



Lower Colorado River Authority

# Unsolicited Proposal Policy

Community Resources

1. **APPLICABILITY.** This policy applies to Unsolicited Proposals received by the Lower Colorado River Authority Community Resources (CR) department for the development of amenities and recreation services on LCRA lands. It does not apply to unsolicited proposals regarding the acquisition or sale of LCRA real property. Persons interested in pursuing negotiations regarding real property acquisitions and sales with the LCRA should direct their communications to the LCRA Real Estate Services department. All proposals will be required to meet LCRA Board Policies 401 and 404.
2. **DEFINITION.** An “Unsolicited Proposal” is a written proposal involving the use of LCRA land that is submitted to CR on the initiative of the submitter for the purpose of attempting to obtain a contract or lease with LCRA, not in response to a formal or informal request.
3. **UNSOLICITED PROPOSALS OVERVIEW.** Unsolicited Proposals shall be submitted to CR. Phase One is for Conceptual Proposals. Phase Two is for Detailed Proposals. LCRA may, at any time, choose not to proceed any further with the Unsolicited Proposal.
4. **PROHIBITION ON USE OF CONFIDENTIAL INFORMATION.** Concepts or ideas contained in Unsolicited Proposals shall not be considered proprietary or confidential by LCRA.
  - a. A non-disclosure agreement is required to be executed by all parties in substantially the form attached to this policy, in Exhibit A.
5. **PHASE ONE – CONCEPTUAL PROPOSAL.** The purpose of Phase One is for LCRA to receive written, unsolicited concept-level proposals and to screen those proposals to determine whether LCRA would like to review additional information in Phase Two. The Conceptual Proposal Form in Exhibit B must be completed and submitted with any concept-level proposal.
  - a. **Content.**
    - i. Evaluation Criteria. At Phase One, the evaluation team will determine the evaluation criteria as necessary to reflect the specific proposal, but generally will consider the following factors:
      1. The proposal offers direct or anticipated benefits to LCRA, its customers, and the community;
      2. The proposal contributes to LCRA meeting its financial objectives as detailed in the then-current annual LCRA Business Plan and is consistent with LCRA’s objectives and goals;
      3. A sufficiently detailed description of the scope of work to allow LCRA to evaluate the value received for the price proposed;
      4. Other factors appropriate for the particular proposal.
6. **PHASE TWO – REQUEST FOR DETAILED PROPOSAL.** The purpose of Phase Two is for LCRA to receive more detailed technical and financial information to fully understand and evaluate the Unsolicited Proposal.
  - a. **Process.** If CR decides to proceed to Phase Two, CR will issue a Request for a Detailed Proposal.
  - b. **Submission Minimum Requirements.** In addition to the information provided in Phase One, a Detailed Proposal for Phase Two must, at a minimum, include the following information.
    - i. Technical information.
      1. Names and professional information of the proposer’s key personnel who would be committed to the project;
      2. Type of support needed from LCRA; e.g., facilities, equipment, materials, or personnel resources; and
      3. Proposed revenue generated in sufficient detail for meaningful evaluation, including an annual cash flow for the project;
      4. A schedule for the implementation including specific details for any property and/or services to be provided by LCRA;
      5. Proposed duration of a Letter of Intent to allow for full proposal development.
    - ii. Supporting information.

