



GOVERNMENT OF
WESTERN AUSTRALIA

Market-led Proposals

Supplementary Guidelines

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Department of Planning, Lands and Heritage (DPLH)

Gordon Stephenson House

140 William Street

Perth

Western Australia 6000

Phone: (08) 6552 4731

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

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1 Introduction

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

2 Scope of the Policy

The Policy was developed to assist Government in considering innovative proposals from the private sector that do not fit a standard competitive procurement process. It is targeted at proposals that meet a high priority for Government, justify direct engagement, and include a commercial proposition that offers value for money outcomes for Government.

The scope of the Policy for unsolicited proposals and Problem and Opportunity Statements (POS) is outlined in the Policy.

2.1 Proposal exclusions

All unsolicited MLPs will be assessed to determine if they are within the scope of the Policy as part of the Initial Assessment.

The MLP process is not suitable for proposals which demonstrate the following characteristics and are therefore unlikely to be progressed:

- do not contain a commercial proposition for the Government;
- are dealt with by an existing government process that is underway;
- seek to obtain industry assistance and other grants, where such assistance is available through existing programs;
- relate to a project or program that the 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);
- seek to develop land that is not owned by the Government or the proponent;
- are inconsistent with existing laws (for example, proposals over land which is a Class A Reserve);
- lack structure and sufficient supporting information;
- significant extensions/variations to existing contracts/leases;
- 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;
- provide widely available goods or services to the Government;
- proposals seeking only to change government policy where there is no associated project;
- projects where the tender process has formally commenced, whether published or not;

- seek to stop or suspend another government process (for example, compulsory acquisition); and
- seek 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 the 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 arrange a meeting with the MLP Secretariat. This will assist with determining a path forward and help to inform a proponent if a proposal is likely to meet the requirements for consideration under the Policy before investing further time, effort, and expense.

3 Evaluation principles

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

3.1 Absolute discretion

The 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 uncertainty as much as possible through a staged process and timely communication about a proposal's prospects.

3.2 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 extent of analysis in evaluating a proposal, increases progressively through the stages of the process. The inclusion of multiple decision points is designed to control the cost and risk to proponents and the Government. Every attempt is made to maintain open communication with the proponents to keep them informed on the progress of assessment.

3.3 Interactive process

The MLP process becomes progressively more interactive as proposals progress through the stages.

Prior to submission of a proposal, the MLP Secretariat will convene a pre-submission meeting with proponents to understand the proposal and discuss the suitability of the MLP pathway.

Stage 1 engagement includes clarifying aspects of the proposal and potentially participating in a joint discovery phase, including feedback from the State on the proposal and two-way information sharing. This process will assist the Government in making a decision on whether to consider the proposal further.

In Stage 2, the level of rigour and investment justifies an ‘open book’ approach and greater flexibility, interaction and negotiation. Both parties will have the opportunity to undertake an appropriate level of due diligence to support an informed decision on whether to proceed with a proposal. The process is designed to facilitate direct negotiation with a proponent with a view to arriving at agreed contract terms.

3.4 Obtaining value for money

Obtaining optimal value for money is a fundamental principle of evaluating proposals to the Government. This is achieved by fostering an environment in which proponents can make attractive, innovative proposals with confidence they will be assessed by the Government in the context of achieving value for money outcomes for the people of Western Australia.

3.5 Probity principles

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 may be appointed for large-scale projects or where probity risk is sufficient to warrant appointment. This would normally apply for Stage 2 processes only. If appointed, the role of the probity adviser is to monitor and report to the MLP Steering Committee (or lead agency as appropriate) 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.

The following probity principles apply to the MLP process.

3.5.1 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 assessment and approval functions.

3.5.2 Maintaining accountability and transparency

The demonstration of accountability and transparency is crucial to the integrity of the evaluation. The MLP process appoints an accountable lead agency and identifies responsibilities of participants in the process. It provides feedback mechanisms to keep proponents informed and requires all key activities and decision-making to be appropriately documented.

Transparency refers to the preparedness to open a proposal and its processes to scrutiny and debate. This also includes providing appropriate information to stakeholders and feedback to unsuccessful proponents. Provision of relevant information regarding proposals under consideration in Stage 1 and beyond will be publicly disclosed in accordance with the Policy.

3.5.3 Maintaining confidentiality

The evaluation of MLPs is managed with a high degree of confidentiality to protect participants’ commercially sensitive information. The confidentiality provisions apply to all parties to the process and are designed to encourage the private sector to approach the Government with innovative ideas. The Policy seeks to provide

confidence in the integrity of the process, while balancing the need for transparency and the protection of intellectual property.

The State Government recognises the confidential nature of MLP submissions and will endeavour to treat them accordingly, subject to the disclosure provisions outlined by the Policy, the Terms and Conditions, and subject to the Government's public disclosure and accountability obligations.

While all reasonable steps will be taken to protect genuine intellectual property relating to proposals, proponents should be mindful that participation in the MLP process set out in this Policy is at their own risk.

3.5.4 Managing conflicts of interest

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 perceived 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.

3.5.5 Proponent probity requirements

Once proponents submit a proposal, they must seek the MLP Secretariat's approval before entering discussions with any government agency representatives other than the MLP Secretariat or the lead agency proposal manager. Proponents should not disclose any information in relation to the MLP process (inclusive of the proposal submitted) to third parties or the media without prior written approval from the MLP Secretariat. 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.

