

INQUIRY INTO PROPOSAL TO DEVELOP ROSEHILL RACECOURSE

Organisation: NSW Government

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Premier's Department

NSW Government Submission to Select Committee on the Proposal to Develop Rosehill Racecourse

July 2024

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1 Introduction

The NSW Government welcomes the opportunity to make a submission to the Select Committee on the Proposal to Develop Rosehill Racecourse. To assist the Committee, this submission provides consolidated factual information about the NSW Government's Unsolicited Proposals process, and updates the Committee on the current status of a number of the matters covered in the Committee's terms of reference.

This submission has been collated by the Premier's Department from input provided by the Department of Planning, Housing and Infrastructure, Investment NSW, NSW Office of Sport and Sydney Metro.

2 The NSW Government's Unsolicited Proposals process

The NSW Government's Unsolicited Proposals: Guide for Submission and Assessment (Guide), is aimed at encouraging the best ideas and solutions from the non-Government sector, and a greater level of non-Government sector investment and participation in projects.

An Unsolicited Proposal is an approach to Government from a Proponent with a proposal to deal directly with the Government over a commercial proposition, where the Government has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.

The Guide outlines a transparent and streamlined process to facilitate the NSW Government and non-Government sectors working together to develop and deliver innovative ideas, services and new infrastructure. The Unsolicited Proposals process is separate to, and does not replace, other Government statutory approvals processes (e.g. environmental and planning processes).

Its key objective is to provide consistency and certainty to non-Government sector participants seeking to deal directly with the Government. The Guide sets out how unsolicited proposals will be assessed within a transparent framework.

The assessment criteria are:

Uniqueness

Does the proposal demonstrate unique benefits and the unique ability of the proponent to deliver the proposal?

Value for Money

Does the proposal deliver value for money to the NSW Government, including consideration of the net economic benefits of the proposal?

Whole of Government Impact

Does the proposal demonstrate overall strategic merit consistent with the Government's plans and priorities?

Return on Investment

Would the proposal provide a Return on Investment to the proponent proportionate to the proponent's risks, and industry standards?

Capability and Capacity

Does the proponent have the experience, capability and capacity to carry out the proposal, including in partnership with third parties?

Affordability

Is the proposal affordable in the context of the Government's other priorities as part of the NSW Budget process?

Risk Allocation

Is the proposed risk allocation between Government and the Proponent appropriate and consistent with the Value for Money assessment, including in relation to environmental and planning approvals?

Depending on the nature of the proposal additional assessment criteria may be applied. More detail on the assessment criteria is set out in the attached Guide.

The process follows 4 phases:

Pre-submission concept review stage

Prior to lodging a formal Stage 1 submission, a Proponent may meet with Government to explore whether the proposal is likely to meet the Stage 1 assessment criteria and, accordingly, be guided in their decision regarding whether to lodge their proposal. Notwithstanding any feedback provided by Government, it is the Proponent's decision as to whether it proceeds with making a formal Stage 1 submission.

Stage 1 – Initial submission and preliminary assessment

Once a Proponent has lodged a formal submission, the Investment NSW team, formerly in the Department of Enterprise, Investment and Trade, leads a Preliminary Assessment of the proposal in conjunction with the relevant agencies to determine if the submission constitutes an unsolicited proposal and if sufficient justification exists to justify undertaking a Stage 2 assessment. Government reserves the right to further consider, or not consider, unsolicited proposals beyond this stage at its absolute discretion.

If Government determines that a proposal is of sufficient interest to proceed to Stage 2, information about the proposal will be published on the NSW Government Unsolicited Proposals website.

Stage 2 – Detailed proposal

During Stage 2, the Proponent and Government work cooperatively in the development and assessment of a Detailed Proposal, which may require a degree of preliminary negotiation on key issues, subject to the nature of the proposal.

This stage is characterised by a significant program of financial, commercial, technical, legal and economic analysis. The process results in a Detailed Proposal presented by the proponent. The Government will assess the Detailed Proposal against the relevant criteria.

The Government may or may not consider the Detailed Proposal to be acceptable to progress to Stage 3. The NSW Government Unsolicited Proposals website will be updated with the assessment outcome.

Stage 3 – Negotiation of final binding offer

In Stage 3, all outstanding issues are negotiated and finalised, with a view to the Proponent presenting a final binding offer for assessment. Based on that assessment, the Government may accept the offer or decide not to accept the offer.

The NSW Government Unsolicited Proposals website will be updated with the assessment outcome, including why the proposal has been accepted or not accepted.

3 Current status

On 7 December 2023, the NSW Government announced that discussions had commenced on a concept proposed by the Australian Turf Club (ATC) for the redevelopment of Rosehill Gardens Racecourse for housing, greenspace, and a new Metro West station.

Under the ATC's proposal:

- A Centre of Excellence horse training facility to be established at Horsley Park to accommodate the relocation of 300-400 horses from Rosehill Gardens stables.
- Warwick Farm to be redeveloped as a state-of-the-art racing, training, member and spectator facility.
- Several sites across Sydney will be earmarked and investigated for a new, world-class racecourse track and facilities.
- ATC retains and develops the Rosehill Gardens site for housing (potentially 25,000 homes), entertainment, green space and a new school.
- Funds from the development invested in racing, training and Member and spectator facilities at all racing, training and stabling venues.
- The NSW Government explores the feasibility of a new Metro station at Rosehill to deliver reliable public transport for the new Rosehill Gardens community.

Sydney Metro

Also on 7 December 2023, the NSW Government separately announced Sydney Metro would prepare scoping studies for up to two potential station locations west of Sydney Olympic Park. This is consistent with the Independent Sydney Metro Review and would support the NSW Government's priorities to lift housing supply. The potential addition of up to two metro stations will be subject to the NSW Government's future consideration of Sydney Metro's finalised scoping studies and the separate assessment of the ATC's unsolicited proposal.

Sydney Metro's scoping studies work is ongoing.

Unsolicited Proposals process

A number of discussions and site inspections were held between the ATC and NSW Government representatives during the pre-submission concept review stage to provide initial guidance as to whether the proposal would be likely to meet the Stage 1 assessment criteria for an unsolicited proposal.

Subsequently, on 8 April 2024, the ATC advised its members that it had submitted a formal Stage 1 submission to the NSW Government. As per the process set out in the Guide, the then Department of Enterprise, Investment and Trade led a Preliminary Assessment in conjunction with the relevant agencies to determine if the submission constitutes an unsolicited proposal and if sufficient justification exists to undertake a Stage 2 assessment.

On 7 June 2024, the NSW Government advised, through its Unsolicited Proposals website, that the submission was of sufficient interest to warrant further development and progression to a more defined project. In particular, the assessment panel was satisfied that there was potential for a detailed proposal to satisfy each of the USP assessment criteria, and concluded that:

- ATC and its proposal are uniquely positioned to deliver a significant housing outcome in the manner proposed that responds to the Government's priorities.
- The proposal has the potential to align with key Government plans and priorities.
- The proposal has the potential to achieve a value for money outcome which will be confirmed through quantitative due diligence undertaken in Stage 2.

At the date of this submission, the proposal is in Stage 2 – Detailed Proposal. The NSW Premier’s Department is coordinating the participation of government agencies in that process and is supporting the proposal specific Steering Committee and Stage 2 Assessment Panel.

The outcome of the Stage 2 process will be published on the NSW Government Unsolicited Proposals website in due course.

Planning investigations

The NSW Government requires a broad understanding of the impact a new residential development and a new station at Rosehill would have on the current strategic planning for the Camellia/Rosehill precinct.

This requires the development of high-level masterplan/structure plan options for an integrated Camellia/Rosehill precinct to enable an analysis of the impacts. Areas of impact may be:

- Restructure of the street and road network
- Review of allocation, extent and connection of public open space
- Review of the proposed Camellia town centre, if a new town centre were to be located adjacent the proposed Metro
- Review of the built form under an alternative urban strategy (such as built form distribution, views, public open space access, etc)

The Government has engaged a planning consultant to undertake this analysis. This work is continuing.

