



GOVERNMENT OF
WESTERN AUSTRALIA

Market-led Proposals Supplementary Guidelines

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Department of Planning, Lands and Heritage (DPLH)

Gordon Stephenson House

2/140 William Street

Perth

Western Australia

6000

Phone: (08) 6552 4731

E-mail: marketledproposals@dplh.wa.gov.au

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1 Introduction

These guidelines should be read in conjunction with the Market-led Proposals (MLP) Policy (the Policy). The purpose of these guidelines is to provide additional detail about the evaluation criteria, principles and the roles and responsibilities of each party.

2 Administering the policy

2.1 Evaluation principles

The following principles will guide the evaluation of MLPs and POSs by government.

2.1.1 Absolute discretion

Government reserves the absolute right to decline, accept, defer, or redirect proposals to another government process at any point. The MLP process is designed to mitigate the impact of such uncertainty as much as possible through a staged process and timely communication about a proposal's prospects. If a proposal is directed to a competitive tendering process, all reasonable steps will be taken to protect the genuine intellectual property of the proponent. However, the proponent should be mindful that it participates in the MLP process set out in this policy at its own risk.

2.1.2 Rigorous, fair, and equitable

The evaluation process is rigorous, and the criteria set a high standard. The level of rigour is scaled to the risk, value, and complexity of a proposal. This approach applies to all proposals and proponents.

The level of detail required, and the evaluation rigour, increases progressively through the stages of the process as the merits of a proposal are better understood. Every attempt is made to provide an open door to proponents and multiple decision points to control the cost and risk to proponents and government.

2.1.3 Interactive and collaborative

The MLP process becomes progressively more interactive and collaborative as proposals progress through the stages, as appropriate to the level of risk, investment, and process rigour. During Stage 1, this is generally limited to a proponent clarifying aspects of the proposal to enable government to make an informed decision. This changes in Stage 2, where the level of rigour and investment justifies an 'open book' approach and greater flexibility and collaboration. The agreed approach and investments are detailed in the terms and conditions (the MLP Terms and Conditions) governing the MLP Process. The MLP Terms and Conditions may be found on the MLP webpage on wa.gov.au. Additional Stage Agreements or variations specific to each proposal may also be negotiated where required.

2.1.4 Probity framework

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.

A dedicated probity adviser will typically be appointed for large-scale projects or where probity risk is sufficient to warrant appointment. If appointed, the role of the probity adviser is to monitor and report to the Steering Committee/Lead Agency on the application of the probity principles during the assessment process. In the absence of a probity adviser this role will be undertaken by the MLP Secretariat.

Maintaining impartiality

Fair and impartial treatment is a feature of each stage of the evaluation process. The process features a clear separation of duties and personnel between the assessment and approval functions.

Maintaining accountability and transparency

Accountability and transparency are related concepts. The demonstration of both is crucial to the integrity of the evaluation. Accountability requires that all participants be held accountable for their actions. The evaluation process will identify responsibilities, provide feedback mechanisms, and require all activities and decision-making to be appropriately documented.

Transparency refers to the preparedness to open a proposal and its processes to scrutiny, debate, and possible criticism. This also includes providing appropriate information to stakeholders, feedback to unsuccessful proponents, and provision of relevant information regarding proposals under consideration in Stage 2 and beyond being publicly available to the extent appropriate.

Maintaining confidentiality

In the evaluation of MLPs there is a 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.

The WA Government recognises the confidential nature of MLP submissions and will endeavour to treat them accordingly, subject to the disclosure outlined by the Policy, the terms and conditions, and subject to 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.

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.

Only proposals invited to Stage 2 and beyond will be publicly disclosed. Proponents will be notified and consulted when any information is disclosed. The extent and timing of disclosure will depend on the nature of the proposal.

Stage 1 Disclosure

- Proposals that are not invited beyond Stage 1 will not be publicly disclosed.
- Those invited to Stage 2 will be publicly disclosed at the conclusion of Stage 1. The proposal title, status within the process, the name of the proponent and a high-level proposal description will be published.
- Determination on the timing for disclosure of POS proposals invited to Stage 2 will occur on a case-by-case basis to protect the probity of each process.

Stage 2 Disclosure

- Where an unsolicited proposal is subject to a First Mover Advantage, the desired outcomes and/or key elements the proposal is seeking to deliver, will be published during the Stage 2 competitive tendering process.
- At the conclusion of Stage 2, all proposals 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. This applies to POS and unsolicited proposals.

Disclosure by Proponents

Once proponents submit a proposal, they must seek the MLP Secretariat's approval before disclosing any information in relation to the MLP process (inclusive of the proposal submitted) to third parties or publicly. If at any time a proponent is unsure of its obligations, it is recommended they discuss them with their nominated proposal manager or the MLP Secretariat.

Managing conflicts of interest

In support of the public interest, transparency and accountability, the identification, management, and monitoring of conflicts of interest is required for all MLPs. Participants are required to disclose any current or past relationships or connections that may unfairly influence or be seen to unfairly influence the integrity of the evaluation process. Identified conflicts will be reviewed by the MLP Secretariat and managed to ensure the probity of the process is maintained.

Obtaining value-for-money

Obtaining optimal value-for-money is a fundamental principle of government. This is achieved by fostering an environment in which proponents can make attractive, innovative proposals with confidence that they will be assessed on their merits and where value-for-money to the people of Western Australia is appropriately considered.

2.1.5 Other statutory approvals and processes

The Policy cannot bypass standard government approvals, planning, environmental and other regulatory processes. The Policy also works within existing statutory frameworks governing agency and Government Trading Enterprise (GTE) activities and allocating agency and GTE responsibility for various activities of government. Government will work with proponents to identify these requirements at the outset of each stage to ensure these processes are understood and staged appropriately.

Statutory approvals and relevant consultation may be required to be completed by the proponent either within the process or following confirmation the proposal has been endorsed by Cabinet. This will be clearly articulated to the proponent and disclosed publicly where appropriate.

Gaining approvals and meeting planning, environmental, etc 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 (for example, Commonwealth environmental approvals, Australian Competition & Consumer Commission, Foreign Investment Review Board, etc).

The Government's Gateway Review process, as outlined in General Procurement Direction 2021/05, may also apply to some MLPs.

2.1.6 Resourcing requirements

Resourcing requirements will be determined on a case-by-case basis once a concept proposal is submitted by the proponent. Proponents are required to provide sufficient resources to meet agreed evaluation requirements and timeframes. Resourcing considerations and the requirement for third-party expert advice to assist the evaluation process are determined at each stage of the process as required. 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.

3 Evaluation process

All sections of the Stage 1 Concept Proposal or POS Concept Proposal template are to be adequately addressed and completed to the level commensurate with the level of detail required for the complexity of the proposal, to the satisfaction of the MLP Secretariat. Information may be presented in the form of cross-referenced addenda if preferred.

Templates for unsolicited proposals will not be accepted until the proponent has completed a pre-submission meeting with the MLP Secretariat.

The Stage 1 Concept Proposal Template is available on the MLP webpage and must be lodged online to the MLP Secretariat, fully completed, and signed by relevant parties.

Lodgements of unsolicited proposals and queries are to be addressed to:

marketledproposals@dph.wa.gov.au

An initial assessment of unsolicited proposals will be completed by the MLP Secretariat, focussing on each proposal's alignment to the:

- scope of the MLP Policy
- current priorities of the Government; and
- criteria listed in the MLP Policy.

To save time and expenditure for both proponents and agencies, unsolicited proposals that clearly fail to meet the MLP Scope and Priorities assessment criteria will be declined prior to entering full evaluation in Stage 1 (Fast Fail Gate).

This assessment and recommendation will be forwarded to the Treasurer for decision. The Treasurer, in collaboration with the Lead Agency Minister, will decide to either progress to full evaluation, refer to another process or decline (Fast Fail Gate) the proposal.

The target for this assessment and notification is within 30 business days of lodgement.

3.1 Scope assessment

All unsolicited MLPs will undergo an initial examination to determine whether a proposal fits within, and has a reasonable chance of meeting, the Policy requirements to warrant further assessment (refer to the Policy, sections 1.1 and 1.2).

Types of proposals that are unlikely to progress as an MLP include:

- proposals for significant extensions/variations to existing contracts/leases, or the next stage of a staged project on the basis that the contractor is already "on-site" but cannot demonstrate an unassailable advantage.
- proposals seeking to develop land that is not owned by government or the proponent.
- proposals which are inconsistent with existing laws (for example, proposals over land which is an A class reserve).
- proposals that do not contain a commercial proposition for government.

- proposals that identify the proponent's skills or workforce capability as the only justification for direct negotiation. A proponent with personnel holding superior expertise or experience in a particular field is not sufficient for the Government to justify bypassing an open tender unless the claimed skills cannot be procured elsewhere in the market.
- proposals to provide widely available goods or services to government.
- proposals seeking only to change government policy where there is no associated project.
- proposals for projects where the tender process has formally commenced, whether published or not.
- proposals that would not require a competitive procurement process (as specified in the Western Australian Procurement Rules or other General Procurement Direction).
- proposals that lack structure and sufficient supporting evidence.
- proposals seeking to stop or suspend another government process (for example, compulsory acquisition).
- proposals seeking an exclusive mandate, or exclusive rights over a government asset, for a period of time so the proponent can develop a feasibility study.

Some of these examples may be considered by government but may progress through an alternate means rather than a market-led proposal – for example, open tenders, trials, grants, or other procurement processes.

Proponents with well-developed proposals who are unsure of the appropriate procurement path are encouraged to complete the online Pre-Submission Meeting Request Form to contact the MLP Secretariat to arrange a meeting. This will assist with determining a path forward or help to inform a proponent if a proposal is unlikely to succeed before investing further time, effort, and expense.

3.2 Priorities assessment

This step will be used to determine if an unsolicited proposal fits within the context of the current government priorities.

The MLP webpage hosts current information on Western Australian Government [Priorities](#) and may invite industry to propose innovative solutions in response to an identified opportunity or problem.

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

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.

3.3 Evaluation criteria

The Policy sets out five evaluation criteria used by government to evaluate proposals at Stage 1 (concept evaluation) and Stage 2 (business case and final offer) of the evaluation process. The evaluation criteria apply to both unsolicited and POS proposals. These supplementary guidelines provide additional information on how the criteria are defined, and how they have been applied in practice in other jurisdictions.

3.3.1 Strategic alignment

The proposal is aligned with government policy objectives and priorities.

A critical test of an MLP is strategic alignment with government priorities. Government provides a strong lead to proponents through the annual Budget, policy directions and public commitments. Proponents are advised to address government priorities when describing the public and strategic value of a proposal and align their proposals accordingly. Proponents should also consider the opportunity cost from the Government investing in the proposal relative to other strategic priorities.

From time to time, government agencies set out infrastructure and service priorities in plans and strategies. As the type of proposals that meet this criterion will depend on the priorities of the Government of the day, specific examples have not been included in these guidelines. Proponents should review the Government's Our Priorities list on the MLP webpage and current policies, strategies, and election commitments for further direction.

3.3.2 Public interest

The proposal has significant social, environmental, economic, or financial benefits to Western Australians.

Public interest is a broad yet important test for whether a proposal should be pursued by government, or better left to the market. The following questions are a useful guide:

- Does the proposal meet a project or service need?
- What are the benefits of what is being proposed and are they adequately defined?
- Are the benefits of value to government and the community of Western Australia?
- Are there any costs to government and the community of Western Australia from the proposal? Do the benefits outweigh any costs?
- How is the public interest advanced through government facilitating the outcomes proposed?
- Have the benefits and risks for key stakeholders been identified?

Examples of successful MLPs from other jurisdictions – public interest criterion

New International Cruise Terminal

The proposal will grow the cruise ship market and capture significant economic benefits associated with a dedicated mega cruise ship facility, in exchange for access to government land.

Construction and lease of a new police centre

The proposal will meet a service need given the known expiration of the current police centre lease and provide opportunities to drive improvement and productivity due to the site's location and integration with existing adjacent facilities.

Construction of a new transit hall and entrance for a major train station

The proposal will consolidate four existing buildings to deliver a new transit hall and entrance to a major railway station, as well as a state-of-the-art office tower that will transform and revitalise a major transport hub.

3.3.3 Value for money

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

Value for money is the overall value of the proposal to government. It is not solely about the direct financial cost or benefit but includes the consideration of broader whole-of-government costs and benefits over the life of the proposal, such as changes to future demand for government services or supporting economic growth.

In the absence of a competitive tendering process (such as an open market sale or tender) there are a range of ways that the value of a proposal might be demonstrated including:

- independent valuation of a right or asset if sold on the open market
- an estimate of the likely savings/costs to government of forecast changes in future demand for services
- an open book process where the proponent provides detailed information to the Government about the business model, demonstrating a value-for-money outcome that is likely to meet or exceed that of a 'next best alternative' proposal; and
- competitively tendering elements of the proposal.

Proponents are required to set out, in their proposal, how value for money could be assessed. In evaluating whether a proposal represents value for money, among other matters, government will consider the following factors.

Return on investment

As part of the open book evaluation process, particularly through Stage 2, the proposal's commercial rationale and projections will be examined by government. Proponents are advised to consider the following questions as they determine the commercial settings for a project:

- Is the proposed return to the proponent proportionate to the proponent's risks, and industry standards?
- Can the rate of return be justified relative to a public sector comparator (that is, an estimate of the whole-of-life costs and revenue if the proposal was delivered by government)?
- Can the rate of return be justified in terms of future costs to the economy, users of the service or infrastructure?
- How does the proposed rate of return compare to similar projects domestically and internationally?

Whole-of-government impact

The direct cost of a proposal is often only a portion of the real impact across government. Often government inadvertently subsidises projects in different ways – for example, staffing increases to meet new demand, increased maintenance and upgrades of public infrastructure, health consequences, etc. The costs and benefits of proposals are weighed against these effects to determine value for money.

Proponents are advised to consider the following questions:

- Will additional investments and ongoing costs be required to meet new demand created by the proposal?

- Will the proposal result in wider costs or reduced revenue to government?
- How do these impacts and benefits affect the overall value-for-money of the proposal?

Affordability

By their nature, MLPs generally may not have been factored into the annual State Budget and forward estimates which can, at times, mean that they are unaffordable in the context of existing priorities.

Proponents are advised to consider the following questions:

- Does the proposal require government funding or finance, either up-front or over the life of the proposal?
- Does the proposal replace an existing funding commitment?
- What would be the ongoing impact on revenue over the life of the proposal?
- Does the Government have these funds available or budgeted?
- Is the opportunity cost from government investing in the proposal justified relative to other strategic priorities?
- If an alternative funding source is proposed, what are the ongoing impacts on the public, the State and government revenue?
- Can normal costs to government be offset through an alternative business model?

The Government will also consider any potential accounting impacts of the proposal. For example, some projects can involve no State funding, but the project can still have an impact on the State's balance sheet.

Examples of successful MLPs from other jurisdictions – value for money criterion

New International Cruise Terminal

The proponent would take the full cost and risk of the construction and operation of the project on the basis of future revenues from wharfage and terminal access fees, including revenue risk, reflecting market practice for comparable projects.

Construction and lease of a new police centre

The proposal demonstrates best value when compared against existing and alternative accommodation options that could house the police centre, while delivering unique efficiency benefits due to its location and the new purpose-built building. The lease rent is in line with market analysis and reflects a true economic rent.

Construction of a new transit hall and entrance for a major train station

The proponent will build and maintain the transit hall in perpetuity and, in return, will receive stratum air rights that will enable the construction of an office tower and retail lots above and adjoining the transit hall. The office tower and retail lots will be owned in freehold by the proponent.

3.3.4 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.

Proponents must demonstrate both the feasibility of a proposal (for example, any costs that are not to be borne by the Government are capable of being financed by debt and/or equity providers) and that their organisation has access to adequate expertise, experience, resources, and an appropriate structure to deliver the proposal. This also refers to the capability and capacity of its proponent.

The proponent will be required to provide detailed corporate and financial information to enable government to undertake this assessment, such as company balance sheets, annual reports, and corporate ownership structure (including international) as well as information on the proposed financing arrangements for the proposal. Depending on the scale, complexity and risks associated with the proposal, government may also require financial guarantees from the proponent.

