Market-led Proposals Policy

Frequently Asked Questions

What is a Market-led Proposal (MLP)?

An MLP is a proposal from the private sector to government to:

• build and/or finance infrastructure;
• provide goods or services; or
• to purchase a government owned asset,

where government has not requested the proposal (e.g. through a competitive procurement or expression of interest process etc.).

MLPs always include a commercial proposition for government such as accessing land, assets, information or networks; developing public infrastructure; or providing a good or service on behalf of government.

MLPs are generally outside the normal planning and competitive procurement processes of government but may offer opportunities to deliver real value to the government and the Western Australian community.

What is the MLP Policy?

The MLP Policy outlines how the government will:

• consider proposals from the private sector to build and/or finance government infrastructures and/or to provide goods and services that meet government objectives and deliver outcomes unlikely to be obtained using standard competitive processes within acceptable timeframes;

• have a total estimated value below the threshold that would require a competitive procurement process (as specified in WA Government policy and/or legislation).

The MLP Policy is also not intended to capture proposals for private sector projects which do not have a substantial element of public value, where government’s role would primarily be the facilitation of that project rather than being a recipient of benefit from it on behalf of the public.

For example, this may include major natural resource extraction; major water resources and/or water treatment; construction of private sector infrastructure projects which are not required to be subjected to a competitive procurement process; or lead projects which have a total estimated value below the threshold.

How can businesses submit an MLP?

Businesses can submit proposals using the pre-qualification template via the Market-led Proposals portal on the Department of Finance website.

The portal also has the relevant information, guidelines and tools to assist businesses in submitting an MLP.

How much detail do businesses need to provide on proposals in the pre-qualification stage?

The level of detail required at each stage of the MLP process progressively increases through the stages of the process as the merits of the proposal are better understood. In addition, there are multiple decision points to minimise the cost and risk to proponents and government.

At the pre-qualification stage, businesses only need to provide a high-level summary of their MLP using the pre-qualification template. Additional information that directly supports the pre-qualification review, such as maps, designs and financial modelling, can also be provided.

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When will businesses be advised if their proposal is successful?
Organisations that submit an MLP through the Department of Finance portal will be advised if their proposal will progress or if it was unsuccessful, following the pre-qualification review.

Best endeavours will be made by government to advise on the outcomes of the pre-qualification review within three months of lodging a proposal.

Should the proposal progress through to the next stage, the timeframes for each stage will be considered in the Stage Agreements for Stage 1, 2 and 3.

How will the evaluation process be managed?
The MLP Policy sets out a single evaluation process that applies to all Western Australian government agencies and government trading enterprises.

An MLP Steering Committee has been established to coordinate the evaluation of high value/high risk proposals, those involving multiple government agencies or where requested by the responsible Minister. The Steering Committee will make recommendations to Cabinet at each stage of the process (excluding the pre-qualification review).

The evaluation of all other MLPs will be managed directly by the nominated Lead Agency, however, all other requirements of the policy apply, including the standardised process.

What factors will be considered by Government when evaluating an MLP?
An evaluation panel will be formed to evaluate each proposal against the following six criteria:

1. Strategic alignment: The proposal is aligned with government policy objectives and priorities. For example, aligned to the Government’s Our Priorities and/or other government strategies/plans.

2. Public interest: The proposal has significant social, environmental, economic or financial benefits for Western Australians.

3. Value for money: The proposal represents value for money for Western Australians and is affordable in the context of budget priorities.

4. Feasible and capable of being delivered: The proposal is feasible (including financially) and the proponent has the financial and technical capacity, capability and experience to deliver the outcome successfully.

5. Risk: Any financial, reputational and/or security risks to government from the proposal are acceptable and there is an appropriate allocation of risk between the proponent and government.

6. Justification for exclusive negotiation: The proposal delivers outcomes unlikely to be obtained using standard competitive processes and within acceptable timeframes and therefore justifies exclusive negotiations with government.

What are the key stages of the evaluation process?
The evaluation process will involve four stages, as outlined below, with the level of detail required from proponents and the evaluation rigour increasing as the details of the proposal are developed.