NSW housing targets

Parramatta LGA is allocated a 5-year housing target of 19,500 new homes by June 2029.

To align with the proposed Commonwealth approach for monitoring progress against National Housing targets, the targets are for gross homes completed. This differs from the previous targets for Parramatta that were for net completions. The target is made up of planned homes already in the system and expected additional homes from the low and mid rise reforms.

There are an estimated 16,900 planned homes in Parramatta (87%) of the target. This estimate is derived from the 2023 Sydney Housing Supply Forecast (net dwellings) published on the DPHI website. These dwellings are under construction, approved, under assessment or planned for completion by June 2029.

Camellia and Rosehill Racecourse are not in the Sydney Housing Supply Forecast. The forecast does not include these types of longer term proposals.

NSW Premier’s Department

July 2024

Attached: Unsolicited Proposals: Guide for Submission and Assessment, May 2022

Premier's Department

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OFFICIAL

UNSOLICITED PROPOSALS

GUIDE FOR SUBMISSION AND ASSESSMENT

May 2022

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PREFACE

In 2012, the NSW Government launched its Unsolicited Proposals Guide for Submission and Assessment (Guide), in order to encourage the best ideas and solutions from the non-Government sector, and a greater level of non-Government sector investment and participation in projects.

The Guide outlines a transparent and streamlined process to facilitate the NSW Government and non-Government sectors working together to develop and deliver innovative ideas, services and new infrastructure.

Its key objective is to provide consistency and certainty to non-Government sector participants seeking to deal directly with the Government. The Guide sets out how unsolicited proposals will be assessed within a transparent framework. The key criteria are uniqueness, value for money and strategic fit with Government objectives.

In 2014, the Guide was enhanced as a result of an extensive review that included feedback from industry.

The August 2017 update incorporates the recommendations from two Performance Audits conducted by the Audit Office of NSW (Managing Unsolicited Proposals in NSW, 2016 and NorthConnex, 2017) and the most recent periodic review (2016), providing greater clarity and public reporting.

In 2022, the Guide was updated to reflect Machinery of Government changes.

1 INTRODUCTION

1.1 Definition

An Unsolicited Proposal is an approach to Government from a Proponent with a proposal to deal directly with the Government over a commercial proposition, where the Government has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction. Section 2.2 describes proposals that may not qualify. A glossary of terms used in this Guide is included in section 6.

1.2 Government Procurement

The NSW Government is continually seeking to capture value, and unique and innovative ideas from industry that provide real and tangible benefits to the people of NSW. In order to achieve this, it procures projects, goods and services by two broad means:

- 1. Government initiated procurement processes.** This is the predominant form of procurement and is based on competition through tendering in order to achieve value for money in a fair and transparent manner. Such procurement is driven by the Government's strategic and operational planning processes and allows efficient and timely delivery of Government services. This form of procurement is not covered by this Guide. For further information on Government procurement: <https://buy.nsw.gov.au/>
- 2. Non-Government sector initiated proposals, not solicited by Government through the process described in 1. above.** The non-Government sector includes private individuals, companies, not-for-profit entities and non-NSW Government owned Local Authorities such as councils. Such proposals are by definition outside the normal planning and procurement processes of Government but may offer opportunities for real value for Government. These proposals are administered under this *Guide for Submission and Assessment of Unsolicited Proposals* and/or the NSW Government *Direct Dealing Guidelines*.

The unsolicited proposals process is not a substitute for routine competitive procurement by Government. The focus of unsolicited proposals is on unique and innovative projects or services. Similarly, the unsolicited proposals process is not designed to replace applicable environmental and planning assessment processes. If the Government decides to progress an unsolicited proposal, that should not be interpreted as any form of explicit or tacit support for planning approvals.

While direct negotiation with a proponent in response to an Unsolicited Proposal may be pursued in justifying circumstances, Government's usual procurement approach is to test the market. This generally results in the demonstrable achievement of value-for-money outcomes and provides fair and equal opportunities for private sector participants to do business with Government.

The Government will generally only consider proposals where both the proposal and its proponent (on the face of it, or after a market test has occurred) have unique attributes such that others could not deliver a similar proposal with the

same value-for-money outcome. Government will consider directly negotiating with an individual or organisation that presents an Unsolicited Proposal (see Glossary) where circumstances justify this approach and at its absolute discretion.

1.3 Assessment Process and Criteria

This Guide sets out the processes to be followed by both Government and Proponents in developing Unsolicited Proposals. It represents commitment by Government to the allocation of resources to meet its responsibilities as outlined in this Guide. Proposals will be evaluated against the Assessment Criteria outlined in section 2.3. A four-stage assessment process has been developed to guide the evaluation of proposals:

- Pre-Submission Concept Review
- Stage 1:
 - A. Initial Submission and Preliminary Assessment
 - B. Strategic Assessment of the Initial Submission
- Stage 2: Detailed Proposal
- Stage 3: Negotiation of Final Binding Offer

These stages are described in detail in section 4.

It is recognised that a Proponent will be entitled to a fair rate of return for its involvement in a project and that outcomes should be mutually beneficial for the Proponent and Government. Further, Government recognises the right of Proponents to derive benefit from unique ideas. The approach to the identification, recognition and protection of intellectual property rights will be addressed and agreed with the Proponent during Stage 1 of the process as set out below.

Where the Government assesses a proposal as not meeting the criteria, including uniqueness, the Government reserves its usual right to go to market. The Proponent will be provided with the opportunity to participate in the procurement process should the concept be offered to the market, but will have no additional rights beyond those afforded to other market participants. If the Government elects to go to market in such circumstances it will respect any Intellectual Property (IP) owned by the Proponent.

The unsolicited proposals assessment process is separate to other Government statutory approvals processes – e.g. environmental and planning. However, where appropriate, the assessment of unsolicited proposals will give consideration to the potential consistency of the proposal with relevant planning and environmental controls, and approvals processes.

Unsolicited Proposals regarding State Owned Corporations should be referred to the Department of Enterprise, Investment and Trade (DEIT) in the first instance.

1.4 Contact Details and Lodgement

Enquiries and requests for ‘pre-lodgement’ meetings should be submitted at: <https://www.nsw.gov.au/unsolicited-proposals>.

Should Proponents wish to submit a paper-based proposal, please address it to:

Secretary

NSW Department of Enterprise, Investment and Trade

GPO Box 5341

Sydney NSW 2001

A soft copy should also be submitted at the website listed above.

A Government Website at <https://www.nsw.gov.au/unsolicited-proposals> has been established that includes information and supporting template documents that will be of assistance to organisations when contemplating if and how to present an Unsolicited Proposal to Government. DEIT will publish aggregate data annually on Unsolicited Proposals received, including its reasons for declining proposals. The data will be presented in such a manner as to promote transparency in the Unsolicited Proposal assessment process while maintaining Proponent confidentiality.

Once a proposal has been submitted, DEIT will formally acknowledge receipt of the proposal and provide contact details of the Proposal Manager (refer section 3.5). This will be the Proponent's only point of contact in Government regarding the proposal. Once lodged, the proposal is subject to a formal assessment process. **Proponents must not contact Government Ministers, advisers or officials, in regard to the submitted proposal, outside of the formal assessment process.** This includes organisations authorised to act on the Proponent's behalf. Proponents must comply with the *Lobbying of Government Officials Act 2011* (NSW) at all times.

2 GUIDING PRINCIPLES

2.1 Optimise Outcomes

By their nature, Unsolicited Proposals are unlikely to be the current focus of Government's strategic planning. Proposals must therefore be considered in light of the wider benefits and strategic outcomes that may be derived. In order to proceed however, proposals must be broadly consistent with State objectives and plans, and offer some unique attributes that justify departing from a competitive tender process. Outcomes must always be in the best interest of the State.

In order to demonstrate that optimal Value for Money will be achieved, an "open book" approach to negotiations is to be adopted once the proposal has progressed to Stage 2 assessment. Government will also consider whole-of-Government impact and cost. The approach to demonstrating Value for Money is outlined in Section 2.3.