1. Type of operating agreement, contract or permit preferred;
  2. Description of the organization, previous experience in the field, and facilities to be used;
  3. Required statements, if applicable, about organizational conflicts of interest, and environmental impacts; and
  4. Information demonstrating to LCRA that the proposer has the necessary financial resources to complete and operate the project, as determined by CR. Such information may include
    - a. Financial statements, including an Auditor's Report Letter or an Accountant's Review Letter, Balance Sheets, Statements of Income and Stockholder's Equity, and a Statement of Change in Financial Position;
    - b. Un-audited balance sheets;
    - c. Names of banks or other financial institutions with which the proposer conducts business;
    - d. Letter of credit commitments; and
    - e. Pro-forma financial statement.
- c. **Other Required Items.** Depending on the circumstances, the Request may include the following:
- i. Essential terms and conditions that could be part of a subsequent agreement between LCRA and the proposer;
  - ii. Schedule and important deadlines for the proposer;
  - iii. Specific technical, financial or other information necessary to fully evaluate the proposal;
  - iv. Requests for specific modifications or clarifications to the scope of the original proposal.
7. **TERMS.** LCRA's receipt of an Unsolicited Proposal does not, by itself, justify a contract award. Before entering into an operating agreement or contract resulting from an Unsolicited Proposal, LCRA will take the following steps:
- a. **Receipt.** LCRA will publicize its receipt of the Unsolicited Proposal by posting on LCRA's website. Such publication of receipt could occur at any phase of the process, to be determined by CR.
  - b. **Adequate Opportunity to Compete.** LCRA may choose, at its full discretion, to provide an adequate opportunity for interested parties to comment or submit competing proposals, and/or requests for an opportunity to respond within a time frame (minimum of 14 days) specified by CR staff.
  - c. **Nothing in this policy or otherwise requires LCRA to act or enter into a contract based on an Unsolicited Proposal. LCRA may return and/or reject an Unsolicited Proposal at any time during the process.**

## EXHIBIT A

### CONFIDENTIALITY AGREEMENT

This confidentiality agreement (“Agreement”) is between the Lower Colorado River Authority (hereinafter, “LCRA”) and \_\_\_\_\_ (hereinafter, the “Receiving Party”). Collectively, the LCRA and the Receiving Party may be referred to as the “Parties” and separately as a “Party.” This Agreement shall take effect on the date of the last signature below (“Effective Date”).

It is understood and agreed that information shared by LCRA under this Agreement is provided in connection with the negotiation and possible execution and performance of a separate contract between the Parties resulting from an Unsolicited Proposal.

In consideration of the negotiation and possible execution and performance of the separate contract between the Parties, which would not take place in the absence of this Agreement, the Parties agree as follows:

- A. This Agreement shall remain in effect for the same period as the separate contract between the Parties (Contract # \_\_\_\_\_).
- B. The term “Protected Information” means all information (including without limitation all maps, legal opinions, memoranda, notes, analyses, returns, work papers, documents, data, reports, interpretations, financial statements, forecasts, records and other materials), whether in verbal, visual, written, electronic or other form, that is made available by LCRA to the Receiving Party, together, in each case, with all notes, memoranda, summaries, analyses, studies, compilations and other information relating thereto or based in whole or in part thereon, prepared by the Receiving Party or others.

Protected Information does not include:

- i. Information already in the possession of the Receiving Party prior to the Effective Date and which was not acquired or obtained from LCRA, provided that such information is not, to the Receiving Parties’ knowledge, subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, LCRA;
  - ii. Information obtained by the Receiving Party from a source other than LCRA who, insofar as is known to the Receiving Party, is not prohibited from transmitting the information to the Receiving Party by a contractual, legal, or fiduciary obligation;
  - iii. Information generally available to the public other than as a result of a disclosure by the Receiving Party in violation of the provisions of this Agreement;
  - iv. Information developed by the Receiving Party completely independent of any information disclosed by LCRA; or
  - v. Information that is ascertainable from a commercially available product.
- C. Receiving Party agrees (i) to hold the Protected Information in strict confidence and to take all reasonable precautions to protect the Protected Information (including, without limitation, all precautions the Receiving Party employs with respect to its most confidential materials), (ii) not to divulge the Protected Information to any third parties (except as authorized herein), and (iii) not to make any use whatsoever at any time of the Protected Information except in connection with the negotiation and possible execution and performance of the separate contract between the Parties.
- D. Without the prior written consent of LCRA, the Receiving Party shall not disclose:
  - i. The fact that Protected Information has been made available to the Receiving Party;
  - ii. The fact that any solicitation, discussions, or negotiations are taking, have taken or will take place regarding a possible transaction between the Parties;
  - iii. That this Agreement exists or the terms hereof;
  - iv. Any of the terms, conditions, status of discussions, or any other facts regarding a possible transaction between the Parties; or

