



GOVERNMENT OF
WESTERN AUSTRALIA

Market-led Proposals Policy

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1. INTRODUCTION

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

The objectives of the MLP Policy (Policy) are to:

- encourage proposals that the private sector is uniquely positioned to deliver, presenting value for money solutions and delivering on high priority outcomes for the Government;
- diversify the economy, supporting economic growth and the creation of new jobs and skills in Western Australia; and
- provide a clear, consistent and transparent process for the private sector to submit proposals to the Government.

The Policy outlines how the Government will evaluate the merits of such proposals and, for unsolicited proposals, determine whether it is in the public interest to engage directly with one proponent, rather than undertaking an alternative competitive process.

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

The Policy does not replace or override applicable legislation or regulatory processes, including environmental and planning assessment. All relevant legislative requirements will be considered when evaluating proposals and will take precedence over the Policy. Questions of legislative, regulatory and policy alignment can be referred to the MLP Secretariat for consideration.

In the interest of saving time and expense for all parties, proposals that do not meet current government priorities or are not within the scope of the Policy may be declined or referred to another process.

The Policy is to be read in conjunction with the MLP Terms and Conditions (Terms and Conditions) and MLP Supplementary Guidelines (Guidelines), which provide further detail on the evaluation process.

2. SCOPE OF THE MLP POLICY

The MLP Policy governs two processes for assessing proposals from the private sector:

1. unsolicited market-led proposals; and
2. Problem and Opportunity Statements (POS) where the Government advertises specific opportunities for industry to respond to.

The scope of each process governed by the Policy is outlined below.

2.1. Scope - unsolicited proposals

The Policy provides for unsolicited proposals from the private sector and non-government organisations that are generally outside the normal planning and competitive procurement processes of the Government. MLPs offer opportunities to deliver public benefit, value for money and innovative solutions to the Government and the Western Australian community.

The Policy is targeted at commercial propositions to the Government that justify direct engagement and provide outcomes addressing high priorities for the State.

An unsolicited MLP is a proposal from the private sector to the Government to:

- build and/or finance infrastructure;
- provide goods or services; or
- purchase a Government-owned asset

where the Government has not requested the proposal (for example, through a competitive procurement or expression of interest (EOI) process).

Proposals must satisfy the MLP evaluation criteria set out in section 4.2. High priorities for the Government are listed on the MLP webpage and updated periodically.

Prior to submitting proposals, proponents are encouraged to review the Guidelines for a list of exclusions that will not be considered under the Policy.

2.2. Scope - Problem and Opportunity Statements

A Problem and Opportunity Statement (POS) allows the Government to invite innovative responses from industry to a specified opportunity. A POS is designed to attract high-level concept proposals in a manner similar to an EOI.

The scope of a POS process includes requests for proposals where:

- the desired outcome is less well-defined than a typical government procurement process; and
- the Government is seeking solutions that draw on industry expertise and encourage private sector innovation.

POS processes are advertised publicly and include a competitive evaluation of proposals. Like unsolicited proposals, responses to POS processes must satisfy the MLP evaluation criteria, include a commercial proposition for the Government, and deliver value for money outcomes that benefit the community.

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

3. ADMINISTERING THE MLP POLICY

3.1. Governance

The MLP Steering Committee oversees the implementation of the Policy, with reporting responsibility to the Treasurer and Cabinet. The Policy applies to all Western Australian government agencies (departments and statutory authorities) and GTEs.

The Policy operates within existing statutory frameworks governing agency activities, with agency responsibility for various activities of the Government allocated as appropriate.

The Policy provides for a two-stage process, with Stage 1 including evaluation at a concept level and Stage 2 generally involving detailed business case development and commercial negotiations to arrive at agreed contract terms.

Decision-makers may escalate decisions to the next approving authority at any point in the process if required (for example, where the impact of the decision may affect multiple agencies).

The section below describes the governing structure for assessment of proposals.

3.1.1. MLP Steering Committee

The MLP Steering Committee provides cross-agency oversight and advice to the Government on all submissions under the Policy and makes recommendations to the Treasurer and Cabinet on centrally governed proposals.