In order to guide the Proponent, Government will provide an early indication of an acceptable return on investment and other requirements to be achieved by the Proponent in the delivery of its proposal.

2.2 Uniqueness

Proposal and Proponent to be uniquely able to deliver proposed service

Most unsolicited proposals received have been assessed as being insufficiently unique to warrant direct dealing with a particular proponent. For unsolicited proposals to progress through the assessment process, the uniqueness needs to apply to both the proposal and the proponent. The essential questions to be addressed in any Unsolicited Proposal are:

- Can this proposal be readily delivered by competitors? If the answer is yes, then what, if any, justification would the Government have to the public for not seeking best value through a competitive tender process? What benefit(s) would the Government gain?
- Does the proponent own something that would limit the Government from contracting with other parties if the Government went to tender? This would include IP, real property and other unique assets.
- Are there other attributes which may not necessarily stand alone as unique but, when combined, create a "unique" proposal? This may include genuinely innovative ideas, including financial arrangements or solutions that are otherwise unlikely to be defined and put to market (e.g. alternatives to providing a Government service or substantive processes, products or methods for delivering a service that is not offered by other service providers and constitute a significant departure from traditional service delivery).

Types of proposals that are NOT considered unique and/or proposals that are unlikely to be progressed

- Proponents seeking to directly purchase or acquire a Government-owned entity or property. 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 transaction proposals will be referred to Property NSW or the owner agency for consideration.
- Proponents with an existing Government licence to provide goods or services seeking to bypass a future tender process.
- Proposals for significant extensions/variations to existing contracts/leases, 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 do not contain a commercial proposition for the Government.
- Proposals that identify the proponent’s skills or workforce capability as the only unique characteristic are unlikely to progress to Stage 2. A proponent with personnel holding superior expertise or experience in a particular field is not sufficient for the Government to justify bypassing an open tender. For example, a proposal to deliver niche healthcare services to a local community would need to demonstrate that the claimed skills could not be procured or developed elsewhere in the market.
- Proposals to provide widely available goods or services to Government. This includes proposals for Government to purchase standard office administration products, software development and other readily available services. The default procurement process is to hold an open tender.
- Proposals seeking only to change Government policy that have no associated project.
- Proposals for consultancy services.
- Proposals for projects where the tender process has formally commenced, whether published or not.
- Proposals that are early concepts or lack detail.
- Proposals seeking grants (e.g. scientific research), loans or bank guarantees, etc.
- Proposals whose claim to uniqueness is trivial (e.g. a ‘unique’ view from a particular site).
- Proposals seeking Government support for a ‘pilot’ program.
- Proposals seeking to stop or suspend another Government process (e.g. compulsory acquisition).
- Proposals seeking an exclusive mandate, or exclusive rights over a Government asset, for a period of time so the Proponent can develop a feasibility study.

Example: an unsuccessful unsolicited proposal

The proponent currently holds a 5-year contract to provide maintenance services for Government-owned buildings, and has a demonstrated record of delivering quality services to Government and other clients. The proponent's contract is due to expire in 12 months and the Government is planning to commence the usual open tender process. The proponent submits an unsolicited proposal to the Government to extend the existing contract for a further 5 years without going to tender. The key unique quality claimed by the proponent is demonstrated experience in delivering maintenance services and a good relationship with the relevant Government agency.

This unsolicited proposal would be unlikely to progress to Stage 2 because there is an established market to provide the required service, and the proposal has not demonstrated any genuinely unique characteristics. The Government would likely proceed with an open tender process to procure the services.

2.3 Assessment Criteria

Proposals will be initially assessed against the Assessment Criteria in the table below. Assessment will be based on the proposal satisfactorily meeting each of the criteria. Additional Criteria relevant to a particular proposal may also be applied at later stages. If so, the Proponent will be informed of the criteria in order for these to be addressed in its Detailed Proposal during Stage 2.

Uniqueness	<p>Demonstration of unique benefits of the proposal and the unique ability of the proponent to deliver the proposal. In particular the following are to be demonstrated:</p> <ul style="list-style-type: none"> • Can this proposal be readily delivered by competitors? If the answer is yes, then what, if any justification would the Government have to the public for not seeking best value through a competitive tender process? What benefit(s) would the Government gain? Are the benefits and outcomes of the proposal unlikely to be obtained via a standard competitive procurement process? • Does the proponent own something that would limit the Government from contracting with other parties if the Government went to tender? This would include intellectual property, real property and other unique assets. • Are there other attributes which may not necessarily stand alone as unique but, when combined, create a "unique" proposal? This may include genuinely innovative ideas,
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	<p>including financial arrangements or a unique ability to deliver a strategic outcome. It is possible that the Government might agree to initiate market testing of a new proposal that has merit but is not unique.</p> <ul style="list-style-type: none"> Note that while a proposal may contain unique characteristics such as design or technology, this may represent one option among a range of technologies or solutions available to Government. Where the uniqueness of the proposal is not immediately apparent, the Government reserves the right to test the market to satisfy itself as to this criteria.
Value for Money	<p>Does the proposal deliver value for money to the NSW Government?</p> <p>What are the <i>net</i> economic benefits of the proposal (the status quo should be defined)?</p> <p>Is the proposal seeking to purchase a Government asset at less than its value in exchange for other services?</p> <p>Does the proposal provide time and/or financial benefits/savings that would not otherwise be achieved?</p> <p>A proposal is Value for Money if it achieves the required project outcomes and objectives in an efficient, high quality, innovative and cost-effective way with appropriate regard to the allocation, management and mitigation of risks.</p> <p>While Value for Money will be tested appropriately in the context of each specific proposal, factors that will be given consideration are likely to include:</p> <ul style="list-style-type: none"> Quality of all aspects of the proposal, including: achievable timetable, clearly stated proposal objectives and outcomes, design, community impacts, detailed proposal documentation and appropriate commercial and/or contractual agreements (including any key performance targets), and a clearly set-out process for obtaining any planning or other required approvals. Innovation in service delivery, infrastructure design, construction methodologies, and maintenance.

	<ul style="list-style-type: none"> Competitively tendering aspects of the proposal where feasible or likely to yield value for money. Cost efficient delivery of Government policy targets. Optimal risk allocation (refer to criterion below). <p>Evaluation of Value for Money may also include, but not be limited to the following quantitative analysis:</p> <ul style="list-style-type: none"> Interrogation of the Proponent's financial models to determine the reasonableness of any capital, land acquisition, service and maintenance cost estimates and, if relevant, revenue estimates (including the appropriateness of any user fees or prices and estimates of quantity levels). This evaluation may include the use of independent experts or valuers, benchmarking analysis, sensitivity testing, and where appropriate, the use of comparative financial models like Public Sector Comparators or Shadow Bid Models, based on a Reference Project. Return on Investment (refer to criterion below). <p>Note: A high level indicative Value for Money assessment will occur at Stage 1. A more detailed assessment of Value for Money will occur at Stage 2 and beyond.</p>
Whole of Government Impact	<p>Does the proposal meet a project or service need?</p> <p>What is the overall strategic merit of the proposal?</p> <p>What is the opportunity cost for Government if it were to proceed with the proposal?</p> <p>Is the proposal consistent with the Government's plans and priorities?</p> <p>Does the proposal have the potential to achieve planning approval, taking into account relevant planning and environmental controls?</p> <p>Does the proposal contribute to meeting the objectives of District Plans, Regional Plans and Metropolitan Plans, and delivering on housing targets?</p>