Proponents must declare any actual or perceived conflicts of interest at the time of submitting a proposal, or if one arises throughout the assessment of a proposal. Proponents must not seek to influence any person who is directly or indirectly engaged in the evaluation or decision-making process for a proposal.

Proponents will be required to acknowledge and adhere to the probity framework applicable to the MLP process and may be required to sign a probity plan.

4 Assessment of proposals

4.1 Priorities assessment

Proposals will be assessed to determine if they fit within the context of current priorities of the Government.

The MLP webpage hosts information on specific State Government priorities. It is recommended that proponents consider agency-specific priorities that may relate to a proposal and seek feedback from agencies where appropriate.

To assist proponents in understanding the types of proposals or solutions that the 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 the Government and will undergo evaluation in Stage 1, unless specified in the advertised POS.

4.2 Evaluation criteria

The Policy sets out five evaluation criteria used by the Government to evaluate proposals in Stage 1 (concept evaluation) and Stage 2 (business case and key terms) of the MLP process. The evaluation criteria apply to both unsolicited and POS proposals, unless specified in an advertised POS. These Guidelines provide additional information on how the criteria are defined and applied.

4.2.1 Strategic alignment

The proposal is aligned with government policy objectives and priorities.

A critical test of an MLP is strategic alignment with government priorities. The Government provides a strong lead to proponents through the annual State 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. The types of proposals that satisfy the strategic alignment criterion will depend on the priorities of the Government of the day, so specific examples have not been included in these Guidelines. Proponents should review the priorities list on the MLP webpage along with policies, strategies and election commitments that are relevant to the proposal.

4.2.2 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 the Government, or better left to the market. The following questions are a useful guide:

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

4.2.3 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 the 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 the 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 should set out how value for money will be achieved through delivery of the proposal. In evaluating whether a proposal represents value for money, among other matters, the Government will consider the factors outlined below.

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. 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 the Government inadvertently subsidises projects in different ways – for example, staffing increases to meet new demand or increased maintenance and upgrade costs for public infrastructure. The costs and benefits of proposals are weighed against these factors to determine value for money.

Proponents are advised to consider the following questions:

- What additional investments and/or ongoing costs will be required to meet new demand created by the proposal?
- Will the proposal result in increased costs or reduced revenue for the Government?
- How do these impacts and benefits affect the overall value for money of the proposal?

Affordability

By their nature, MLPs 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.

In assessing proposals, the Government will 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 government revenue over the life of the proposal?
- Does the Government have these funds available or budgeted?
- Is the opportunity cost from the 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 community, 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.

4.2.4 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 the feasibility of a proposal and that their organisation has sufficient capacity and capability by way of access to adequate expertise, experience, resources, and an appropriate structure to deliver the proposal.

In later stages of the project, the proponent will be required to provide detailed corporate and financial information to enable the Government to undertake an assessment, such as company balance sheets, annual reports, and corporate ownership structure (including international entities). Information on the proposed commercial structure and financing arrangements for the proposal should be provided with the initial submission. Depending on the scale, complexity and risks associated with the proposal, the Government may also require financial guarantees from the proponent.

The following questions offer guidance:

- Has the proponent previously undertaken a similar proposal under similar conditions?
- Can the proponent provide evidence of its experience in 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 the 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 the 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. The Government is unlikely to progress proposals through the MLP process where these tests are not adequately met, or insufficient information is provided.

4.2.5 Risk

Any financial, reputational, political, and/or security risks to the Government from the proposal are acceptable and there is an appropriate allocation of risk between the proponent and the 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?
- What are the likelihood and consequences of these risks to each party?
- 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 the Government or the proponent bear the cost and risks associated with obtaining approvals?