It comprises the directors general/senior executive officers of the following agencies and statutory authorities:

- Department of Planning, Lands and Heritage (Chairperson);
- Department of the Premier and Cabinet;
- Department of Treasury;
- Department of Finance;
- Department of Jobs, Tourism, Science and Innovation;
- Department of Primary Industries and Regional Development;
- Western Australian Planning Commission;
- lead agency for the proposal; and
- other key agencies as determined by the MLP Steering Committee.

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

3.1.2. MLP Secretariat

The MLP Secretariat supports the MLP Steering Committee, facilitates the MLP process, and provides a central point of contact for the receipt and management of all MLPs. MLPs and all other communications relating to the Policy should be directed to the MLP Secretariat in the first instance.

3.1.3. Lead Agency

The Treasurer will appoint a lead agency for all proposals that proceed beyond the Initial Assessment under the Policy. The lead agency is the government agency or GTE that is considered to have the technical expertise and/or legislative or executive authority to inform the evaluation process and oversee implementation, should a proposal be successful.

A proposal manager will be appointed from the lead agency to represent the State and will be responsible for chairing evaluation panels. Along with the MLP Secretariat, the proposal manager will be the proponent's main point of contact with the Government throughout the evaluation process.

3.1.4. Proposal management and decision-making

During Stage 1, all MLPs will be centrally governed via the MLP Steering Committee. This approach reflects the need for broad consideration of whether a proposal is likely to meet the Government's policy and economic objectives and can justify continued assessment and contract negotiations in Stage 2 of the process.

Cabinet approval is required for all MLPs at the end of Stage 1, on the recommendation of the MLP Steering Committee. This Policy does not prescribe detail in relation to Cabinet approval processes and usual processes will apply.

As part of the Stage 1 submission to Cabinet, the MLP Steering Committee will make a recommendation on whether the evaluation of a proposal should continue to be centrally governed by the MLP Steering Committee in Stage 2 or should be governed by a relevant lead agency.

The criteria impacting Cabinet's decision on the governance of a proposal in Stage 2 of the MLP process are outlined below.

Centrally governed proposals

Proposals that meet one or more of the following thresholds may be recommended as a centrally governed process in Stage 2:

- proposals with a value of more than:
 - \$10 million for information and communications technology related proposals;
 - \$50 million for all other proposals; or
 - high risk proposals below these values;
- complex proposals, such as those that have multiple components or matters that are not currently addressed by the government policy or practice;
- proposals involving more than one government body;
- where the lead agency and the MLP Secretariat agree; or
- where requested by the relevant Minister.

For MLPs that are centrally governed, Cabinet approval is required at the end of Stage 2, on the recommendation of the MLP Steering Committee, as per the Stage 1 process.

POS processes are centrally governed by the MLP Steering Committee for the duration of the MLP process. They require Cabinet approval prior to public release and at the conclusion of Stages 1 and 2.

Agency governed proposals

For proposals that do not meet the above thresholds, Cabinet may determine the evaluation process in Stage 2 should be governed by a lead agency.

For agency governed proposals, the Director General of the nominated lead agency fulfils the role of the MLP Steering Committee. The requirement for Cabinet and/or Ministerial approval will depend on the internal governance arrangements and legislative requirements of the agency (which may vary depending on the value of the proposal). The remainder of this policy and the Guidelines should be read subject to this paragraph.

Agency governed proposals are managed and evaluated consistent with the process, principles and evaluation criteria outlined in this Policy. The MLP Secretariat supports the proposal manager from the lead agency in managing the evaluation process in Stage 2.

The lead agency is required to advise the MLP Steering Committee regarding the outcome of all agency governed proposals at the end of each stage of the MLP and prior to making any public disclosures or commitments to the proponent.

The lead agency will also be responsible for ensuring appropriate consultation with other relevant agencies.

3.1.5. Evaluation and negotiation panels

An evaluation panel will be established at the commencement of Stage 1 of the MLP process to assess proposals and provide recommendations to the MLP Steering Committee. The evaluation panel will comprise suitably experienced representatives from key stakeholder agencies.

