



GOVERNMENT OF
WESTERN AUSTRALIA

Market-led Proposals Policy

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1. Introduction

The Western Australian Government's Market-led Proposals (MLP) Policy is an innovative pathway for businesses and government to work together to create jobs and stimulate the economy. MLPs allow the Government to harness good ideas, private sector investment and entrepreneurship to develop projects that benefit Western Australians.

The MLP Policy (the Policy) provides a clear, consistent, and transparent process for parties seeking to approach government with proposals. It governs two processes for assessing proposals from the private sector:

1. unsolicited market-led proposals; and
2. Problem and Opportunity Statements (POS) where government publishes focussed opportunities for industry to respond to.

The Policy outlines how the Government will evaluate the merits of such proposals and, for unsolicited proposals, determine whether it is in the public interest to enter exclusive negotiations with a proponent, rather than engaging in an alternative competitive process.

The MLP Policy applies to, and is to be followed by, all Western Australian Government agencies and Government Trading Enterprises (GTEs) and supersedes any policies maintained by them in respect of dealing with MLPs.

Further details on the evaluation process and criteria are provided in the MLP Supplementary Guidelines (the Guidelines).

1.1. What is a Market-led proposal?

An unsolicited 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 (for example, through a competitive procurement or expression of interest process, etc).

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

The focus for unsolicited MLPs is on proposals which justify direct negotiation. Such proposals are generally outside the normal planning and competitive procurement processes of government and will offer opportunities to deliver real value and innovation to the Government and the Western Australian community.

1.1.1. Exclusions from the MLP Policy for unsolicited proposals

Types of unsolicited proposals that will not generally be considered under the MLP Policy include those that:

- are dealt with by an existing government process that is underway
- seek to obtain industry assistance and other grants currently available and considered through existing programs
- relate to a project or program that government has already decided and/or announced will be released to the market

- would not require a competitive procurement process (as specified in the Western Australian Procurement Rules or other General Procurement Direction)
- have a total estimated value below the threshold that would require a competitive procurement process (as specified in Western Australian Government policy and/or legislation)
- do not meet the Government's current priorities; or
- lack structure and sufficient supporting information.

This 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 and private sector infrastructure projects which are typically facilitated by the Department of Jobs, Tourism, Science and Innovation. If such proposals are made to the MLP Secretariat they will be referred directly to the relevant government agency.

The MLP Policy does not replace applicable environmental and planning assessment processes or other regulatory requirements.

The MLP Policy is intended to be administered consistently with applicable legislation. All relevant legislative requirements will be considered when evaluating proposals and will take precedence over the MLP Policy. Questions of legislative, regulatory and policy alignment can be referred to the MLP Steering Committee for consideration.

In the interest of saving time and expense for all parties, proposals that do not meet current government priorities (as published on the MLP webpage) or are not within the scope of the policy may be declined or referred to another process, as provided in this Policy.

1.2. What is a Problem and Opportunity Statement?

A Problem and Opportunity Statement (POS) allows Government to invite innovative responses from industry to a focussed opportunity in accordance with a common deadline. The POS process replaces Stage 1 of the MLP process and any requirement for a First Mover Advantage process. POS are designed to attract high-level concept proposals in a manner similar to an expression of interest. POS processes are used when the desired outcome of the process is broadly defined and could benefit from an innovative solution from the private sector. Given a POS is issued publicly, it removes the need to assess an appropriate procurement pathway and justify exclusive negotiation.

POS processes are released by Government periodically when suitable opportunities and challenges arise. Issue of a POS is discretionary for Government. The option for Government to issue a POS does not replace any other process available to Government in relation to a particular opportunity.

2. Administering the MLP Policy

2.1. Governance

The MLP Policy sets out an evaluation process that applies to all Western Australian Government agencies (departments and statutory authorities) and GTEs.

The evaluation process works within existing statutory frameworks governing agency activities and allocating agency responsibility for various activities of government.

The MLP evaluation process is summarised in Figure 1.

2.1.1. MLP Steering Committee

The MLP Steering Committee will oversee the implementation of the MLP Policy and provide recommendations to Cabinet. The MLP Steering Committee comprises the Directors General/Chief Executive Officers/Senior Executive Officers of the following agencies and statutory authorities:

- Department of Planning, Lands and Heritage (Chairperson)
- Department of the Premier and Cabinet
- Department of Treasury
- Department of Finance
- Department of Jobs, Tourism, Science and Innovation
- Department of Primary Industries and Regional Development
- Western Australian Planning Commission Chairman (for all planning and land related MLPs)
- Lead Agency for the proposal
- Other key agencies as determined by the MLP Steering Committee

The MLP Steering Committee may establish sub-committees to manage high risk/complex MLPs.

2.1.2. MLP Secretariat

The MLP Secretariat will support the MLP Steering Committee and provide a central point of contact for the receipt and management of all MLPs. MLPs and all other communications relating to the MLP Policy should be directed to the MLP Secretariat in the first instance.

2.1.3. Lead Agency

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

The Treasurer will assign a Lead Agency for each proposal in Stage 1. A proposal manager will also be appointed. The proposal manager will be responsible for chairing evaluation panels and, along with the MLP Secretariat, will be the proponent's sole point of WA Government contact throughout the evaluation process.

