

B.19 Unsolicited Proposals

- 1 **Introduction:** Unsolicited proposals can be a valuable means for Sound Transit to obtain innovative or unique supplies, methods, or approaches from outside sources to accomplish Sound Transit's mission. As a public entity, Sound Transit has an obligation to act as a good steward of public funds. Laws and regulations require Sound Transit to seek full and open competition for most procurement and contracting opportunities. This process is intended to facilitate, not impede, the proper receipt and evaluation of unsolicited proposals while preserving the integrity of the procurement process and conforming to applicable laws and regulations. Sound Transit is under no obligation to accept an unsolicited proposal, or to make a contract award arising from an unsolicited proposal.
- 2 **Definition of Unsolicited Proposal:**
 - (A) An unsolicited proposal is a proposal that is:
 - (1) Innovative, unique, and pragmatic.
 - (2) Independently originated and developed by the proposer.
 - (3) Prepared without Sound Transit's supervision, endorsement, direction, or direct involvement.
 - (4) Sufficiently detailed that its benefits in support of Sound Transit's mission and responsibilities are apparent.
 - (5) Not an advance proposal for property or services that Sound Transit plans/intends to acquire through traditional competitive methods.
 - (6) Not an offer responding to a Sound Transit previously advertised expression of need or Request for Proposals.
 - (B) An unsolicited proposal should be distinguished from the following:
 - (1) Advertising or Promotional Material: Material designed to acquaint Sound Transit with a prospective proposer's current products or potential capabilities, or designed to determine Sound Transit's interest in procuring such products or services.
 - (2) Contributions: Concepts, suggestions, or mere ideas presented to Sound Transit for its use, with no indication on the part of the offeror that it will continue in its efforts with regard to such concepts, suggestions, or ideas on behalf of Sound Transit.
 - (3) Technical Correspondence: Written inquiries regarding Sound Transit's interest in developing infrastructure projects, preproposal explorations, technical inquiries and research proposals.
 - (C) Sound Transit may enter into a contract based on an unsolicited proposal when authorized by applicable State law and Sound Transit regulations. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, Sound Transit will seek competition.
- 3 **Unsolicited Proposal Process:** To satisfy the requirement for full and open competition, Sound Transit will take the following actions before entering into a contract resulting from an unsolicited proposal.
 - (A) **Initial Review and Evaluation:**
 - (1) An initial review shall be conducted by the Procurement & Contracts (P&C) Division to determine whether:
 - (a) The proposal fits the definition of an unsolicited proposal.
 - (b) The proposal contains sufficient information and detail to permit a comprehensive evaluation.
 - (2) If the proposal does not fit the definition of an unsolicited proposal it shall be rejected. If the proposal does not contain sufficient information and detail to permit a comprehensive evaluation the proposer may be given the opportunity to provide additional required information. When a proposal meets items 1 and 2, above, P&C Division will share the proposal with agency stakeholders (Sound Transit department(s) most affected by the subject-matter of the proposal) for a determination whether there is sufficient interest in the agency to proceed further to a comprehensive evaluation. Upon determining that the proposal fits the definition of an unsolicited proposal, the P&C Division will notify the proposer of the amount of time it is expected to take, but not to exceed 120 days, to perform a comprehensive evaluation. However, if there is not sufficient interest, the P&C Division will inform the proposer that the proposal is not accepted, thereby ending the process.

