



Board Report

File #: 2024-0247, **File Type:** Motion / Motion Response

Agenda Number: 21.

**EXECUTIVE MANAGEMENT COMMITTEE
JUNE 20, 2024**

SUBJECT: UNSOLICITED PROPOSALS POLICY UPDATE

ACTION: APPROVE RECOMMENDATION

RECOMMENDATION

CONSIDER:

- A. RECEIVING AND FILING the status update on the recommendations from the Unsolicited Proposals Five Year Review; and
- B. ADOPTING the Unsolicited Proposals (UP) Policy Staff Recommendations (Attachment A) in response to Board Motion 39.

ISSUE

Since inception in February 2016, the Unsolicited Proposals (UP) Policy (Attachment B) has led to 286 Unsolicited Proposals - a substantial volume of submissions. Of those 286 Unsolicited Proposals, 34 proposals have advanced to implementation, leading to 22 unique projects and 13 no-cost-to-Metro Proofs of Concept as of May 2024. Projects and approaches that originated as an Unsolicited Proposal include Metro Micro, Camera Bus Lane Enforcement, and Smart Mobile Bathroom Pilot.

At its March 2024 meeting, the Board approved Motion 39 (Attachment C) by Directors Yaroslavsky, Bass, Krekorian, Najarian, and Horvath, directing the CEO to provide a comprehensive review and recommend updates to the UP Policy related to key focus areas. This report addresses Board Motion 39 including a status update on the recommendations from the Unsolicited Proposals Five Year Review completed in 2021.

BACKGROUND

Established in February 2016, Metro's UP Policy allows any external party (such as a company, non-profit, or private citizen) or Metro employee to submit conceptual project proposals for formal evaluation. The UP Policy is a nimble, industry-accepted procurement tool managed by the Office of Strategic Innovation (OSI) and Vendor/Contract Management (V/CM) that provides an avenue for new ideas to be received, explored, and implemented to advance Metro's mission and priorities.

Unsolicited Proposals are evaluated by a Review Team, composed of Metro staff from the following Departments: OSI, at least one subject matter expert from outside OSI, and V/CM. Unsolicited Proposals can result in one of four outcomes:

1. Decline Proposal: Metro does not seek additional information or proceed with a proposal.
2. Additional Fact-Finding (referred to as “Phase II” in the UP Policy): Metro requests more detailed technical and financial information to fully understand and evaluate the proposal.
3. Proof of Concept: a no-cost-to-Metro pilot of the proposal with limited scope and duration to demonstrate product viability.
4. Advance to Implementation: Review Team gives a recommendation for a proposal to proceed to competitive solicitation. In three circumstances, and in adherence to V/CM rules and guidelines, a proposal can qualify to advance to a sole source solicitation. Advancing a proposal to implementation does not compel Metro to enter into a contract. Metro, at its sole discretion, may return and/or decline to proceed with an Unsolicited Proposal at any time during the process. All proposals advanced to implementation must adhere to Federal, State, and Board mandated procurement guidelines.

Once the Review Team makes a recommendation, staff crafts a Decision Letter with the outcome and reasoning outlined for the proposer. A Decision Letter is not binding; it is intended to inform the proposer of Metro’s intent. The intent given can change at Metro’s sole discretion.

In February 2021, Metro staff issued a Five Year Review of the UP Policy, which assessed whether the Policy had worked as intended, led to high-value projects, and made Metro more innovative. The Five Year Review concluded that the UP Policy had provided a steady flow of ideas, helped to drive decision-making, and established a process for developing meritorious ideas into Metro projects. The assessment also produced eight recommendations to update and improve the Policy. In 2021, the Metro Board also adopted the Joint Development (JD) Policy, which spoke to the treatment of Unsolicited Proposals for prospective Joint Development sites. Within the Policy, staff may consider unsolicited proposals that seek the right to develop or improve Metro property by bringing unique benefits to a Metro site such as adjacent property.