- v. If the separate contract is ultimately entered into between the Parties, the existence of the separate contract, or any of the terms, conditions, status, or any other facts regarding the separate contract.
- E. Receiving Party may disclose the Protected Information to its respective officers, directors, employees and attorneys (“Representatives”) working in connection with the purpose for which the Protected Information is disclosed, but only to the extent necessary to carry out that purpose and subject to all requirements of confidentiality set forth in this Agreement. Receiving Party shall be responsible for any breach of this Agreement by any of its Representatives.
- F. It is expressly understood by the Parties that LCRA is subject to Chapter 552 of the Texas Government Code (“Public Information Act” or “PIA”). Release of Protected Information to the Receiving Party for the limited purposes authorized herein is not to be construed as a waiver of any exceptions to the PIA’s disclosure requirements that may apply to the Protected Information. If the Receiving Party receives a request for Protected Information (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoena, requests made under the PIA, civil investigative demand or other similar process) it shall promptly, but in any event within no more than three (3) calendar days, notify and provide LCRA a copy of the request. LCRA shall bear the responsibility and expense for asserting its objections and exceptions to disclosure of Protected Information. The Receiving Party shall reasonably cooperate with LCRA in the assertion and presentation of appropriate exceptions or objections to release and shall bear sole responsibility and expense for asserting its own confidentiality interests, if any, in the Protected Information. If requested by LCRA, the Receiving Party shall actively pursue (at LCRA’s expense) the appropriate exceptions or objections and endeavor to provide LCRA the opportunity to intervene to prevent the release or disclosure of Protected Information in accordance with applicable law.
- G. In the event the Receiving Party is directed or ordered by the Texas Attorney General, a court of competent jurisdiction, or by an international, national, state or local governmental or regulatory body to release any Protected Information, the Receiving Party shall notify LCRA within three (3) calendar days of such direction or order. If either Party decides to pursue appeals or other legal remedies, the Parties shall cooperate to the fullest extent possible in such proceedings until all appeals or other legal remedies to protect such Protected Information are exhausted or the Party that decided to pursue an appeal or other legal remedy decides to cease that pursuit. In pursuing such appeals and/or other legal remedies, the Party deciding to pursue the appeal or other legal remedy shall bear the responsibility and expense of preparing pleadings, arguments, and other documentation and support necessary to the assertion of its position.
- H. No copies will be made of any Protected Information provided by LCRA without LCRA’s written consent, which will not be unreasonably withheld. The Receiving Party shall keep a record of all copies made of Protected Information and all individuals or entities provided such copies in accordance with the terms herein, and such record shall be available for review by LCRA upon request during the Receiving Party’s normal business hours.
- I. After completion of (i) unsuccessful negotiations in connection with which the Protected Information was disclosed to the Receiving Party, (ii) the specific contract in connection with which the Protected Information was disclosed to the Receiving Party, or (iii) upon written request by LCRA, all copies of the Protected Information shall be returned to LCRA immediately, or immediately destroyed by the Receiving Party, said destruction being certified in writing to LCRA by an authorized representative of the Receiving Party. Notwithstanding these or any other data retention, destruction, or return provisions elsewhere in this Agreement, information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course and the Custodial Party may retain one copy of the Protected Information for the purpose of defending against any claims arising in connection with this Agreement. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can customarily only be retrieved by computer forensic experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return or destruction of information as contemplated by this section. Such archival copies or latent data are subject to the obligations set forth in this Agreement for so long as such copies exist. Under no circumstances shall Protected Information be considered the records of the Receiving Party.

