



NEW ZEALAND
GOVERNMENT PROCUREMENT

Unsolicited Unique Proposals

How to deal with uninvited bids

A guide for government agencies

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HĪKINA WHAKATUTUKI

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New Zealand Government

New Zealand Government Procurement

PO Box 1473
Wellington 6140
New Zealand

www.procurement.govt.nz
procurement@mbie.govt.nz

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This guide

Unique and innovative ideas

Government wants to encourage businesses to put forward good ideas. It is important that these are assessed objectively and on the basis of fact and evidence.

From time to time, suppliers may approach government with a proposal to meet a perceived need, without being asked to do so. This is called an unsolicited proposal.

This guide supports government agencies to manage unsolicited proposals in a way that:

- is transparent and fair to everyone, and
- encourages businesses to put forward good ideas.

It provides a structured approach for considering unsolicited proposals that agencies can use and adjust appropriately to fit the particular circumstances. It does not replace open competition or establish a new mechanism for suppliers to provide goods and services to government.

Open competition

The opportunity to put forward unsolicited proposals must not be used as an opportunity to get around the specific requirements set out in the Government Rules of Sourcing.

Why consider unsolicited proposals?

Sometimes businesses have ideas that are unique, innovative and may be valuable to government, even though it may not be something that has been identified as a current need or priority.

Government wants to encourage suppliers to put forward ideas that will help it to deliver better public services, and give those ideas a fair hearing.

What is an unsolicited unique proposal?

A proposal that offers a solution to a need, is unique and has not been requested by government.

Further information on what should be considered in assessing proposals is set out in this guide.

Note:

Always consider the five Principles of Government Procurement when assessing unsolicited proposals.

You can read more about these and the Government Rules of Sourcing at: www.procurement.govt.nz

Good procurement practice

Although this guide sets out a framework for dealing with unsolicited proposals, you must be aware of the Principles of Procurement and the Government Rules of Sourcing.

Your assessment of an unsolicited proposal should reflect how you have considered these.

What are the *Principles*?

1. Plan and manage for great results

2. Be fair to all suppliers

3. Get the right supplier

4. Get the best deal for everyone

5. Play by the rules

Probity

Businesses may attempt to use unsolicited proposals as a way to pitch their suggestions to government, without having to compete for a contract.

If agencies act on these proposals without openly testing the market, it will be unfair to other suppliers of similar products or services.

For this reason, agencies need to be careful to put in place sufficient and appropriate checks to:

- ensure that the proposer and other potential suppliers are treated fairly
- avoid misconduct or any perception of misconduct
- declare any conflicts of interest immediately
- remove any conflicted individuals from the piece of work, or manage the situation with care

When should an unsolicited proposal be given further consideration by government?

Note:

In some cases, suppliers may put forward an unsolicited proposal as a way of bringing their product or service to the attention of government, regardless of whether or not it is unique – a “solution looking for a problem”.

Serious consideration will generally be given only to exceptional proposals.

These should demonstrate unique concepts or benefits that cannot otherwise be obtained in the marketplace or that are only able to be provided by a single supplier, eg, as a result of IP or capability issues.

Proposals will be considered when they:

- are unique
- provide value or significant benefit to the New Zealand taxpayer, ie:
 - they address significant government needs, or
 - they offer more effective technical or service delivery improvement opportunities, or
 - they contribute significantly to the general economic development and well-being of New Zealanders
- are not advance proposals for a requirement that has already been identified, and perhaps socialised in the market
- are not readily obtainable in the marketplace
- have been developed independently, without government assistance
- include sufficient detail so that the government can assess whether it is worthwhile

Proposals will *not* be considered when they:

- are promotional or advertising materials, such as special pricing, modifying or extending an existing contract
- the goods or services are readily available in the marketplace
- are an advance proposal for a known requirement, for which a competitive process is planned

What information should be included in a proposal?

The effect of the Official Information Act (OIA)

Unsolicited proposals will be subject to the OIA. This means that the information in them can be disclosed on request.