The following questions offer guidance:

- Has the proponent undertaken the proposal before under similar conditions?
- Can the proponent provide evidence of its experience successfully delivering a similar proposal and/or working with governments in Australia or in similar jurisdictions elsewhere in the world?
- What reliance is there on third parties? Why can any third-party inputs be relied upon?
- Does the financial structure of the proposal offer sufficient security to government in the event the proposal encounters difficulties during the delivery phase?
 - What is the source of project capital?
 - How much of that capital is equity and what is the source of the equity? Who are the strategic equity participants in the project?
 - How much of the project capital will be debt financed? Is the source of finance credible?
 - When will financial close take place? When will the final investment decision take place?
- Does the company structure offer sufficient security to government in the event the proposal encounters difficulties during the delivery phase?
 - What is the corporate ownership structure (including international) of the proponent?
 - Is there a current balance sheet?
 - How does the proponent's balance sheet connect into the parent company (if applicable)?
 - Who would provide a parent company guarantee if required, and where would that come from?

The requirement for demonstrating financial capacity increases as proposals progress through the stages of the evaluation process. Government is unlikely to progress proposals through the MLP process where these tests are not adequately met, or insufficient information is provided.

3.3.5 Risk

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

Proponents must demonstrate that the proposal involves an acceptable and optimal sharing of risks between the Government and the proponent. Proponents are advised to quantify and account for such risks through the structure of a proposal and identify proposed strategies to mitigate any risk, where possible. Proponents are advised to consider the following questions:

- What risks are to be borne by the proponent and by the Government?
- How will risks be managed/mitigated?
- Does the proposal require environmental, planning, or other regulatory approvals?
 - If so, has the process been appropriately considered?
 - Does government or the proponent bear the cost and risks associated with obtaining approvals?

3.4 Procurement Pathway Assessment

The Procurement Pathway Assessment applies to unsolicited proposals only.

Government is rigorous in its assessment of proposals to ensure any resulting in direct procurement can be justified at the conclusion of the process. While a concept may be innovative and the proposal may demonstrate significant process advantages, such as design or technology, it may represent one option among a range of technologies or solutions available to government.

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

To incentivise the delivery of innovative solutions that meet the Government's priorities, proposals that meet the scope of the policy, government priorities and full criteria of the policy will be assessed for their appropriate procurement pathway. This includes the potential for a First Mover Advantage or Exclusive Negotiation to be offered to a proponent that meets the criteria listed below. Those that fail to meet the relevant criteria may be referred to another relevant government process (see Section 3.5).

3.4.1 Assessment of whether the proposal is within the Policy [and has First Mover Advantage Characteristics]

The proposal will be assessed as to whether it falls within the Policy having regard to the following 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 is borne by the proponent than the State.

Where these characteristics are not met, the Government will consider that the outcome could be achieved by a competitor and the proposal will be referred to another relevant government process (see section 3.5).

3.4.2 Assessment of whether government will engage in exclusive negotiations

If the proposal is assessed under section 3.4.1 as falling within the Policy, then the proposal will be further assessed to determine whether the Government will engage in exclusive negotiations with the proponent, having regard to the following characteristics:

- 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 or all 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.

3.4.3 Process if government determines not to engage in exclusive negotiations

If a determination is made by Cabinet at the end of Stage 1, under section 3.4.2 that the Government will not engage in exclusive negotiations with the proponent, then the MLP Steering Committee will oversee a market testing process at the beginning of Stage 2. This process will take one of the following forms:

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.

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.

The Evaluation panel, in consultation with relevant government subject matter experts, will design and undertake a tailored competitive tender process with terms and conditions appropriate to such a procurement process.

Outcomes of the market testing process can include: shortlisting one or more responses for further evaluation in Stage 2; deferring one or more responses; referring responses to an alternative government process; or declining one, multiple or all responses.

The MLP Steering Committee has authority to approve a successful respondent in a market testing process and invite the proponent to submit a business case and final offer in Stage 2 of the MLP process. Recommendations to decline all submissions in the market testing process will be referred to Cabinet for decision.

3.5 Referral to an alternate government process

Where an unsolicited or POS 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 deemed worthy of further consideration by government, the Treasurer (Scope and Priorities Assessment (Fast Fail Gate)) 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 tendering 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.

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 proposed offer for Cabinet approval.

3.7 Roles and responsibilities

The roles and responsibilities of proponents and government at each stage of the centralised MLP evaluation process are outlined below.

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. The Proposal Manager will also become the central point of contact for the proponent and will fulfil the role of the MLP Secretariat in relation to organisation and communication should a proposal move to the Full Criteria Assessment phase.

3.7.1 MLP Stage 1: Concept Evaluation

Self-Assessment

Proponent	<ul style="list-style-type: none"> • Completes the online Pre-Submission Meeting Request Form to consider suitability of the proposal against the scope of the Policy requirements, and published government priorities and other relevant information.
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Compulsory Pre-submission Meeting

Proponent	<ul style="list-style-type: none"> • Contacts MLP Secretariat to arrange a pre-submission meeting. • Attends a pre-submission meeting and clearly articulates high level concept of proposal and how it addresses MLP scope and priorities, including cost and benefit to the State. • Be prepared to investigate the merits and shortcomings of the proposed concept.
MLP Secretariat	<ul style="list-style-type: none"> • Schedules and attends pre-submission meeting. • Provide advice on the type of information required at Stage 1 and whether the proposal has a reasonable chance of meeting the Policy requirements before proponents invest in developing a full concept proposal.

Concept Proposal Lodgement

Proponent	<ul style="list-style-type: none"> • Completes and signs the Stage 1 Concept Proposal Template (available on the MLP webpage). • Lodges the proposal with the MLP Secretariat via email to marketledproposals@dplh.wa.gov.au
MLP Secretariat	<ul style="list-style-type: none"> • Initial assessment of proposal to ensure it includes adequate information to proceed. • Confirms lodgement acceptance with the proponent and communicates updates on the progress of the proposal. • Identifies Lead Agency and other relevant government bodies. • Contacts relevant government bodies, MLP Steering Committee confirming receipt of the proposal.

Scope and Priorities Assessment

Proponent	<ul style="list-style-type: none"> Provides additional and technical information upon request.
MLP Secretariat	<ul style="list-style-type: none"> Assess the Stage 1 Concept Proposal for alignment with MLP Policy and government priorities, determines the Lead Agency and relevant agencies in the recommendation to the Treasurer. Consults with MLP Steering Committee and relevant agencies. Collates feedback on the Stage 1 Concept Proposal. Informs MLP Steering Committee of Treasurer's decision. If the decision is to proceed to full Stage 1 evaluation: <ul style="list-style-type: none"> notifies the proponent of the decision Coordinates process with the Lead Agency, proposal manager and evaluation panel of relevant agencies.
MLP Steering Committee	<ul style="list-style-type: none"> Provides input on the Stage 1 Concept Proposal. Notes the Treasurer and Lead Agency Minister's decision. Provides written advice to the proponent if the Treasurer decides not to proceed (Fast Fail Gate).
Treasurer	<ul style="list-style-type: none"> In consultation with the Lead Agency Minister, considers the Stage 1 Concept Proposal and makes a decision to allow the proposal to proceed; redirect the proposal; or decline the proposal (Fast Fail Gate).

Full Criteria and Procurement Pathway Assessment

Proponent	<ul style="list-style-type: none"> Provides additional information upon request. Attends Stage 1 meeting with evaluation panel.
MLP Secretariat	<ul style="list-style-type: none"> A central communication point for all parties, including the point of contact for the proponent. Forms a non-voting role on the evaluation panel. Organises evaluation panel meeting with proponent for Stage 1 meeting. Manages the proposal to ensure probity principles are maintained and process remains on schedule. Reports on progress to MLP Steering Committee. Provides recommendation on process to MLP Steering Committee
Evaluation Panel	<ul style="list-style-type: none"> Conducts the evaluation. Requests additional information, as required. Conducts Stage 1 meeting with the proponent. Liaises with MLP Secretariat and provides recommendations to the MLP Steering Committee. Should the evaluation panel's recommendation be to progress the proposal to Stage 2, then the evaluation panel evaluates the proposal to determine the appropriate procurement pathway. Drafts Cabinet submission for ministerial consideration.

	<ul style="list-style-type: none"> • Where appropriate, joins the MLP Secretariat in the debriefing session for the proponent should the proposal be declined.
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Final Stage 1 Decision

MLP Steering Committee	<ul style="list-style-type: none"> • Reviews the evaluation panel's recommendation and provides a recommendation to Cabinet, through the Lead Agency Minister, that the WA Government: <ul style="list-style-type: none"> – invites the proponent to submit a Stage 2 proposal and confirms the appropriate procurement process; or – redirects the proponent or proposal to an alternative government process if appropriate; or – declines the proposal. • Provides draft Cabinet submission for ministerial consideration. • Acts to inform the proponent of Cabinet's decision.
MLP Secretariat	<ul style="list-style-type: none"> • Where Cabinet declines the proposal, provides a debriefing session to the proponent to discuss the process and outcome, where appropriate.
Lead Agency Minister	<ul style="list-style-type: none"> • Considers draft Cabinet submission and makes a recommendation to Cabinet.
Cabinet	<ul style="list-style-type: none"> • Decision or deferral including any additional requirements.

3.7.2 MLP Stage 2: Business Case and Final Offer Evaluation

3.7.2.1 Market Testing Process

(Only used where First Mover Advantage pathway is required as per section 3.4.3. Otherwise refer to 3.7.2.2 Business Case and Final Offer.)

Establishment Meeting

MLP Secretariat	<ul style="list-style-type: none"> • Organises Stage 2 establishment meeting.
Proposal Manager / Stage 1 Proponent	<ul style="list-style-type: none"> • The Lead Agency, in negotiation with the Stage 1 proponent, may enter a Stage 2 Agreement, or will ensure the terms and conditions applicable to the MLP process appropriately address: <ul style="list-style-type: none"> – The Stage 1 proponents' participation in the market testing process – roles, resourcing, financial contributions, governance structure and other requirements of all parties, including third parties, such as technical experts

	<ul style="list-style-type: none"> – Stage 2 Deliverables and delivery date (Should the Stage 1 proponent be successful in the market testing process). Stage 2 Deliverables will include, as a minimum: <ul style="list-style-type: none"> • a business case; and • an offer capable of acceptance; or • final offer for negotiation; plus • other relevant matters.
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Expression of Interest (EOI) Development and Release

Proposal Manager	<ul style="list-style-type: none"> • Drafts the EOI document and specification.
MLP Secretariat	<ul style="list-style-type: none"> • Establish Evaluation Panel • A central communication point for all parties, including the point of contact for the proponent. • Manages the EOI process, releases the EOI to market on Tenders WA.
MLP Steering Committee	<ul style="list-style-type: none"> • Reviews the EOI and approves release.

Lodgement

EOI Proponent	<ul style="list-style-type: none"> • Lodge response to publicly issued EOI in accordance with the EOI terms and conditions.
MLP Secretariat	<ul style="list-style-type: none"> • Receive lodged responses and issues to Evaluation Panel for assessment.

