



Western
Sydney
International
Airport

WSI Policy

Unsolicited Proposal (USP)

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1. **What is this Policy about?**

Western Sydney International (Nancy-Bird Walton) Airport is one of the largest civil engineering projects underway in Australia. Due to the nature and size of the project there will be considerable public interest and private sector involvement in the project. It is recognised that this interest may generate Unsolicited Proposals (USPs) from the market for involvement in certain aspects of the project.

This Policy sets out guidance for WSA Co Limited (WSA) and proponents in developing and assessing Unsolicited Proposals.

2. **Introduction**

2.1. **To whom does this policy apply?**

The Unsolicited Proposal Policy applies to all WSA employees.

2.2. **Policy Review**

This policy will be reviewed two (2) years unless circumstances necessitate more frequent updates.

2.3. **Policy availability**

This policy is available to be accessed on the **WSA Published Documents SharePoint** Site or **Western Sydney Website**. Currency and accuracy cannot be guaranteed if sourced from other locations.

2.4. **Acronyms and Definitions**

The following words and terms used within this policy are defined as follows.

Word / Term	Definitions
Assessment Criteria	The criteria upon which Unsolicited Proposals will be assessed.
Detailed Proposal	Submission by a Proponent to WSA at the conclusion of Stage 2.
Evaluation Panel	A panel of WSA representatives established to assess an Unsolicited Proposal (this may include specialist advisers).
Final Binding Offer	A formal proposal submitted by the Proponent at the conclusion of Stage 4 which is capable of acceptance by WSA.
Initial Schedule of Information Requirements	Information to be prepared by Proponent in preparation for pre-lodgement meeting with WSA.
Initial Submission	A submission by the Proponent during Stage 1 which briefly describes the Unsolicited Proposal (in accordance with the Schedule of Information Requirements).
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

Word / Term	Definitions
	information protected against unlawful disclosure by common law and through additional contractual obligations such as Confidentiality Agreements.
Participation Agreement	Agreement between WSA and the Proponent at the commencement of Stage 2.
Proponent	The person or organisation that submits an Unsolicited Proposal.
Proposal Manager	The person with responsibility for coordinating WSA input for the receipt and assessment of an Unsolicited Proposal.
Review Panel	Committee of senior WSA representatives with responsibility for oversight of WSA consideration of Unsolicited Proposals (this may include independent chair/members).
Unsolicited Proposal (USP)	An approach to WSA from a Proponent with a proposal to deal directly with WSA over a commercial proposition, where WSA has not requested the proposal.
Value for Money	The overall value of a proposal to WSA.

3. Policy statement

An USP is an approach, in writing, to WSA from a proponent with a proposal to deal directly with WSA over a commercial proposition where WSA has not requested the proposal. This might include proposals to acquire property, build infrastructure, provide goods or services or other commercial transactions.

3.1. Alignment with Procurement Policy and Commercial Transactions Governance Framework

Unsolicited Proposals are the exception to the rule in an environment where open and fair competition is actively endorsed. Unsolicited proposals are not a substitute for competitive procurement, which is Western Sydney Airport’s core position, in accordance with Western Sydney Airport’s Procurement Policy. However, Western Sydney Airport can receive and consider unsolicited proposals and, through this Policy, all proposals will be assessed and documented in a structured, objective, transparent and fair manner.

WSA will generally only consider proposals where:

- both the proposal and its proponent have unique attributes that others could not deliver or arrive at a similar value-for-money outcome; and
- the proposal would be of major significance to the project and/or would represent enhanced value-for-money to WSA and its shareholders.

3.2. Policy Objectives

The objectives of this policy are:

- a. To ensure the following principles are met in WSA’s dealings with all stakeholders:
 - Integrity, Transparency and probity.
 - Best Value for money / best for business and cost effectiveness.

- Meeting the needs of the community.
- Advocating economic, social and environmental sustainability.
- Best Practice.

4. Guiding Principles

4.1. Optimise Outcomes and Strategic Alignment

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

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 and Stage 3 assessment (as applicable). Western Sydney Airport will also consider whole-of-Project impact and cost.

To guide the proponent, WSA 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, as part of the Pre-Submission Concept Review stage.

4.2. Uniqueness

Proposal and Proponent to be uniquely able to deliver proposed service.

For USPs to progress through the assessment process, the uniqueness needs to apply to both the proposal and/or the proponent. The essential questions to be addressed in any USPs are:

- Can this proposal be readily delivered by competitors? If the answer is yes, then what, if any, justification would WSA have to the public for not seeking best value through a competitive tender process? What benefit(s) would WSA gain?
- Does the proponent own something that would limit WSA from contracting with other parties if WSA 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 solutions that are otherwise unlikely to be defined and put to market (e.g. alternatives to providing WSA a 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).