	<p>Is the proposal aligned with emerging or enabling sectors in NSW as identified in NSW Government industry policy such as <i>The NSW Industry Development Framework</i>.</p> <p>Consideration will be given to whether the proposal would require Government to re-prioritise and re-allocate funding.</p>
Return on Investment	<p>Is the proposed Return on Investment to the proponent proportionate to the proponent's risks, and industry standards? Where feasible, the proposed rate of return may be subject to independent review or benchmarking.</p>
Capability and Capacity	<p>Does the proponent have the experience, capability and capacity to carry out the proposal? What reliance is there on third parties?</p> <p>Where appropriate, the Proponent should provide referees in relation to working with Government (e.g. NSW or other Australian Governments).</p>
Affordability	<p>Does the proposal require Government funding, or for the Government to purchase proposed services? Does the Government have these funds available or budgeted and if not what source would be proposed?</p> <p>Where State funding is required, the Government may undertake or require the Proponent to undertake a (Preliminary) Business Case and/or an economic appraisal at Stage 2 (where appropriate), consistent with the NSW Government Guide to Cost-Benefit Analysis (TPP17-03). Regardless of the outcome of the Business Case/economic appraisal, the proposal still needs to be affordable in the context of the Government's other priorities, and to be considered as part of the NSW Budget process.</p>
Risk Allocation	<p>What risks are to be borne by the proponent and by the Government? Appropriate risk allocation and quantification may also be considered under the Value for Money criterion.</p> <p>Does the proposal require Environmental and Planning Approvals? If so, has the process been appropriately considered, including whether the Government or Proponent bears the risks associated in obtaining the approvals.</p>

2.4 Interactive Process

The Government will manage an interactive process with the proponent at all formal stages of assessment, commencing with the formal pre-lodgement meeting set out in Section 4. During both the pre-lodgement meeting and the Stage 1 Assessment this interaction will be limited to clarification of the proposal by Government in order to effectively carry out the assessment. It will not be an opportunity to negotiate the details of the proposal. This opportunity will arise in later stages if the proposal proceeds past the Stage 1 Assessment.

2.5 Probity

Government seeks to conduct its commercial dealings with integrity. The assessment of Unsolicited Proposals must be fair, open and demonstrate the highest levels of probity consistent with the public interest. The assessment of Unsolicited Proposals will be conducted through the application of established probity principles that aim to assure all parties of the integrity of the decision-making processes. These principles are outlined in this section.

Maintaining impartiality

Fair and impartial treatment will be a feature of each stage of the assessment process. The process will feature a clearly defined separation of duties and personnel between the assessment and approval functions.

Maintaining accountability and transparency

Accountability and transparency are related concepts. The demonstration of both is crucial to the integrity of the assessment.

Accountability requires that all participants be held accountable for their actions. The assessment process will identify responsibilities, provide feedback mechanisms and require that all activities and decision making be appropriately documented.

Transparency refers to the preparedness to open a project and its processes to scrutiny, debate and possible criticism. This also involves providing reasons for all decisions taken and the provision of appropriate information to relevant stakeholders. Relevant summary information regarding proposals under consideration at Stage 2 will be made publicly available. Further information may be published as appropriate.

Managing conflicts of interest

In support of the public interest, transparency and accountability, the Government requires the identification, management and monitoring of conflicts of interest. Participants will be required to disclose any current or past relationships or connections that may unfairly influence or be seen to unfairly influence the integrity of the assessment process.

Maintaining confidentiality

In the assessment of Unsolicited Proposals there is need for high levels of accountability and transparency. However, there is also a need for some information to be kept confidential, at least for a specified period of time. This is important to provide participants with confidence in the integrity of the process.

All proposals submitted will be kept confidential at Stage 1 of the assessment process.

Obtaining value for money

Obtaining optimal value for money is a fundamental principle of public sector work. This is achieved by fostering an environment in which Proponents can make attractive, innovative proposals with the confidence that they will be assessed on their merits and where Government appropriately considers value. At Stage 2 of the assessment process, the approach to assessing Value for Money will be confirmed. Where a probity advisor has been appointed, their role is to monitor the evaluation process and ensure that Value for Money has been optimally considered. It is not the role of the probity advisor to determine whether the proposal meets the required Value for Money criterion.

2.6 Resource Commitments

In order for an Unsolicited Proposal to progress, the Government and the Proponent will be required to commit resources. The staged approach to assessment as detailed in section 4 of this Guide seeks to balance resource input at each stage in order to reduce the potential for unnecessary expenditure.

While this Guide sets out information and processes to minimise costs for Proponents, Government will not normally reimburse costs associated with Unsolicited Proposals.

2.7 Governance Arrangements

Governance arrangements will include whole of Government management and co-ordination through DEIT, a single, overarching Unsolicited Proposals Steering Committee, Proposal Specific Steering Committees where required, proposal specific assessment committees, and a staged approach to assessment, negotiation and contracting.

Once a proposal reaches Stage 2 of the assessment process, the Government will establish appropriate governance arrangements that will detail the make-up and responsibilities of the Steering Committee and assessment/technical panels, management of confidentiality and conflict of interest, and provide details of the appointed Proposal Manager and probity advisor. In most circumstances, the Stage 2 Proposal Manager will be the NSW Government agency with existing responsibility for the subject matter of the proposal. For example, an Unsolicited Proposal about transport infrastructure will be managed by Transport for NSW.

Unsolicited Proposals will take into account relevant processes and approval requirements in related procurement policy documents (e.g. [NSW Public Private Partnership Guidelines 2017](#) (NSW PPP Guidelines)).

In addition, proposals will be assessed under Infrastructure NSW's [Infrastructure Investor Assurance Framework](#), where appropriate.

The Stage 2 Participation Agreement will outline whether the proposal will be subject to an approval process outlined in another procurement policy document and/or a project assurance mechanism.

2.8 Participation Agreement

A Participation Agreement provides an agreed framework for Stage 2 and Stage 3 which will be entered into by both the Proponent and the relevant NSW Government department or agency tasked with leading the proposal. The purpose of the Participation Agreement is to ensure the alignment of expectations regarding participation in the process.

The Participation Agreement will contain:

- acknowledgement that a Value for Money outcome is a requirement for the proposal to proceed;
- assessment Criteria and other relevant Government requirements;
- communication channels, including a prohibition on lobbying;
- agreement regarding cost arrangements;
- resource commitments;
- conflict of interest management arrangements;
- confidentiality requirements;
- commitment to following an open book approach to discussions;
- timeframe; and
- approval requirements, including planning and environmental approvals.

Stage 3 Agreement

A Stage 3 Agreement provides an agreed framework for participation in Stage 3 which will be entered into by the Proponent and the relevant NSW Government department or agency tasked with leading the proposal in order to ensure alignment of expectations. The Stage 3 Agreement will contain (but not be limited to):

- communication channels, including a prohibition on lobbying;
- agreement regarding cost arrangements;
- resource commitments;
- conflict of interest management arrangements;
- confidentiality requirements;
- timeframe;
- approval requirements, including planning and environmental matters where relevant. Except where otherwise approved, the Government will require projects to have secured relevant planning consents as part of the unsolicited proposal agreement;
- outline of any conditions arising from Cabinet's consideration of the Detailed Proposal; and
- schedule of items and issues to be negotiated (this may be provided separately to the Stage 3 Agreement).

2.9 Monitoring

DEIT will establish a structured periodic review to assess the effectiveness of the approach to dealing with Unsolicited Proposals and Direct Approaches.

3 ROLES AND RESPONSIBILITIES

3.1 Proponent

The Proponent is required to:

- prepare an outline Submission and meet with DEIT to discuss its unique characteristics and other key principles, prior to lodgement of a formal submission – this involves the Proponent completing an initial Schedule of Information Requirements;
- prepare and lodge with DEIT an Initial Submission for Preliminary or Stage 1 Assessment - this involves the Proponent completing the Schedule of Information Requirements and attaching any other relevant information;
- enter into a Participation Agreement if recommended to proceed to Stage 2 with the relevant NSW Government department or agency tasked with leading the proposal;
- provide a Detailed Proposal at the conclusion of Stage 2; and
- provide a Binding Offer at the conclusion of Stage 3.

3.2 Government (Cabinet)

Proposals will be submitted to Government (Cabinet) for approval prior to any progression of a proposal to Stage 2 or 3, prior to the signing of any agreement, and prior to provision of any Government funding.

The required approval process will be described to the proponent.

Additional Government (Cabinet) approvals may be required for any changes to previously approved commercial terms or Government funding.