Evaluation

EOI Proponent	<ul style="list-style-type: none"> • Responds to clarifications from the Evaluation Panel as required.
Evaluation Panel	<ul style="list-style-type: none"> • Clarifies questions in relation to the responses submitted to the EOI. • Evaluates the response/s received. • Makes a recommendation to the MLP Steering Committee. The Recommendation may include but is not limited to: <ul style="list-style-type: none"> – Declining one, multiple or all responses – Shortlisting response/s for further evaluation in Stage 2 – Referring proponent/s to an alternate government process – Deferring proponent/s.
MLP Secretariat	<ul style="list-style-type: none"> • A central communication point for all parties, including the point of contact for the EOI proponent/s. • Forms a non-voting role on the evaluation panel. • Manages the process to ensure probity principles are maintained.

	<ul style="list-style-type: none"> • Reports on progress to MLP Steering Committee.
MLP Steering Committee	<ul style="list-style-type: none"> • Reviews the evaluation panel's recommendation and where the recommendation is to: <ul style="list-style-type: none"> – decline all responses and terminate the MLP process, provides a recommendation to Cabinet, though the Lead Agency Minister. – invite the EOI recommended proponent (which may or may not be the Stage 1 proponent) to the next steps of the MLP process, authorises the MLP Secretariat and evaluation panel to proceed to Stage 2 business case and final offer.

Cabinet Process

Lead Agency Minister	Where the MLP Steering Committee recommendation is to decline all response/s and terminate the MLP process, considers draft Cabinet submission and makes a recommendation to Cabinet.
Cabinet	<ul style="list-style-type: none"> • Decision or deferral including any additional requirements. • Cabinet decision only required if the recommendation is to decline all responses and terminate the MLP process.

Advice to EOI Proponent

MLP Steering Committee	<ul style="list-style-type: none"> • Notifies the proponents of the outcome of the EOI process.
MLP Secretariat	<ul style="list-style-type: none"> • Where Cabinet declines the response/s, provides a debriefing session to the proponent/s to discuss process and outcomes, where appropriate.

3.7.2.2 Business Case and Final Offer

Establish Evaluation Panel

MLP Secretariat	<ul style="list-style-type: none"> • Establishes the Evaluation Panel. • Confirms conditions, concerns including State Solicitor's Office and Treasury requirements for process.
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Stage 2 Establishment Meeting

Proposal Manager	<ul style="list-style-type: none"> • Organises Stage 2 establishment meeting. • Forms part of the Evaluation Panel.
Evaluation Panel / Proponent	<ul style="list-style-type: none"> • Attends Stage 2 establishment meeting. • The Lead Agency, in negotiation with the proponent, may enter a Stage 2 Agreement, or will ensure the terms and conditions applicable to the MLP process (whether the MLP Terms and Conditions or terms and conditions agreed upon in response to an EOI in Stage 2), appropriately address the: <ul style="list-style-type: none"> – roles, resourcing, financial contributions, governance structure and other requirements of all parties, including third parties, such as technical experts

	<ul style="list-style-type: none"> – Stage 2 Deliverables and delivery date. Stage 2 Deliverables will include, as a minimum: <ul style="list-style-type: none"> • a business case; and • an offer capable of acceptance; or • final offer for negotiation; plus – other relevant matters. <p>NOTE: 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.</p>
MLP Secretariat	<ul style="list-style-type: none"> • Forms a non-voting role on the evaluation panel. • Manages the proposal to ensure probity principles are maintained. • Reports on progress to MLP Steering Committee.
MLP Steering Committee	<ul style="list-style-type: none"> • Reviews and approves the draft Stage 2 Agreement, or any proposed variations to the terms and conditions applicable to the MLP process and Stage 2 Deliverables and directs the evaluation panel, as required.

Lodgement

Proponent	Lodges Stage 2 Deliverables in accordance with the agreed scope and timeframe with the MLP Secretariat.
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Business Case and Negotiation of Final Offer

Proponent	<ul style="list-style-type: none"> • Participates and contributes resources as required. • Provides additional information, as required. • Works with WA Government representatives to negotiate offered terms, if required.
Evaluation Panel	<ul style="list-style-type: none"> • Requests additional information, as required. • Conducts evaluation of Stage 2 Deliverables and any additional information provided by the proponent. • Facilitates the negotiation of offer terms. • Makes a recommendation to the MLP Steering Committee. • Drafts Cabinet submission for ministerial consideration (Proposal Manager). • Refers proponent’s business case to Infrastructure WA for advice (if an infrastructure-related proposal above the specified threshold or deemed appropriate). Lead agency responsibility.

MLP Secretariat	<ul style="list-style-type: none"> • A central communication point for all parties, including the point of contact for the proponent. • Forms a non-voting role on the evaluation panel. • Manages the Stage 2 evaluation process. • Manages the process to ensure probity principles are maintained. • Reports on progress to MLP Steering Committee.
MLP Steering Committee	<ul style="list-style-type: none"> • Reviews the evaluation panel's recommendation and provides a recommendation to Cabinet, through the Lead Agency Minister.

Cabinet Process

MLP Steering Committee	<ul style="list-style-type: none"> • MLP Steering Committee will provide a recommendation to Cabinet, through the Lead Agency Minister to: <ul style="list-style-type: none"> – invite the proponent to finalise contractual arrangements based on conditions stipulated by Cabinet – in the case where commercial terms have already been negotiated and drafted, execute the proposed agreement as recommended or with stipulated updates or conditions – refer the proposal to an agency for consideration outside the Policy; or – not consider the proposal any further. <p>NOTE: The MLP Steering Committee may make a recommendation to Cabinet, through the Lead Agency Minister, at an any point in Stage 2 to allow the Lead Agency to continue to negotiate with the proponent. Refer to section 3.7.2.3.</p>
Lead Agency Minister	<ul style="list-style-type: none"> • Reviews draft Cabinet submission and makes a recommendation to Cabinet. • Acts in accordance with Cabinet instruction.
Cabinet	<ul style="list-style-type: none"> • Consider MLP Steering Committee recommendation. • Decision or deferral, including any additional requirements.

