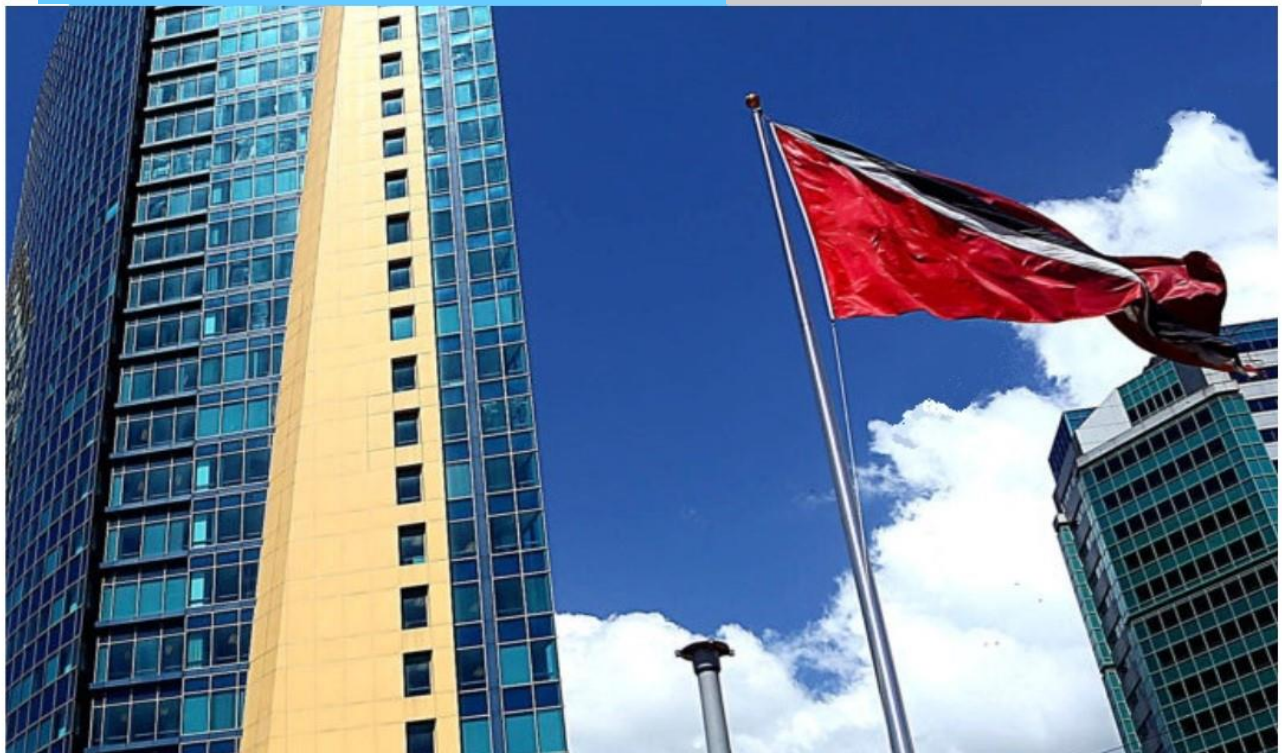


General Guidelines



TREATING WITH UNSOLICITED PROPOSALS



Prepared by: The Office of Procurement Regulation

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Developed in accordance with the Trinidad and Tobago Public Procurement and Disposal of Public Property Act Number 1 of 2015 (as amended) and the attendant Public Procurement and Disposal of Public Property Regulations 2021

REVISIONS

Revisions of 2023

To be in alignment with the fully proclaimed *Public Procurement and Disposal of Public Property Act, 2015*, as amended (“the Act”), and the ten *Public Procurement and Disposal of Public Property Regulations* of 2021, revisions were made within these guidelines with respect to:

Revision	Page No.
Section 1.0: Inclusion of a Preamble	1
Section 2.0: Update of link to General Guidelines, and to include reference to Regulations and General Guidelines	2
Section 4.1.2: Update of link to General Guidelines	5
Section 4.2: Update of link to Market Research Report template	6
Bibliography: Updated to include definition of PPIAF	10
Deletion of Glossary of Terms; replaced by link to OPR’s website for Glossary of Terms	10
Deletion of Acronyms; replaced by link to OPR’s website for Acronyms	10
The general terminology used throughout these guidelines	
Minor editorial changes throughout these guidelines	

***Note:** In the event that there is a discrepancy between the Handbooks & Guidelines and the Act and Regulations, the provisions of the Act and the Regulations shall prevail.