Examples of USPs that are NOT considered unique and/or proposals that are unlikely to be progressed (the below is not an exhaustive list and is provided as examples only)

- Proponents seeking to directly purchase or acquire a WSA owned entity or property. Unless the proposal presents a unique opportunity to WSA, WSA is unlikely to enter into such an arrangement without an open tender process.
- Proponents with an existing government license 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 WSA or the proponent.
- 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 WSA to justify bypassing an open tender.
- Proposals to provide widely available goods or services to WSA. This includes proposals for WSA to purchase standard office administration products, software development and other readily available services.
- Proposals seeking only to change WSA policy that have no associated project.
- Proposals for consultancy services.
- Proposals for projects where the tender 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 WSA support for a 'pilot' program.
- Proposals seeking to stop or suspend another WSA process
- Proposals seeking an exclusive mandate, or exclusive rights over a WSA asset, for a period of time so the Proponent can develop a feasibility study

4.3. Probity

WSA seeks to conduct its commercial dealings with integrity. The assessment of USPs must be fair, open and demonstrate the highest levels of probity consistent with the public interest. The assessment of USPs 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 as below:

i. 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.

ii. 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 may be made publicly available. Further information may be published as appropriate.

iii. Managing Conflicts of interest

In support of the public interest, transparency and accountability, WSA 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 the integrity of the assessment process.

iv. Maintaining Confidentiality

In the assessment of USPs 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.

v. 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 WSA 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 (either internal or external), 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.

5.1. Resource Commitments

In order for an Unsolicited Proposal to progress, WSA and the Proponent will be required to commit resources. The staged approach to assessment as detailed in the WSA Unsolicited Proposals Procedure and Governance Framework seeks to balance resource input at each stage in order to reduce the potential for unnecessary expenditure.

While this Policy sets out information and processes to minimise costs for Proponents, WSA will not normally reimburse costs associated with USPs.

6. Assessment Process

6.1. Stages of the USP Process

WSA will adopt a staged process for the assessment of proposals received in accordance with this Policy. The stages of the processes are defined below. A triple bottom line approach (economic, environmental and social) must be applied to the consideration, assessment and implementation of proposals.

- a. **Pre-Submission Concept Review** - this stage will be a triaging process whereby WSA will undertake an initial review of the proposal concept and provide the Proponent with advice on whether the proposal would be considered by WSA. At this stage in the process, WSA reserves the right to decline to consider a proposal further on the basis that there is insufficient justification to proceed with a direct deal.
- b. **Stage 1 Preliminary Proposal and Assessment** - as part of this stage Proponents will be requested to submit a preliminary proposal in response to the assessment criteria, which WSA will assess to determine whether the proposal will be progressed or declined.
- c. **Stage 2 Detailed Proposal and Assessment**- as part of this process, WSA will enter into a Participation Agreement with the Proponent following an interactive process

with WSA, the Proponent will lodge a Detailed Proposal for WSA's assessment. From this assessment, a recommendation will be made to WSA for it to resolve whether to proceed to a Final Binding Offer from the proponent.

- d. **Stage 3 Business Case and Due Diligence-** The objective of stage 3 is to undertake due diligence of the proposal including financials.
- e. **Stage 4 Negotiation of the Final Binding Offer-** The objective of Stage 4 is to finalise all outstanding issues, and to finalise and enter into a Final Contract.

6.2. Assessment Criteria

During Stage 1, proposals will be initially assessed against the Assessment Criteria as set out below. Further information in relation to the specific considerations for each of these criteria is outlined in the Unsolicited Proposals Procedure and Governance Framework.

Assessment will be based on the proposal satisfactorily meeting each of the criteria. Additional Criteria relevant to a particular proposal may also be applied from Stage 2 onwards. If so, the Proponent will be informed of the criteria in order for these to be addressed in its Detailed Proposal during Stage 2.

The Assessment Criteria are:

- Uniqueness
- Value for money
- Whole of Project impact
- Return on investment
- Capability and capacity
- Affordability
- Risk allocation.

6.3. Interactive Process

WSA will manage an interactive process with the proponent at all formal stages of assessment, commencing with an Initial Meeting in the Pre-Submission Concept Review Stage set out in the Procedures.

During both the initial meeting and the Stage 1 Assessment, this interaction will be limited to clarification of the proposal by WSA 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.

6.4. Governance Arrangements

WSA will establish appropriate governance arrangements that will detail the roles and responsibilities of the relevant assessment panels. management of confidentiality and conflict of interests and provide details of the appointed Proposal Manager and probity advisor.

USPs will take into account relevant processes and approval requirements as provided in Board's Charter, the *Public Governance, Performance and Accountability Act (Cth) 2013*, the Commonwealth Procurement Rules and the Commonwealth GBE Governance and Oversight Guidelines and other relevant legislation.

6.5. Participation Agreement

A Participation Agreement provides an agreed framework from Stage 2 which will be entered into by both WSA and the Proponent to ensure the alignment of expectations regarding participation in the process as well as the protocols to guide the interaction between WSA and the Proponent during the Detailed Proposal stage. The Stage 2 Participation Agreement will outline whether the proposal will be subject to an approval process outlined in another policy document and/or a project assurance mechanism.

7. Western Sydney Airport Contact Details for Unsolicited Proposals

WSA has a dedicated contact point for all enquiries related USPs. All enquiries must be directed to the WSA dedicated contact point to ensure it can be dealt with in accordance with the processes outlined in this policy.

Enquiries and requests for Pre-Submission Concept Review meetings should be submitted to Mike Bourke, General Manager Procurement, at procurement@wsairport.com.au.

Submissions should be e-mailed to procurement@wsairport.com.au with subject clearly identifying it as a “Unsolicited Proposal”.

Once a proposal has been submitted, WSA will formally acknowledge receipt of the proposal and provide contact details of the Proposal Manager. This will be the proponent’s only point of contact in WSA 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 handling and assessment process. This includes organisations authorised to act on the proponent’s behalf.

WSA reserves the right to suspend or terminate proposal assessment process should the proponent breaches provisions that is set forth in this Policy or the Unsolicited Proposals Procedure and Governance Framework.