DISCUSSION

Integration of Metro’s Core Mission, Goals and Priorities

The UP Policy exists to widen the portal for ideas on the ways in which Metro delivers its core mission of getting people where they need to go in a safe, efficient, affordable, and reliable manner. Ensuring that proposals advance Metro’s goals and align with the agency’s priorities are critical to the success of any Unsolicited Proposal that is eventually implemented. Metro staff recommend the following adjustments that strengthen the review process and prioritize proposals that best meet Metro’s priorities:

1. *Incorporate equity and sustainability components in the Unsolicited Proposal review process:* staff recommends adding questions in the Exhibit C intake form that ask proposers to directly state how the project will advance Metro’s Equity and Sustainability values. Once an Unsolicited Proposal is received, staff use a series of six criteria to evaluate a proposal. Staff

recommends including equity as a seventh evaluation criterion. Staff will also include these recommendations when using the Rapid Screening Tool, which will include equity as a criterion. The Rapid Screening Tool rates proposals on a 0-3 scale for each criterion and is used during high intake periods for Unsolicited Proposal. Equity will be measured based on the extent to which the proposal presents an “equity opportunity.” Metro defines an equity opportunity as “a decision that is designed to provide benefits or reduce or not perpetuate disparities for historically marginalized communities or others facing disparities in access to opportunities.” Unsolicited Proposals may warrant further review through Metro’s Rapid Equity Assessment (REA) if the proposal does not present a strong equity opportunity. For example, an Unsolicited Proposal that scores well in the areas of technical and financial merit but has the potential to result in negative impacts to marginalized and vulnerable groups may require a REA.

An equivalent screening tool for sustainability does not currently exist at the agency. However, staff recommends including consideration for sustainability in the formal evaluation that must be developed for all Unsolicited Proposals to ensure thorough internal review. This requirement will be stated as follows: “Describe and quantify, if possible, how the proposal advances (or does not hinder) Metro’s commitment to environmental sustainability and/or climate resiliency.” Staff will also post additional guidance on Metro’s equity and sustainability goals on the Partnerships webpage to direct interested parties to pertinent resources.

- 2. Prioritize Unsolicited Proposals in support of the 2028 Olympic/Paralympic Games and Measure R & M Expenditure Plans:* Staff recommend additional informational requirements in Exhibit C of the Policy that indicate how the proposal supports projects outlined in the Measure R and Measure M Expenditure Plans, as well as, whether the submitted Unsolicited Proposal supports the 2028 Mobility Concept Plan or Olympics preparation and to identify the specific project within the plan. Unsolicited Proposals that clearly demonstrate alignment will be prioritized for review.

Phased Review Process and Regularity of Board Consultation

Blackout Period

Staff continue to adhere to all policies, State/Federal laws, and internal ethics standards surrounding procurements and specific projects with information not yet publicly available. Federal and state rules mandate a “blackout period” during the procurement process, in which the proposer cannot engage in any advocacy while the proposal is being evaluated. The Board is prohibited from seeking information from Metro staff during review. While these rules, outlined in California Public Utilities Commission Sections 130680 and 130685, were adopted prior to the establishment of the Unsolicited Proposals process, staff have maintained a consistent standard of the application of procurement rules and guidelines to maintain the integrity of the review and evaluation of Unsolicited Proposals. As such, staff do not inform the Board, public, or any non-Review Team members of

ongoing Unsolicited Proposal reviews for the following reasons:

- To maintain the impartiality of Metro’s Board during ongoing procurement efforts.
- To maintain the impartiality of Metro’s Review Team by prohibiting industry stakeholders from communicating with staff and influencing evaluation efforts.
- To maintain trust and confidentiality with proposers and protect proprietary information and/or technologies.
- To allow for a nimble and streamlined review process. Staff have 120 days to respond to Unsolicited Proposals. Creating a Board review process for active Unsolicited Proposals would lead to increased demand for staff time on each Unsolicited Proposal to meet these deadlines.
- To ensure the competitiveness of a future solicitation resulting from a successful Unsolicited Proposal review.