2.1.4. Coordination of evaluation process

During Stage 1, the MLP Secretariat, in collaboration with relevant agencies, will determine whether the evaluation will be centrally-led (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-led process:

- proposals with a value of more than:
 - \$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 MLP Secretariat agree; or
- where requested by the relevant Minister.

For proposals that do not meet these thresholds, the evaluation process will be managed by the nominated Lead Agency in line with the process and principles outlined in this policy. All other requirements set out in this policy will apply.

The Lead Agency is required to report to the MLP Steering Committee on the outcome of all agency-led proposals at the end of each stage of evaluation and prior to making any public disclosures or commitments to the proponent.

The Lead Agency will also be responsible for ensuring appropriate consultation with other relevant agencies.

Notwithstanding the above, at any stage of the evaluation process the MLP Steering Committee may determine (in consultation with the Lead Agency) that a particular proposal will be coordinated by the Lead Agency, rather than the centrally coordinated process, or vice versa.

2.1.5. Evaluation panel

An evaluation panel will be established at the commencement of each stage of the MLP process to assess proposals and provide recommendations to the MLP Steering Committee (or Lead Agency DG/CEO for agency-led proposals). The evaluation panel will comprise suitably experienced representatives from key stakeholder agencies.

Composition of the evaluation panel will depend on the nature of the proposal and may include technical experts from several relevant government agencies. The evaluation panel may also seek advice from external technical experts where required.

The evaluation panel will assess the proposal against the evaluation criteria and procurement pathway characteristics (for unsolicited proposals). Documentation from the process including but not limited to Declaration of Interest and Confidentiality forms; the proposal; technical expert advice; costings; valuations; modelling; financial analysis; and final recommendation/s will be retained in the records of the process.

2.1.6. Infrastructure WA

Business cases for major infrastructure proposals that meet the definition within the *Infrastructure Western Australia Act 2019*, may be referred to Infrastructure WA for advice during any stage of the evaluation process. This advice will be provided to Cabinet to inform the decision on whether to invite the proponent to proceed.

2.1.7. Project Funding

In the course of assessing proposals, the evaluation panel will request confirmation from the Lead Agency that State funding requested in the proposal is available in the Lead Agency's budget, or if a budget submission will be required through the State budget process. This will be undertaken in Stage 1 or 2 as appropriate.

2.1.8. Decision-making authority

When a Stage 1 unsolicited concept proposal is lodged with the MLP Secretariat it will undergo an initial assessment for alignment with government priorities and scope of the policy. The decision to proceed to Stage 1 evaluation, decline the proposal (Fast Fail Gate) or refer to another process will be made by the Treasurer in consultation with the Lead Agency Minister.

For MLPs that are centrally-led, Cabinet approval is required at the end of Stage 1 and 2 of the evaluation process respectively, on the recommendation of the MLP Steering Committee. This Policy does not prescribe detail in relation to Cabinet approval processes and the usual processes will apply.

For agency-led 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).

POS processes require Cabinet approval prior to public release.

2.2. Probity

The evaluation of proposals and all negotiations with proponents will be undertaken with the highest levels of probity consistent with the public interest. The application of established probity principles aims to assure all parties of the integrity of the decision-making process.

These include maintaining impartiality, accountability, and transparency, managing potential or perceived conflicts of interest, maintaining confidentiality, and obtaining value for money. Further details on the probity principles are provided in the MLP Supplementary Guidelines.

2.3. Resource commitments and timeframes

In order for an MLP to progress, the Government and the proponent will be required to commit resources. The staged approach to evaluation (as detailed in section 3 and 4 of this policy) seeks to balance resource input at each stage to minimise unnecessary expenditure.

The participation of a proponent in any stage of an MLP evaluation process or in relation to any matter concerning a proposal, is at the proponent's sole risk, cost, and expense. The proponent may be required to pay the cost of any third-party experts appointed by government to assist with the evaluation of the proposal, on a cost recovery basis. These costs will be agreed with the proponent prior to engaging third parties.

MLPs are evaluated with the objective of reaching key decision points within agreed timeframes.

2.4. Disclosure

The MLP Secretariat is responsible for coordinating the public disclosure of MLPs received under this policy.

Government recognises the confidential nature of MLP proposals and will endeavour to treat them accordingly, subject to the disclosure outlined by the MLP Policy, the terms and conditions and government's public disclosure and accountability obligations. Only those administering the MLP Policy or involved in the assessment of a specific proposal will have access to the proponent's information.

While all reasonable steps will be taken to protect the 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.

A summary of each unsolicited MLP invited to Stage 2 and the outcome of the evaluation process at the end of Stage 2 is publicly disclosed on the MLP webpage. POS disclosure practises are outlined in Section 4.

Where appropriate, any other relevant disclosures in the public interest will be considered by the MLP Secretariat, which will make its best endeavours to consult with the proponent prior to disclosing any information.

A register of all MLPs received will also be maintained by the MLP Secretariat.

To support the probity of each process, regular reporting to Cabinet on the status of each MLP will be provided by the MLP Steering Committee via the Treasurer.

2.5. Terms and conditions

This policy, its administration, and the receipt and evaluation of proposals submitted pursuant to it are subject to the MLP Terms and Conditions and will form part of the concept proposal. The terms and conditions will apply at all stages, however, may be supplemented by the Proposal Acknowledgement in the Stage 1 Concept Proposal and POS Concept Submission; Probity Framework; and Stage 2 Agreement as relevant.

