



WASHOE COUNTY

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|-------------|-------------------|
| CM/ACM | <u>KS</u> |
| Finance | <u>DN</u> |
| DA | <u> </u> ✓ |
| Risk Mgt. | <u>N/A</u> |
| HR | <u>N/A</u> |
| Comptroller | <u>MS</u> |

STAFF REPORT BOARD MEETING DATE: January 12, 2016

DATE: December 8, 2015

TO: Board of County Commissioners

FROM: Dave Solaro, Architect, P.E., Director,
Community Services Department, 328-3624, dsolaro@washoecounty.us

THROUGH: Kevin Schiller, Assistant County Manager

SUBJECT: Approve an Unsolicited Proposal Policy and Guideline document to be utilized for review of proposals to Washoe County for development and/or use of County owned land and/or infrastructure. (All Commission Districts.)

SUMMARY

The aim of this Policy and Guideline document is to provide a transparent and consistent assessment process to allow the County to fairly consider unsolicited proposals received from the private sector, and to determine whether they align with the County's strategic priorities and provide a benefit to the public.

This policy is intended to be applied for the normal review of unsolicited requests for purchases or investments as outlined in the Rules and Procedures for the Board of County Commissioners.

Washoe County Strategic Objective supported by this item: Stewardship of Our Community.

PREVIOUS ACTION

No previous action associated with this item.

BACKGROUND

An unsolicited proposal is a unique or innovative proposal initiated by the private sector¹ that uses County-owned fixed assets -- either land, infrastructure or both -- and is submitted to the County to deliver outcomes that are desirable to Washoe County and which may not be suitable to progress through standard competitive procurement processes. It involves private sector businesses approaching Washoe County for the

¹ "Private sector" includes for-profit businesses, tax-exempt nonprofit organizations formed under Section 501(c) of the United States Internal Revenue Code, and faith based organizations.

County's approval and support for the project, which could take the form of financial support, or other forms of in-kind support such as regulatory or social support, or the use of County assets. When involving the financing, design, construction and/or maintenance of infrastructure, these proposals are sometimes called private-public partnerships ("P3"). However, an unsolicited proposal also can include proposals such as the leasing and development of County land.

Washoe County employees receive numerous inquiries from the private sector in regard to the use of County owned land and solicitations to use specific operating systems, or infrastructure equipment. Washoe County employees have no consistent assessment process to utilize in reviewing the proposals. This inconsistent approach creates uncertainty for the proposer as well as utilizes large amounts of staff time in working to either support or deny the proposal.

The following objectives guide the County's process for considering unsolicited proposals:

- Promoting the development of innovative ideas with the private sector where appropriate;
- Ensuring an open, transparent and fair process that involves a high standard of ethics and public accountability;
- Ensuring a project benefit for Washoe County is achieved;
- Ensuring the benefits of the project for the county are measurable and can be maximized; and
- Ensuring the proponent's intellectual property (IP) is respected.

A consistent approach to handling proposed private-public partnerships is outlined in this policy and guideline document. This document is prepared in such a way that the proposer understands what information is necessary for Washoe County to review the proposal, and it also directs staff on the process to review the information. The review of proposals will be completed by the CIP Committee convened as an Assessment Panel.

A three stage process will guide assessment of unsolicited proposals:

- **Stage One:** The proponent submits an unsolicited proposal for preliminary consideration and assessment against guiding principles;
- **Stage Two:** The Assessment Panel and proponent work together to develop a full proposal and a detailed evaluation and assessment is undertaken, including a detailed financial assessment; and
- **Stage Three:** The County awards the contract and the parties deliver the project.

If at any stage during the process the proposal (in full or any components) is deemed to be a procurement, the Assessment Panel must seek relevant approvals from the Board of County Commissioners. It should be noted that this process cannot be used to bypass existing procurement processes already underway.

FISCAL IMPACT

There is no cost associated with approving this policy and guideline document. Proposals that are approved by the Board to proceed through the assessment process will be brought back to the Board for final approval and will include any applicable fiscal impact.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve an Unsolicited Proposal Policy and Guideline document to be utilized for review of proposals to Washoe County for development and/or use County owned land and/or infrastructure.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:
"Move to approve an Unsolicited Proposal Policy and Guideline document to be utilized for review of proposals to Washoe County for development and/or use County owned land and/or infrastructure."

WASHOE COUNTY

Unsolicited Proposal
Policy and Guideline

January 2016

WASHOE COUNTY

Unsolicited Proposal Policy and Guideline

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Introduction

Washoe County is committed to implementing a clear policy and framework for the consideration of unsolicited proposals for development and/or use of County-owned land and/or infrastructure and associated service delivery.