Metro staff currently maintain a blackout period for all Unsolicited Proposals submitted until a Decision Letter is signed and sent to the proposer. However, staff recommend quarterly reports to the Board on the Decision Letters issued related to Phase 1 and Phase 2 milestones, except for “landmark Unsolicited Proposals.” “Landmark” is defined as Unsolicited Proposals, such as major capital projects or new transit service, that proceed through initial review (Phase 1), or proposals that require Metro to allocate more than \$10 million. “Landmark” proposals would require Board approval based on the following threshold:

- Any Unsolicited Proposal recommended to “Advance to Implementation” that introduces a new mode of mobility and/or transit guideway systems that require Metro funding, project management, call for Metro to serve as lead agency in the development of an EIR/EIS, and/or falls under a project subject to CPUC Code 130252, and/or;
- Any Unsolicited Proposal recommended to “Advance to Implementation” that would require Metro to allocate more than \$10 million to fulfill a solicitation.

Note: An “advance to implementation” recommendation is not a legally binding commitment from Metro to undertake a project or the scope proposed therein. As stated on page seven of the UP Policy, “Nothing in this policy or otherwise requires Metro to act or enter into a contract based on an Unsolicited Proposal.” Strengthened Community-Focused Transparency and Engagement

The UP Policy is a medium for stakeholders to present ideas beyond the normal avenues of internal project generation. While the blackout period prevents staff from engaging with the public regarding the details of an Unsolicited Proposal during the review process, staff have identified opportunities that enhance the community engagement process once the blackout period is lifted. These opportunities are described below.

Prioritize Proposals that Promote Community-Informed Projects

The UP Policy works to move Metro’s mission, goals, and values forward. An enhancement to the Policy, as discussed in this Report, is to prioritize proposals that support projects listed in the 2028 Mobility Concept Plan, Measure R/M Expenditure Plans, and/or plans published by Metro that set agency and department priorities. The priorities in these plans have been vetted by the public and will

continue to follow Metro's standards for community engagement as they progress through planning and implementation.

Early Community Engagement Planning for Landmark Unsolicited Proposals

When proposals meet the above thresholds for Board consultation, staff will consult with Metro's Community Relations team during the review period for guidance on how to seek input from community stakeholders as the project develops. If a proposal is advanced to implementation, staff would include this information when seeking Board approval. This information serves to prompt conversations on community engagement and informs the Board of staff's recommendations. All community engagement activities would occur after the proposal outcome has been determined, and the Board has approved Metro's recommended course of action.

Community Outreach for Joint Development Unsolicited Proposals

Language within the Joint Development UP Policy supports the framework for community outreach. Community outreach would occur prior to the proposed project being submitted to the Board for consideration. Promoting community-focused transparency and engagement would occur through the creation of a developer-led community outreach plan, canvassing of local stakeholders in proximity to the project, presentations to interested parties, and direct communications to the Board of Directors and affected locally elected officials. Any major project that proceeds through the Joint Development Unsolicited Proposals process to environmental review would be subject to the engagement best practices.

Industry Outreach

Staff have also engaged in industry outreach. In December 2018, the Office of Strategic Innovation hosted an Unsolicited Proposal forum with the theme "Think You Can Solve Traffic," which allowed interested partners and community members the opportunity to learn about Metro's current efforts, hear from industry professionals and researchers, as well as discuss their ideas with Metro. Staff received 43 proposals following the forum. These outreach efforts are under consideration for the future, particularly for projects that serve the 2028 Games.

Workstream Delegation to Reduce Metro Staff Time

Staff have access to a financial advisory bench of consultants that can be activated for additional support in evaluating the financial viability of Public-Private Partnerships. When Metro receives an Unsolicited Proposal that presents a Public-Private Partnership opportunity, staff can solicit support from this bench to augment Metro staff capacity and expertise and reduce staff time needed to conduct an extensive financial evaluation. Staff have used these resources in the past and will continue to do so when necessary. Additionally, the Rapid Screening Tool allows staff to more effectively and efficiently identify proposals that do not align with Metro's mission and values.