3.3 Department of Enterprise, Investment and Trade

DEIT will take the lead role in the receipt and coordination of the consideration of Unsolicited Proposals. This will include appointing Proposal Managers within DEIT, and then, subject to Stage 2 progression, from the relevant NSW Government agency as appropriate. It will also include, chairing the Unsolicited Proposals Steering Committee. Involvement of relevant agencies in these matters will be managed by DEIT.

3.4 Steering Committees

Unsolicited Proposals Steering Committee

An overarching Unsolicited Proposals Steering Committee has been established comprising senior representatives of the following agencies:

- DEIT (Chair);
- Department of Premier and Cabinet (DPC);

- NSW Treasury;
- Infrastructure NSW; and
- Transport for NSW.

Representatives of other agencies may be required to provide resources and input to assist in Steering Committee decision-making. Membership of the Steering Committee may change from time to time.

Proposal Specific Steering Committees

For certain proposals the Unsolicited Proposals Steering Committee or Government (Cabinet) may direct a Proposal Specific Steering Committee be established to oversee assessment of that proposal. This would normally be the case for proposals proceeding to Stage 2 of the assessment process. This Proposal Specific Steering Committee would have the relevant responsibilities as outlined below and will update the Unsolicited Proposals Steering Committee on progress only. Membership of the Proposal Specific Steering Committee typically includes the lead NSW Government agency (Chair), and a range of other agencies such as DEIT, DPC, NSW Treasury and other relevant agencies.

Responsibilities

Unsolicited Proposals Steering Committee
Consider recommendations made by the Proposal Manager or Assessment Panel at Stage 1 and agree on proposed course of action
Confirm the unique elements of the proposal and agree on the approach to managing IP
Approve the makeup of the Assessment Panel for Stage 1B
Agree on feedback to be provided to Proponents at Stage 1
Provide policy and inter-agency input to deliberations
Monitor progress of assessments
Make recommendations to Government (Cabinet) for the proposal to progress from Stage 1 to Stage 2
Determine that proposal does not meet the criteria for progression and inform the proponent and Government (Cabinet)
Proposal Specific Steering Committee
Approve the Governance Plan to be applied to Stages 2 and 3
Approve the makeup of the Assessment Panel (and commercial/technical teams) at Stages 2 and 3
Confirm the approach to assessing Value for Money
Ensure relevant policy and project assurance processes are adhered to, where appropriate

Seek advice from NSW Treasury and Infrastructure NSW about whether an Unsolicited Proposal should be subject to the NSW PPP Guidelines or Infrastructure Investor Assurance Framework
Provide policy and inter-agency input to deliberations
Consider recommendations from the Assessment Panel at Stages 2 and 3
Endorse negotiation conditions prior to Stage 3
Make recommendations to Government (Cabinet) to progress or not progress from: <ul style="list-style-type: none"> • Stage 2 to Stage 3; and • Stage 3 to entering final transaction documents.
Agree feedback to be provided to Proponents

3.5 Proposal Manager

DEIT will take the lead role in the receipt and coordination of the consideration of Unsolicited Proposals. This will include appointing Proposal Managers. In the first instance, a Proposal Manager will be appointed by and within DEIT in order to receive and progress consideration of Unsolicited Proposals. The Proposal Manager has the following responsibilities, unless otherwise documented in the Governance Plan:

- receive Unsolicited Proposals;
- undertake an initial compliance check;
- facilitate the Assessment Panel and/or Steering Committee/Proposal Specific Steering Committee (as appropriate);
- act as contact point for Proponents;
- facilitate interactions between the Proponent and Government;
- facilitate the preparation of information provided to the Proponent;
- coordinate assessment, including input from advisers;
- coordinate preparation of Assessment Reports; and
- provide assistance to Government agencies with a responsibility for assessing Unsolicited Proposals.

Once a proposal proceeds to Stage 2, a separate Proposal Manager will be appointed specifically for that proposal. A proposal may be referred to the most appropriate Government agency at Stage 2 to lead the assessment, resulting in a new Proposal Manager from that agency being appointed to act as a central contact point for the Proponent. When a proposal is referred to a particular agency, that agency will commit appropriate resources to fully participate in the proposal development and assessment processes.

3.6 Assessment Panel

An Assessment Panel comprising appropriately qualified representatives will be established to undertake the assessment. The involvement of the Assessment Panel during Stages 1 and 2 will vary depending on the nature of the proposal. The makeup will be approved by the Steering Committee or Proposal Specific Steering Committee (as appropriate) and maybe represented by a range of agencies including the lead NSW Government agency, DEIT, DPC, NSW Treasury and other relevant agencies.

The Assessment Panel will:

- report to the Steering Committee or Proposal Specific Steering Committee (as appropriate);
- participate in meetings with the Proponent, where appropriate;
- assess the Initial Submission and Detailed Proposal against the Assessment Criteria;
- prepare recommendations to be made to the Steering Committee or Proposal Specific Steering Committee (as appropriate);
- prepare Assessment Reports as required by the Steering Committee or Proposal Specific Steering Committee (as appropriate);
- consider issues raised by the Steering Committee or Proposal Specific Steering Committee (as appropriate); and
- prepare a proposed schedule of items for negotiation during Stage 3 (to be approved by the Steering Committee/Project Specific Steering Committee (as appropriate) and/or Government (Cabinet), if required).

3.7 Agencies

Unsolicited Proposals received by agencies will not be accepted and should be forwarded to DEIT as set out in the Guide. Where a proposal affects a particular agency, that agency will commit appropriate resources to fully participate in the assessment and proposal development processes. At Stage 2 of the assessment process, proposals may be referred to the relevant agency to lead the assessment and interactive proposal development with the proponent.

3.8 Advisers

Advisers may provide expert advice to the Assessment Panel and Steering Committee or Proposal Specific Steering Committee (as appropriate). The following key advisers may be appointed to provide specialist expertise to assist in project scoping and assessment:

- legal;
- financial;
- technical; and
- environmental.

Other advisers may be appointed where specialist input is required.

A specialist Project Director may be appointed from Stage 2, particularly for large and/or complex projects.

Advisers are to follow all project governance and probity requirements.

3.9 Probity Adviser

At Stage 1, a probity adviser will be appointed for projects where the Steering Committee considers that the probity risk is sufficient to warrant appointment or for large-scale projects. Probity advisers will be appointed at Stages 2 and 3 of the assessment process.

The role of the probity adviser is to monitor and report on the application of the probity fundamentals during the assessment process. The probity adviser will:

- assist in the development of a Governance Plan (where applicable);
- provide a probity report at the end of each stage to be considered by the Steering Committee or Proposal Specific Steering Committee (as appropriate) before the decision to proceed to the next stage (or otherwise). The probity adviser may provide interim reports at key milestones of the assessment or at the behest of the Steering Committee or Proposal Specific Steering Committee (as appropriate); and
- report to the chair of the Steering Committee or Proposal Specific Steering Committee (as appropriate) and will be available to Proponents to discuss probity related matters. If the probity advisor has identified probity concerns for the proposal, this may be escalated to the Secretary of DEIT or to the 'escalation contact point', where one has been provided. An escalation contact point is provided by the Government and the Proponent at Stages 2 and 3.

In the absence of a probity adviser, this role will be undertaken by the Proposal Manager.

Proponents are able to request the appointment of a probity adviser.

4 THE PROCESS

4.1 Introduction

This section outlines a four-stage assessment process for the consideration of Unsolicited Proposals. It is recognised that the nominated stages may be refined in order to most effectively manage the assessment of any particular proposal. For example, each stage may include a number of milestones to be achieved in order to prevent unnecessary expenditure and to provide confidence for the Proponent to continue. Any milestones or changes to the stages will be discussed and agreed with the Proponent.