If terms and conditions appear to be breached, the proposal assessment may be held in abeyance whilst the MLP Steering Committee considers the breach and potential actions.

The evaluation process will also be guided by the principles outlined in section 2 of the MLP Supplementary Guidelines.

2.6. Lodging enquiries, requests, and proposals

All initial enquiries, requests and proposals should be lodged with the MLP Secretariat. Proponents who approach agencies outside this process in relation to an MLP will be referred to the MLP Secretariat.

The MLP webpage provides a central resource for proponents seeking to submit an unsolicited MLP to government. A proponent can contact the MLP Secretariat to arrange a compulsory pre-submission meeting. This requirement does not apply to POS proposals.

Upon lodgement of a proposal, a Lead Agency proposal manager will be appointed and notified to the proponent. From this point, all enquiries should be directed to the MLP Secretariat or proposal manager.

The MLP Secretariat and Lead Agency proposal manager can advise the proponent of communication protocols to be followed.

2.7. Resubmitting proposals

A declined proposal will not be eligible for reconsideration for a period of 18 months from notification of a decision on the MLP, with exceptions at the discretion of the MLP Steering Committee.

2.8. MLP Policy review

This policy will be reviewed on an annual basis and may be updated between the annual reviews to incorporate lessons learnt from current MLP proposals. Lessons will be captured and incorporated into the MLP Policy on an ongoing basis.

3. Evaluation process

3.1. Overview of evaluation process stages

The key stages of the evaluation process are outlined below. The level of information required from the proponent will increase at each stage of the process but may vary depending on the nature of the proposal.

Stage 1: Concept Evaluation

Proponents intending to submit an unsolicited proposal should complete the online [Pre-Submission Meeting Request Form](#) and attend a compulsory pre-submission meeting with the MLP Secretariat before lodging a concept proposal. These requirements do not apply to POS processes.

All unsolicited MLPs will undergo an initial scope and priorities assessment when they are submitted, to determine if they should proceed to full evaluation in Stage 1. Unsolicited proposals that do not meet the scope and priorities assessment may be declined via the Fast Fail Gate process, without proceeding to full evaluation. For further details please refer to Section 3.7 – Outcomes of Stage 1.

Unsolicited proposals that meet the scope of the MLP Policy and Government's current priorities may proceed to full evaluation by an evaluation panel in Stage 1.

POS proposals are in response to an advertised priority for Government and will undergo full evaluation in Stage 1, unless specified in the advertised POS.

In making a decision whether to invite a proposal to Stage 2 of the MLP process, Cabinet will consider whether the proposal is within the scope of the MLP Policy, aligns with government priorities, demonstrates a reasonable prospect of meeting the evaluation criteria and is not market standard.

Stage 2: Business Case and Final Offer

Stage 2 is designed for the successful proponent to develop a business case, negotiate on key issues, and, where contract negotiation is successful, deliver an offer capable of acceptance at the end of this stage.

For unsolicited proposals, a First Mover Advantage process (Swiss Challenge/Bid Premium) may be required at the commencement of Stage 2 if the proponent does not meet the justification for exclusive negotiation characteristics in Stage 1. For further details please refer to Section 3.4 – Procurement Pathways.

Once exclusive negotiations are confirmed, the proponent awarded the right to exclusive negotiations will be invited to further develop their proposal into a detailed business case and final offer in consultation with the Lead Agency, for evaluation by government. In POS processes, it is possible for more than one proponent to be invited to Stage 2 to complete a business case and offer.

The centrally-led proposal evaluation process for unsolicited proposals is outlined in Figure 1. The process for evaluation of POS proposals is outlined in Figure 2.

For agency-led proposals, the same process applies, however, the Director General/Chief Executive Officer of the Lead Agency will fulfil the role of the MLP Steering Committee and the requirement for Cabinet and/or ministerial approval will depend on the internal governance arrangements and legislative requirements of the agency. This section and the remainder of this policy and the MLP Supplementary Guidelines should be read subject to this paragraph.

3.2. Priorities assessment

The current Western Australian Government priorities and exclusions will be published on the MLP webpage at www.wa.gov.au. Problem and Opportunity Statements will also be published here.

To assist proponents in understanding the types of proposals or solutions that Government will not consider as a priority, specific exclusions will be published to the MLP webpage from time to time.

Proposals will be assessed against the published priorities and relevant Problem and Opportunity Statements in Stage 1.

Proponents must demonstrate how their proposal aligns to current priorities and that it is within scope of the Policy in order to progress to full evaluation.

3.3. Evaluation criteria

The following evaluation criteria will be used by government to evaluate proposals. Government may also take into account any other factors it considers relevant to the evaluation of proposals.

1. Strategic Alignment

The proposal is aligned with government policy objectives and priorities.

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.

Detailed due diligence on the proponent (including any parent and subsidiary companies) and the proposed financial and corporate structure of the proposal will be undertaken in evaluating this criterion.

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.

Proposals may be evaluated against additional evaluation criteria if deemed appropriate and approved by the MLP Steering Committee. Where additional criteria are approved, proponents will receive advance notice.

The individual scores for all criteria will directly inform the overall decision of the panel.

A POS or Stage 2 Agreement may provide further detail on how the evaluation criteria will be applied in a particular process.

3.4. Procurement pathways – unsolicited proposals

Unsolicited MLPs will be assessed in Stage 1 to determine the procurement pathway the proposal will follow if the proposal is invited to proceed to Stage 2.