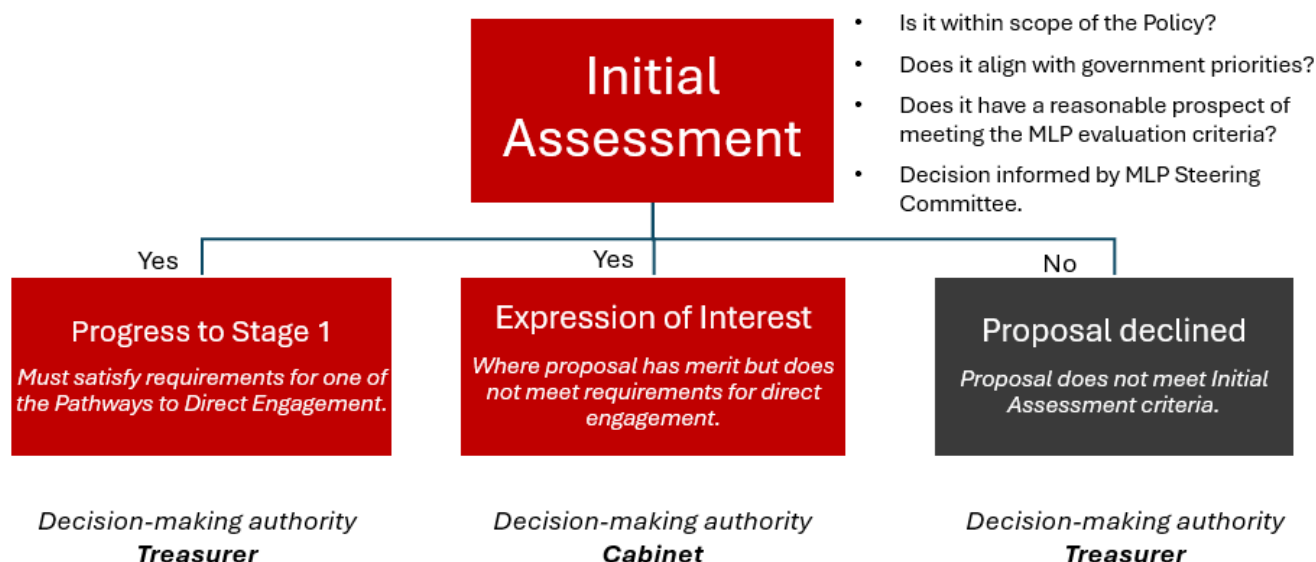
5 Evaluation process

The key stages of the MLP process are outlined in the Policy. To facilitate consideration of a proposal, proponents are required to attend a pre-submission meeting with the MLP Secretariat and submit proposals in the required form (refer to the Policy).

The section below provides further detail on the assessment of proposals from the Initial Assessment through to a final decision on a proposal and clarifies the roles of each party.

The Initial Assessment does not apply to POS processes. In addition, the assessment of responses to a POS replaces Stage 1 of the MLP process. Refer to section 6 on Problem and Opportunity Statements for further information.

5.1 Initial Assessment



5.1.1 Government's role

During the Initial Assessment, the MLP Secretariat will consult with the MLP Steering Committee and relevant agencies to obtain feedback on a proposal. The feedback will address whether the proposal:

- is within the scope of the Policy
- aligns with government priorities; and
- has a reasonable prospect of meeting the MLP evaluation criteria.

Further feedback will be sought on whether the proposal meets the requirements of one of the Pathways to Direct Engagement as outlined in the Policy, to determine the most suitable procurement approach for progressing the proposal.

The MLP Secretariat will consider feedback from government stakeholders and prepare a recommendation to the Treasurer.

5.1.2 Proponent's role

All sections of the proposal template are to be adequately addressed and completed to a level commensurate with the complexity of the proposal. It is recommended that proponents engage with the MLP Secretariat to discuss the level of information required. Information may be presented in the form of cross-referenced addenda if preferred.

The proponent should consider whether the submission contains enough detail for the Government to decide whether the proposal should proceed to Stage 1 evaluation.

Proponents are welcome to submit a draft proposal to the MLP Secretariat for feedback on whether the proposal is sufficiently detailed.

5.1.3 Outcome of the Initial Assessment

The following are possible outcomes of the Initial Assessment:

- a) Proceed to Stage 1: The proposal meets the Initial Assessment criteria and satisfies the requirements for one of the Pathways to Direct Engagement. Requires approval from the Treasurer following consultation with the lead agency minister.
- b) Proceed to expression of interest (EOI): The proposal meets the Initial Assessment criteria but does not meet the requirements for either of the Pathways to Direct Engagement. A 'first mover advantage' premium may be allocated to the proponent in the EOI process as outlined in section 5.2.2. Requires Cabinet approval.
- c) Proposal is declined: The proposal does not meet the criteria of the Initial Assessment. Requires approval from the Treasurer in consultation with the lead agency minister.

Proponents will be formally notified of the outcome of the Initial Assessment. Unsuccessful proponents will be offered the opportunity of a debrief.

In some instances, the Treasurer may determine that a proposal addresses a high priority of the Government however there are potentially multiple ways to address that priority. In such circumstances, the Government may wish to explore a range of different solutions from the market. To facilitate this, a recommendation may be made to Cabinet that the proposal is declined, and a separate competitive process is initiated via a Problem and Opportunity Statement. Further information on POS processes is available in section 6.

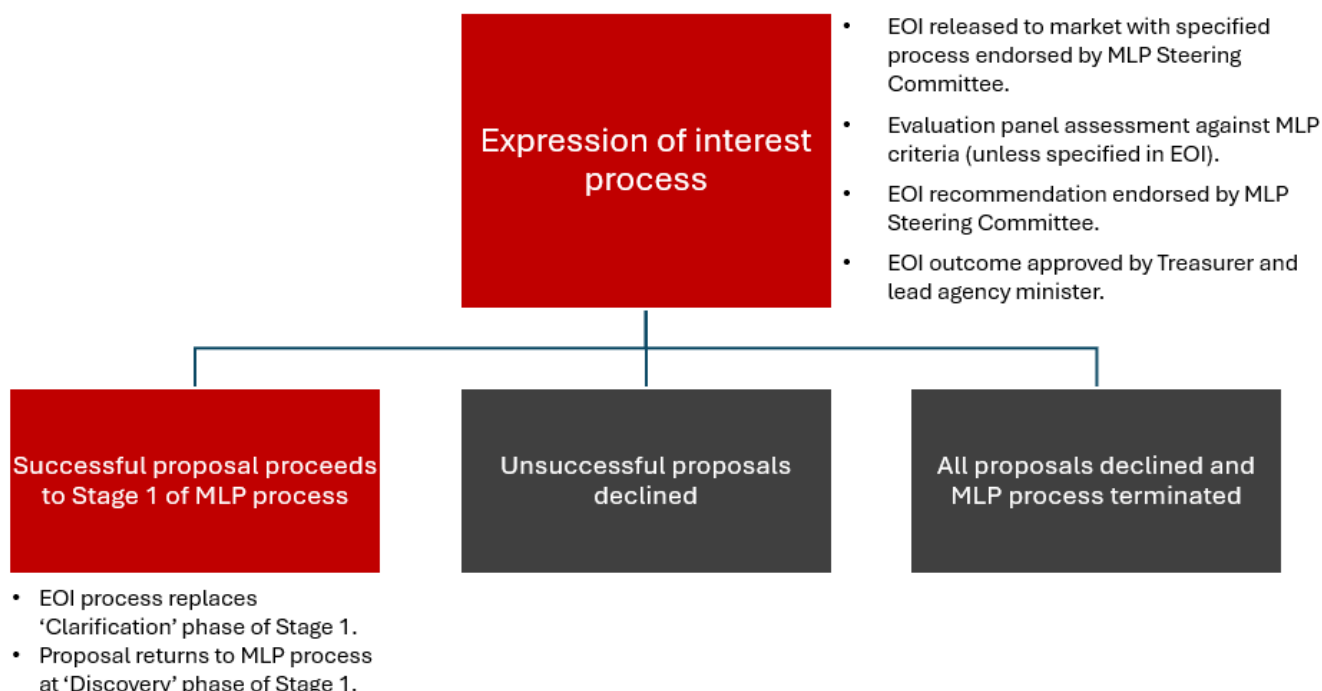
Disclosure practices at the end of the Initial Assessment are outlined in the Policy.