4.2 Pre-submission concept review stage

Objective

For the Proponent to meet with DEIT (which may at its discretion include relevant agencies, and/or advisers), in order to formally explore whether the proposal is likely to meet the Stage 1 assessment criteria and to guide Proponents in their decision regarding whether to lodge their proposal. A key part of this meeting will be the demonstration of the unique attributes of both the proposal and the Proponent in order to progress through the process. The key attributes, benefits, requirements and assumptions underlying the potential proposal may also be discussed. The Government may provide feedback at this stage as to whether it considers that the proposal, as presented, is consistent with the Guide. Notwithstanding this feedback, it is the Proponent's decision as to whether it proceeds with making a formal Stage 1 submission.

This is not a compulsory stage, but Proponents planning to formally submit an unsolicited proposal are strongly advised to arrange such a meeting with DEIT, prior to committing substantial resources for the development of the proposal.

Timing

It is recognised that there may be numerous discussions at many levels between the proponent and Government stakeholders in order to ascertain Government needs and to better understand the business environment. These are informal discussions and are outside the realm of this Guide.

This initial meeting represents the first formal step in assessing the merits of each Unsolicited Proposal and may be before or after lodgement of the full proposal. The Government's strong preference is that this occurs before formal lodging of any proposal and commencement of Stage 1.

Proponent responsibilities

In order for this meeting to be helpful, the proposal needs to be developed to a stage where the key inputs and outcomes have been identified, key assumptions and requirements of Government are clear, and other key elements have been identified. In particular, the unique ability of the proponent to deliver the proposal should be demonstrated and documented. The initial Schedule of Information Requirements at Section 7 should be completed, as well as the Pre-Lodgement Meeting Checklist at Section 8. Irrespective of the outcomes of this meeting, proponents may lodge their proposal formally.

Government responsibilities

Where the Government is of the view that there is little prospect of the uniqueness criteria being met, it will communicate this to the proponent. In such circumstances, the Government reserves the right not to advance assessment of the proposals to Stage 1 assessment as set out below.

4.3 Stage 1

A) Initial submission and preliminary assessment

Objective

For DEIT to undertake a Preliminary Assessment of the proposal in conjunction with the relevant agencies to determine if the submission constitutes an unsolicited proposal and if sufficient justification exists to justify direct dealing and therefore undertake a Stage 1 assessment. Government reserves the right to further consider, or not consider, Unsolicited Proposals beyond this stage at its absolute discretion. The Unsolicited Proposals Steering Committee approves progression to Stage 1B).

Proponent responsibilities

During Stage 1A, the Proponent is responsible for:

- preparing an Initial Submission in accordance with the Schedule of Information Requirements listed on the Government Website;
- identification of unique elements of the proposal;
- forwarding the Initial Submission to the Secretary, DEIT; and
- responding to requests for further information - the information to be provided will depend on the size and complexity of the proposed project.

Government responsibilities

During Stage 1A, Government is responsible for:

- promptly acknowledging receipt of the Initial Submission;
- undertaking an initial compliance check to ensure the required information has been provided;
- requesting further information from the Proponent if required - this may involve clarification meetings with the Proponent in order to promote clarity of Government requirements;
- undertaking a Preliminary Assessment that will be based on the potential for the proposal to satisfactorily meet the Assessment Criteria;
- preparing a Preliminary Assessment Report for review and approval by the Steering Committee;
- Steering Committee approval to progress to Stage 1B, if warranted; and
- notification of the Preliminary Assessment outcome to the Proponent.

Outcomes

The following outcomes may result from this stage:

- the Submission is considered suitable for progression to Stage 1B; or

- the Submission is not considered suitable for further consideration. In this case, the Steering Committee will recommend a course of action, for example:
 - inform Proponent that the submission will not be considered further;
 - refer Proponent to another procurement process;
 - refer submission to the relevant agency for consideration under an alternative framework or scheme;
 - refer proponents seeking financial support to the relevant application scheme; or
 - refer to relevant agency to investigate the opportunity and/or undertake a procurement process.

Case Study: Unsolicited Proposal that led to a procurement process

The Australian Wildlife Conservancy submitted an Unsolicited Proposal for the re-introduction of mammals considered extinct in NSW. The proposal did not adequately satisfy the assessment criteria to justify direct dealing. However, the proposal had merit and so the Government instigated a market procurement process to find suitable organisations to manage the reintroduction project. As a result of the procurement process, two conservation groups were contracted to manage the project: the Australian Wildlife Conservancy and the University of NSW-led Wildlife Restoration and Management Partnership. For further information, refer to:

<http://www.environment.nsw.gov.au/resources/MinMedia/MinMedia14041301.pdf>

<http://www.environment.nsw.gov.au/resources/MinMedia/MinMedia15060501.pdf>

Feedback

Proponents will be provided with written feedback on whether their Submission has progressed to Stage 1B or reasons for a decision not to proceed with a proposal. In the event that the proposal is referred to an alternative process, as described above, details will be provided.

B) Strategic assessment of initial submission

Objective

For Government to undertake a comprehensive initial assessment of the proposal to identify the potential benefit to Government of further consideration and development with the Proponent.

Proponent responsibilities

During Stage 1B, the Proponent is responsible for responding to requests for further information. The information to be provided will depend on the size and complexity of the proposed project.

Government responsibilities

During Stage 1B, Government is responsible for:

- establishment of the Assessment Panel;

- requesting further information from the Proponent if required - this may involve clarification meetings with the Proponent in order to promote clarity of Government requirements;
- undertaking a formal assessment - the assessment will be based on the potential for a subsequent Detailed Proposal to satisfactorily meet each of the Assessment Criteria if progressed to Stage 2;
- determining whether other procurement policy documents (e.g. NSW PPP Guidelines) and/or a project assurance mechanism (e.g. Infrastructure Investor Assurance Framework) should be applied for proposals recommended to proceed to Stage 2;
- preparing an Assessment Report for review and approval by the Steering Committee;
- preparing a draft Participation Agreement for all proposals deemed appropriate to progress to Stage 2;
- notification of the initial assessment outcome to the Proponent; and
- Government (Cabinet) approval to progress to Stage 2, if warranted.

Outcomes

The following outcomes may result from this stage:

- the proposal is considered suitable for progression to Stage 2: the proposal, in concept form, is deemed of sufficient interest to Government to warrant further development and progression to a more defined project either with the original Proponent or with a view to bringing a project to market.
- the proposal is not sufficiently unique to justify direct negotiations with the Proponent: in this case, the Steering Committee will agree a recommended course of action such as those outlined above in Stage 1A.
- the proposal is considered suitable for referral to the relevant agency for further consideration if the project appears to have merit, requires a relatively low resource commitment by Government, is low risk, affects a single agency only and does not conflict with a whole of Government initiative.
- the Submission is not considered suitable for further consideration.

Feedback

Proponents with proposals considered suitable to proceed to Stage 2 or referral to an agency for further consideration will be provided with the following information:

- a summary of the assessment findings;
- the proposed process for the further development and consideration of a Detailed Proposal, including governance arrangements;
- guidance regarding: value, scope, appropriate target return on investment parameters, timing, risk and other limitations affecting the Detailed Proposal in order to avoid unnecessary costs for the Proponent;
- a Draft Participation Agreement; and

- written feedback providing reasons for a decision not to proceed with a proposal will be provided.

Disclosure

Information on all Unsolicited Proposals that progress to Stage 2 will be published on the Government Website. This may include details of the proponent and proposal, the governance structure for Stage 2, the probity advisor appointed and reasons why the proposal has progressed to Stage 2. Further information may be published as appropriate. The Government will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

Generally, the Government seeks to disclose all proposals in this stage. In some cases, Proponents may request that proposals are not listed, if this would pose significant risks to commercial negotiations or IP. The Government considers each request and may agree not to disclose a proposal. The ability to undertake an assessment in confidence is considered essential to creating a receptive environment to elicit innovative private sector proposals.

4.4 Stage 2 – Detailed proposal

Objective

For the Proponent and Government to work cooperatively in the development and assessment of a Detailed Proposal, which may require a degree of preliminary negotiation on key issues, subject to the nature of the proposal.