This Policy and Guideline indicates a willingness on the part of the County to partner with the private sector to deliver innovative infrastructure and associated service delivery outcomes and provides a gateway for the private sector to deal directly with Washoe County on unique proposals.

The aim of this Policy and Guideline is to provide a transparent and consistent assessment process to allow the County to fairly consider unsolicited proposals received from the private sector, and to determine whether they align with the County's strategic priorities and provide a benefit to the public.

It should be noted that Washoe County procures infrastructure and associated services under the process set forth in the Nevada Revised Statutes (NRS), which provide for an open competitive process to achieve the best value for money. In the majority of cases, this is the preferred approach for procurement to achieve the best return for Washoe County and to ensure all proponents wishing to conduct business with the County are given a fair and reasonable opportunity to do so.

Application of the policy

The *Unsolicited Proposals: Policy and Guidelines* applies to services, supplies, partnerships, and projects which have a minimum private investment contribution of \$100,000.

This policy is to be applied as a policy for normal review of unsolicited requests for purchases or investments as outlined in the Rules and Procedures for the Board of County Commissioners.

Definition of unsolicited proposal

An unsolicited proposal is a unique or innovative proposal initiated by the private sector¹ that uses County-owned fixed assets -- either land, infrastructure or both -- and is submitted to the County to deliver outcomes that are desirable to Washoe County and which may not be suitable to progress through standard competitive procurement processes. It involves private sector businesses approaching Washoe County for the County's approval and support for the project, which could take the form of financial support, or other forms of in-kind support such as regulatory or social support, or the use of County assets. When involving the financing, design, construction and/or maintenance of infrastructure, these proposals are sometimes called private-public partnerships ("P3"). However, an unsolicited infrastructure proposal also can include proposals such as the leasing and development of County land.

Objectives

The following objectives will guide the County's process for considering unsolicited proposals:

- Promoting the development of innovative ideas with the private sector where appropriate;

¹ "Private sector" includes for-profit businesses, tax-exempt nonprofit organizations formed under Section 501(c) of the United States Internal Revenue Code, and faith based organizations.

- Ensuring an open, transparent and fair process that involves a high standard of ethics and public accountability;
- Ensuring a project benefit for Washoe County is achieved;
- Ensuring the benefits of the project for the County are measurable and can be maximized; and
- Ensuring the proponent’s Intellectual Property (IP) is respected.

The County has no obligation to approve an unsolicited infrastructure proposal no matter how much contribution the project proponent has offered. The County recognizes that a number of issues must be considered in evaluating such proposals and that even considering a significant upfront commitment, that commitment may be dwarfed by ongoing costs of the County in operating or maintaining the facility, which could otherwise be used by the County for other initiatives it deems of greater value.

Ethics

The assessment of unsolicited proposals must be fair, open, demonstrate the highest levels of ethics and be consistent with the public interest. The assessment of proposals will be conducted through the application of established ethical principles that aim to ensure the integrity of the decision making processes. In particular, Washoe County will aim to ensure the process is:

- Impartial;
- Accountable and transparent, with any conflicts of interest managed appropriately;
- Confidential to the extent allowed under State law; and
- Provides benefit to Washoe County residents.

Ethics laws for public employees are contained in Nevada Revised Statutes (NRS) 281A and will be the guiding principles against which the decision making process is governed for each proposal.

Governance

The Washoe County Budget Office (“Budget”) is responsible for receiving unsolicited proposals and for coordinating the assessment process. Budget will participate on and establish an Assessment Panel comprised of representatives from the Capital Improvement Committee and affected County departments and agencies, to undertake the assessment of the proposal and provide a recommendation to the Board of County Commissioners (“Board”).

The Board is responsible for initial approval at Stage One and for final approval, including entering into a contract.

Budget is able to issue administrative instructions to clarify the requirements for the assessment under this Policy and Guideline. Any such administrative instructions must be entirely consistent with this Policy and Guideline.

Resource Commitments

As the proponent and County work through the assessment and development of the proposal, there will likely be a requirement for the commitment of resources by both parties, including financial costs borne by the proponent for the more detailed development of the proposal in Stage Two.