Advice to Proponent/s

MLP Steering Committee	<ul style="list-style-type: none"> • Notifies the proponent/s of the outcome of the Stage 2 process.
MLP Secretariat	<ul style="list-style-type: none"> • Where Cabinet declines the proposal, provide a debriefing session to the proponent to discuss reasons, where it is appropriate.

3.7.2.3 Cabinet referral for Lead Agency Negotiation

MLP Steering Committee	<ul style="list-style-type: none"> 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. Notifies the proponent of the outcome of the process.
Lead Agency Minister	<ul style="list-style-type: none"> Reviews draft Cabinet submission and makes a recommendation to Cabinet. Acts in accordance with Cabinet instruction.
Cabinet	<ul style="list-style-type: none"> Decision or deferral including any additional requirements.

3.7.3 POS Development

POS Development

Proposal Manager	<ul style="list-style-type: none"> Drafts the POS document and specification. Submits POS concept to MLP Secretariat. Drafts Cabinet submission recommending release of POS to market.
MLP Secretariat	<ul style="list-style-type: none"> Circulates POS document to key agencies for technical expert input. Collates key agency feedback for Proposal Manager.
Lead Agency	<ul style="list-style-type: none"> Identifies the proposed POS Concept. Lead Agency Director General approves POS Concept.
MLP Steering Committee	<ul style="list-style-type: none"> Reviews the POS Concept and Cabinet submission and endorses for Cabinet decision.

Cabinet Process

Lead Agency Minister	<ul style="list-style-type: none"> Reviews draft Cabinet submission and makes a recommendation to Cabinet. Acts in accordance with Cabinet instruction.
Cabinet	<ul style="list-style-type: none"> Decision or deferral, including any additional requirements.

Release to Market

MLP Secretariat	<ul style="list-style-type: none"> Releases the POS to market on Tenders WA.
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3.7.4 POS Stage 1: Concept Evaluation

Establish Evaluation Panel

MLP Secretariat	<ul style="list-style-type: none"> Establishes the Evaluation Panel.
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Lodgement

POS Proponent	<ul style="list-style-type: none"> Lodges response to publicly issued POS in accordance with the POS terms and conditions.
MLP Secretariat	<ul style="list-style-type: none"> Receive lodged responses and issues to Evaluation Panel for assessment.

Evaluation

POS Proponent	<ul style="list-style-type: none"> Responds to clarifications from the Evaluation Panel as required.
Evaluation Panel	<ul style="list-style-type: none"> Clarifies questions in relation to the responses submitted to the POS. Evaluates the response/s received. Makes a recommendation to the MLP Steering Committee. The Recommendation may include but is not limited to: <ul style="list-style-type: none"> declining one, multiple or all responses shortlisting response/s for further evaluation in Stage 2 referring proponent/s to an alternate government process deferring proponent/s. Drafts Cabinet submission for ministerial consideration (Proposal Manager).
MLP Secretariat	<ul style="list-style-type: none"> A central communication point for all parties, including the point of contact for the POS proponent/s. Forms a non-voting role on the evaluation panel. Manages the process to ensure probity principles are maintained. Reports on progress to MLP Steering Committee.
MLP Steering Committee	<ul style="list-style-type: none"> Reviews the evaluation panel's recommendation and provides a recommendation to Cabinet, through the Lead Agency Minister.

Cabinet Process

Lead Agency Minister	<ul style="list-style-type: none"> Reviews draft Cabinet submission and makes a recommendation to Cabinet. Acts in accordance with Cabinet instruction.
Cabinet	<ul style="list-style-type: none"> Decision or deferral including any additional requirements.

Advice to POS Proponent/s

MLP Steering Committee	<ul style="list-style-type: none"> Notifies the proponent/s of the outcome of the Stage 1 POS process.
MLP Secretariat	<ul style="list-style-type: none"> Where Cabinet declines proposal, provide a debriefing session to the proponent/s to discuss reasons, where it is appropriate.

3.7.5 POS Stage 2 Business Case and Final Offer Evaluation

Establish Evaluation Panel

MLP Secretariat	<ul style="list-style-type: none"> Establishes the Evaluation Panel Confirms conditions, concerns including State Solicitor's Office and Treasury requirements for process.
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Stage 2 Establishment Meeting

Proposal Manager	<ul style="list-style-type: none"> Organises Stage 2 establishment meeting. Forms part of the Evaluation Panel.
Evaluation Panel / Proponent/s	<ul style="list-style-type: none"> Attends Stage 2 establishment meeting. The Lead Agency, in negotiation with the proponent/s, may enter a Stage 2 Agreement/s, or will ensure the terms and conditions applicable to the POS process appropriately address the: <ul style="list-style-type: none"> roles, resourcing, financial contributions, governance structure and other requirements of all parties, including third parties, such as technical experts. Stage 2 Deliverables and delivery date. Stage 2 Deliverables will include, as a minimum: <ul style="list-style-type: none"> a business case; and an offer capable of acceptance; or final offer for negotiation; plus other relevant evaluation details. <p>NOTE: For infrastructure related proposals seeking government funding, a Project Definition Plan (PDP) may be required to be prepared by the proponent/s 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.</p>
MLP Secretariat	<ul style="list-style-type: none"> Forms a non-voting role on the evaluation panel. Manages the proposal to ensure probity principles are maintained. Reports on progress to MLP Steering Committee.
MLP Steering Committee	<ul style="list-style-type: none"> Reviews and approves the draft Stage 2 Agreement/s, or any proposed variations to the terms and conditions applicable to the POS process and Stage 2 Deliverables and directs the evaluation panel, as required.