Staff capacity is a factor as a part of the Feasibility criteria for proposal evaluation. For Landmark Unsolicited Proposals that meet the above threshold, Metro staff will incorporate initial findings on how the proposal will impact staff time as part of the subsequent Receive and File to the Board.

Status of Five Year Review Recommendations

In the Five Year Review, staff introduced eight recommendations to update and improve the Policy. The recommendations were:

1. Expand FAQ documents to include a discussion of proposal success factors;
2. Formalize pre-proposal briefings;
3. Apply an equity lens to proposals;
4. Employ the Rapid Screening Tool to assess a proposal's chance of success;
5. Extend the review period;
6. Finalize and disseminate Policy operating procedures to clarify the process for participants;
7. Establish a Proof of Concept best practices guide and library resource;
8. Write the next Innovation Portfolio;

Recommendations 1, 2, 5, and 6 have been fully adopted.

While equity was established as an evaluation consideration in the Phase I evaluation form following the release of the Five Year Review, staff have now memorialized equity criterion in the Rapid Screening Tool as well. As mentioned above, Unsolicited Proposals that represent an equity opportunity, whether by enhancing positive impacts or reducing negative impacts for historically marginalized communities or others likely to be impacted by the proposal, may warrant further review through Metro's Office of Equity and Race Rapid Equity Assessment (REA).

The Rapid Screening Tool is not currently outlined in the UP Policy and, therefore, is not universally applied to incoming Unsolicited Proposals as such a grading mechanism is not readily available to proposers. Metro staff recommends updating the UP Policy to include the Rapid Screening Tool. The adoption of these changes will mean Five Year Review Recommendations 3 and 4 will be fully adopted. Recommendations 7 and 8 will be completed before the end of 2024 when staff publishes the Innovation Portfolio and Proof of Concept best practices guide.

FINANCIAL IMPACT

Approval of the recommendations does not result in a financial impact to Metro.

EQUITY PLATFORM

Staff are taking additional steps, as outlined in the recommendations above, to incorporate equity as part of the Unsolicited Proposal review and evaluation process. This includes codifying equity as a core consideration in the Exhibit C intake form.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The UP Policy is a flexible tool that can be adapted to advance many of Metro's strategic goals. The Policy supports the implementation of Goal 1: Provide high-quality mobility options that enable people to spend less time traveling; Goal 2: Deliver outstanding trip experiences for all users of the transportation system; Goal 3: Enhance communities and lives through mobility and access to

opportunity.

ALTERNATIVES CONSIDERED

The Board could elect not to approve recommendations set forth in this report and maintain status quo operating procedures for proposal intake and review. However, this is not recommended as including equity and sustainability considerations in reviews, reporting thresholds for Board review, and Olympic/Paralympic MCP, as well as Measure R and M Expenditure Plan prioritization during intake, can help the UP Policy and staff facilitate more effective reviews. Not taking these actions can reduce Metro's ability to address mobility issues nimbly and equitably through new ideas.

NEXT STEPS

Upon Board approval, staff will incorporate the recommendations outlined in this Board Report, publish the revised UP Policy on Metro's website, and update the website and FAQ document to reflect current information.

ATTACHMENTS

Attachment A - Unsolicited Proposals Policy Staff Recommendations

Attachment B - Unsolicited Proposals Policy

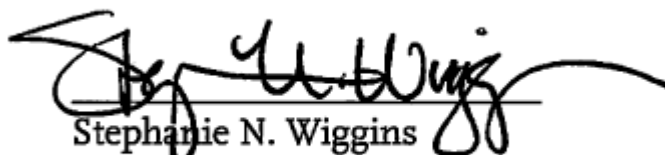
Attachment C - Board Motion 39

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