- Pre-qualification review: The proponent is required to complete a pre-qualification template (and attend a pre-qualification meeting) to provide a high-level summary of the proposal. Only proposals that are considered to be within the scope of the MLP Policy and have a reasonable prospect of meeting the evaluation criteria will be invited to Stage 1.

- Stage 1: Concept evaluation: If invited to Stage 1, proponents submit their proposal (at a concept level) for assessment against the evaluation criteria to justify the preparation of a more detailed business case.

- Stage 2: Business case evaluation: If invited to Stage 2, proponents develop their proposal into a detailed business case, in consultation with the Lead Agency, for evaluation by government.

- Stage 3: Negotiation of Final Binding Offer: If invited to Stage 3, outstanding issues are negotiated with a view to entering a binding agreement should government accept the offer.

Will the MLP Policy allow projects to fast-track statutory approvals?
The MLP Policy does not replace applicable environmental and planning assessment processes or other legislative and regulatory requirements. However, government will work with proponents to identify these requirements at the outset of each stage to ensure these processes are understood and incorporated appropriately.

Gaining approvals and meeting planning conditions is the responsibility of proponents, unless otherwise agreed. This includes any Commonwealth or other third-party approvals that may be required, depending on the nature of the proposal.

The MLP Policy allows government to negotiate directly with proponents without a competitive process. How is this in the public interest?
The focus of the MLP Policy is on unique and innovative projects or services that meet government objectives, achieve value for money and deliver outcomes that are not likely to be obtained using standard competitive processes within acceptable timeframes.

Government recognises the value of private sector investment and entrepreneurship and has designed the MLP Policy to enable proponents to bring forward proposals for consideration. Importantly, where questions remain about whether similar outcomes could be delivered by a competitor, government will be able to test the market through an Expression of Interest process.
Will the MLP Policy allow industry to approach government with proposals to purchase government owned assets?

The MLP Policy provides a single portal for proponents to present all types of unsolicited proposals to government. This may include, for example, proposals to build public infrastructure, provide public goods or services, or purchase surplus public land or other assets.

The policy provides a clear, consistent and transparent process for government to consider each proposal on its merits against the evaluation criteria. Importantly, proposals that do not align with the policy positions, objectives and priorities of the government of the day, and don’t present a unique opportunity to government, are unlikely to proceed beyond the pre-qualification stage of the evaluation process.

The policy position about whether or not to allow specific government assets to be sold is determined by the government of the day – the MLP Policy does not change this in any way.

Who is the contact for each MLP?

All initial enquiries, requests and proposals should be lodged with the MLP Secretariat via marketledproposals@finance.wa.gov.au.

Proponents who approach government outside of this process in relation to an MLP will be referred to the MLP Secretariat.

Following lodgment of the pre-qualification template, the MLP Secretariat will contact the proponent to arrange the pre-qualification meeting (for centrally coordinated processes). For proposals coordinated by a Lead Agency, the Lead Agency will arrange the meeting.

After a Lead Agency proposal manager is appointed and notified to the proponent, all enquiries should be directed to the proposal manager.

What is the role and membership of the MLP Steering Committee?

The MLP Steering Committee oversees the implementation of the MLP Policy and provides recommendations to Cabinet for centrally coordinated processes. The Steering Committee comprises an independent Chair and Directors General/Chief Executive Officers of the following agencies:

- Department of the Premier Cabinet;
- Department of Treasury;
- Department of Finance;
- Department of Jobs, Tourism, Science and Innovation;
- Department of Primary Industries and Regional Development (for MLPs located outside the Perth metropolitan area only);
- Lead Agency for the proposal; and
- other key agencies or government trading enterprises as determined by the Steering Committee.

What is the role of the MLP Secretariat?

The Department of Finance’s MLP Secretariat supports the MLP Steering Committee and provides a central point of contact for the receipt of MLPs.

MLPs and all other communications relating to the MLP Policy should be directed to the MLP Secretariat in the first instance.

What is the role of the Lead Agency?

The Lead Agency is the government agency or government trading enterprise that is considered to have the technical expertise and/or legislative mandate to inform the evaluation process and oversee implementation should a proposal be successful.