Evaluation Criteria

Guiding Principles

The County has adopted the following principles to guide its consideration of unsolicited proposals:

1. The proposal is unique and innovative and cannot be reasonably delivered by another proponent or achieve the same (or greater) value for money outcome through a competitive process within acceptable timeframes;
2. The proposal aligns with the County's policies and strategic objectives;
3. The proposal represents value for money for the investment required by Washoe County and provides benefits to the community by meeting the following principles;
 - a. The proposal is cost-effective on a cost-benefit basis;
 - b. The proposed use of the facility is considered the highest and best use of the facility when considered against other proposals or plans for the development of the property within the last 10 years;
 - c. The method of development and operation of the facility is less expensive than if the County were to develop the property in question itself unless the County lacks the financial resources within the next two fiscal years to develop the property itself;
 - d. Preferably, there are synergies or economic spinoff benefits associated with the proposal that the County cannot solely achieve.
4. There is a demonstrated need and support [or interest] for the project from the perspective of both the County and the broader public interest; and
5. The proposal is financially, legally, economically, socially and technically feasible.

These principles are used to assess proposals throughout the process to ensure net benefits are delivered to the community. Specific and more detailed Evaluation Criteria relevant to a particular proposal will be developed and applied at later stages in the process, as discussed below under the assessment process. The detailed Evaluation Criteria will be a refinement of these guiding principles.

Unique and innovative

For an unsolicited proposal to be considered, it must demonstrate unique benefits, a clear ability to deliver the proposal and demonstrate how its idea is differentiated from other offerings in terms of benefiting the general public. Factors that should be considered include whether:

- The proposal can be readily delivered by other private sector entities or the County itself;
- The proponent owns something that would limit the County from contracting with other parties;
- There are other attributes which may not necessarily stand alone as unique but, when combined, create a unique proposal; and
- The proponent has a unique ability to deliver a strategic outcome or financial arrangement.

Strategic objectives and County policy

The proposal will be assessed against its ability to support or deliver on strategic objectives and whether it is consistent with the County's plans, priorities and policies. Importantly, this includes whether it upholds the public interest and delivers a public benefit such as facilitating economic growth or providing a service that is not provided by the County, what level (if any) of sustained impact it will have on the community and whether it has a positive and significant impact on local jobs.

Project Benefit

The Assessment Panel will consider whether the proposal delivers value for money to the community. It will consider the net economic benefits of the proposal, life cycle costs and revenue, quality, risk borne by Washoe County, and benefits gained by the community. The proposal must meet the following principles:

- The proposal is cost-effective on a cost-benefit basis;
- The proposed use of the facility is considered the highest and best use of the facility when considered against other proposals or plans for the development of the property within the last 10 years;
- The method of development and operation of the facility is less expensive than if the County were to develop the property in question itself, unless the County lacks the financial resources within the next two fiscal years to develop the property itself;
- Ideally, there are synergies or economic spinoff benefits associated with the proposal that the County cannot solely achieve.

The County will not consider the use of private-sector financing for the construction of any facility that the County owns or will own, unless the proponent is proposing to construct a facility and deed that facility to the County at no cost.

Need and Support

The Assessment Panel will consider whether there is a demonstrated need and support for the proposal or whether its financial and administrative resources would be better focused elsewhere. It will also ask whether the proposal is consistent with Washoe County's plans and priorities and whether the proposal would require the County to re-prioritize and/or re-allocate funding (and whether any such re-allocation is appropriate).

In determining the level of support for a proposal, the Assessment Panel will consider one or more of the following methods:

- Community surveys previously conducted by the entity submitting the proposal
- Community surveys to be conducted by the County
- An assessment of the need and projected revenues prepared by a consultant contracted by the County
- Public testimony received at one or more community workshops conducted by the County

Feasibility

The Assessment Panel will consider the financial, legal, economic, social and technical feasibility of the project. The Assessment Panel, in consultation with Budget, will consider whether the proposal can be appropriately funded and from which source this funding would be available. If the proposal moves to Stage Two of the process, a detailed financial appraisal will be required to be undertaken.

The Assessment Panel will also consider whether the:

- The proposed delivery model including planning, design and construction and operations arrangements is feasible (within a reasonable timeframe and appropriate level of risk) as well as being consistent with the County's objectives;
- Proponents/parties to the proposed project are capable of delivering the project and the proposed contractual structure will enable the delivery of the outcomes; and

- The proposed project does not violate County ordinances or state or federal law. The Assessment Panel shall consult with the District Attorney's Office and the County's bond counsel in reaching this determination.²

The assessment process

A three stage process will guide the assessment of unsolicited proposals:

- **Stage One:** The proponent submits an unsolicited proposal for preliminary consideration and assessment against guiding principles;
- **Stage Two:** The Assessment Panel and proponent work together to develop a full proposal and a detailed evaluation and assessment is undertaken, including a detailed financial assessment; and
- **Stage Three:** The County awards the contract and the parties deliver the project.