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1.0 Preamble

1.1 Purpose of these guidelines

The purpose of these general guidelines is to provide guidance, in keeping with the objects of the Public Procurement and Disposal of Public Property Act 2015, as amended (“the Act”), to all public bodies on the treatment and management of unsolicited proposals.

1.2 Who should use these guidelines?

These general guidelines are intended for use by all public bodies who require an understanding of the key decision areas for treatment of unsolicited proposals as well as the risks and mitigation strategies to ensure procurement procedures are conducted in accordance with the Act.

1.3 How should these guidelines be used?

These guidelines should be read in conjunction with the Act, the Public Procurement and Disposal of Public Property Regulations 2021 and the Comprehensive Handbook on Procurement, Retention and Disposal of Public Property.

1.4 Compliance with these general guidelines

In accordance with Sections 30(1)(a) and 54(1)(a) of the Act, public bodies ‘shall comply with’ these general guidelines issued by the Office of Procurement Regulation (“the OPR”).

1.5 Exemptions or amendments to these general guidelines

As may be applicable, pursuant to Sections 13(1) (c), 30(1)(b)(c), 30(2), 30(3), 54(1)(b) and (c), 54(2) and 54(3) of the Act, public bodies shall prepare handbooks and special guidelines highlighting exemptions or amendments to these general guidelines, in the format specified by the OPR, for its approval.

2.0 Introduction

Procuring entities involved in the expenditure of public funds for goods, works and/or services, or in the disposal of public property, are required to ensure that their activities are conducted in accordance with the Public Procurement and Disposal of Public Property Act 2015, as amended (“the Act”), the Regulations and approved Handbooks and Guidelines. In making their procurement and disposal of public property decisions, earnest consideration must always be given to the achievement of the objects of the Act.

The objects of the Act are to promote

- (a) the principles of accountability, integrity, transparency and value for money;
- (b) efficiency, fairness, equity and public confidence; and
- (c) local industry development, sustainable procurement and sustainable development in public procurement and the disposal of public property.

As stated in Section 5 (1)

The general rule therefore is that the public body shall engage in a competitive procurement process for the provision of the goods, works or services, as in most cases the established public procurement processes will provide best value for money solutions.

In exceptional cases, an unsolicited proposal from a private/public company may provide the innovative solution required to effectively and efficiently solve a public sector challenge or problem.

It should be noted however, that a public body is not obliged to consider any proposal that is presented to it outside of the formal procurement proceedings. Additional information on procurement methods and procedures are provided in the **General Guideline: Procurement Method and Procedures** available at [Stage 1 – Planning – The Office of Procurement Regulation \(oprtd.org\)](http://oprtd.org).

2.1 Risks identified with the utilisation of unsolicited proposals

A public body may seek to justify the use of unsolicited proposals on the basis of expediency or confidentiality without benefit of competition. Some of the risks inherent in such an approach, and the procurement principles to be considered, are identified in Table 1 below:

Rationale for accepting unsolicited proposal	Alternative considerations	Principles to be considered
<ul style="list-style-type: none"> - Good relationship with proposing firm - Fear of entrusting the work to another less qualified firm in 	There may well be many reputable and well run companies within the sector	<ul style="list-style-type: none"> - Fairness - Transparency - Value for Money

Rationale for accepting unsolicited proposal	Alternative considerations	Principles to be considered
the case of a competitive bidding procedure	or industry, that the market research will identify.	
- Save time and cost associated with a competitive procurement process	Research has shown that while projects of this nature may be executed faster in the early stages, in the later stages they tend to become 'difficult' and take longer to complete.	- Value for money - Efficiency
- Lack of financial resources for conducting the preliminary studies required prior to starting the solicitation process.	Funding may be available from viable sources for appropriate projects.	- Value for money

Table 1: Unsolicited Proposals – Risks to procurement principles

3.0 What is an Unsolicited Proposal?

A private (or in some cases) a public company may identify a business need within a public body and after consideration (analysis, feasibility study) may determine that it can provide a viable solution that can benefit both the private and the public entities. The private/public company then takes the initiative and approaches the public body directly with a proposal, without the benefit of an Invitation to Tender, or a Request for Proposals. The solution being offered may be unique to that public/private company, or it may be available from other public/private companies.