Lodgement

Proponent/s	Lodges Stage 2 Deliverables in accordance with the agreed scope and timeframe with the MLP Secretariat.
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Business Case and Negotiation of Final Offer

Proponent/s	<ul style="list-style-type: none"> • Participates and contributes resources as required. • Provides additional information, as required. • Works with WA Government representatives to negotiate offered terms, if required.
Evaluation Panel	<ul style="list-style-type: none"> • Requests additional information, as required. • Conducts evaluation of Stage 2 Deliverables and any additional information provided by the proponent/s. • Facilitates the negotiation of offer terms. • Makes a recommendation to the MLP Steering Committee. • Drafts Cabinet submission for ministerial consideration (Proposal Manager). • Refers proponent's business case to Infrastructure WA for advice (if an infrastructure-related proposal above the specified threshold or deemed appropriate). Lead agency responsibility.
MLP Secretariat	<ul style="list-style-type: none"> • A central communication point for all parties, including the point of contact for the proponent/s. • Forms a non-voting role on the evaluation panel. • Manages the Stage 2 evaluation process. • Manages the process to ensure probity principles are maintained. • Reports on progress to MLP Steering Committee.
MLP Steering Committee	<ul style="list-style-type: none"> • Reviews the evaluation panel's recommendation and provides a recommendation to Cabinet, through the Lead Agency Minister.

Cabinet Process

MLP Steering Committee	<ul style="list-style-type: none"> • MLP Steering Committee will provide a recommendation to Cabinet, through the Lead Agency Minister to: <ul style="list-style-type: none"> – invite the proponent/s to finalise contractual arrangements based on conditions stipulated by Cabinet. <p>In the case where commercial terms have already been negotiated and drafted, execute the proposed agreement as recommended or with stipulated updates or conditions.</p> <ul style="list-style-type: none"> – refer the proposal to an agency for consideration outside the Policy; or – not consider the proposal any further. <p>NOTE: The MLP Steering Committee may make a recommendation to Cabinet, through the Lead Agency Minister, at an any point in Stage 2 to allow the Lead Agency to continue to negotiate with the proponent/s. Refer to section 3.7.5.1.</p>
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Lead Agency Minister	<ul style="list-style-type: none"> • Reviews draft Cabinet submission and makes a recommendation to Cabinet. • Acts in accordance with Cabinet instruction.
Cabinet	<ul style="list-style-type: none"> • Decision or deferral, including any additional requirements.

Advice to Proponent/s

MLP Steering Committee	<ul style="list-style-type: none"> • Notifies the proponent/s of the outcome of the Stage 2 process.
MLP Secretariat	<ul style="list-style-type: none"> • Where Cabinet declines the proponent/s response, provide a debriefing session to the proponent/s to discuss reasons, where it is appropriate.

3.7.5.1 Cabinet referral for Lead Agency Negotiation

MLP Steering Committee	<ul style="list-style-type: none"> • The MLP Steering Committee may make a recommendation to Cabinet, through the Lead Agency Minister, at an any point in Stage 2 to allow the Lead Agency to continue to negotiate with the proponent/s and finalise contracts. • Notifies the proponent/s of the outcome of the process.
Lead Agency Minister	<ul style="list-style-type: none"> • Reviews draft Cabinet submission and makes a recommendation to Cabinet. • Acts in accordance with Cabinet instruction.
Cabinet	<ul style="list-style-type: none"> • Decision or deferral including any additional requirements.

4 Glossary

Accountable Authority	Accountable authority has the meaning given by section 3 of the <i>Financial Management Act 2006</i> .
Agency	Agency has the same meaning as State agency given by section 4 of the <i>Procurement Act 2020</i> .
Business Case	Key overarching document setting out justification, scope, and deliverability of the proposal.
Expression of Interest	Instrument used by the State to approach the market in circumstances where the First Mover Advantage Pathway is adopted.
Final Offer	Includes commercial, legal, and other terms that form the basis of a final contract between the State and proponent.
General Direction	Means a general procurement direction issued by the Minister under Part 4 of the <i>Procurement Act 2020</i> . General Procurement Directions may be found on the wa.gov.au website.
GTE	Government Trading Enterprise
Lead Agency	The Lead Agency is the Agency or GTE considered to have the technical expertise and/or legislative or executive authority to inform the MLP process and oversee implementation, should a proposal be successful.
Treasurer	Minister responsible for the Policy.
MLP Steering Committee	The MLP Steering Committee oversees the implementation of the Policy and makes recommendations to Cabinet. The MLP Steering Committee includes Directors General/Chief Executive Officers of a number of Agencies.
MLP Secretariat	The MLP Secretariat supports the MLP Steering Committee and provides a central point of contact for the receipt of MLPs.
MLP Terms and Conditions	Means the MLP Terms and Conditions published on the MLP website on www.wa.gov.au
Policy	The Market-Led Proposals Policy.
Problem and Opportunity Statement	Process for the government to publish specific problem or opportunity statements, inviting industry to provide innovative solutions for consideration.
Strategic Asset Management Framework	The WA Government Strategic Asset Management Framework (SAMF) sets out certain requirements for inclusion in business cases for infrastructure proposals. Further information about SAMF may be found on the wa.gov.au website.
Stage 2 Deliverables	Stage 2 Deliverables will include but are not limited to: <ul style="list-style-type: none"> • a business case; and • a final offer capable of acceptance.
Western Australian Procurement Rules	Means the Western Australian Procurement Rules, issued as a General Procurement Direction, under the <i>Procurement Act 2020</i> .