If at any stage during the process approval is not obtained to move to the next stage, the County and proponent will (consistent with any agreements reached throughout the various stages), decide on protection of relevant intellectual property and costs of both parties.

Further, if at any stage during the process the proposal (in full or any components) is deemed to be a procurement, the Assessment Panel must seek relevant approvals from the Board. It should be noted that this process cannot be used to bypass existing procurement processes already underway.

Stage One

All proponents are strongly encouraged to review this Policy and Guidelines document in order to gauge the suitability of the proposal and discuss key requirements under the Policy and Guideline with Budget prior to making their submission.

Submission of proposal

The proponent will submit an unsolicited proposal to Washoe County. All proposals are to be directed to Budget, and must include key information to facilitate a preliminary assessment of the proposal.

Proposals are to be sent to:

Washoe County Manager's Office – Budget Office
P.O. Box 11130
Reno, Nevada 89520
Phone: 775-328-2000

Proposals will not be considered until all relevant information is provided. Relevant information includes:

- Identification and supportive information relating to all of the parties associated with the proposal;
- An outline of the proposal, including sufficient detail of the costs and benefits, to demonstrate that the proposal is viable and able to be appropriately resourced;
- An explanation of how the proposal meets the guiding principles;

² An opinion from bond counsel is necessary when the proposal requires the use of land or facilities previously financed by tax-exempt debt.

- The unique or innovative aspects of the proposal;
- The proposed benefits to the County, including how the proposal is in the public interest;
- The desired delivery method;
- The required County support and financial commitments, including the expected capital cost, the financial capacity of the provider and other funding sources (if applicable); and
- A discussion of areas considered to be unique intellectual property.

Preliminary assessment

Once Budget has received all required information from the proponent and is satisfied that it meets the basic eligibility requirements, an Assessment Panel comprised of representatives from the Capital Improvement Committee and affected County departments and agencies will be established based on the type of proposal and its requirements.

The Panel will assess the proposal against the guiding principles and submit the initial recommendation to the Board. The Board submission will recommend either that the proposal is viable and should move to Stage Two to undergo a full evaluation or that the proposal should not proceed. If it is recommended that the proposal should move to Stage Two, the Panel may also recommend to the Board that it enters into an exclusive negotiation with the proponent.

If it is recommended that the proposal proceed, the Board submission will include:

- The detailed Evaluation Criteria against which the proposal will be evaluated – this will be based on the type of proposal received, but will be consistent with the guiding principles; and
- The broad terms and conditions to be included in a Memorandum of Understanding (MOU) to be developed with the proponent, including any funding requirements from the County. The MOU will be developed in conjunction with the District Attorney’s Office.

Stage Two

Memorandum of Understanding

Following initial Board approval, a MOU will be developed by the District Attorney’s Office in conjunction with the Assessment Panel. The MOU will include:

- All core issues identified in the Board approval;
- The detailed Evaluation Criteria previously approved by the Board (including a process for determining project budget and the proposal’s local impact on jobs), which will be consistent with the Guiding Principles; and
- Ethics, process and protocols for negotiation.

The MOU will also involve collaboration in conjunction with the proponent and may include other components such as:

- A process for identifying and treating intellectual property rights;
- A process for determining project costs;
- Timeframes for completion of the negotiation and assessment requirements;
- Rights and obligations of each of the parties;
- Information requirements;
- Potential outcomes;
- Confidentiality and approval requirements; and
- Management of conflict of interest.

Detailed Submission

Following the development of the MOU, the proponent and the Assessment Panel will work together to further develop the proposal and final recommendation, and to develop a project plan to be submitted to the Board. Depending upon the nature of the proposal, this may require a degree of preliminary negotiation on key issues, however, this will be covered by the MOU. The ethics laws will also be reviewed as required, and an adviser from the District Attorney's Office may be appointed for the duration of the process.

This stage involves further assessment against the guiding principles and associated specific evaluation criteria as outlined in the Board submission referred to above. It will also involve further consideration of the feasibility of the project, how it will be delivered and whether it represents a benefit for Washoe County citizens. There is no presumption that at the end of the negotiation process a proposal will be agreed upon.

It is expected that the proposal will be fully developed at the end of this stage, including the commercial and financial aspects, with only a limited number of issues outstanding.