Proponent responsibilities

During Stage 2, the Proponent will:

- enter into a Participation Agreement;
- attend the Establishment Meeting;
- participate in Proposal Development Workshops; and
- prepare and submit a Detailed Proposal in a form previously agreed with Government that addresses each of the Government's Assessment Criteria – this may include (where appropriate):
 - draft commercial terms for Government's consideration; and
 - a (Preliminary) Business Case and/or economic appraisal.

Government responsibilities

During Stage 2, the Government will:

- establish a Proposal Specific Steering Committee, Assessment Panel and associated governance framework;
- prepare an internal Governance Plan (may be updated as appropriate throughout the process);
- appoint a Proposal Manager;
- enter into a Participation Agreement;
- facilitate an Establishment Meeting in order to:

- provide feedback to the Proponent regarding risks and concerns with the Initial Submission;
 - provide guidance to the Proponent regarding Government requirements;
 - agree the approach to managing Proposal Development Workshops;
 - advise of the relevant Assessment Criteria;
 - agree the format for the Detailed Proposal, including the information and level of detail required; and
 - commence discussions concerning the acceptable commercial and legal terms (with a view to developing draft commercial and legal terms that will form the basis of a final binding offer);
- commit appropriately experienced and qualified resources to participate in the Stage 2 process, including legal, financial and technical advice where appropriate;
 - confirm the approach to assessing Value for Money (which may include investigating benchmarking and preparing a Public Sector Comparator where appropriate);
 - where appropriate, undertake (or require the Proponent to undertake) a (Preliminary) Business Case and/or an economic appraisal, consistent with NSW Treasury Guidelines;
 - ensure relevant policy (e.g. NSW PPP Guidelines) and project assurance processes (e.g. Infrastructure Investor Assurance Framework) are considered and applied, where appropriate;
 - participate in Proposal Development Workshops;
 - where appropriate, the Government may establish commercial/technical teams to guide and liaise with the proponent – these teams will provide information to the Assessment Panel which will in turn report to the Proposal Specific Steering Committee;
 - provide further information to the Proponent to assist with proposal development;
 - receive the Detailed Proposal;
 - undertake assessment of the Detailed Proposal (by the Assessment Panel) against each of the Assessment Criteria;
 - request further information from the Proponent as required;
 - prepare an Assessment Report (by the Assessment Panel) and make recommendations to the Proposal Specific Steering Committee;
 - make recommendations to Government (Cabinet); and
 - Government (Cabinet) approval to progress to Stage 3, if warranted.

Outcomes

The following outcomes may result from this stage:

- the Detailed Proposal is considered acceptable to progress to Stage 3. Ideally, commercial terms should be agreed by the Government (Cabinet) and the Proponent, and will form the basis of a Final Binding Offer; and

- the Detailed Proposal not considered suitable for further consideration.

Feedback

- proponents progressing to Stage 3 will be provided with a draft Stage 3 Agreement and a schedule of items and issues to be negotiated (this may be provided separately to the Stage 3 Agreement); and
- written feedback providing reasons for a decision by Government to not proceed will be provided.

Disclosure

At the end of Stage 2, the Government Website will be updated with the assessment outcome.

Other Information will also be published, such as reasons why the proposal has or has not progressed to Stage 3, the governance structure for Stage 3 and the probity advisor appointed.

Further information may be published as appropriate. The Government will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

4.5 Stage 3 – Negotiation of final binding offer

Objective

To finalise all outstanding issues with a view to entering into a binding agreement.

Proponent responsibilities

During Stage 3, the Proponent will:

- enter into a 'Stage 3 Agreement';
- participate in the negotiation process; and
- submit a Binding Offer, including appropriate legal and commercial terms.

Government responsibilities

During Stage 3, Government will:

- enter into a 'Stage 3 Agreement';
- inform the Proponent of the process and protocols for negotiation;
- provide the Proponent with a schedule of items for negotiation;
- prepare an internal Governance Plan (may be updated as appropriate throughout the process);
- commit appropriately qualified resources to complete negotiations, including legal, financial and technical advice where appropriate;
- undertake a comprehensive assessment of the Final Binding Offer;
- define the appropriate Contract Management arrangements to monitor and ensure contracted outcomes are delivered;
- make recommendations to Government (Cabinet); and

- Government (Cabinet) approval to accept Final Binding Offer, if warranted.

Outcomes

The following outcomes may result from this stage:

- recommendation to Government that the Final Binding Offer be accepted; or
- recommendation to Government that the Final Binding Offer not be accepted.

Feedback

The following feedback will be provided to the Proponent:

- notification of recommendations and ongoing procedures;
- written feedback providing reasons for a decision to not proceed, if warranted.

Disclosure

At the end of Stage 3, the Government Website will be updated with the assessment outcome. Other Information will also be published, such as reasons why the proposal has been accepted or not accepted. Further information may be published as appropriate.

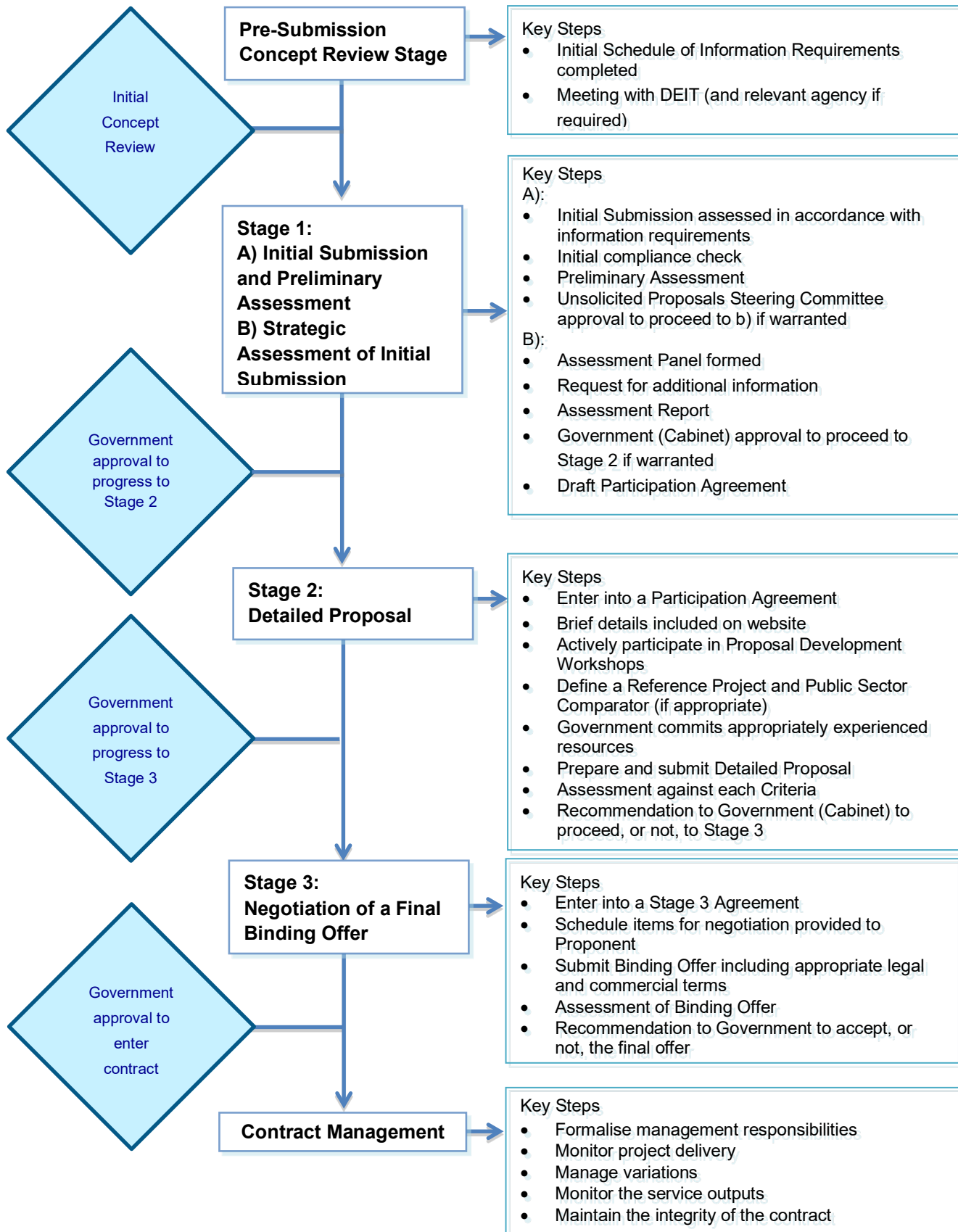
Subject to the nature of the proposal, where a Final Binding Offer has been accepted, the relevant agency will comply with the Government's standard public disclosure requirements, such as those described in the *Government Information (Public Access) Act 2009* (NSW).