For this reason, it is important that the proposer clearly indicates any information in their proposal that:

- is a trade secret, or
- would damage the commercial position of the person who supplied the information.

An unsolicited proposal must contain enough information to enable an agency to assess whether or not it deserves further attention. The level of detail required will vary depending on the nature and complexity of the proposal.

The proposal that the supplier submits will be the basis of the agency's decision whether or not to take the idea forward, so it is in the supplier's best interest to give all of the information necessary to enable a reasonable assessment of the proposal.

To help the agency to consider the unsolicited proposal in an objective and timely manner, suppliers should include as much of the following information as possible:

- the details of the party making the proposal, including:
 - their name
 - their contact details and
 - a brief profile, eg, the type of business and the nature of the business
- a brief but thorough description of the nature of the proposal
- an explanation of the benefits that the proposal will deliver to the goals of the agency or the government in general
- how they can authenticate the innovative or unique elements of the proposal
- all ownership interests, such as real property and intellectual property rights
- any information that the proposer does not want disclosed outside of the evaluation process, ie, information that is commercially sensitive
- the period of time that the proposal is valid, with a suggested minimum of six months
- the names of other government agencies that the proposal has been sent to
- the costs in sufficient detail to enable meaningful evaluation

In addition, the proposer should be prepared to supply further information to answer any questions from the agency, such as:

- additional detail on the original proposal
- the anticipated delivery date, where appropriate
- any support that the supplier needs from the agency to execute the proposal, if appropriate
- the type of contract that the supplier would prefer.

How will government respond to unsolicited proposals?

Value for money over whole of life

A measure of quality that assesses the monetary cost of the product or service against the quality and/or benefits of that product or service, taking into account subjective factors such as fitness for purpose, along with whole-of-life costs such as installation, training, maintenance and disposal, and wastage.

When agencies receive unsolicited proposals, they must ensure that proposals are dealt with in a way that ensures:

- transparency, fairness and best value for money over whole of life, and
- protects the proposer's commercially sensitive information and intellectual property rights.