5.2 Expression of interest process

One potential outcome of the Initial Assessment is that the proposal proceeds to an EOI process. An EOI is used to determine if there are other providers who could

deliver the outcome and if the proposal offers the best value for money for the Government.

If an EOI is released, all reasonable steps will be taken to protect the genuine intellectual property of the proponent. However, proponents should be mindful that participation in the MLP process is at their own risk.



5.2.1 Government's role

Cabinet may decide to award the original proponent a 'first mover advantage' in the EOI process in the form of a bid premium. The decision to award a first mover advantage will depend on the intended scope of the market process and the State's expected outcomes. An explanation of how the bid premium is applied in the EOI process is explained in section 5.2.2.

An evaluation panel, in consultation with the relevant government subject matter experts, will design and undertake a tailored competitive procurement process. Each EOI process will specify the terms, conditions and process that apply to the assessment of responses. This will be publicly advertised with the EOI documentation. The MLP Steering Committee is responsible for reviewing the content of the EOI and approving its release.

Unless specified in the advertised EOI, responses will be assessed against the MLP evaluation criteria. The evaluation panel will consider responses and make a recommendation to the MLP Steering Committee on the outcome. The MLP Steering Committee will consider the panel's recommendation and make a final recommendation to the Treasurer and lead agency minister as the authorised decision-makers for EOI outcomes under the Policy.

5.2.2 First mover advantage

If Cabinet approves the allocation of a bid premium to a proponent in the EOI process, the bid premium is added to the evaluation of the proponent's response.

The bid premium reflects the ‘first mover advantage’ of the proponent.

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 Treasurer, in consultation with the lead agency minister, will make a recommendation to Cabinet on the allocation of a bid premium as part of the approval of a competitive process as an outcome of the Initial Assessment. Details regarding the application of a bid premium will be included in the publicly advertised EOI.

5.2.3 Proponent’s role

In advising the outcome of the Initial Assessment, Government will seek the proponent’s confirmation that it intends to submit a response to the EOI. If the proponent chooses not to submit a response, Government reserves the right to terminate the MLP process for the proposal.

The MLP Secretariat will inform the proponent when the EOI is released. All proponents will be expected to prepare a response as per the requirements specified in the advertised EOI and respond to any queries Government may have regarding the submission.

5.2.4 Outcomes of the EOI process

The Treasurer and lead agency minister are the authorised decision-makers for the outcome of the EOI process, which can include:

- a) shortlisting a response for further evaluation in Stage 1;
- b) deferring one or more responses;
- c) referring responses to an alternative government process; or
- d) declining one, multiple or all responses.