If the proposal involves a PPP, the relevant agency will comply with the public disclosure requirements of the NSW PPP Guidelines, which state that a Project Summary should be publicly released 90 days after the contract becomes effective. Project summaries are placed on the NSW Treasury PPP website.

The Government will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

5 PROCESS FLOWCHART

Key Stages in the Consideration of Unsolicited Proposals



6 GLOSSARY OF TERMS

Term	Meaning
Assessment Criteria	The criteria upon which Unsolicited Proposals will be assessed
Assessment Panel	A panel of Government representatives established to assess an Unsolicited Proposal (this may include specialist advisers)
Cabinet	<p>The forum of NSW Government Ministers who deliberate upon and decide major policy for the Government.</p> <p>For the purposes of this guide, this includes the relevant sub-committees of the Cabinet.</p>
Detailed Proposal	A submission by a Proponent to Government at the conclusion of Stage 2
DEIT	The NSW Department of Enterprise, Investment and Trade
Establishment Meeting	The first meeting between Government and the Proponent held at the commencement of Stage 2
Final Binding Offer	A formal proposal submitted by the Proponent at the conclusion of Stage 3 which is capable of acceptance by Government
Government	The NSW State Government - this includes agencies and Cabinet. Where possible, specific reference to Cabinet is made throughout the Guide
Government Website	https://www.nsw.gov.au/unsolicited-proposals
Initial Submission	A submission by the Proponent during Stage 1 which briefly describes the Unsolicited Proposal (in accordance with the Schedule of Information Requirements)
Initial Schedule of Information Requirements	Information to be prepared by Proponent in preparation for pre-lodgement meeting with DEIT
Intellectual Property	Inventions, original designs and practical applications of good ideas protected by statute law 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 Confidentiality Agreements
NSW Treasury PPP Website	https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships
Participation Agreement	An agreement signed by Government and the Proponent at the commencement of Stage 2
Proponent	The person or organisation that submits an Unsolicited Proposal
Proposal Development Workshop	Interactive meetings held between Government and Proponent representatives with the aim of progressing proposal development
Proposal Manager	The person with responsibility for coordinating Government input for the receipt and assessment of an Unsolicited Proposal
Public Sector Comparator (PSC)	An estimate of the net present value of a project's whole of life costs and revenues using the most efficient and likely form of Government delivery
Reference Project	The basis for calculating the PSC, reflecting Government delivery of the project by traditional means
Shadow Bid Model	The Government's best estimate of a private party bid price
Stage 3 Agreement	An agreement signed by the Government and the Proponent at the commencement of Stage 3.
Steering Committee	A committee of senior Government representatives with responsibility for oversight of Government consideration of Unsolicited Proposals (this may include independent chair/members)
Unsolicited Proposal	An approach to Government from a Proponent with a proposal to deal directly with the Government over a commercial proposition, where the Government has not requested the proposal. This may include proposals to build and/or finance infrastructure, provide goods or services, or undertake a major commercial transaction.
Value for Money	The overall value of a proposal to Government (refer to section 2.3. for further details)

7 SCHEDULE OF INFORMATION REQUIREMENTS

This form is to be completed by organisations in presenting an Unsolicited Proposal to Government (note: must be a registered organisation). Please ensure all sections of this form are adequately addressed. Information may be presented in the form of cross-referenced addenda if preferred.

An initial version of this schedule should be prepared prior to the formal “Pre-Lodgement” meeting with DEIT.

Organisation Name:		Address:	
Identity:	[Individual, sole trader, company, etc.]	Type of organisation:	[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)			
Short Title Abstract			
Proposal details			
i. Objectives of the proposal ii. Method of approach iii. Nature and extent of anticipated outcomes iv. Benefits the proposal will bring to the State			

Assessment Criteria

Please provide a brief description of how the proposal would meet each of the assessment criteria. Refer to section 2.3 of the Guide for detailed description of each criteria and items to be addressed.

1. Uniqueness i.e. what are the unique elements of the proposal that would provide justification for Government entering into direct negotiations with the Proponent? 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 outcome
 - Other demonstrably unique elements.
2. Value for money
3. Whole of Government impact
4. Return on investment
5. Capability and capacity
6. Affordability
7. 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.

Costs and Requirements of Government

Please provide details of costs to Government.

Clearly explain the requirements of Government emerging from the proposal (what are you seeking from Government?). This may include legislative/regulatory amendments, finance or the use of Government assets, facilities, equipment, materials, personnel, resources and land. What would be the cost of Government providing this? (e.g. what would be the value of the Government land?)

Risks

Please provide a list of proponent and Government risks.

Organisation			
<p>Please provide a brief description of:</p> <ul style="list-style-type: none"> i. Your organisation ii. Previous experience in delivery of similar project iii. Past performance operating similar project iv. Facilities to be used (e.g. land owned by proponent or Government land) 			
Intellectual property			
<p>If applicable please provide a description of the following:</p> <ul style="list-style-type: none"> i. Inventory of each item of intellectual property ii. Nature of the intellectual property claimed (e.g. copyright, patent, etc.) iii. The owner(s) of the intellectual property claimed iv. Registration details (where applicable) v. Details of any items for which confidentiality is wholly or partly claimed. 			
Other statements			
<p>For example, please detail any applicable organisational conflict of interest and environmental impacts.</p>			
Preferred contractual arrangements			
Agency points of contact			
<p>If applicable, please provide <u>names and contact information</u> of any other agency and Government points of contact already contacted regarding this proposal.</p>			
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 proponent authorised to represent and contractually bind the proponent.

Name: _____

Position: _____

Signature: _____

Date: _____

8 Pre-Lodgement Meeting Checklist

The following checklist should be completed prior to the formal “Pre-Lodgement” meeting with DEIT.

		YES	NO
1	Have you completed the initial Schedule of Information Requirements?	<input type="checkbox"/>	<input type="checkbox"/>
2	Are you the only party that could deliver your proposal?	<input type="checkbox"/>	<input type="checkbox"/>
3	Have you documented why the product/service you are proposing (or similar) cannot be delivered by a competitor?	<input type="checkbox"/>	<input type="checkbox"/>
4	Do you own any intellectual or real property required for your proposal?	<input type="checkbox"/>	<input type="checkbox"/>
5	Have you documented your ownership of any intellectual or real property required for your proposal?	<input type="checkbox"/>	<input type="checkbox"/>
6	Does your proposal contain unique elements that could not be replicated by others, other than related intellectual or real property?	<input type="checkbox"/>	<input type="checkbox"/>
7	Does your proposal contain unique elements that would require the Government to contract with your company if the Government went to tender?	<input type="checkbox"/>	<input type="checkbox"/>
8	Have you documented the unique elements (other than related intellectual or real property) of your proposal that could not be replicated by others, and which provide tangible benefits to the NSW Government?	<input type="checkbox"/>	<input type="checkbox"/>

9	<p>If you answered “NO” to any questions, have you documented in the (initial) Schedule of Information Requirements the basis you believe the Government should consider your proposal, given that it is likely it does not meet basic “uniqueness” criteria as set out in the Guide.</p> <p>Note – in some cases the Government may recognise merit in your proposal, but want to ask the market to confirm value for money. Please discuss this with DEIT in the pre-lodgement meeting.</p>	<input type="checkbox"/>	<input type="checkbox"/>
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