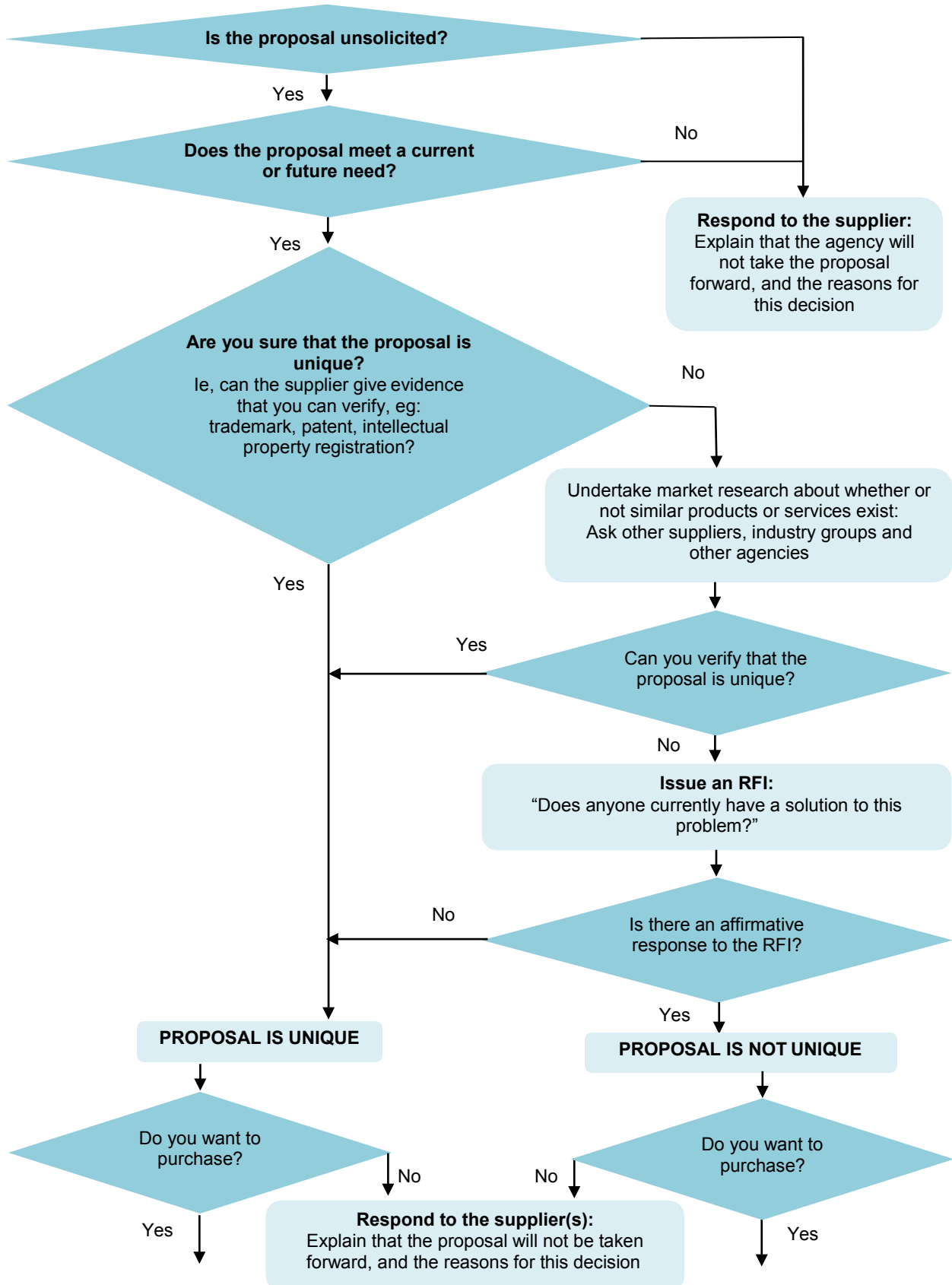
How to process an unsolicited proposal

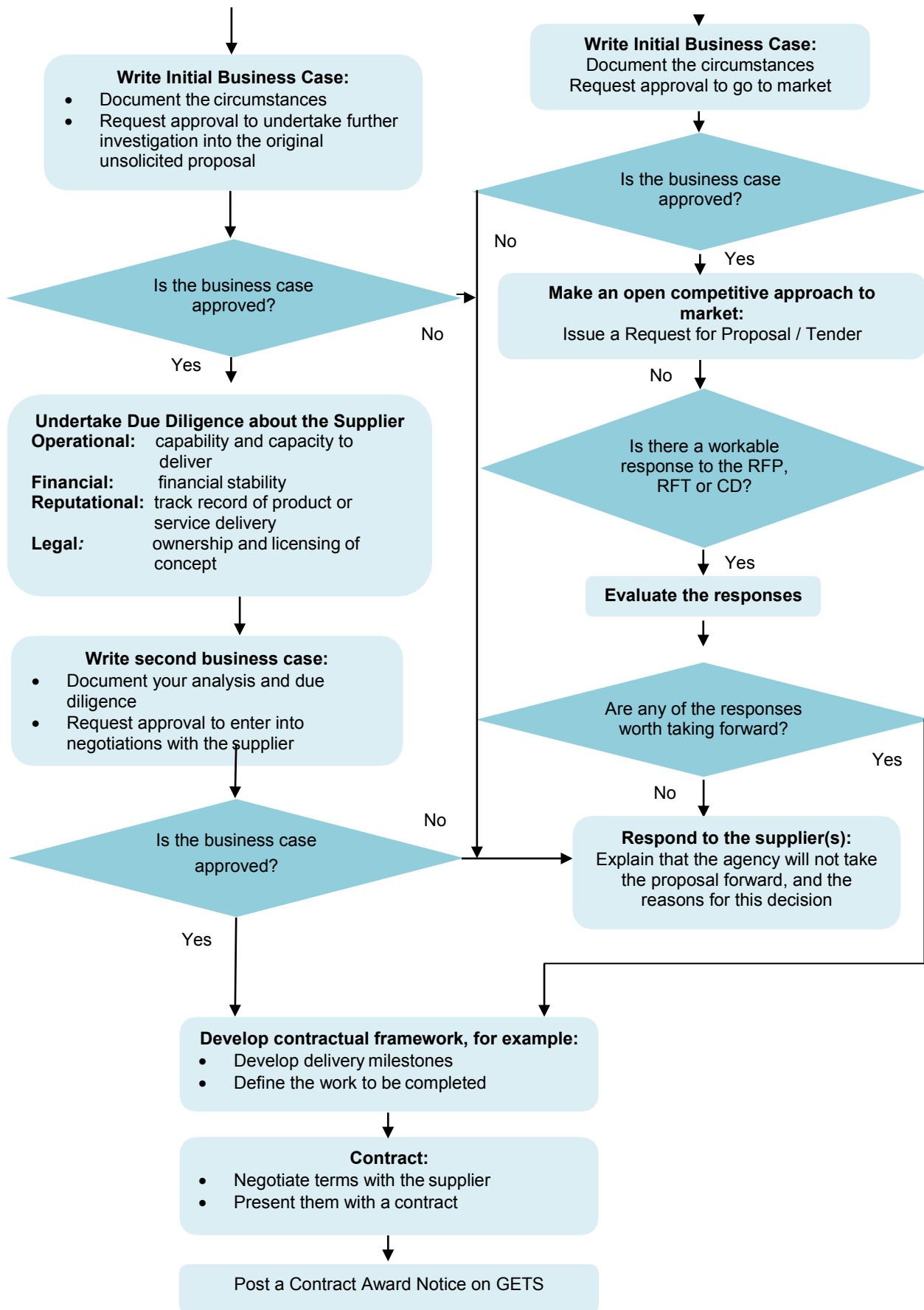
Agencies have considerable flexibility and discretion to design their own processes, but it is expected that you will complete the following broad steps:

1. Is the proposal unsolicited?
2. Does the proposal meet a current or future need?
3. Is the proposal unique, eg, it is not an advance proposal for a need that is already known or for goods and services readily available in the marketplace?
4. Do you want to proceed with the proposal?
5. Write a business case for approval to undertake further investigation
6. If this is approved, complete market research, due diligence and reflect the results of these in a second business case
7. If this is approved, develop a negotiation plan
8. Complete negotiation and document the contract
9. Post a Contract Award Notice on GETS.

More about the process and what you need to consider at each step is set out below. A decision tree is shown over the next few pages, followed by information on what you need to consider at each step.

Unsolicited unique proposals decision tree





What to consider at each step of the assessment

When don't I need to advertise?

There are some limited situations where the *Government Rules of Sourcing* apply, but where an agency does not need to openly advertise. These are called *exemptions to open advertising - Rule 15.9*.

You can learn more about these in the *Government Rules of Sourcing* at: www.procurement.govt.nz

Is the proposal unsolicited?

Is the proposal the subject of a need that has already been identified, and possibly discussed in the market place? If so, it may be appropriate to advise the supplier that it is likely to be the subject of a competitive process in the future.

Does the proposal meet a current or future need?

Below are some questions that you will need to address to satisfy yourself that it is appropriate to proceed without a competitive process, such as a Request for Proposal (RFP).

Current or future government needs

- What government needs does the proposal address?
- Are these concerns significant?
- In what way are they significant, eg, are they high priority or high value?
If so, why haven't you already issued an RFx to try to find a solution?
- Are they consistent with government priorities and strategic plans?
- If so, what is this based on?

Technical or service delivery improvement opportunities

- What major technical or service delivery improvement opportunities does the proposal offer?
- Are the improvements offered significant enough to take forward?
- If so, what is this based on?

Opportunities for economic development or the general well-being of New Zealanders

- What major economic development opportunities does the proposal offer?
- In what way will the proposal offer an improvement to the well-being of New Zealanders? How significant are they? How can this be measured?
- What is this based on?

What is “unique”?

“Unique” can be hard to define in the context of procurement.

An example could be a new use for a concept that already exists, eg, using helicopter technology to improve industrial air conditioning.