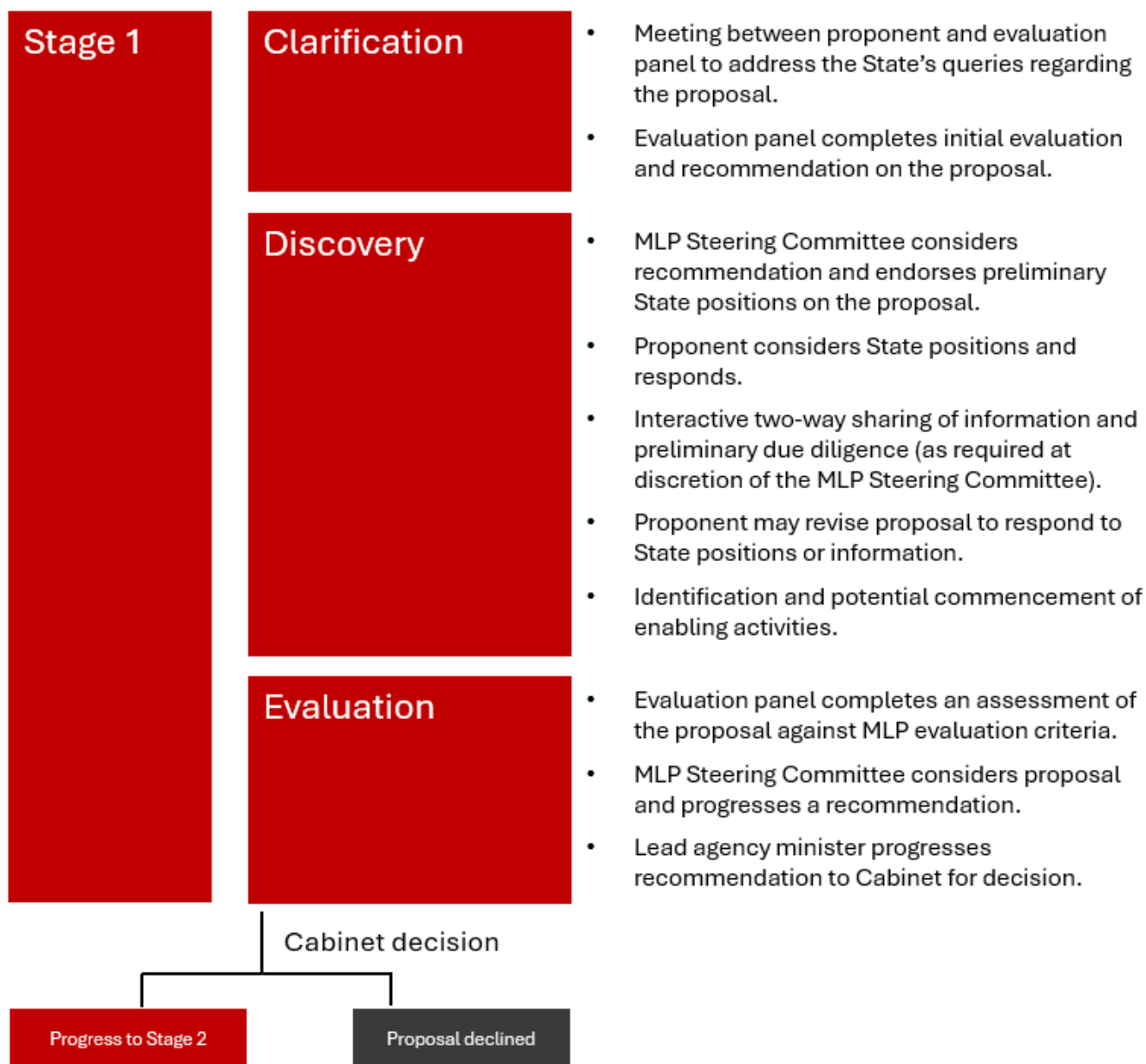
In most cases, the EOI will seek to progress one successful respondent to Stage 1 of the MLP process. However, there may be situations where the proposal requires multiple proponents for it to be successful. Detail such as this will be specified in the advertised EOI document.

The EOI process replaces the ‘Clarification’ phase of Stage 1 of the MLP process. As such, proposals that are approved to proceed to Stage 1 following an EOI will enter the MLP process at the ‘Discovery’ phase. Refer to section 5.3 for more information.

Respondents will be notified of the outcome of the EOI process. Unsuccessful respondents will be offered the opportunity of a debrief following conclusion of the EOI process.

Disclosure practices for the EOI process are the same as for the Initial Assessment as outlined in the Policy in section 3.4.

5.3 Stage 1



5.3.1 Government's role

5.3.1.1 Clarification phase

At the commencement of Stage 1, the Government will appoint a lead agency to oversee assessment of the proposal and establish an evaluation panel of suitably experienced representatives from relevant agencies. The lead agency for the proposal is approved as part of the Initial Assessment.

The evaluation panel will meet with the proponent to clarify aspects of the proposal to inform a preliminary assessment against the MLP evaluation criteria. The panel will prepare an initial recommendation on the proposal with proposed positions for consideration.

The MLP Steering Committee will consider the evaluation panel's recommendation and endorse high level positions on the proposal.

5.3.1.2 *Discovery phase*

The discovery phase facilitates the State and the proponent working interactively to explore the proposal further and enables two-way information sharing at the discretion of the State.

The State will share its positions on the proposal and offer the proponent the opportunity to respond and revise the proposal (if appropriate), before a Stage 1 decision.

The scope and nature of the discovery phase is at the discretion of the MLP Steering Committee.

The State may request additional information on a proposal throughout this phase and undertake preliminary due diligence on the proponent and proposal. This may include financial due diligence on the proponent and identifying enabling activities if appropriate. To inform future budget submissions, the State may identify funding needed to implement the proposal and for any Stage 2 activities if required.

Following a period of engagement, the evaluation panel will finalise its assessment of the proposal and prepare a recommendation on whether the proposal should proceed to Stage 2 of the MLP process. The MLP Steering Committee will consider the panel's recommendation and make its own recommendation which will be progressed to Cabinet by the lead agency minister.

5.3.2 Proponent's role

5.3.2.1 *Clarification phase*

At the commencement of Stage 1, the proponent will participate in a meeting with the evaluation panel to clarify aspects of the proposal. The proponent will be provided with a list of questions in advance to assist in preparing for the meeting. Proponents will have the opportunity to present responses in person and will also provide written responses to any questions from the State.

