation Agreement recording basis under which Council and initiator will enter into negotiations.

Step 11 Enter into Negotiations on Commercial Terms

Council to engage assistance of Legal Services Unit.

Step 12 Does Council wish to proceed?

If yes, proceed to enter into contract. Seek assistance of Legal Services Unit. Proceed to Step 13.

If not, cease negotiations with initiator.

Step 13 Council to publish outcome on CCC website

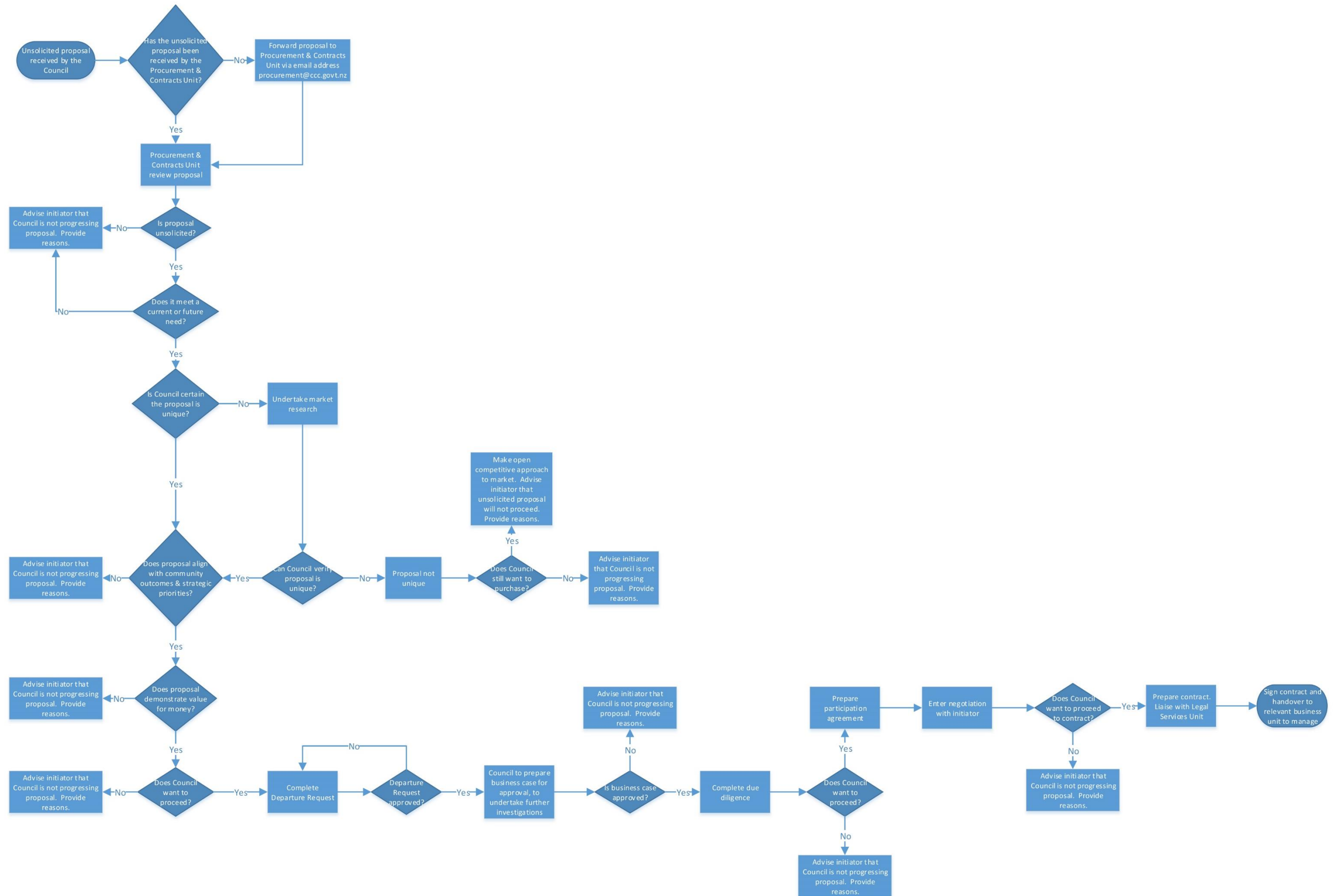
6.2 Council's discretion

Council reserves the right to decline any unsolicited proposals at any stage of the analysis process and request proposals from the open market.

Even if the proposal meets Council's needs and any key criteria identified it may not be line with Council's priorities and the Council may not proceed with it.

7 Assessment process flowchart

Council reserves the right to decline any unsolicited proposals at any stage of the analysis process and request proposals from the open market. Even if the proposal meets Council's needs and any key criteria identified it may not be in line with Council's priorities and the Council may not proceed with it.



Appendix 1 - Schedule of Information Requirements

This form is to be completed by the initiator organisation(s) when presenting an unsolicited proposal to Christchurch City Council. Please ensure all sections of this form are adequately addressed. Information may be presented in the form of cross referenced agenda if preferred.