Firstly, the proponent must meet the following First Mover Advantage characteristics:

- a. the proposal is unique and not market standard
- b. the concept or a similar proposal has not been provided to the Western Australian Government in the past two years by another proponent; and
- c. the proponent has demonstrated a higher share of risk borne by the proponent than the State.

Where the First Mover Advantage characteristics are not met, it is acknowledged that the outcome could be achieved by a competitor and the proposal will be referred to another relevant government process.

However, if the proposal meets the First Mover Advantage characteristics, the proposal will be further assessed to determine the appropriate procurement pathway. The proposal would be assessed against the Justification for Exclusive Negotiation characteristics below:

- a. genuine intellectual property, patents, copyrights, or other exclusive rights, or due to an absence of competition for technical reasons, without which the proposal could not proceed to implementation; and/or
- b. ownership of strategic assets, contractual rights or real property placing it in a unique position to deliver the aims of the proposal, and to which other parties could not deliver; and/or
- c. bona fide sole source of supply with there being no reasonable substitute or alternative.

If the proponent demonstrates any of these characteristics, it is acknowledged that the outcome could not be achieved by a competitor at this time and the Government may undertake exclusive negotiations with the proponent.

If the Justification for Exclusive Negotiation characteristics are not met, the MLP Steering Committee will recommend an appropriate mechanism for a benefit to be assigned to the proponent in a market testing process at the commencement of Stage 2. This process will take the following form:

1. Swiss Challenge – the Government will undertake a competitive tender process and if the proponent is initially unsuccessful in submitting the most attractive bid, it has the option to match the winning bid and implement its proposal, should it be successfully negotiated in Stage 2. The Government recognises that bidders other than the proponent are only likely to participate in a Swiss Challenge if they believe that they have a significant, differentiating advantage over the proponent; or
2. Bid Premium – the Government will undertake an otherwise competitive tender process, but the proponent will receive a bonus bid evaluation. The bid premium is added to the evaluation of the proponent’s offer. The premium will be set between 10 and 20 per cent, and may apply to all, some or one of the scores against the evaluation criteria. The final size of the premium within this range will be recommended by the MLP Steering Committee, with Government determining the value of the premium as part of the Stage 1 approval process. This premium reflects the ‘first mover’ advantage of the proponent.

3.5. Referral to an alternate government process

Where an unsolicited proposal does not fall within the scope of the Policy, does not meet the MLP evaluation criteria, or is unable to demonstrate the characteristics of First Mover Advantage and/or Exclusive Negotiation but is thought worthy of further consideration by government, the Treasurer (for Fast Fail Gate processes) or Cabinet may refer the proposal to the relevant Lead Agency. This referral may occur at any stage but is most likely in Stage 1. This process also applies to agency-led proposals (note MLP Supplementary Guidelines section 3.7 Roles and Responsibilities).

The Lead Agency will decide whether to further develop the proposal as part of its ongoing operations or progress it through a standard competitive process.

The MLP Steering Committee will require the Lead Agency to report back on any decisions or action taken in regard to the referral within three months or such other timeframe agreed by the MLP Steering Committee.

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

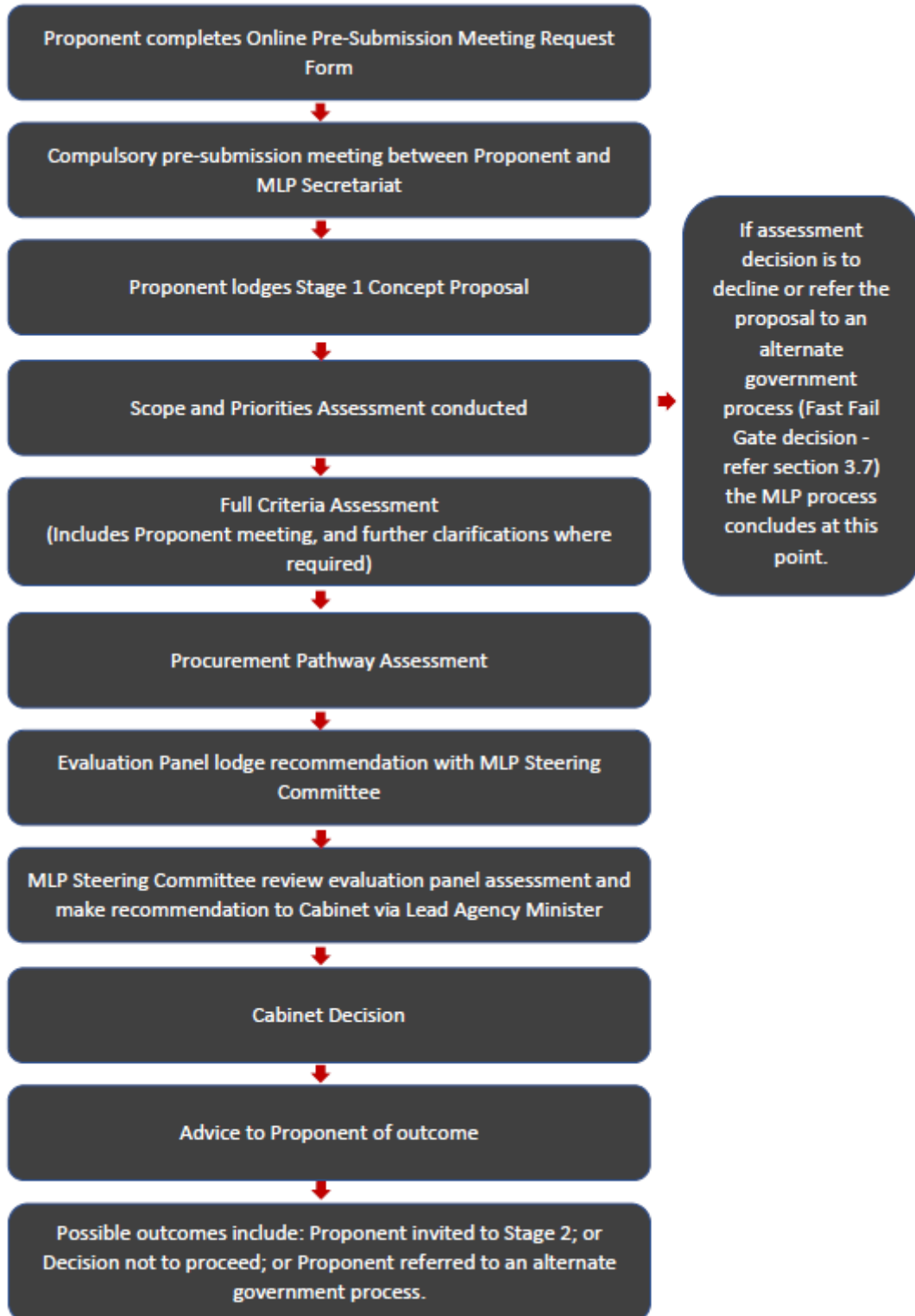
3.6. Cabinet referral for Lead Agency negotiation

