

Unsolicited Offer Exemption - Guidance

What is an Unsolicited Offer?

A building owner who is not offering to sell or lease their building is approached by another party with an offer to purchase, lease or sublease their building. Following this initial approach the building owner may wish to start negotiations with the party making the offer, resulting in an 'Unsolicited Offer'.

If the Building owner doesn't wish to commence negotiations then the proposal is null and void and no further action is required. However, if the building owner wishes to commence negotiations and possibly move to exchange of contracts, they must either apply for an exemption in accordance with section 17 (3) (c) of the *Building Energy Efficiency Disclosure Act 2010* or obtain a Building Energy Efficiency Certificate(BEEC).

There are certain conditions that apply to an Unsolicited Offer of exemption. These include:

- the exemption facilitating negotiations between two parties only
- an offer maker waiving their right to be provided a current BEEC
- asserting that an Unsolicited Offer exemption has not been granted within the previous 3 months
- the building has not been advertised or offered for sale, lease or sublease within the previous 6 months
- asserting that other negotiations have not occurred within the previous 6 months with any other person.

When to seek an Exemption?

If a building owner or lessor has received an offer to purchase, lease or sub-lease office space, and the offer is unsolicited they are required to seek an exemption or obtain a BEEC to continue with those negotiations prior to entering into any contracts for sale or lease.

The building owner or lessor will also need the intended purchaser or lessee ('the offer maker') to waive their rights to receive a current BEEC. An exemption cannot be granted unless a signed waiver is provided with the application form.

A building owner or lessor may wish to obtain independent legal advice to determine eligibility for this exemption; however this is not a necessary requirement.

Granted exemptions are valid for a maximum period of 12 months from the date of issue.

When to use the CBD Unsolicited Offers Exemption form?

Under subsection 17(3) (c) of the BEED Act, an application for an exemption must be submitted by way of an approved form, including any prescribed information. This form is available on the CBD website. A letter of notification of the decision regarding the exemption application will be sent to the Applicant.



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The Exemption application form needs to be completed by the building owner or lessor being approached with an unsolicited offer, as they will be seeking the exemption under section 17(3) (c) of the BEED Act;

What's needed in the application form?

The application form for an unsolicited offer exemption includes Parts A, B, C, and D. Details on how to complete the individual parts are listed below.

➤ Part A: Applicant Details – Building Owner – The Offer Recipient

Details to support the application, including the applicants name or corporation name (if the building is owned by a corporation), business/corporate number and contact details.

➤ Part B: Building Details

This section requires details of the building being requested for exemption. This includes the full street address; a PO Box address is not acceptable. The Net Lettable Area (NLA) of the building or the area of the building if the application relates to a tenancy or part of the building must be provided.

➤ Part C: Other offers to deal

Part C lists the circumstances to be met to seek an exemption from a disclosure obligation for an unsolicited offer.

These circumstances are based on the following questions;

1. In the six months before this application was made, did the applicant:
 - a) make an offer to sell, let, or sublet the building or the area; or
 - b) invite any offer to purchase, lease or sublease the building or the area; or
 - c) Advertise the Building for sale, lease or sublease?

2. During the 6 months before this offer has the applicant been granted an exemption for the building in relation to another unsolicited offer?

Please be aware that answering yes to any of these questions will prompt the CBD team to consult further with the applicant and may result in the exemption being returned or formally refused. There is also a free text box to allow the applicant to provide any additional information in relation to their application.

The applicant (the offer recipient) will need to sign the declaration to reflect that the information provided in the application is true and correct. The Department may need to copy, record, and use or disclose information in the application to ensure compliance with the *BEED Act 2010*.

➤ Part D: Waiver by the Offer Maker

It is the responsibility of the applicant when applying for the exemption, to have Part D of the application form signed by the offer maker.

The waiver relates to Section 12 of the BEED Act which describes the rights of a prospective purchaser, lessee or sublessee to ask for a BEEC from a building owner or lessor prior to the transaction.



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The offer maker must sign a declaration that the information they have provided in the application is true and correct. They will also need to be aware that the Department may need to copy, record, and use or disclose information in the application to ensure compliance with the *BEED Act 2010*.

Are all the questions answered?

All of the questions on the application form must be answered and the declaration signed in order to be considered. The applicant is encouraged to keep a copy of the completed form.

If more time is required after the exemption has been granted?

If an exemption has been granted for an unsolicited offer and additional time is required to finalise negotiations with the prospective purchaser or lessee, the applicant can apply for an extension of time up to a maximum period of 12 months from the expiry of the granted exemption.

There is a separate '*Application for Extension of a Granted Exemption for an unsolicited offer*' that captures detailed reasons as to why additional time is required.

Each extension application will be considered on a case by case basis. We recommend that the building owner's legal representative assist with the reasoning.

Submitting the application form

The completed and signed form should be submitted by email to: info@cbd.gov.au with the subject line – Unsolicited Offer Exemption Application – '*Building Address that exemption is being applied for*'-

Or by post: (mailed applications will take additional time to receive and process)

**Commercial Building Disclosure
Exemptions Administrator
Energy Efficiency Division
Department of the Environment and Energy
PO Box 787
CANBERRA ACT 2601**

There are no fees associated with an Unsolicited Offer Exemption application.

When to expect a response from the Department

The Department will aim to process the application within 5 working days of receipt of a complete application form. If an issue with the application arises, which may lead to a longer response time, the Department will advise the applicant as soon as practicable.

A decision to refuse an exemption is a reviewable decision under section 67 of the BEED Act 2010. An applicant may apply for a review of this decision. For information about how to apply for a review contact the Commercial Building Disclosure team by email at info@cbd.gov.au

