



Unsolicited proposals

Turning problems into opportunities

by Michael Asner

For many public agencies unsolicited proposals are problems not opportunities. Most jurisdictions don't want to handle them at all – an approach that is safe and avoids controversy – because they are not the result of a public tendering process and “fair and open competition.”

The proposal may well be for a super idea that will save your organizations money, but it was not asked for. Do you refuse it simply because you aren't sure how to deal with it? Do you take it – and possibly get on the news for not following the standard tendering process? Acceptance of an unsolicited proposal can be challenged as an unwarranted award of a sole source contract. Do you end up issuing a Request for Proposal (RFP), which, in fact, hijacks the idea from the originator?

Unsolicited proposals sometimes result following discussions with purchasing organizations, where the vendors gained insight to a problem – which even the agency may not have identified – and feel they can offer a unique solution; sometimes vendors simply have new innovative ideas; and sometimes they really are an attempt by the vendor to bypass the competitive process. Regardless of the vendor's initial intention, unsolicited proposals, and how to handle them, can present problems for agencies, even if – and especially when – there is no written policy.

Public sector organizations would be wise to adopt and publish a policy regarding unsolicited proposals that balances the interests of the private sector with the public sector need to promote fair and open competition. While some governments, such as Nova Scotia, solicit genuine new ideas in the form of unsolicited proposals from the scientific and technology research communities, they have taken care to develop a framework of policies and guidelines to ensure a defensible process designed to balance the benefits of truly innovative ideas with the need for fair and open competition. However, other public sector organizations have no policy.

Let's begin with the simplest case – those with no written policy. In the absence of policy, there are two main approaches to be followed: you can refuse to evaluate unsolicited proposals, or you can, on an *ad hoc* basis, try to deal with each unsolicited proposal on its individual merit. Clearly this last option poses problems related to fair and open competition, and the first option provides little benefit to your organization.

Some organizations do have written policies – usually based on that of the *Model Procurement Code and Regulations*, first published in 1980 by the American Bar Association. This policy, which defined unsolicited offers and how they are to be processed, has been adopted in many jurisdictions. It states that to be considered for evaluation, an unsolicited offer must:

- be in writing;
- be sufficiently detailed to allow a judgement to be made concerning the potential utility of the offer to the [State];
- be unique or innovative to [State] use;
- demonstrate that the proprietary character of the offering warrants consideration of the use of sole source procurement; and
- may be subject to testing under terms and conditions specified by the [State].

In Ontario, Management Board Secretariat only permits research proposals. In BC, proposals must be clearly “unique.” The City of Calgary permits unsolicited proposals but has no written policy. The City of Ottawa's policy was written for public-private partnerships. Most policies dealing with unsolicited proposals are usually for large dollar amounts, capital or infrastructure items.

Despite the problems they pose, I think there is a role for unsolicited proposals. The private sector is capable of creative innovation, which, when applied to government, could streamline services or save money. But how do we encourage them? Clearly any approach must meet public scrutiny, but that does not always mean issuing an RFP. We don't issue RFPs for \$10,000 worth of architectural design services, or for \$20,000 worth of policy review, even when it's procurement policy. Most organizations have introduced simplified procurement methods when the dollar-value or risks are low. So let's apply this thinking to small-dollar-value, minimal risk unsolicited proposals and see what ideas we can get from the private sector.

One such policy could embrace the following principles:

- The product or service must be innovative, but not necessarily unique.
- It must provide significant value or save money.
- The contract value must be less than the spending limit, including the cost of abandoning the service after one year (the off-ramp).
- The contract can only be for one year and must be completed at the end of the year. Extensions in any form are prohibited.

I suspect that this sort of policy would result in some interesting proposals from the private sector, with little risk or commitment from the local public authority attached. You might get a proposal from a computer software firm to optimize your snowplough routes, or from a firm that wants to paint the lines on selected city streets using a new technology. And it is likely that these proposals would be from local suppliers in smaller communities. If proven worthwhile, each proposal would lead to an RFP being issued at the end of the contract period.

In *my opinion*, some of our small public sector entities should initiate this sort of policy, promote it to the vendor community and see what innovative ideas emerge. ♫

Additional information

In August 2003, the City of Toronto released a report titled *An Overview of Policies and Practices for Unsolicited Proposals*, which contains a survey of the policy in 16 different jurisdictions including Canada and the United States. See www.city.toronto.on.ca/legdocs/2003/agendas/committees/adm/adm030904/it052.pdf.

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