Initiator name(s)			
Address		Type of Organisation/ Consortium:	[profit / non-profit, educational, small business, etc.]
Contact person(s) details for evaluation purposes:		Date of Submission:	

Concise title and abstract of proposal (approx.200 words)
<p>Short Title</p> <p>Abstract</p>

Proposal Details
<p>Provide information on the:</p> <ul style="list-style-type: none"> (i) objectives of the proposal; (ii) method of approach; (iii) nature and extent of anticipated outcomes; and (iv) benefits the proposal will bring to Christchurch and/or Christchurch City Council.

How does proposal meet Council's key criteria?

Please provide a brief description of how the proposal would meet each of the key assessment criteria. Refer to section 2 of the guidelines for a detailed description of each criteria to be addressed.

1. Uniqueness of the proposal

What are the unique elements of the proposal that would provide justification for Council entering into direct negotiations? Unique elements may include characteristics such as:

- intellectual property or genuinely innovative ideas
- ownership of real property
- ownership of software or technology offering a unique benefit
- unique financial arrangements
- unique ability to deliver strategic outcomes which support the achievement of Council's strategic priorities
- other demonstrably unique elements

2. Strategic alignment with Council's Community Outcomes and Strategic Priorities

3. Value for Money

- value for money
- whole of Council impact
- return on investment
- capability and capacity
- affordability
- risk allocation

Financial and commercial details

Please provide a brief description of the financial and commercial details of the proposal and the proponent's financial capacity to deliver the proposal. Clearly explain what the proposed commercial proposition is for Council to consider.

Costs and requirements of Council

Please provide details of purchase costs to Christchurch City Council.

Clearly explain what the proposal requires of Council (i.e. what support/assistance is being sought from Council)

[This may include legislative/regulatory amendments, finance or the use of Council assets, facilities, equipment, materials, personnel, resources and land.]

Please advise if the same or a similar proposal has been made to another territorial authority or government agency?

Intellectual Property details

If applicable, please provide a description of:

- (i) inventory of each item of intellectual property;
- (ii) nature of the intellectual property claimed (eg. copyright, patent, etc.);
- (iii) the owner(s) of the intellectual property claimed;
- (iv) registration details (where applicable); and
- (v) clearly and specifically detail any items which are of a confidential/commercially sensitive nature (Note, Council will not be bound by confidentiality obligations until agreed in writing. You may wish to withhold sensitive information until a later stage of the unsolicited proposals process.).

Conflict of Interest

Detail any applicable conflict of interest and attach completed Conflict of Interest Declarations (see Appendix 2).

Other Statements

For example, please detail any applicable environmental or social impacts.

Preferred Contractual Arrangements
Identify key contract terms

Council and CCO points of contact			
If applicable, please provide <u>names and contact information</u> of any other Christchurch City Council or Council Controlled Organisation (CCO) representatives already engaged regarding this proposal.			
Period of time for which the proposal is valid	Minimum six months	Proposed duration of the arrangement	

This proposal is to be signed by a representative of the initiator authorised to represent and contractually bind your organisation.

Name: _____

Position: _____

Signature: _____

Date: _____

Appendix 2 – Conflict of Interest Declaration

Name:	
Position:	
Organisation of Person Making Declaration:	

Do you have any actual, potential or perceived conflicts of interest?

A conflict of interest arises if a supplier's personal or business interests or obligations do, could, or could be perceived to, conflict with any other obligations it may have to Christchurch City Council.

A conflict of interest can also be a situation in which a supplier could gain (or be seen to gain) an unfair advantage through an association with an individual or organisation. Associations include financial, personal, professional, family-related or community-related relationships. A conflict of interest can be categorised as follows:

- an actual conflict of interest is where there already is a conflict;
- a potential conflict of interest is where the conflict is about to happen or could happen; and
- a perceived conflict of interest is where other people may reasonably think there is a conflict and is compromised.

Instruction: Provide the following details in relation to each party which has an interest in the proposal being submitted to Christchurch City Council.

Do you or any of your employees, consultants or advisors have a relative or close friend who is (or could be involved in any evaluation or decision-making in relation to the proposal submitted?

- Yes No
 Potential/Perceived

Has any person in your organisation recently provided any special discounts, gifts, trips, hospitality, rewards or favours to any person involved in any evaluation or decision-making relating to your proposal?
(e.g. free travel; free samples for your own use)

- Yes No
 Potential/Perceived

Are you aware of anything that might give the appearance that any person involved in the evaluation stage or decision-making stage relating to your proposal is biased towards or against your organisation?
(e.g. the person has used your organisation's corporate box, is a shareholder or otherwise has a financial interest in your organisation)

- Yes No
 Potential/Perceived

Is there anything else we should know?

Ongoing responsibilities

I understand that my obligation to declare any conflicts of interest continues throughout the unsolicited proposal consideration process and I agree to notify Christchurch City Council should any of my responses in this declaration change during the course of the tender process.

Declaration of conflict of interest

<p>Actual conflict of interest is where you already have a conflict.</p> <p>Potential conflict of interest is where the conflict is about to happen or could happen.</p> <p>Perceived conflict of interest is where other people might reasonably think you are not being objective.</p>	<p>If you have answered 'Yes' or 'Potentially' to any of the above questions, please provide details here. Otherwise sign the declaration below.</p>
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Your declaration

Declaration – I confirm that the above details are correct to the best of my knowledge and I make this declaration in good faith.		
Signature:		Date: