



CORPORATE PROCEDURE

Procedure title:	Unsolicited Proposals
Procedure number:	1.1.58
Objective:	Corporate Governance
Program Area:	Governance
Procedure approved:	13/8/2019
Next review date:	13/8/2024
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1. Introduction

This section outlines a three stage assessment procedure 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.

The three stage assessment procedure has been developed to guide the evaluation of proposals:

- Pre-Submission Concept Review
- Stage 1: Initial Submission and Preliminary Assessment
- Stage 2: Detailed Proposal & Negotiation

2. Pre-submission concept review stage

Objective

For the Proponent to meet with the Proposal Manager (and any other identified officers, 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. Council may provide feedback at this stage as to whether it considers that the proposal, as presented, is consistent with the Policy.

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 Proposal Manager, prior to committing substantial resources for the development of the proposal.

Timing

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. Council's 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 Council 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 (Annexe 1) should be completed, as well as the Pre-Lodgement Meeting Checklist (Annexe 2). Irrespective of the outcomes of this meeting, proponents may lodge their proposal formally.

Council responsibilities

Where Council 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, Council reserves the right not to advance assessment of the proposals to Stage 1 assessment as set out below.

3. Stage 1

Objective

For Council, in the form of the Proposal Manager and convened staff, to undertake a Preliminary Assessment of the proposal to determine if the submission constitutes an unsolicited proposal and if sufficient justification exists to justify direct dealing and undertake a Stage 1 assessment. Council reserves the right to further consider, or not consider, Unsolicited Proposals beyond this stage at its absolute discretion. The Senior Leadership Team recommends to Council regarding progression to Stage 2

Proponent responsibilities

During Stage 1, the Proponent is responsible for:

- Preparing an Initial Submission in accordance with the Schedule of Information Requirements listed in this Procedure.
- Identification of unique elements of the proposal
- Forwarding the Initial Submission to the Proposal Manager
- Responding to requests for further information. The information to be provided will depend on the size and complexity of the proposed project.

Council responsibilities

During Stage 1, Council 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 Council requirements.
- Undertaking a Preliminary Assessment that will be based on the potential for the proposal to satisfactorily meet the Assessment Criteria below:

Uniqueness

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:

- Can this proposal be readily delivered by competitors? If the answer is yes, then what, if any, justification would Council have to the public for not seeking best value through a competitive tender process? What benefit(s) would Council 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 Council from contracting with other parties if Council 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, including financial arrangements or a unique ability to deliver a strategic outcome. It is possible that Council might agree to initiate market testing of a new proposal that has merit, but is not unique.
- 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 Council.

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 Council-owned entity or property. Unless the proposal presents a unique opportunity to it, Council is unlikely to enter into such an arrangement without an open tender process.
- Proponents with an existing Council licence or agreement 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 Council or the proponent.
- Proposals that do not contain a commercial proposition for the Council. Proposals that identify the proponent’s skills or workforce capability as the only unique characteristic are unlikely to progress to Stage 2.
- Proposals to provide widely available goods or services to Council.
- Proposals seeking only to change Council 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 particular site.
- Proposals seeking Council support for a 'pilot' program.
- Proposals seeking to stop or suspend another Council process (e.g. compulsory acquisition), or extend an existing contractual arrangement that conflicts with Council's efficient and effective service provision or procurement or asset management responsibilities.

Value for Money

Does the proposal deliver value for money to Council?

What are the net economic benefits of the proposal (the status quo should be defined)?

Is the proposal seeking to purchase a Council asset at less than its value in exchange for other services?

Does the proposal provide time and/or financial benefits/savings that would not otherwise be achieved?

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.

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:

- 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.
- Competitively tendering aspects of the proposal where feasible or likely to yield value for money.
- Cost efficient delivery of Council policy targets.
- Optimal risk allocation (refer to criterion below).

Evaluation of Value for Money may also include, but not be limited to the following quantitative analysis:

- 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 at the sole cost of the proponent.
- Return on Investment (refer to criterion below).

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. "*Value for money*" means the overall value of a proposal to Council and the community, using the above criteria and methodology determined by the Steering Committee.

Whole of Council Impact

Does the proposal meet a project or service need?

What is the overall strategic merit of the proposal?

What is the opportunity cost for Council if it were to proceed with the proposal?

Is the proposal consistent with the Council's plans and priorities?

Does the proposal have the potential to achieve planning approval, taking into account relevant planning and environmental controls?

Consideration will be given to whether the proposal would require Council to reprioritise and re-allocate funding

Return on Investment

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.

Capability and Capacity

Does the proponent have the experience, capability and capacity to carry out the proposal? What reliance is there on third parties?

Where appropriate, the Proponent should provide referees in relation to working with government (e.g. local, State or Commonwealth governments).

Affordability

Does the proposal require Government or Council funding, or for the Council to purchase proposed services? Does Council have these funds available or budgeted and if not what source would be proposed?

Where Council funding is required, Council may undertake or require the Proponent to undertake a (Preliminary) Business Case and/or an economic appraisal at Stage 2 (where appropriate). Regardless of the outcome of the Business Case/economic appraisal, the proposal still needs to be affordable in the context of Council's other priorities, and to be considered as part of its budget process.

Risk Allocation

What risks are to be borne by the proponent and by Council? Does the proposal require Environmental and Planning consents or approvals? If so, has the process been appropriately considered, including whether Council or Proponent bears the risks associated in obtaining the approvals.

- Preparing a Preliminary Assessment Report for review and approval by the Senior Leadership Team.
- Senior Leadership Team approval recommending to Council progression to Stage 2, if warranted.
- 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 2 as recommended by Senior Leadership Team
- The Submission is not considered suitable for further consideration. In this case, the Proposal Manager will recommend a course of action, for example:
 - Inform Proponent that the submission will not be considered further.
 - Refer Proponent to another procurement process (e.g. Pre-Qualification Scheme).
 - Refer submission for consideration under an alternative framework or scheme (e.g. Voluntary Planning Agreement).
 - Refer proponents seeking financial support to the relevant application if any.

Feedback

Proponents will be provided with written feedback on whether their Submission has progressed to Stage 2 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.

Disclosure

Information on all Unsolicited Proposals that progress to Stage 2 will be reported in Council's Annual Report as Unsolicited Proposals. 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. Council will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

Generally, Council 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. Council 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. Stage 2 – Detailed proposal

Objective

For the Proponent and Council 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 MOU
- Participate in Proposal Development Workshops
- Prepare and submit a Detailed Proposal in a form previously agreed with Council that addresses each of the Council's Assessment Criteria. This may include (where appropriate):
 - *Draft commercial terms for Council's consideration*
 - *A (Preliminary) Business Case and/or economic appraisal.*
- Negotiate commercial and legal terms with a view to entering into a binding agreement
- Submit a binding offer, as required.

Council responsibilities

During Stage 2, Council will:

- Establish a Proposal Specific Steering Committee and associated governance framework
- Appoint a probity Advisor
- Prepare an internal Governance Plan (may be updated as appropriate throughout the process)
- Consider the engagement of a specialist Project Manager

- Enter into a MOU
- 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).
- Where appropriate, undertake (or require the Proponent to undertake) a business case.
- Ensure relevant policy (e.g. NSW PPP Guidelines) and project assurance processes are considered and applied, where appropriate.
- Participate in Proposal Development Workshops. Where appropriate, Council may establish commercial/technical teams to guide and liaise with the Proponent. These teams will provide information 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 against each of the Assessment Criteria.
- Request further information from the Proponent as required.
- Negotiate commercial and legal terms, and prepare a binding agreement.
- Prepare an Assessment Report and make recommendations to Senior Leadership Team.
- Progress to Council report for resolution under Section 55 of the LG Act, or other approval, if warranted

Outcomes

The following outcomes may result from this stage:

- The Detailed Proposal is considered acceptable to progress to agreement. Ideally, commercial terms should be agreed by Council and the Proponent, and will form the basis of a Final Binding Offer.
- The Detailed Proposal not considered suitable for further consideration.

Feedback

- Proponents progressing to Stage 3 will be provided with a draft Agreement and a schedule of items and issues to be negotiated.
- Written feedback providing reasons for a decision by Council to not proceed will be provided.

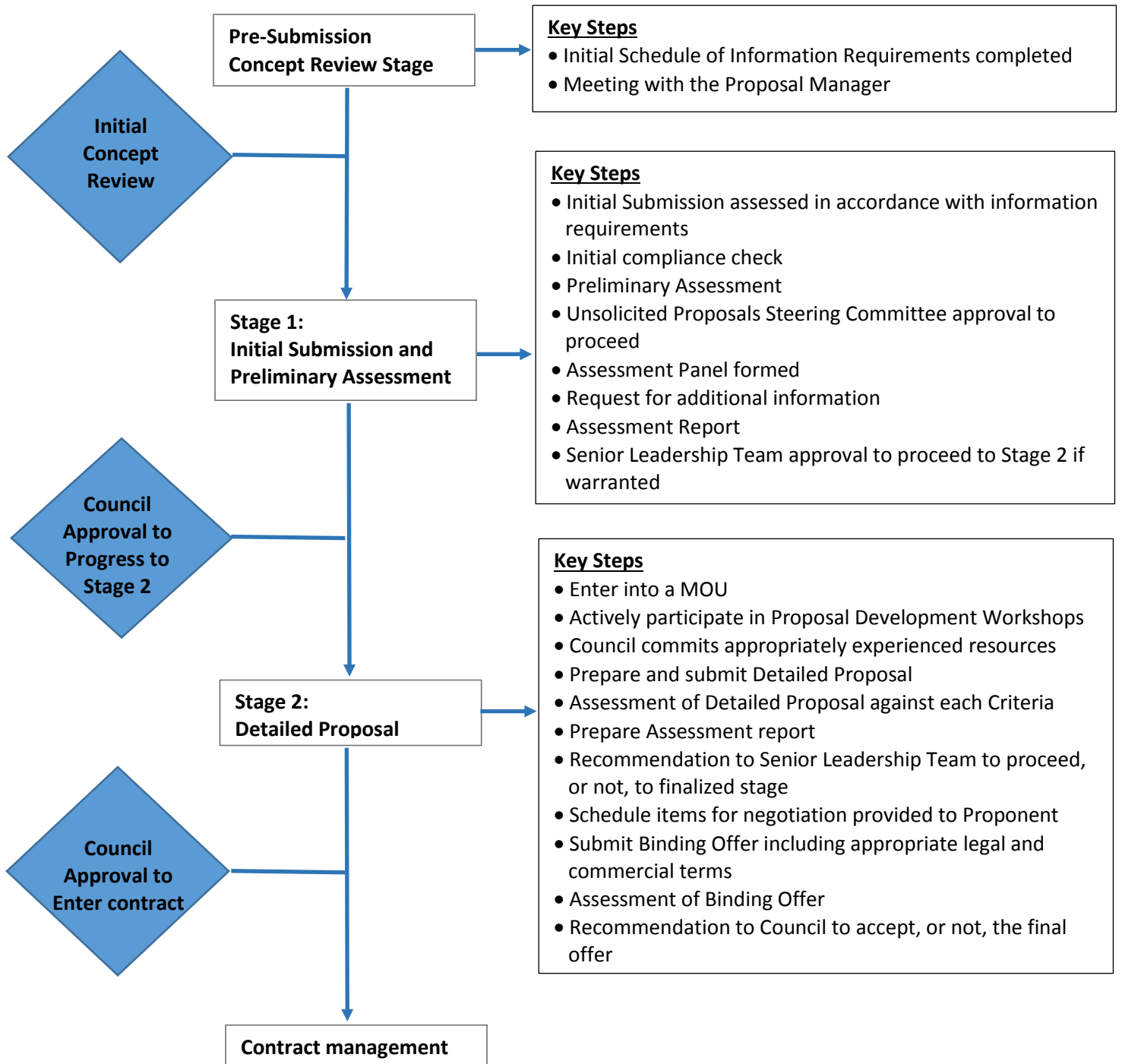
Disclosure

Where a Council resolution is required pursuant to Section 55 of the LG Act, it will be published as part of the Council's publicly available minutes.

Any agreement with the Proponent will be available in accordance with the Government Information (Public Access) Act 2009.

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

Key Stages in the Consideration of Unsolicited Proposals – Process Flowchart



ANNEXURE 1: SCHEDULE OF INFORMATION REQUIREMENTS FOR UNSOLICITED PROPOSALS

This form is to be completed by organisations in presenting an Unsolicited Proposal to Lismore City Council. Please ensure all sections of this form are adequately addressed. Information may be presented in the form of cross referenced addenda if preferred.

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)			
<p>Short Title</p> <p>Abstract</p>			
Proposal details			
<ul style="list-style-type: none"> i. Objectives of the proposal ii. Method of approach iii. Nature and extent of anticipated outcomes iv. Benefits the proposal will bring to the Council 			

ANNEXURE 1: SCHEDULE OF INFORMATION REQUIREMENTS FOR UNSOLICITED PROPOSALS

Assessment Criteria
<p><i>Please provide a brief description of how the proposal would meet each of the assessment criteria.</i></p> <ol style="list-style-type: none"> 1. Uniqueness i.e. what are the unique elements of the proposal that would provide justification for Council entering into direct negotiations with the Proponent? Unique elements may include characteristics such as: <ul style="list-style-type: none"> - 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 Council impact 4. Return on investment 5. Capability and capacity 6. Affordability 7. Risk allocation.
Financial and commercial details
<p><i>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.</i></p>
Costs and Requirements of Council
<p><i>Please provide details of costs to Council.</i></p> <p><i><u>Clearly explain the requirements of Council emerging from the proposal (what are you seeking from Council?). This may include legislative/regulatory amendments, finance or the use of Council assets, facilities, equipment, materials, personnel, resources and land. What would be the cost of Council providing this? (e.g. what would be the value of the Council land?)</u></i></p>
Risks
<p><i>Please provide a list of Proponent and Council risks.</i></p>

ANNEXURE 1: SCHEDULE OF INFORMATION REQUIREMENTS FOR UNSOLICITED PROPOSALS

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 Council 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><i>For example, please detail any applicable organisational conflict of interest and environmental impacts.</i></p>
Preferred contractual arrangements
Agency points of contact
<p><i>If applicable, please provide <u>names and contact information</u> of any other agency and Council points of contact already contacted regarding this proposal.</i></p>



ANNEXURE 1: SCHEDULE OF INFORMATION REQUIREMENTS FOR UNSOLICITED PROPOSALS

Period of time for which the proposal is valid	Minimum six months	Proposed duration of the arrangement	
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This proposal is to be signed by a representative of the Proponent authorised to represent and contractually bind the Proponent.

Name: _____

Position: _____

Signature: _____

Date: _____

ANNEXURE 2: UNSOLICITED PROPOSALS

PRE-LODGMET MEETING CHECKLIST

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

		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 Council to contract with your company if Council 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 Lismore City Council?	<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 Council 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 Council may recognise merit in your proposal, but want to ask the market to confirm value for money. Please discuss this with the Proposal Manager in the pre-lodgement meeting.</p>	<input type="checkbox"/>	<input type="checkbox"/>