For the unsolicited proposal to be considered, it should offer a solution to a publicly identified challenge, and it should include the following:

- a) A reasonably detailed project brief, inclusive of:
 - a. Preliminary feasibility study,
 - b. Scope, structure and terms,
 - c. Detailed technical specifications or scope of services, and implementation schedule,
 - d. Fully costed funding plan, and
- b) Independently verified financial information demonstrating the proposer's capacity to undertake the project.

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3.1 Benefits of Unsolicited Proposals

The private (or public) company may have genuinely innovative ideas, proprietary technology, technical capability and financial resources to solve a public body's problem. The unsolicited proposal may also assist the public body with:

- a) Identifying and prioritising its projects;
- b) Identifying a wider range of potential solutions for public sector challenges; and
- c) Overcoming challenges related to early stage project identification and assessment.

3.2 Procurement Risks with Utilising Unsolicited proposals

Studies have shown however, that genuinely innovative proposals are much fewer in number than those that are eventually proven to be financially weak and high-risk, utilising the valuable time of the public body's limited human resources. These projects ultimately take longer than normal to implement, and often do not produce the desired or promised results¹.

3.3 Weaknesses and challenges with unsolicited proposals

A number of weaknesses have been identified with unsolicited proposals (PPIAF 2007), such as:

1. The proposal is based on incomplete technical and inaccurate costing information for the project,
2. Inadequate project risk identification and analysis, resulting in the public body ultimately being responsible for bearing the risks and liabilities that surface later on in the project cycle, and
3. The risk that a margin of preference may deter other suppliers/contractors from participating in an eventual competitive procurement process.

Additionally, challenges that can arise with unsolicited proposals include the following:

1. Administrative – a disproportionate amount of time and human resources have to be diverted from other projects to review and determine the merits of the unsolicited proposal.
2. Negotiation – the absence of a transparent or competitive procurement process could lead to achieving poor value for money.
3. Legal – projects over an established threshold (WTO/CARICOM) may be mandatory for competition, and the contract may not be able to be awarded on the basis of a sole source procedure.
4. Public confidence – the lack of transparency could lead to allegations of corruption and result in poor public confidence in the procurement processes undertaken by the public body.

¹ PPIAF (2009) Toolkit for Public-Private Partnerships in Roads & Highways pp 81-86

4.0 Treatment of Unsolicited Proposals

4.1 Consideration of Unsolicited Proposals

An unsolicited proposal shall only be considered in the circumstances where the proposer offers a genuinely innovative solution where the proposal is based on the following:

- a) proprietary technology,
- b) its technical and managerial expertise, and/or
- c) its ability to accept and manage the financial risk associated with the project.

Accordingly, in treating with unsolicited proposals, the public body must be careful in

- a) determining the merits of the proposed solution, and
- b) ensuring that the objects of the Act are achieved, in particular integrity, transparency, efficiency and value for money.

4.1.1 Determining the merits of the unsolicited proposal

The public body, receiving the unsolicited proposal would be required to convene an evaluation committee and develop appropriate evaluation criteria to objectively determine whether the proposal, among other things, would provide an economic or social benefit to the national community.

4.1.2 Direct Negotiations

The private (or public) company would submit an unsolicited proposal to the public body with the expectation that a contract would be awarded for the provision of the services or works on the basis of direct negotiation. However, it is only in exceptional cases, upon determining the merits of the proposed solution, that the public body may enter into direct negotiations with the proposer, where it can be demonstrated that the following conditions are met:

- a) the subject of the unsolicited proposal is commercially sensitive and the proposed solution would be adversely affected by a tendering process, e.g. where the public body operates in a competitive market;
- b) national security interests would be compromised;
- c) the goods, works or services are urgently required to ensure business continuity and/or
- d) to alleviate immediate danger to the physical (tangible or intangible) and human resource assets of the public body.