It’s important to consider very carefully why the proposal is sufficiently unique that a direct sourcing approach is justified.

When in doubt

It’s easy to be persuaded by the proposer that their idea is one of a kind, especially when you haven’t thought of it.

If you have doubt about the uniqueness of the proposal, but you believe that addressing the need is important, you should issue a Request for Information or Request for Proposal from the market.

Is the proposal unique?

For any unsolicited proposal to be considered, it needs to be unique in order to justify a direct sourcing approach. The proposer must be able to give some evidence that their idea is original and that they are in a unique position to deliver the proposal.

In order to judge whether or not the proposal is unique, thorough market research and analysis will need to be conducted to provide evidence-based information in regards to the following questions:

- Do similar products or solutions exist in the marketplace that could easily be delivered by a competitor?
- How innovative is the proposal?
- Could it be easily replicated?
- What intellectual property rights does the proposer hold, and to what extent might these be infringed by an approach-to-market?
- Might similar benefits and outcomes be achieved by a standard competitive procurement process?

Do you want to purchase the subject of the proposal?

Are there any other reasons why your agency is not interested in the proposal, eg you do not have budget to proceed?

Note:

A favourable initial review does not imply that the proposal will be taken forward without full and open competition.

Agencies have absolute discretion about this.

Your rationale for not proceeding should also be documented.

Initial Business Case

In most agencies, you will need to get approval to undertake further investigation into the original unsolicited proposal.

You should therefore document fully the circumstances of the unsolicited proposal and your rationale for wanting to proceed, including:

- the details of the proposal
- the need that it would meet and the benefits it would deliver
- why it is unique
- the facts/evidence on which you base your conclusions
- why it is not obtainable through an open process
- indicative costs of the product or service

You should also set out details of the plan for making a final assessment and decision, and request approval to proceed on this basis. This includes:

- the resources required to complete the review (eg, costs and human resources)
- governance arrangements
- the assessment criteria and evaluation methodology
- probity requirements

Due diligence

An investigation into the facts about an organisation, product or service, before entering into a contract with that organisation.

Undertake Due Diligence about the supplier

The amount of due diligence that you need to do will be proportionate to the size, complexity, value and significance of the proposal. You should consider:

- **operational:**
the capability and capacity of the supplier to deliver
- **financial:**
the financial stability of the supplier
- **reputation:**
the supplier's track record of product or service delivery
- **legal:**
ownership and licensing of the concept
- **the product or service:**
ensure that it meets your needs
- **value for money - sustainability:**
the supplier's history of environmental, economic and social
- any other information needed to make a decision.

Does the proposal represent best value for money over whole of life?

Note:

Competition is usually the best way to ensure the best combination of quality and price.

However, when there is no competition, agencies will still need to be satisfied that the proposal represents best value over the whole of life.

Example:

An agency processed applications in a very manual way.

A supplier developed a new computer application that was able to perform calculations and logic that could take a lot of the manual work out of the processing.

The agency went to market to check that nothing similar already existed. The only responses were for other manual solutions that added no value, so the agency entered into a contract with the supplier who proposed the new solution.

You must be able to demonstrate that the proposal is best value for money over whole of life. This will be more difficult where the market comparators that come from open competition are not available.

To evaluate whether or not the proposal provides value for money over the whole of life, consider the following:

Benefits

- What benefits do you think that the proposal would offer and are there facts or evidence to support this?
- Can you clearly demonstrate that these benefits will be achieved?
- Can these benefits be quantified?
- Are the benefits significant, eg do they create a step change in addressing an issue?

Quality

- Will there be a substantial improvement over the current product or service and any less innovative alternatives, for example, direct improvements such as faster processing or reduced waste, or longer term results such as increased exports?
- Is the proposed solution sustainable in the short, medium and long term?

Total cost of ownership

- How do the whole of life or total cost of ownership costs compare with any alternative solutions or the current practice? For example, what are the costs of maintenance, consumables, etc?
- Are there alternative less innovative options that have lower or similar costs that meet the same need as the proposal? If so, in what way do those options differ from the unsolicited proposal?