MLPs that proceed to Stage 1 will be assigned a Lead Agency who will nominate a proposal manager responsible for chairing an evaluation panel that will provide recommendations to:

- the MLP Steering Committee for centrally coordinated processes; or
- the Lead Agency CEO for MLPs that are not centrally coordinated.

What type of MLP will be evaluated through the centrally coordinated process?

During the pre-qualification review stage, the MLP Steering Committee, in collaboration with relevant agencies, will determine whether the evaluation process will be centrally coordinated (by the MLP Steering Committee) or managed directly by the Lead Agency.

Proposals which meet one or more of the following thresholds will be evaluated through the centrally coordinated process:

- Proposals with a value of more than $1:
  - $10 million for information and communications technology related proposals;
  - $50 million for all other proposals; or
  - high risk proposals below these values.
- complex proposals involving more than one government body;
- where the Lead Agency and the MLP Secretariat agree; or
- where requested by the relevant Minister.

For MLPs managed directly by the Lead Agency, the evaluation process and principles of the MLP Policy will apply.

Who has MLP decision-making authority?

For MLPs that are centrally coordinated, Cabinet approval is required at each stage of the evaluation process (excluding the pre-qualification review), on the recommendation of the MLP Steering Committee.

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1 This threshold does not apply when a government trading enterprise is the Lead Agency.

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For Lead Agency coordinated proposals, the requirement for Cabinet and/or Ministerial approval will depend on the internal governance arrangements and legislative requirements of the agency (which may vary depending on the value of the proposal).

**What is the additional justification test for exclusive negotiation?**

Where a proposal has been assessed as meeting the evaluation criteria sufficiently but questions remain about whether exclusive negotiation is justified, an Expression of Interest (EOI) process may apply in Stage 1.

The purpose of the EOI is to test the market to determine if other parties could deliver similar outcomes within similar acceptable timeframes and offer comparable value as to what has been proposed.

The proponent will be advised prior to an EOI process being undertaken and may withdraw from the process at any time within Stage 1.

**Could an MLP be subjected to a standard procurement process?**

Where a proposal does not meet the MLP Policy evaluation criteria but is thought worthy of further consideration, the proposal may be referred to the relevant Lead Agency.

The Lead Agency may decide to further develop the proposal as part of its ongoing operations or progress through a standard process such as an open tender for which the original proponent could apply.

The legal rights of a proponent in respect of any intellectual property held by it in connection with a proposal will be observed.

**Will agencies need to update agency specific procurement policies or other existing policies to align with the MLP Policy?**

Various State Supply Commission supply policies have been amended, including exemptions from Open and Effective Competition policy requirements where the public authority is proceeding in accordance with the MLP Policy.

Agencies and GTEs should also review their procurement and related policies to ensure consistency with the MLP Policy and Supplementary Guidelines.

Further, a number of separate guidelines for evaluating specific types of MLPs have been developed in recent years in WA. These separate processes dealing with MLPs are superseded at the commencement of the whole-of-government MLP Policy.

**How will confidentiality be managed?**

In the evaluation of MLPs there is need for high levels of accountability and transparency. However, there is also a need for some information to be kept confidential, at least for a specified period of time. This is important to provide participants with confidence in the integrity of the process and to encourage proponents to approach government with innovative ideas by protecting intellectual property.

Government recognises the confidential nature of MLP submissions and will endeavour to treat them accordingly, subject to the disclosure contemplated by the MLP Policy, the terms and conditions, and government’s public disclosure and accountability obligations.

While all reasonable steps will be taken to protect the genuine intellectual property of the proponent, the proponent should be mindful that it participates in the MLP process set out in this policy at its own risk.

Proponents are advised to exercise a high degree of discretion in disclosing any information publicly throughout the process of developing a proposal and, particularly, once a proposal is lodged.

**Will there be public disclosure of the MLPs received?**

A summary of each MLP and the outcome of the evaluation process is publicly disclosed on the Department of Finance’s MLP website at the end of Stages 1, 2 and 3.

If you need further assistance regarding the MLP Policy you can contact the MLP Secretariat via marketledproposals@finance.wa.gov.au