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

A negotiation team may be appointed during Stage 2 of the MLP process to lead commercial discussions with the proponent. The negotiation team will be responsible for ensuring the proposal continues to meet the Policy requirements and outcomes sought by the Government.

Further information on the evaluation process is provided in sections 4 and 5.

3.1.6. Interface with statutory authorities

For proposals that impact statutory bodies or decision makers, established approval processes will apply in addition to a decision by the MLP Steering Committee and Cabinet. Ordinarily, such proposals will be considered by the relevant approval authority following consideration by the MLP Steering Committee, but prior to Cabinet approval or contract execution. The approval process may differ depending on agency requirements and/or the complexity of the proposal.

3.1.7. Infrastructure WA

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

3.1.8. Project funding

The MLP process is not a mechanism for the private sector to seek standalone government funding, however it is recognised that some proposals justify investment by the Government due to the community or economic outcomes that can be attained.

Where a proposal requests State funding, this will be evaluated as part of the MLP process in a value for money assessment. Advice will be sought as to whether funding is available in the lead agency's budget, or if a funding submission will be required through the State budget process. A decision on project funding will be made in the context of existing budget priorities, alternative options to achieve similar outcomes, and agency budget capacity.

3.2. Probity

The evaluation of proposals and any 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.

The probity principles applicable to the MLP process include:

- maintaining impartiality;
- accountability and transparency;
- managing actual, potential or perceived conflicts of interest; and
- maintaining confidentiality.

An explanation of each of the probity principles is provided in the Guidelines.

3.3. Resource commitments and timeframes

For an MLP to progress, the Government and the proponent will be required to commit time and resources to the proposal. The staged approach to the MLP process (as detailed in section 5 of this Policy) seeks to balance resource input at each stage to minimise unnecessary expenditure.

Unless otherwise endorsed by the MLP Steering Committee, the participation of a proponent in any stage of an MLP process or in relation to any matter concerning a proposal is at the proponent's sole risk and cost.

The Government reserves the right to seek additional information from the proponent to inform its deliberations.

MLPs are evaluated with the objective of reaching key decision points within agreed timeframes and best endeavours will be made to achieve these timeframes. The time taken to assess a proposal will vary depending on the complexity of the proposal, whether additional information is required to complete an assessment, and the timeliness of proponent

responses. It is also noted that an MLP may relate to issues the Government has not considered previously and may not have a policy position on. Such proposals may take time for the Government to consider appropriately.

3.4. Disclosure

The MLP Secretariat is responsible for coordinating the public disclosure of MLPs received under this Policy. The Government acknowledges the importance of transparency in its dealings with the private sector, particularly in relation to unsolicited bids.

The Government also recognises the confidential nature of MLPs and will endeavour to treat them accordingly, subject to the disclosure outlined in the Policy, the Terms and Conditions and the Government's public disclosure and accountability obligations.

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

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

3.4.1. Initial Assessment disclosure

Proposals that proceed past the Initial Assessment will be disclosed publicly on the MLP webpage. The disclosure at this point is limited and will include the proponent's name and title of the proposal only.

Proposals that do not proceed past the Initial Assessment will not be disclosed publicly.

Disclosure practices for EOI processes conducted under the Policy are the same as for the Initial Assessment.

3.4.2. Stage 1 disclosure

At the conclusion of Stage 1, a high-level summary of each unsolicited MLP invited to Stage 2 will be disclosed.

3.4.3. Stage 2 disclosure

Following the Stage 2 process, the outcome of the evaluation will be disclosed publicly, along with a detailed description of any proposal that progresses to contract execution.

Where appropriate, any additional disclosures in the public interest will be considered by the MLP Secretariat, which will consult with the proponent prior to disclosing any information. During later stages of the process, the MLP Secretariat may consider requests from proponents to commence relevant regulatory or planning approval processes that require public consultation or information to be shared with impacted parties.

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

POS disclosure practices differ slightly and are outlined in section 6.

3.5. Terms and Conditions

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

If Terms and Conditions appear to be breached, the assessment of a proposal may be held in abeyance while the MLP Steering Committee considers the breach and potential actions.

3.6. Lodging enquiries, requests, and proposals

Initial enquiries, requests and proposals are to be lodged with the MLP Secretariat. Proponents are encouraged to seek input from relevant government agencies prior to submitting their proposal.