The MLP Steering Committee may make a recommendation to Cabinet, through the Lead Agency Minister, at any point in Stage 2 to allow the Lead Agency to continue to negotiate with the proponent and finalise contracts. This is most likely to happen where key commercial terms have been approved by Cabinet and there remain only minor issues to be resolved. Should the final terms materially change, the Lead Agency will be required to return the final offer for Cabinet approval.

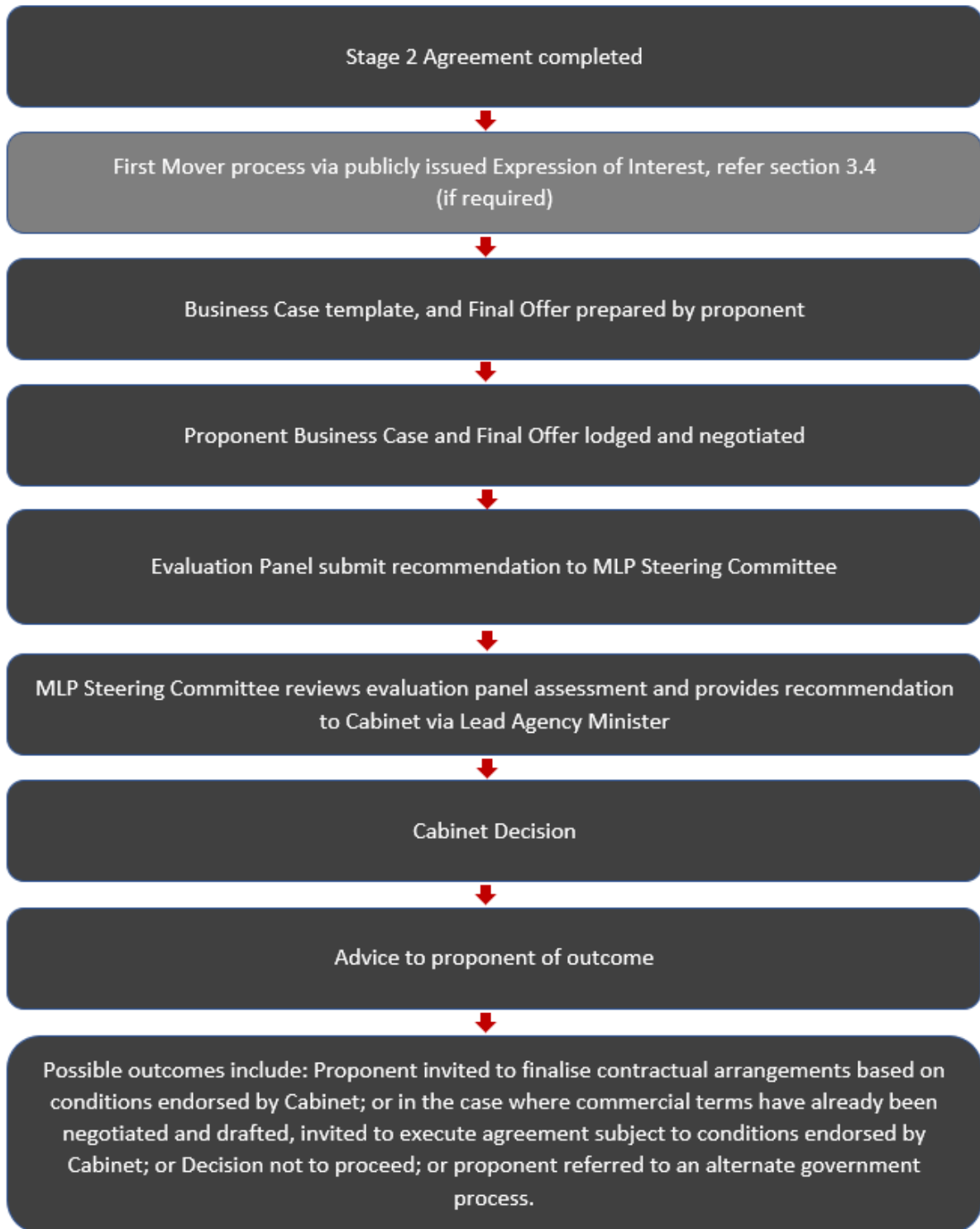
Figure 1: Unsolicited MLP evaluation process