5.3.2.2 *Discovery phase*

The discovery phase allows a proponent to receive initial feedback from the State on its proposal. The proponent is provided an opportunity to consider the State's positions and respond. This may include the option to table alternate positions or revise a proposal if appropriate.

Requests from proponents for additional government information during this phase will be considered by the State in the context of progressing the proposal relevant to its stage in the assessment process. The proponent's requests for government information should be targeted and relevant to inform their response to the State's positions and any revisions to the submission.

If a proponent is requested to provide additional information by the State, this should be provided in a timely way to enable an efficient evaluation process.

The discovery phase allows both parties to undertake preliminary due diligence and identify any enabling activities that may be required to progress the proposal.

Proponents should participate in any workshops with the State (if required) in good faith.

5.3.3 Outcomes of Stage 1

At the end of Stage 1, the MLP Steering Committee considers the evaluation panel's advice and makes a recommendation to the lead agency minister and Cabinet for decision. Possible outcomes of the Stage 1 process are:

- a) proceed to Stage 2: the proposal meets the evaluation criteria of the Policy and is recommended to proceed to Stage 2; or
- b) proposal is declined: the proposal does not meet the evaluation criteria of the Policy.

A Cabinet decision is required for all proposals at the end of Stage 1.

Proponents will be formally notified of the outcome of the Stage 1 process. Unsuccessful proponents will be offered the opportunity of a debrief following conclusion of the Stage 1 process.

Disclosure practices at the end of Stage 1 are outlined in the Policy.

5.4 Stage 2



5.4.1 Government's role

Stage 2 allows both parties to undertake detailed due diligence to determine the merits of a proposal. A Stage 2 agreement will be prepared by the State outlining the process and governance for Stage 2 and the roles and responsibilities of each party. Stage 2 commences once this agreement has been approved by the MLP Steering Committee and is signed by both parties.

The Government will establish an evaluation panel of suitably experienced representatives from relevant agencies to undertake the evaluation and engage with the proponent throughout the Stage 2 process. A separate negotiation team may also be formed to manage commercial negotiations with the proponent.

The State will undertake due diligence on the proponent including a financial capability assessment, which may consider past financial statements, company structure and credit history. The State's due diligence on the proposal may include benchmarking, preparation of a public sector comparator, and the engagement of consultants or technical experts. Technical, legal and commercial working groups

may also be established.

A detailed assessment of funding requirements will be completed, including the timing of required funding, for implementation of the proposal and ongoing operational requirements (as applicable). Cabinet approval may be required for any new funding.

Following receipt of a proponent's business case and key terms, the evaluation panel will undertake an assessment against the MLP evaluation criteria and raise any issues requiring negotiation. The MLP Steering Committee will consider the evaluation panel's assessment and endorse negotiation parameters. A negotiation team may be established by the State to engage with the proponent in a negotiation phase.

Following a period of collaboration and negotiation to arrive at agreed terms, the State will advise the proponent regarding the responsibility for preparing the draft contract. In most instances, the State will assume responsibility for contract drafting.

A final recommendation on the proposal is presented to the MLP Steering Committee for consideration. The MLP Steering Committee will consider the proposal, key terms and draft contract and make a recommendation to Cabinet via the lead agency minister.

At any point during the Stage 2 process, if it becomes evident that the parties are unable to reach agreement, the State may choose to recommend to Cabinet that the proposal is declined.

5.4.2 Proponent's role

At the commencement of Stage 2 the proponent will engage with the State to finalise and execute a Stage 2 agreement outlining the roles, responsibilities and deliverables of each party. The proponent's key deliverables in Stage 2 include preparation of a business case, key terms and final offer for consideration by the Government.

Stage 2 allows the proponent to undertake more detailed due diligence on the proposal to inform preparation of the business case and key terms. It facilitates progression of enabling activities and consultation with impacted stakeholders.

Proponents are responsible for identifying and obtaining all approvals including federal, statutory, environmental and planning approvals as required. Some of these approvals may be required prior to finalisation of the MLP process, and some may be required as part of project delivery, following contract execution. The proponent should engage with the State team prior to liaising with any government agencies or initiating any government approval processes.

Proponents should endeavour to respond promptly to any requests from the State for further information. This will allow the State's assessment to progress in a timely manner.

The Stage 2 process is an opportunity for the proponent and the State to collaborate and negotiate in good faith to allow both parties to decide whether to proceed to contract execution.

The confidentiality provisions of the MLP Policy continue to apply throughout the Stage 2 process. Proponents should not make any public comment on the process

or proposal, unless approved by the MLP Secretariat in writing.

5.4.3 Outcomes of Stage 2

Cabinet approval is required for all centrally governed proposals at the end of Stage 2. Proposals governed by a lead agency will require a decision by the appropriate authority, depending on legislative requirements and delegations.

Possible outcomes at the end of Stage 2 are:

- a) Proceed to contract execution: the proposal meets the requirements of the MLP Policy and the Government's strategic objectives and is approved for contract execution. Once executed, the MLP process concludes and the proposal will be subject to delivery by the proponent, in conjunction with the lead agency (where required).
- b) Proposal is declined: the proposal does not meet the requirements of the Government or MLP Policy and is declined.

Proponents will be advised of the outcome of the Stage 2 process. Unsuccessful proponents will be offered the opportunity of a debrief following conclusion of the Stage 2 process.