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- (3) If it is determined that the proposal fits the definition of an unsolicited proposal, contains sufficient information and detail to permit a comprehensive evaluation, and Sound Transit has elected to proceed further, P&C Division will organize a comprehensive evaluation of the unsolicited proposal through an internal process involving the agency stakeholders and insuring a balanced assessment. Sound Transit shall consider the following factors, in addition to any other appropriate for the particular proposal:
 - (a) Direct or anticipated benefits to Sound Transit, its passengers and the region;
 - (b) Unique, innovative or meritorious methods, approaches or ideas that have originated with or assembled together by the offeror that are contained in the proposal;
 - (c) Overall merits of the proposed project;
 - (d) Capabilities related to experience, facilities or techniques, or unique combinations thereof that the offeror possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal;
 - (e) Qualifications, capabilities, and experience of the proposed principal, team, leader or key personnel who are considered to be critical in achieving the objectives of the proposal;
 - (f) Financial benefit or cost to Sound Transit, and level of capital contributions and risk assumption by the proposer;
 - (g) Timing considerations;
 - (h) Responsibility of the Proposer as an eligible contractor; and
 - (i) Other factors appropriate for the particular proposal.
 - (4) The evaluation team reviewing the proposal will prepare a summary of the evaluation results including a recommendation for further action. If Sound Transit determines that a proposal is unacceptable, the proposer will be notified in writing with the reasons for the decision.
- (B) **Publication and Opportunity to Compete:**
- (1) Following a recommendation to proceed by the evaluation team, Sound Transit will solicit competitive proposals by publicizing the following:
 - (a) The receipt of the unsolicited proposal.
 - (b) Sound Transit's interest in acquiring the property or services described in the proposal.
 - (c) Sound Transit's intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.
 - (d) An adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought.
 - (e) Deadline for the submission of competing proposals.
 - (2) The original proposer may choose to submit a new or further defined proposal at this stage.
 - (3) If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, Sound Transit may make a sole source award to the proposer. A sole source award may not be based solely on the unique capability of the offeror to provide the specific property or services proposed and must comply with the requirements for Sole Source Procurements contained in Sound Transit Board Resolution 78-2.
- (C) **Post Publication Evaluation and Recommendation:** Following the deadline the evaluation team will evaluate the proposal(s) based on the factors used during the evaluation of the original unsolicited proposal, plus any new factors that have been identified. The evaluation team will prepare a summary of the evaluation results including a recommendation for further action. At this time the evaluation team may recommend rejecting all proposals, requesting revised proposals which will be re-evaluated, recommending one or more proposals be approved to enter into contract negotiations with Sound Transit, or recommending that Sound Transit issue a separate Request For Proposals. Any recommendation to enter into contract negotiations will be submitted by the Procurement & Contracts Division to the Sound Transit CEO for consideration and must be approved by the CEO or the CEO's designee before entering into

contract negotiations.

- (D) **Review/Approval by Sound Transit Board of Directors:** Any contract resulting from an unsolicited proposal, or a proposal received through the Opportunity to Compete process described above, is subject to review and approval by the Sound Transit Board of Directors regardless of dollar amount at a public meeting of the Sound Transit Board of Directors.

- 4 **Public Disclosure:** Pursuant to Chapter 42.56 RCW, unsolicited proposals submitted under this process shall be considered public records and, with limited exceptions, will be available for inspection and copying by the public. Proposers must specifically designate and clearly label as "CONFIDENTIAL" any and all materials or portions thereof they deem to contain trade secrets or other proprietary information, which is exempt from public inspection and copying. The Proposer must provide the legal basis for the exemption to Sound Transit upon request. If a proposal does not clearly identify the "CONFIDENTIAL" portions, Sound Transit will not notify the Proposer that its proposal will be made available for inspection. If a request is made for disclosure of material or any portion marked "CONFIDENTIAL," Sound Transit will determine whether the material should be made available under the law. If Sound Transit determines that the material is not exempt and may be disclosed, Sound Transit will notify the Proposer of the request and allow the Proposer 10 working days to take appropriate action pursuant to RCW 42.56.540. If the Proposer fails or neglects to take such action within said period, Sound Transit may release the portions of the proposal deemed subject to disclosure. To the extent that Sound Transit withholds from disclosure all or any portion of Proposer's documents at Proposer's request, Proposer shall indemnify, defend and hold harmless Sound Transit from all damages, penalties, attorneys' fees and costs Sound Transit incurs related to withholding information from public disclosure. By submitting a proposal, the Proposer consents to the procedure outlined in this paragraph and shall have no claim against Sound Transit by reason of actions taken under this procedure.