- J. After completion of (i) unsuccessful negotiations in connection with which the Protected Information was disclosed to the Receiving Party, (ii) the specific contract in connection with which the Protected Information was disclosed to the Receiving Party, or (iii) upon written request by LCRA, all copies of the Protected Information shall be returned to LCRA immediately, or immediately destroyed by the Receiving Party, said destruction being certified in writing to LCRA by an authorized representative of the Receiving Party. Notwithstanding these or any other data retention, destruction, or return provisions elsewhere in this Agreement, information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course and the Custodial Party may retain one copy of the Protected Information for the purpose of defending against any claims arising in connection with this Agreement. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can customarily only be retrieved by computer forensic experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirement for the return or destruction of information as contemplated by this section. Such archival copies or latent data are subject to the obligations set forth in this Agreement for so long as such copies exist. Under no circumstances shall Protected Information be considered the records of the Receiving Party.
- K. This Agreement does not grant or license any rights to information under any patent, copyright or other intellectual property right of LCRA, nor shall this Agreement grant the Receiving Party any rights in or to LCRA's Protected Information.
- L. The Receiving Party shall provide LCRA with a final copy of all reports, analysis, and conclusions made from the use of Protected Information provided to the Receiving Party.
- M. Each Party acknowledges and agrees that, unless and until a final definitive agreement regarding a proposed transaction has been executed and delivered, neither Party will be under any legal obligation of any kind whatsoever with respect to that transaction by virtue of this Agreement except for the matters specifically set forth herein.
- N. This Agreement constitutes the entire agreement and understanding of the Parties regarding the subject matter of this Agreement and shall be binding and inure to the benefit of the successors and assigns of the Parties; provided, however, that a Party may not assign all or any part of this Agreement without the written consent of the other Party. Money damages would not be a sufficient remedy for any breach of this Agreement by a Party or its Representatives, and a non-breaching Party shall be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed the exclusive relief as remedies for any such breach. This Agreement shall be governed and construed in accordance with the laws of the state of Texas without regard to its conflict of laws principles. Venue for any dispute arising out of this Agreement is proper only in Travis County, Texas.

Any alteration, modification, or waiver of this Agreement, or any portion thereof, must be agreed upon in writing and executed by the authorized representatives of both Parties. If any provision of this Agreement is held by a governmental agency or court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

Signed and executed by authorized representatives of the Parties:

**LOWER COLORADO RIVER AUTHORITY**

**[RECEIVING PARTY]**

By: \_\_\_\_\_  
*Authorized Signature*

By: \_\_\_\_\_  
*Authorized Signature*

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**PHASE ONE: CONCEPTUAL PROPOSAL FORM**

Phase One of LCRA’s Unsolicited Proposal process involves submitting this form. If LCRA determines that the proposal should proceed to Phase Two, LCRA will issue a Request for Detailed Proposal.

**PART 1. PROPOSER INFORMATION**

**Organization:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

These individuals should be responsible for answering LCRA’s technical or business questions concerning the proposal or any subsequent agreement concerning the Proposal.

**Technical Contact Name(s):** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

**Business Contact Name(s):** \_\_\_\_\_

**Phone:** \_\_\_\_\_ **Email Address:** \_\_\_\_\_

**PART 2. TECHNICAL INFORMATION**

**Proposal Title:** \_\_\_\_\_

Abstract of the Proposal is attached. To move forward in the Unsolicited Proposal process, the submission must include a brief – but complete – outline of the following:

- (1) Objectives;
- (2) Scope of project;
- (3) Method of approach;
- (4) Concept site plan;
- (5) Nature and extent of anticipated results; and
- (6) Manner in which the work will help support accomplishment of LCRA’s Business Plan.

**Technical expertise the proposer needs from LCRA:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PART 3. FINANCIAL INFORMATION**

Be concise but provide sufficient detail for LCRA to meaningfully evaluate the Proposal.

**Proposed Price or Total Estimated Cost:** \_\_\_\_\_

\_\_\_\_\_

**Revenue:** \_\_\_\_\_

\_\_\_\_\_

**Financial information the proposer needs from LCRA:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PART 4. PROCEDURAL INFORMATION**

**Period of Time for which the proposal is valid:** \_\_\_\_\_

Proprietary data has been submitted with this proposal and is deemed confidential by the proposer in the event of a request submitted to LCRA under the Texas Open Records Act. Any proprietary data must be clearly designated.

There are patents, copyrights and/or trademarks applicable to the goods or services proposed.

Please explain: \_\_\_\_\_

\_\_\_\_\_

**A meeting with LCRA:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

There is additional information that would allow LCRA to evaluate this proposal at this conceptual phase. Attached additional information to this proposal.



**PART 5. AUTHORIZATION**

By signing this agreement, I state and declare I have read it carefully, I understand all of its terms and I voluntarily sign it with full knowledge of its legal consequences. I further represent I am duly authorized by the Proposer to sign this agreement as the act and deed of the Proposer.

Proposer:

LCRA:

By: \_\_\_\_\_  
*Authorized Signature*

By: \_\_\_\_\_  
*Authorized Signature*

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_