In treating with the unsolicited proposal, care should also be taken to ensure that the resultant contract is formed in keeping with the **General Guideline: Ethical Code of Conduct for Public Bodies and Public Officers** and **General Guideline: Ethical Code of Conduct for Suppliers and Contractors**, available at [General Guidelines – Operational Framework – The Office of Procurement Regulation \(oprtd.org\)](https://oprtd.org).

4.2 General Guidelines for treating with Unsolicited Proposals

In treating with unsolicited proposals, the public body should be guided by the following procedure:

1. Review the proposal and determine its merits, i.e. does the proposal meet an identified public need in accordance with the public body's mandate and strategy.
2. Conduct market research to determine market conditions (A Market Research Report template is available at [Stage 1 – Planning – The Office of Procurement Regulation \(oprtt.org\)](#)).
3. Enter into direct negotiations with the proposer, if the criteria outlined in 4.1.1 are satisfied.
4. Alternatively, develop a sound RFP document and initiate a competitive process, providing an appropriate incentive to the firm that submitted the unsolicited proposal, in accordance with the methodology described in 5.2 below.
5. Review and evaluate proposals submitted against the pre-determined evaluation methodology and scoring criteria to identify the winning proponent.
6. Award the contract in accordance with the methodology and selection criteria outlined in the RFP documents.

5.0 Procedures for Managing unsolicited proposals²

The public body shall utilise the following two-stage procedure for identifying the successful proponent and awarding the contract in the case of an unsolicited proposal:

- a) the public body's internal project approval process, and
- b) a competitive tender to determine the final project developer and operator.

Stage 1: Approval

The following four steps are to be utilised in the approval process for the unsolicited proposal:

Step 1. The public body receives and reviews the supplier's or contractor's unsolicited proposal. The proposal should clearly articulate the economic benefit to the public body and to the nation.

Step 2. After a stipulated review period (see Table 2 below), the public body provides the proposer with a preliminary response, assessing whether the project serves a "public interest" or fits into its strategic mandate or plan.

Step 3. If the public body grants preliminary acceptance to the initial project description, the proposer would be given formal recognition for the concept and a set period to present a full, detailed proposal.

² Adapted from: Hodges J. T. and Dellacha G. (2007) Unsolicited infrastructure proposals: How some countries introduce competition and transparency.

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- **Step 4.** The detailed proposal would be reviewed and may be approved for a competitive process, or it may be rejected. If accepted, the project would be awarded through an open competitive tender (Stage 2, below). If rejected, the project may not be necessarily dead, i.e. the proposer may submit a modified version for consideration by the public body, or the public body may use the concept in a public tendering process after a stipulated period (e.g. three years).

Stage 2: Competitive tender

During the tendering stage, the project is competitively bid (open or limited bidding), utilising one of the three evaluation methodologies: bonus, swiss challenge, or best and final offer (Hodges & Dellacha, 2007), described in Section 5.2, below.

5.1 Procedural Safeguards

During the tendering and award stage, the public body shall ensure that

- Performance measures are established to ensure that the quality of the goods, works or services delivered meets the needs in accordance with the public body's mandate and strategic objectives.
- The unsolicited bid/proposal is focused on the performance specification (end result).
- The principles of transparency and accountability for process and outcomes are observed, with full recognition of the requirement to protect the intellectual property rights and confidentiality of the private sector company, where necessary.
- The decision-making process is carried out in a manner designed to engender public confidence in all stakeholders.
- The unsolicited bid/proposal is capable of delivering the best value for money.