Risks

- How do the risks of the proposed solution compare with the existing risks, or the risks associated with other less innovative solutions in the market?
- Will implementation add a lot of effort for little gain?

Second Business Case

In the second business case, document the results of your analysis and due diligence. Use this information, together with the initial assessment to support your request for approval to enter into negotiations with the supplier. In this business case:

- ensure that all decisions are made on the basis of facts, evidence and knowledge of the market
- document the market research that led to the understanding that the proposal was unique, such as:
 - discussions with suppliers in that particular market
 - discussions with industry bodies
 - intellectual property searches
- get approval at the appropriate level – this will depend on the delegations used by the particular agency and the significance and dollar-value of the procurement
- document the process that was used to gain approval to go ahead with the unsolicited proposal.

Develop contractual framework, for example:

- Develop delivery milestones
- Define the work to be completed.

Negotiation of a contract

Where you determine that the proposal meets all of the above and you have obtained approval to proceed, you may finalise all outstanding issues and enter into negotiations with the supplier with a view to entering into a contract for delivery.

Contract:

- Negotiate terms with the supplier
- Present them with a contract.

Contract award notice

Following the award of a contract you must publish a contract award notice on GETS, as set out in Rule 45 of the Government Rules of Sourcing.

If you decide that you don't want to proceed with the proposal

If the proposal is not suitable to be considered further, you must inform the proposer of this and provide reasons why.

The reason for declining the proposal could be as simple as the subject of the proposal not being a current priority for the agency, or for government in general. Sometimes some of the ideas in an unsolicited proposal may challenge the thinking within the agency, stimulating discussion and leading to better definition of their need. If this occurs, you should be careful not to copy, use or give away the supplier's intellectual property without their permission.

Additional considerations

Keep good records

It is very important that your documentation reflects facts, supported by evidence, that justify a direct sourcing approach.

Things that should be taken into consideration during all stages of the assessment include:

Timeliness

The time it takes to assess unsolicited proposals will vary, depending on factors like the complexity of the proposal. You are encouraged to complete the assessment as promptly as possible.

Communication

You are encouraged to communicate regularly with the supplier that has provided the unsolicited proposal to inform them about progress on the assessment.

If other agencies have also received the proposal, then collaborate with them.

Documentation

You are expected to keep good records at each stage of the process. Your documentation should demonstrate that:

- all decisions are made on the basis of facts, evidence and knowledge of the market
- the market research that led to the understanding that the proposal was unique
- a business case and/or procurement plan has been completed
- approval was obtained at the appropriate level.

Prototypes and Pilots

Sometimes a supplier may offer to carry out a pilot to develop an idea, or develop a prototype as a proof of concept.

Under *Rule 15.9 e* of the Government Rules of Sourcing, an agency does not need to openly advertise a contract opportunity if the agency is purchasing a prototype for research, experiment, study or original development. Original development may include a limited production or supply if this is necessary to:

- i. carry out field tests and incorporate the findings, or
- ii. prove that the good or service or works can be produced or supplied in large numbers to an agreed quality standard.

Once the concept has been proved, you will need to go to market, to find the supplier that best meets your needs.

Feedback

Agencies and suppliers are encouraged to provide feedback on this guide.

Its effectiveness will be reviewed in 2014.

Agency discretion

The government reserves the right to decline unsolicited proposals at any stage of the analysis process, and request proposals from the open market.

Even if the proposal meets the needs, it may not be in line with the agency's priorities, and so the agency may not take it forward. The response to the supplier should reflect this.

However, the government assures suppliers that they will not use any intellectual property contained in the proposal without the express permission of the supplier.

Review

The Ministry of Business, Innovation and Employment will review the effectiveness of this guide to unsolicited proposals in January 2014.

Agencies and businesses are invited to provide general feedback at any time to procurement@mbie.govt.nz.

To further support this review, for the period to 31 December 2013, agencies are to provide MBIE with a summary of:

- the number of unsolicited proposals received
- the number of proposals accepted and
- the reasons why proposals were accepted or rejected.