The following tables identify the process undertaken for centrally-led unsolicited MLP processes. For MLPs coordinated by the Lead Agency in an agency-led process, the CEO of the Lead Agency will fulfil the role of the MLP Steering Committee and the requirement for Cabinet and/or ministerial approval will depend on the internal governance arrangements, delegated authority, and legislative requirements of the agency.

Stage 1 – Concept Evaluation / Fast Fail Gate



Stage 2 – Business Case and Final Offer / First Mover process



3.7. Stage 1: Concept evaluation

Objective of Stage 1

The objective of Stage 1 is for government to undertake an evaluation of the proposal (at a concept level) to determine if the proposal is within the scope of the MLP Policy, aligned to government priorities or a Problem and Opportunity Statement, and has a reasonable prospect of meeting the evaluation criteria, before the proponent commits significant resources in the development of a more detailed business case.

The MLP Secretariat will nominate a Lead Agency for the proposal and determine if the evaluation process will be led by the MLP Steering Committee (centrally-led) or the Lead Agency (agency-led).

Online Pre-Submission Meeting Request Form

Proponents intending to submit an unsolicited MLP should complete the online Pre-Submission Meeting Request Form on the MLP webpage. This form allows proponents to consider their proposal against the MLP Policy requirements and ensure they have adequate information to proceed. The completed form will provide the MLP Secretariat with a high-level overview of the proposal ahead of the pre-submission meeting to assist that discussion.

Compulsory pre-submission meeting

Prior to lodgement and acceptance of an unsolicited concept proposal, the proponent must attend a pre-submission meeting with the MLP Secretariat. This will enable the MLP Secretariat to provide advice to proponents on whether the proposal has a reasonable chance of meeting MLP policy requirements before they invest in a submission. The MLP Secretariat may arrange for representatives from relevant government agencies/GTEs (including the proposed Lead Agency) to attend the meeting if required.

Concept proposal

Proponents must complete the Stage 1 Concept Proposal template or POS Proposal template, consent to the Proposal Acknowledgement and submit the template (provided on the MLP webpage) to the MLP Secretariat to commence the evaluation process.

Government may seek additional information from a proponent prior to deciding whether to invite the proponent to submit a Stage 2 proposal.

Outcomes of Stage 1

Unsolicited MLPs will undergo an initial Scope and Priorities Assessment within 30 business days to determine if the proposal is:

- within the scope of the MLP Policy
- aligned with the Government's priorities; or
- not considered suitable for further consideration and is either declined or redirected to an alternative government process (Fast Fail Gate).

A recommendation will be made to the Treasurer who, in consultation with the Lead Agency Minister, will determine if the proposal meets the current government priorities, is within scope of the MLP Policy and maintains a reasonable prospect of meeting the evaluation criteria.

If it is determined the proposal does not meet these criteria, the proposal will be either declined, or referred to an alternate government process; this is referred to as the Fast Fail Gate.

Unsolicited MLPs that satisfy the above MLP Policy requirements and POS proposals will be evaluated in Stage 1 by an evaluation panel coordinated by the MLP Secretariat. The panel will undertake a full criteria and procurement pathways assessment (for unsolicited proposals) to determine whether to:

- invite the proponent to submit a Stage 2 Business Case and Final Offer; and
- identify the appropriate procurement pathway (that is, First Mover Advantage or an Exclusive Negotiation process) if the proposal proceeds to Stage 2 (for unsolicited proposals); or
- decline the proposal or redirect to an alternative government process.

The MLP Steering Committee will provide a final recommendation to Cabinet on whether to invite the proponent to Stage 2 and a procurement pathway if the proposal is to proceed. Cabinet will review the recommendation and decide.

Best endeavours will be made by the MLP Secretariat to advise on the outcomes of Stage 1 within 75 business days of lodging a concept proposal. If this timeframe is not met, the MLP Secretariat will communicate this to the proponent and provide timely updates. For agency-led proposals, timeframes will be managed between the Lead Agency and the proponent.

The proponent has the option to withdraw from the process at any time within Stage 1.

Wherever possible, reasons why an unsuccessful proposal is not suitable for further consideration will be provided to the proponent. All proponents will be offered a debriefing meeting with the MLP Secretariat.

3.8. Stage 2: Business Case and Final Offer evaluation

Objective of Stage 2

The objective of Stage 2 is:

- to confirm if a proponent will be offered the rights for exclusive negotiation with the State
- for the proponent to develop a detailed business case and final offer; and
- to conduct appropriate due diligence and contract negotiation.

At the commencement of Stage 2, the Lead Agency and proponent will enter a Stage 2 Agreement establishing roles and responsibilities of the parties to the process. The Stage 2 Agreement will identify any specific requirements the State requires to be addressed by the proponent in their Stage 2 business case and final offer.