Once proposals are submitted, proponents should only engage with the MLP Secretariat and relevant proposal manager (once appointed). The MLP Secretariat will advise the proponent of communication protocols to be followed throughout the process.

The MLP webpage provides a central resource for proponents seeking information on the MLP process. Section 5 of this Policy outlines the process for submitting a proposal.

3.7. Withdrawal and termination of proposals

Proponents have the option to withdraw from the MLP process at any time, with notice to be provided in writing.

Following consultation with the proponent, the MLP Steering Committee may determine that a proposal should be put on hold for a specified period. This may happen to allow the completion of other enabling processes, for example environmental approvals, planning processes, enabling infrastructure or more detailed design work. Further information on the process for placing MLPs on hold is provided in the Guidelines.

The circumstances under which the State may place on hold or cease consideration of a proposal, or a proponent's participation in the MLP process, are set out in clause 4.2 of the Terms and Conditions.

3.8. Resubmitting proposals

A proposal that has been considered and declined by the Government under the Policy will not be eligible for reconsideration for a period of 24 months from notification of a decision on the proposal, with exceptions at the discretion of the MLP Steering Committee.

3.9. MLP Policy review

The Policy will be reviewed as required, or within three years of its release, whichever is sooner. The Guidelines will be reviewed more regularly to ensure they remain contemporary and fit for purpose.

4. ASSESSMENT OF PROPOSALS

4.1. Priorities assessment

Proposals submitted under the Policy will be assessed against the current priorities of the Government. Matters of high priority for the Western Australian Government will be published on the MLP webpage at www.wa.gov.au, however, agency-specific priorities will be considered on a case-by-case basis.

4.2. Evaluation criteria

The following evaluation criteria will be used by the Government to evaluate proposals submitted under the Policy. The Government may also take into account any other factors it considers relevant to the evaluation of proposals. Further detail on each criterion is provided in the Guidelines.

1. Strategic Alignment

The proposal is aligned with government policy objectives and priorities.

2. Public Interest

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

3. Value for money

The proposal represents value for money for Western Australians and is affordable in the context of budget priorities, public sector comparators or industry benchmarks.

4. Feasible and capable of being delivered

The proposal is feasible (including financially), and the proponent has the financial and technical capacity, capability and experience to deliver the outcome successfully.

5. Risk

Any financial, reputational and/or security risks to the Government from the proposal are acceptable and there is an appropriate allocation of risk between the proponent and the Government. Risk allocation relates to both financial and non-financial risks and resourcing between parties.

Consensus scores for each criterion will directly inform the recommendation of the evaluation panel.

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

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

5. KEY STAGES OF THE MLP PROCESS

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

The process has been designed to facilitate a decision on proposals as efficiently as possible while ensuring robust analysis and defensible outcomes for the Government. More complex or higher risk proposals will naturally take longer to assess. A high-level process diagram is provided for unsolicited proposals in Appendix 1 and POS proposals in Appendix 2. Full details on the process and considerations for each stage are outlined in the Guidelines.

5.1. Pre-submission meeting

Proponents intending to submit an unsolicited proposal should complete the online [Pre-Submission Meeting Request Form](#) and attend a compulsory pre-submission meeting with the MLP Secretariat before lodging a concept proposal.

Proponents responding to POS processes do not need to complete a Pre-Submission Meeting Request Form nor attend a pre-submission meeting with the MLP Secretariat.

5.2. Submitting a proposal

Following the pre-submission meeting, proponents who wish to submit an unsolicited proposal must complete the Stage 1 Concept Proposal template that is available on the MLP webpage. Proposals can be lodged via email to marketledproposals@dplh.wa.gov.au.

POS processes have their own requirements that will be specified as part of the POS process. Typically, it will require completion of a POS Proposal template which will be provided with the advertised POS, along with instructions on lodging responses.

5.3. Initial Assessment

All unsolicited MLPs will undergo an Initial Assessment to determine if the proposal aligns with the Policy, and if so, how it should be progressed.