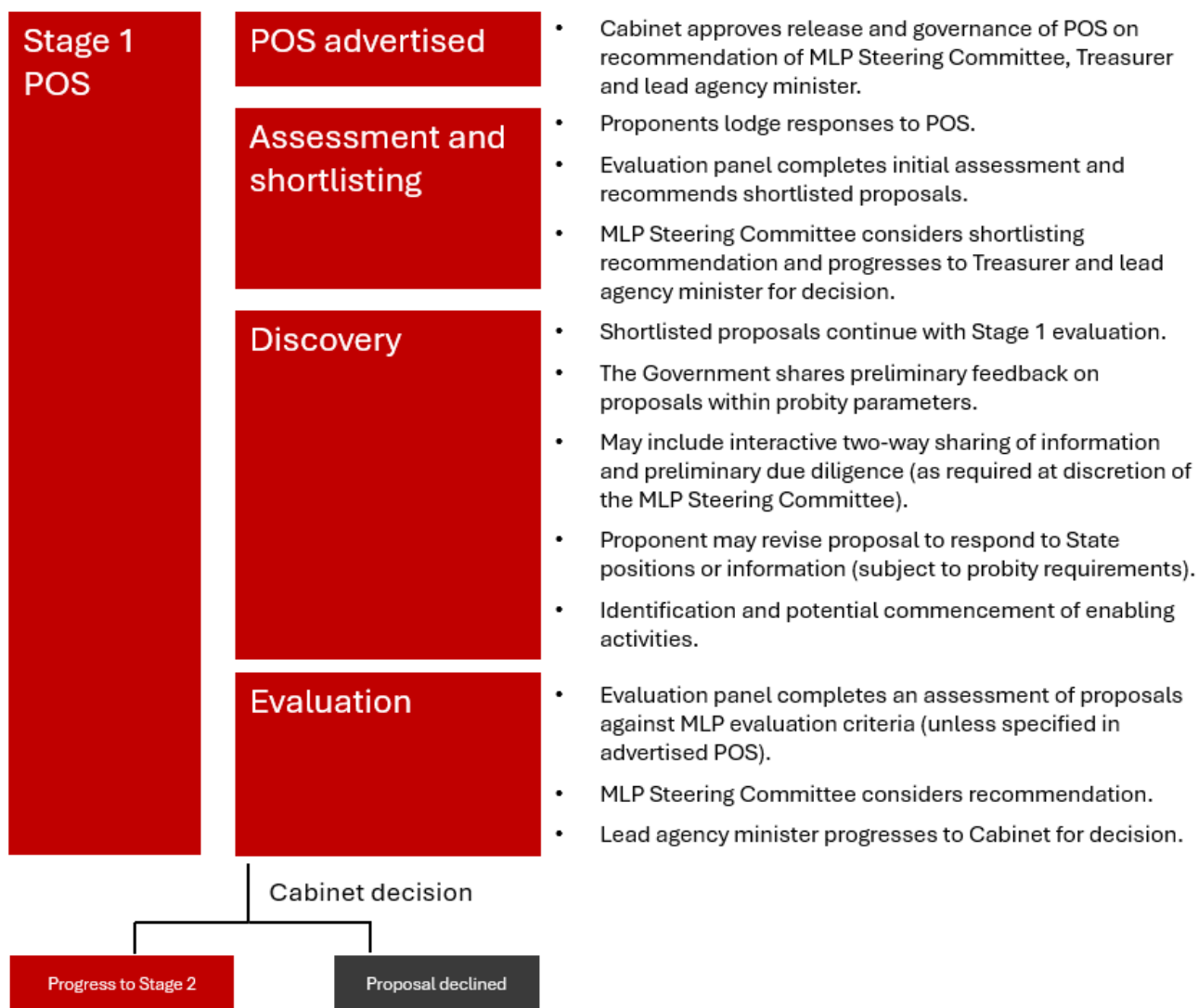
Disclosure practices at the end of Stage 2 are outlined in the Policy.

6 POS evaluation

Cabinet may approve advertising a POS inviting responses from the private sector to a specified problem or opportunity.

The Stage 1 process for a POS replaces the Stage 1 process for evaluating unsolicited proposals and differs slightly due to it being a competitive procurement process. The Stage 1 process for a POS is outlined below.

The Stage 2 process for a POS is the same as for unsolicited proposals, as outlined in section 5.4.



6.1.1 Government's role

A relevant lead agency will identify a problem or opportunity that is suitable for release under the Policy and prepare a submission seeking approval of its release as a POS. The submission will be considered by the MLP Steering Committee which will make a recommendation to the lead agency minister, Treasurer and Cabinet for decision.

The POS will be advertised publicly and will outline the terms, conditions and process pertaining to the POS. It will detail response requirements and provide respondents with information on how submissions will be evaluated.

The Government will establish an evaluation panel and appoint a lead agency for the process. An initial assessment by the evaluation panel will shortlist proposals for further consideration and recommend State positions for discussion with relevant proponents. The MLP Steering Committee will consider the evaluation panel's assessment and progress a recommendation to the Treasurer and lead agency minister for a decision on shortlisting and State positions. Respondents whose proposals are not shortlisted will be offered a debrief at the end of the Stage 1 process.

During Stage 1, the evaluation panel may meet with a respondent to clarify aspects of the proposal. The State may also provide preliminary feedback on State positions as part of the 'discovery' phase. The level of interaction between the State and proponents during a Stage 1 POS process is at the discretion of the State and will depend on the number and type of proposals being considered. The State will be guided by probity requirements in determining the scope of interaction in Stage 1, in the context of a competitive procurement process.