During this stage the proponent and the WA Government will be working together, through the MLP Secretariat and the Lead Agency, to negotiate on key issues, develop a business case, and, where contract negotiation is successful, deliver an offer capable of acceptance at the end of this stage. For infrastructure related proposals seeking government funding, a Project Definition Plan (PDP) may be required to be prepared by the proponent in accordance with the WA Government Strategic Asset Management Framework and the requirements of Infrastructure WA (where relevant). The PDP will refine and confirm the costs, schedule, and risk mitigation strategy for the project as well as the procurement and financing arrangements.

The proponent will be required to submit their final business case and final offer for evaluation within the Stage 2 process.

While the proponent is responsible for submitting their business case and final offer, responsibility for preparing a final contract may be assigned to the State or proponent. This allocation will be decided on by the State in consultation with the proponent for each MLP process.

Best endeavours will be made by the MLP Secretariat to advise on the outcomes of Stage 2 within 125 business days of lodging the Stage 2 proposal. If this timeframe is not met, the MLP Secretariat will communicate this to the proponent and provide timely updates. For agency-led proposals, timeframes will be managed between the Lead Agency and the proponent.

Any amendments to the timeframe will be made in collaboration with the proponent and approved by the MLP Steering Committee. Any amended timeframes will be reported to Cabinet.

The proponent has the option to withdraw from the process at any time within Stage 2.

First Mover Advantage Process

Where an unsolicited proposal has been assigned to a First Mover Advantage process, this will take place in Stage 2. This is a market testing process that will assist government to determine if any other parties could deliver similar outcomes to the proposal. It will take the form of a Swiss Challenge or a Bid Premium, as outlined in section 3.4.

At the conclusion of the market testing process the evaluation panel will consider all responses and prepare a recommendation to the MLP Steering Committee. Where the recommendation from the market testing process is to invite a respondent to complete a business case in Stage 2, approval from the MLP Steering Committee is required. Recommendations to decline all responses to the market testing process and terminate the MLP are submitted to Cabinet, via the Lead Agency Minister, for decision.

While serious consideration will be given to outcomes of the market testing process, the MLP Steering Committee or Cabinet are not bound by the outcomes of this process.

Outcomes of Stage 2

The outcome of the evaluation panel's assessment at the end of Stage 2 is provided to the MLP Steering Committee which will make a recommendation to Cabinet to determine whether:

- the proponent should be invited to finalise contractual arrangements based on conditions stipulated by Cabinet
- the proponent should, in the case commercial terms have already been negotiated and drafted, proceed to execution of the proposed agreement as recommended or with stipulated updates or conditions; or
- the proposal is not considered suitable for further consideration and is either declined or redirected to an alternative government process.

The MLP Steering Committee may also make a recommendation to Cabinet, through the Lead Agency Minister, at any point in Stage 2 to allow the Lead Agency to continue to negotiate with the proponent and finalise contracts. This is most likely to happen where key commercial terms have been approved by Cabinet and there remain only minor issues to be resolved. Should the final terms materially change, the Lead Agency will be required to return the final proposed offer for Cabinet approval.

Additionally, some complex proposals that require detailed negotiations may require Cabinet consideration several times, prior to draft terms being submitted for a final Cabinet decision.

For clarity, any draft contract is not binding until all parties have executed the contract in accordance with the requirements of that contract.

The MLP Steering Committee will notify the proponent(s) of the outcome of the evaluation process.

Wherever possible, reasons why a proposal is not suitable for further consideration will be provided to the proponent(s). The proponent(s) will be offered a debriefing meeting with the MLP Secretariat.

4. Problem and Opportunity Statements

Problem and Opportunity Statements (POS) allow Government to provide focused opportunities for industry to respond with innovative solutions that stimulate the economy and create jobs for Western Australians.

POS provide an alternative to traditional tender methods where it is difficult to provide a clear scope to a problem or opportunity and the State would like to attract diverse solutions from industry.

Proponents are initially invited to provide high level concepts for consideration, reducing the financial burden to submit sophisticated design and detailed plans.

Proposals that have merit may be invited to provide a more detailed business plan and terms for consideration. It is possible for more than one proponent to be invited to Stage 2 of the POS process, and in some instances, be successful in executing contracts with the State. The outcome of each POS process, and number of proposals resulting in contracts with the State, will depend on the nature of the POS.

Each POS process retains the rigour and independence of the evaluation process, and probity principles of the MLP Policy.

Timing for disclosure of information for each POS process will be determined on a case-by-case basis. The probity principles of the MLP process remain applicable, with addition of the following specific POS related disclosure settings:

Stage 1 Disclosure (POS)

- Proposals that are not invited beyond Stage 1 will not be publicly disclosed.
- Determination on the timing for disclosure of those invited to Stage 2 will occur on a case-by-case basis to protect the probity of each process.
- The preferred proposal, or proposals that are invited to Stage 2 will be publicly disclosed, including each proposal title, status within the process, the name of the proponent(s), a high-level proposal description and the proposed next steps.

Stage 2 Disclosure (POS)

- At the conclusion of Stage 2, all proposals invited to Stage 2 will be publicly disclosed, including the proposal title, status within the process, the name of the proponent, a detailed proposal description and the proposed next steps for each proposal.

Problem and Opportunity Statement Process

The framework for each POS process is illustrated in Figure 2 below, however may be adjusted to meet the complexity level of each process. Any adjustments to the standard process will be published. The MLP Supplementary Guidelines 3.7.3 to 3.7.5 provides further details of the POS process, roles and responsibilities, and decision points.