At the end of this stage the County may decide to negotiate a final offer with the proponent, not proceed with the proposal or contemplate another approach, including a competitive process or the purchase of the proponents intellectual property, where possible.

Approval Requirements

Project Benefit

A cost/benefit evaluation will be required to assess whether value for money is being achieved for Washoe County and to ensure that the proposal and its financial impact are considered in relation to the budget. As such, a full financial analysis by the Assessment Panel will be carried out during this stage, possibly using a consultant to assist in this evaluation.

If the proposal requires that the County's financial resources will be needed to construct, operate or maintain the proposed facility or improvements or share in these costs, the proposed costs of this commitment will be considered as part of the annual CIP or operational budget process or both depending on the circumstances, unless the County Manager considers this an urgent or extraordinary opportunity that requires immediate review and directs the Assessment Panel to bring the proposal to the Board immediately upon completion of its analysis.

Board Submission

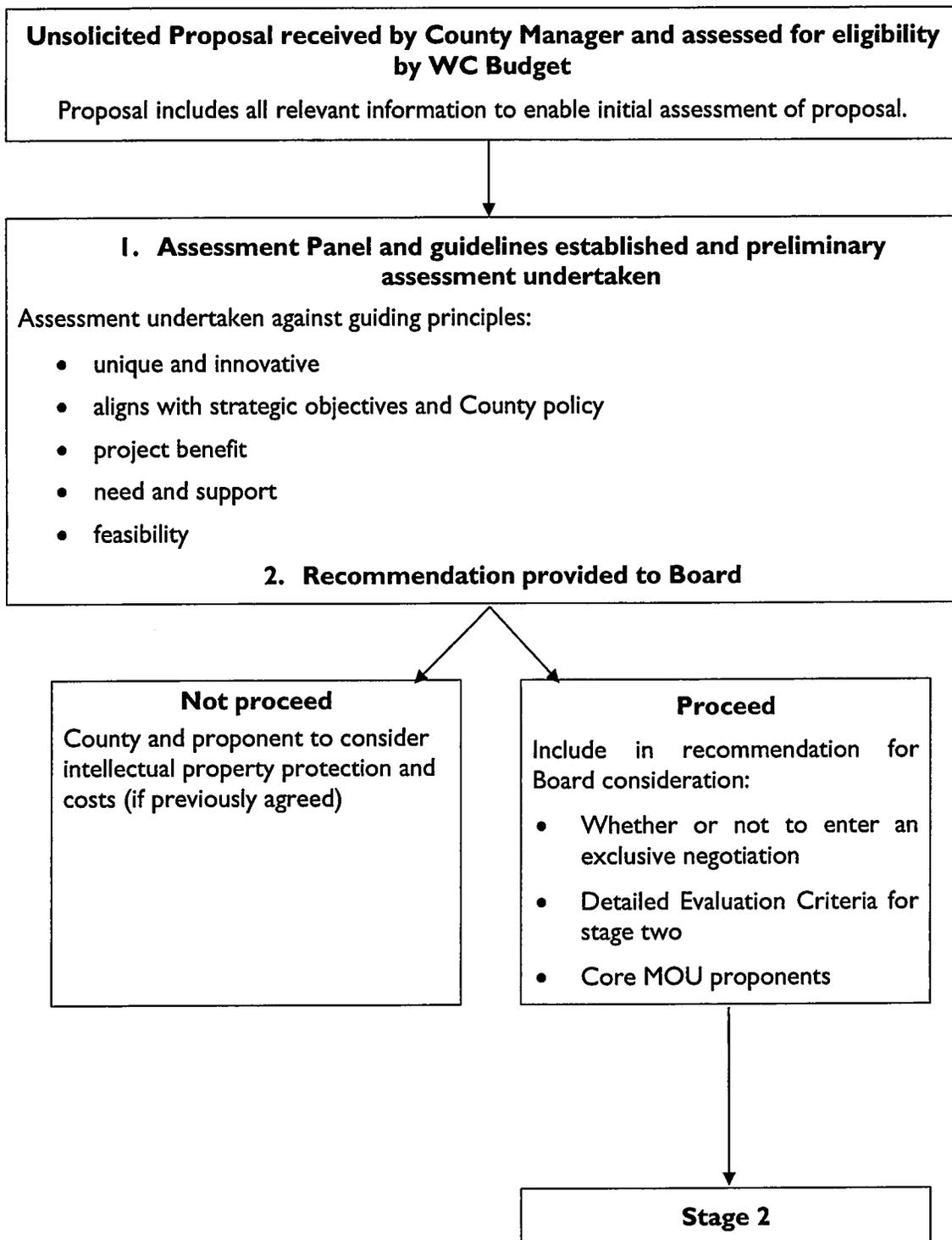
Following endorsement by the Assessment Panel, the detailed submission will be provided to the Board of County Commissioners for approval.