5.2 Considerations for developing evaluation criteria and evaluation of proposals

As there is a potential for public bodies to benefit from unsolicited proposals, incentives for the submission of acceptable unsolicited proposals can be granted to the proposer in one of the following forms:

5.2.1 Bonus system

In the bonus system, a bonus is awarded to the original proposer in the form of an additional theoretical value that can be applied to its technical or financial proposal, for evaluation purposes only. For example, where a ten percent (10%) bonus is applied to the financial proposal, the following would obtain:

- a) The lowest qualified bidder's financial proposal is \$100.00.00
- b) The original proponent's proposal is \$108.00.00
- c) The contract would be awarded to the original bidder since its proposal price would be within 10% of the lowest proposal.

Additionally, the original proposer may be reimbursed for the cost of detailed studies conducted to support its original proposal.

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5.2.2 Swiss challenge system (right to match)

The Swiss challenge system gives the original proponent the right to counter-match any better offers. In this system, once a lower-priced proposal is submitted and approved, the original proponent is granted a stipulated timeframe, e.g. 30 days within which to offer a counter proposal i.e. a better price. If the original proponent does not match the better price, the project is awarded to the alternative proposer. Alternatively, even though the original proponent matches the better price, the public body may award the contract on the basis of technical merit.

5.2.3 Best and final offer system

In the best and final offer system, the key element is multiple rounds of tendering, in which the original proponent is given the advantage of automatically participating in the final round.

In this case, the two most advantageous bids are selected for a final bidding round. If the original proponent is not one of these two, it will still automatically be allowed to compete in the final round. If the original proponent's offer is within, for example, five percent (5%) of the best offer, the original proponent will immediately win the award. But if the difference between the best bid and the original proponent's offer is more than five percent (5%) but less than 20 percent (20%), the two bidders will be invited to submit their best and final offers in a second round. In all cases the final round is an open competition during which the preferred bid will be selected with no bonuses or advantages given.

5.2.4 Developer's fee

In the event that its project idea is accepted, and is subjected to a competitive bidding process, the original proposer is paid a fee, either by the public body or by the winning bidder, for reimbursement of some of the project development costs. This option is different from the other incentives described above in that it is not applied as an advantage to the original proposer during the evaluation stage.

5.3 Estimated Timeframes for Project Approval and Bidding Stages

The estimated timeframe for managing the unsolicited proposals process can range from 3 to 35 months depending on the complexity of the project and the efficiency of the procurement system, including approvals within the public body.

Preliminary Approval	Final Approval	Tendering	Counter offer	Additional time	Total Time
1 to 4 months	2 to 12 months	2 to 12 months	2 to 4 months	1 to 3 months	7 to 35 months

Table 2: Estimated Timeframes for Project Approval and Bidding Stages

6.0 Dealing with Intellectual Property and Confidentiality

Public bodies must be vigilant in not allowing proposers to claim confidentiality and commercial sensitivity too easily, with the objective of limiting competition.

6.1 Intellectual Property

The proposer shall declare any proprietary information and intellectual property, which by right is protected by law, that is included in its unsolicited proposal. The public body shall in turn respect the intellectual property rights in the management of the unsolicited proposal.

Accordingly, in preparing the solicitation documents, the public body shall utilise output based performance specifications, rather than specifying the required technology to be used in delivering the outputs.

In cases where intellectual property is crucial to the project, such that it could not otherwise be implemented, direct negotiations may be warranted, along with procedures to benchmark project costs.

Alternatively, the public body can negotiate with the proposer to obtain the rights to the necessary intellectual property, before the project is tendered for competition.

6.2 Confidential and commercially sensitive information

Options for treating with confidentiality and commercial sensitivity in unsolicited proposals include the following:

- a) In the first instance, the proposer should not include information it considers to be confidential in the unsolicited proposal. This would effectively address the issue of the public body disclosing confidential or commercially sensitive information.
- b) Alternatively, the proposal must identify any confidential information which the proposer wishes to protect, for consideration by and agreement with the public body.
- c) Thereafter, in preparing the solicitation documents, the public body shall utilise output based performance specifications, without revealing the required technology information.

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Glossary Of Terms

The Glossary of Terms is available on the OPR's website at <https://oprtd.org/handbooks-of-procurement-retention-disposal/>

List of Acronyms

The list of Acronyms is available on the OPR's website at <https://oprtd.org/handbooks-of-procurement-retention-disposal/>