In contrast to an unsolicited proposal, a POS response is dealt with in the context of a competitive process which considers potentially multiple proposals. The POS and the relevant Stage 2 Agreement may, in addition to the MLP Supplementary Guidelines and the MLP Terms and Conditions, contain detail as to how evaluation using the Evaluation Criteria in section 3.3 will occur and about other elements of the process.

POS processes do not require the pre-submission meeting required for unsolicited market-led proposals. Some POS processes may require respondents to attend an information session which will be outlined in the released POS on Tenders WA if applicable.

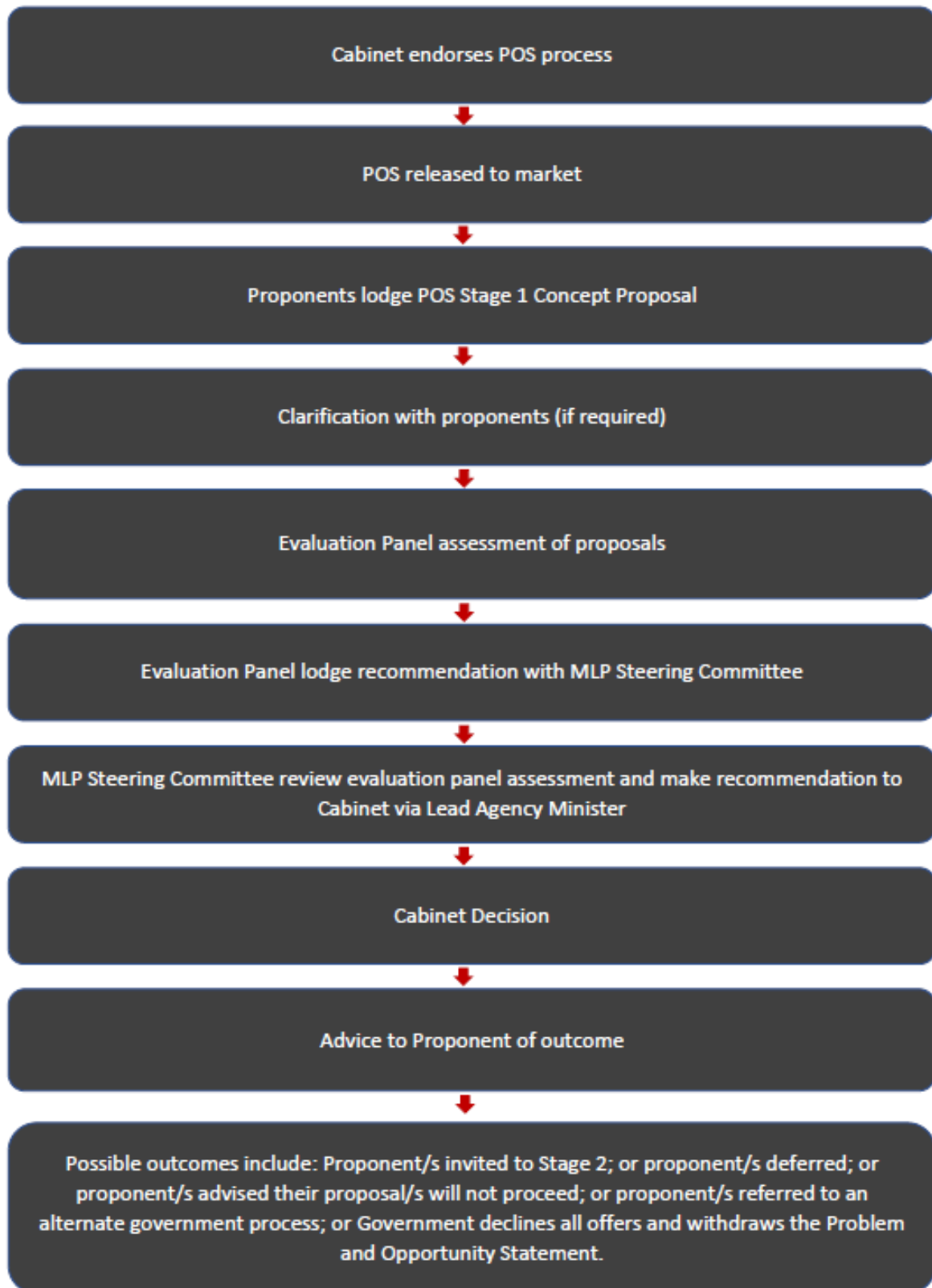
The POS process includes a market testing exercise via an expression of interest, removing the need for the procurement pathway assessment used in the evaluation of unsolicited market-led proposals, as referred to in section 3.4 Procurement Pathways.

Cabinet referral for Lead Agency negotiation

The MLP Steering Committee may make a recommendation to Cabinet, through the Lead Agency Minister, at any point in Stage 2 to allow the Lead Agency to continue to negotiate the POS proposal with the proponent and finalise contracts. This is most likely to happen where key commercial terms have been approved by Cabinet and there remain only minor issues to be resolved. Should the final terms materially change, the Lead Agency will be required to return the final proposed offer for Cabinet approval.

Figure 2: Problem and Opportunity Statement Process

Stage 1 – Concept Evaluation



Stage 2 – Business Case and Final Offer