Feedback from relevant stakeholders, technical experts and consultants may be sought as required. The State will undertake a preliminary assessment of future funding required to implement the proposal and any relevant Stage 2 activities.

Following the discovery phase, the evaluation panel will complete an assessment of proposals against the MLP evaluation criteria, unless specified in the advertised POS. The panel will prepare a recommendation to the MLP Steering Committee, which will progress a recommendation to Cabinet for decision, via the lead agency minister.

6.1.2 Proponent's role

Proponents responding to a POS process should ensure they familiarise themselves with the requirements, terms and conditions, and closing date advertised in the POS.

If required, proponents should endeavour to respond to any State requests for further information as quickly as possible. Following shortlisting, proponents may be asked to attend a meeting or workshop with the State, particularly during the 'discovery' phase. This will allow the evaluation panel to clarify aspects of the proposal and potentially provide preliminary State positions on the proposal. Proponents should participate in any meetings or workshops with the State in good faith.

It may be appropriate during the Stage 1 process for a proponent to undertake preliminary due diligence and identification of enabling activities required to progress the proposal. Proponents should seek permission prior to consulting with government representatives other than the MLP Secretariat or lead agency proposal manager.

In some circumstances proponents may be offered the opportunity to revise a proposal in response to State feedback, however, this will be dictated by the number of respondents and the probity requirements necessary to ensure the integrity of the process.

6.1.3 Outcomes of Stage 1

Assessment and Shortlisting

Following an initial assessment and shortlisting of proposals, the Treasurer and lead agency minister will decide which proposals will be shortlisted for continued assessment in Stage 1.

The possible outcomes of the assessment and shortlisting phase are:

- a) Proposal is shortlisted: the proposal satisfies an initial assessment against the MLP or POS evaluation criteria and is approved for further consideration.
- b) Proposal is declined: the proposal does not satisfy the Initial Assessment against the MLP or POS evaluation criteria.
- c) All proposals are declined: Government determines that responses to the POS will not satisfy the intended outcomes of the POS, and the process is terminated.

One or more proposals may be shortlisted for further consideration.

Respondents whose proposals are not shortlisted for further consideration at this point will be offered the opportunity of a debrief once the Stage 1 process has been finalised.

POS Stage 1 outcome

At the end of Stage 1, the MLP Steering Committee makes a recommendation on the outcome to Cabinet via the lead agency minister. Possible outcomes of the Stage 1 process are:

- a) Proceed to Stage 2: the proposal meets the evaluation criteria of the Policy and POS process and is recommended to proceed to Stage 2.
- b) Proposal is declined: the proposal does not meet the evaluation criteria of the Policy or POS process.
- c) POS process is terminated: the Government determines that proposals will not satisfy the intended outcomes of the POS, and the process is terminated.

It is possible that one or more proposals are approved by Cabinet to proceed to Stage 2 of the process.

A Cabinet decision is required for all proposals at the end of Stage 1.

It is possible that the Government may choose to defer one or more proposals at any point in the POS process and will advise relevant proponents in writing.

6.1.4 Stage 2 process

The Stage 2 process for POS proposals is the same as that outlined in section 5.4. Probity will be managed on a case-by-case basis to ensure a fair and transparent process when assessing proposals from multiple proponents in Stage 2.

7 Process considerations

7.1 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, allocating agency and GTE responsibility for various activities of government. The Government will work with proponents to identify these requirements at the outset of each stage to ensure these processes are understood and staged appropriately.

The proponent may be required to seek relevant government approvals, either within the process or following confirmation the proposal has been endorsed by Cabinet. Approval requirements will be identified during the assessment process and disclosed publicly where appropriate. The Government's Gateway Review process may also apply to some MLPs.

Proponents are responsible for meeting any planning, environmental or other requirements, and gaining any necessary approvals, unless otherwise agreed with the Government. This includes any Commonwealth or other third-party approvals that may be required (for example, Commonwealth environmental approvals, Australian Competition and Consumer Commission, Foreign Investment Review Board).

7.2 Resourcing requirements

Resourcing requirements will be determined on a case-by-case basis once a concept proposal is submitted by a 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.

Proponents 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.

7.3 Placing proposals on hold

The State may choose to place a proposal on hold in accordance with the Terms and Conditions. The State will advise the proponent in writing, including any conditions such as the period for which the proposal has been placed on hold.

Proponents may request the State place a proposal on hold if required. Such requests should be made in writing to the MLP Secretariat and will require the approval of the MLP Steering Committee. Requests should include the reason for the request and the period sought. The MLP Steering Committee will consider the request and provide a response in writing. Requests to extend or shorten a hold period should also be submitted in writing to the MLP Secretariat. Any public disclosures relating to the proposal will be updated to reflect the hold status.

The Government reserves the right to initiate a 'stop clock' on assessment timeframes in instances where further information is required from a proponent that may impact timely evaluation of a proposal.

8 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 a competitive procurement process is approved as an outcome of the Initial Assessment.
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 Government Trading Entity 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 as listed in the MLP Policy.
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.
Western Australian Procurement Rules	Means the Western Australian Procurement Rules, issued as a General Procurement Direction, under the <i>Procurement Act 2020</i> .