To proceed beyond the Initial Assessment, proposals must meet the following criteria:

- be within the scope of the MLP policy;
- align with the Government's priorities; and
- have a reasonable prospect of meeting the MLP evaluation criteria.

Proposals that do not meet these criteria will be recommended for decline or referral to an alternate government process.

For proposals that meet the above criteria, a further assessment will be made as to whether the proposal should:

- a) proceed to Stage 1 evaluation via one of the Pathways for Direct Engagement outlined in section 5.3.1; or
- b) progress to a competitive market process as outlined in section 5.3.2.

The MLP Steering Committee will provide advice to support a decision on the Initial Assessment. The Treasurer will make a decision on the appropriate option for progressing the proposal, following consultation with the lead agency minister.

Best endeavours will be made by the MLP Secretariat to advise on the outcome of the Initial Assessment within 45 business days from concept submission. Proposals requiring Cabinet consideration may result in a longer assessment timeframe.

Proponents whose proposals do not proceed past the Initial Assessment under the Policy will be offered the opportunity for a debrief.

The Initial Assessment does not apply to POS processes. 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.

5.3.1. Pathways for Direct Engagement

Proposals that meet the above criteria must satisfy the requirements of one of the pathways below to proceed to Stage 1 with direct engagement. A recommendation to the Treasurer seeking approval for direct engagement will specify which of the pathways has been satisfied.

Unique Concept Pathway

To progress to Stage 1 with direct engagement via the Unique Concept Pathway, proposals must meet one of the following characteristics:

- 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
- 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; or
- bona fide sole source of supply with there being no reasonable substitute or alternative.

Strategic Importance Pathway

To progress to Stage 1 with direct engagement via the Strategic Importance Pathway, proposals must meet all of the following three requirements as determined by the Government:

- high priority project; and
- likely to deliver significant value for money; and
- likely to deliver significant public benefit.

5.3.2. Competitive market process

Where a proposal does not satisfy the requirements for the Direct Engagement Pathway but otherwise meets the Initial Assessment, the Treasurer may seek Cabinet approval to run a competitive process. This process will be used to determine if any other parties could deliver similar outcomes to the proposal and if the proposal offers the best overall outcome for the Government.

The structure of the market process will be determined by the Government on a case-by-case basis but may take the form of an EOI or POS. In the case of a POS, the original proposal will be declined, and the Government may instead seek a variety of responses to achieve the broad outcomes of the original proposal via release of a separate POS. Refer to section 6 for information on POS processes.

Where a competitive process is released under the Policy as an EOI, the proponent may receive a first mover advantage via a bid premium, depending on the nature of the proposal and what the Government seeks to test through the market process. The application of a first mover advantage will be determined by Cabinet as part of the outcome of the Initial Assessment.

Following an EOI under the Policy, a recommendation will be made by the MLP Steering Committee to the Treasurer and lead agency minister, as the approving authorities. The outcome may include inviting the successful respondent(s) to undergo evaluation in Stage 1 of the MLP process, declining one or more respondents, or declining all responses and terminating the process.

Further information on competitive market processes under the Policy is available in the Guidelines.

5.4. Stage 1 evaluation

The Stage 1 process is a discovery phase where the State may work with the proponent in an interactive manner to clarify aspects of the proposal. This engagement does not constitute negotiation and does not commit the Government to the proposal. It facilitates the exchange of information to ensure each party can make informed decisions about proceeding. The nature and scope of the discovery phase will be approved by the MLP Steering Committee.

Supported by an evaluation panel from key impacted agencies, Stage 1 provides an opportunity for the State to:

- gain a better understanding of the proposal, including the State seeking additional information from proponents to assist with the evaluation;
- establish any State positions regarding acceptable or unacceptable aspects of the proposal that may need to be tabled or resolved with the proponent;
- identify any enabling activities that may be required to progress the submission, such as planning or environmental approvals, enabling infrastructure, or funding requests; and
- assess whether the proposal justifies progressing to Stage 2 (development of full business case and commercial negotiation).

In Stage 1, proponents may seek additional information to revise their proposal in response to tabled State positions.

The level of interaction on a proposal will be driven by the complexity of the offer and the information the State needs to inform a recommendation. The State maintains discretion over the level of engagement and information shared with proponents throughout this process.