Stage Three

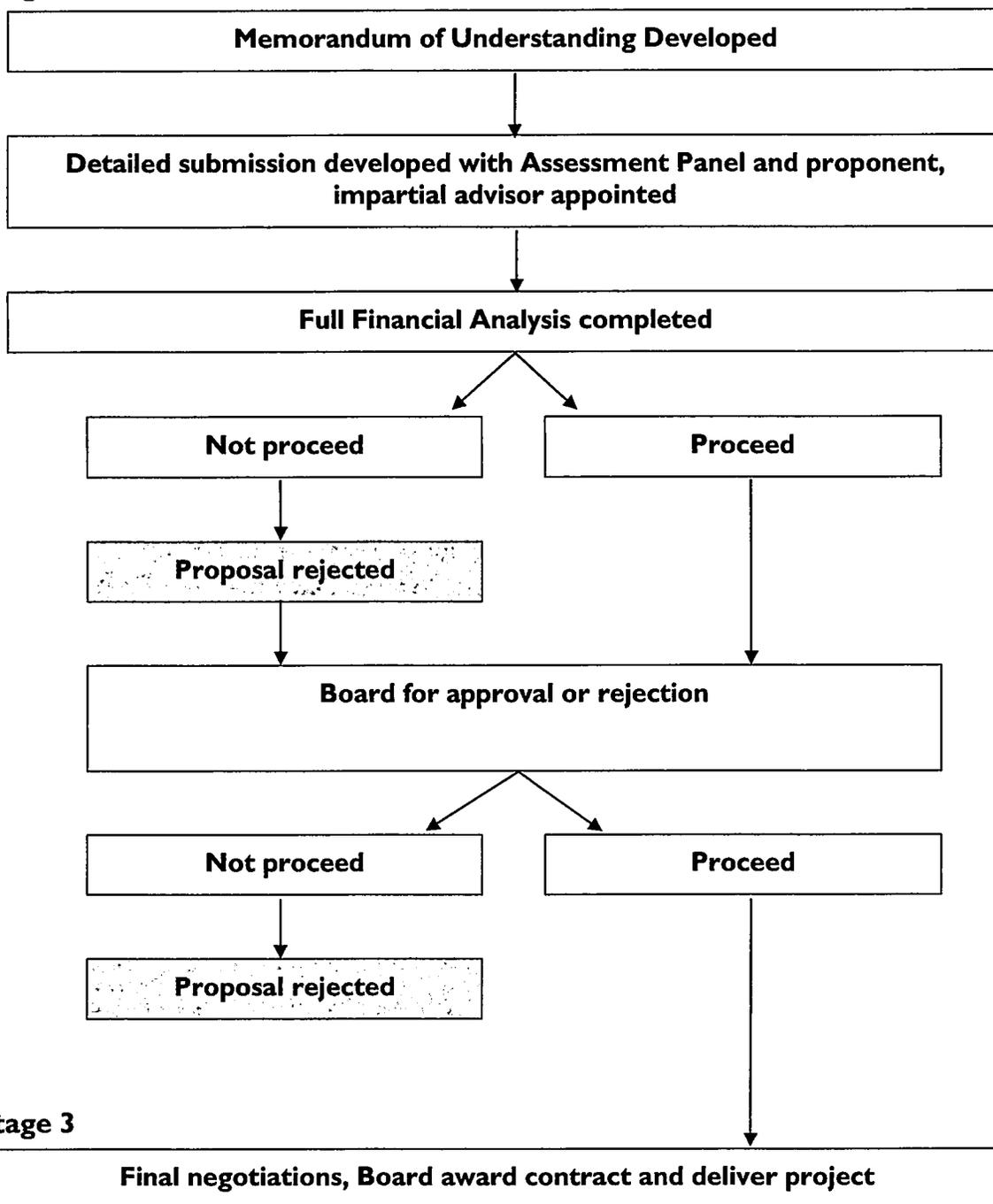
If Board approval is received, stage three involves the proponent and Washoe County entering into binding contractual arrangements to deliver the agreed proposal.

Flowchart - Process for considering unsolicited proposals

Stage 1



Stage 2



Stage 3