Following a period of consultation with the proponent, the evaluation panel will assess the proposal against the MLP evaluation criteria and make a recommendation to the MLP Steering Committee and Cabinet to determine whether to:

- invite the proponent to submit a Stage 2 business case and final offer; or
- decline the proposal or redirect it to an alternative government process.

Best endeavours will be made by the MLP Secretariat to advise on the outcomes of Stage 1 within 90 business days from notification of the Initial Assessment. If this timeframe is not met, the MLP Secretariat will communicate this to the proponent and provide timely updates.

Proponents whose proposals do not proceed past Stage 1 will be offered the opportunity for a debrief.

5.5. Stage 2 evaluation

During Stage 2, the proponent and lead agency will enter into a Stage 2 Agreement that establishes the roles and responsibilities of the parties to the process. Key deliverables of the Stage 2 Agreement are for the proponent to prepare a detailed business case and key terms based on positions approved by the State at the end of Stage 1. The agreement will specify any requirements that must be addressed by the proponent in a business case and final offer and outline any other deliverables of the Stage 2 process.

Stage 2 allows both parties to undertake due diligence to help inform contractual positions and decisions. It involves the proponent and the State working together to negotiate key issues and, where contract negotiation is successful, deliver an offer capable of acceptance at the end of this stage.

The State reserves the right to conduct its own analysis to determine costs and benefits to the State, including obtaining additional information from the proponent to inform the assessment or assist with negotiations or decision-making during Stage 2. It will also undertake financial capacity assessment of the proponent to ensure the proponent is structurally and financially capable of delivering the intended goods, services or infrastructure.

The proponent's business case and key terms will be assessed against the MLP evaluation criteria outlined in this Policy, unless specified otherwise in the Stage 2 Agreement. The governance for Stage 2 may include the formation of a negotiation team to represent the State in negotiations with the proponent. This may be in addition to or instead of an evaluation panel.

If negotiations are successful, responsibility for development of a final contract will be determined by the State in consultation with the proponent.

The outcome of the evaluation panel's assessment at the end of Stage 2 is provided to the MLP Steering Committee which will make a recommendation to Cabinet via the lead agency minister. Complex proposals may require consideration several times by the relevant decision-making authority, prior to a final Cabinet decision on the MLP.

Cabinet will determine whether:

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

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

Proponents will be formally notified of the outcome of the evaluation process.

Best endeavours will be made by the MLP Secretariat to advise on the outcome of Stage 2 within 100 business days of lodging the Stage 2 business case and key terms. If this timeframe is not met, the MLP Secretariat will communicate with the proponent and provide timely updates. For proposals governed via a lead agency in Stage 2, timeframes will be managed between the relevant agency and the proponent.

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

5.6. Referral to an alternate government process

Where an unsolicited proposal does not fall within the scope of the Policy, does not meet the MLP evaluation criteria or is unable to justify direct engagement but is thought worthy of further consideration, the Government may refer the proposal to a relevant lead agency for consideration outside the MLP process. This referral may occur at any stage of the MLP process but is most likely in Stage 1. This process also applies to proposals governed by a lead agency.

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

The MLP Steering Committee may require the lead agency to report back on any decisions or action taken regarding the referral.

5.7. Cabinet delegations

The MLP Steering Committee may make a recommendation to Cabinet, through the lead agency Minister, at any point in Stage 2 to delegate authority to the lead agency to continue to negotiate with the proponent and finalise contracts within approved parameters and delegations. This applies to both unsolicited MLPs and POS processes.

Referral or delegation to a lead agency is most likely to occur where key commercial terms have been approved by Cabinet and there remain only minor issues to be resolved. Should the final terms materially change, the lead agency will be required to return the final offer for Cabinet approval.

6. PROBLEM AND OPPORTUNITY STATEMENTS

A POS allows the Government to provide specified opportunities for industry to respond with innovative solutions that stimulate the economy and create jobs for Western Australians.

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

The MLP evaluation criteria are applied to POS processes except where specified in the advertised POS. Respondents to a POS process are not required to complete a Pre-Submission Meeting Request Form or attend a pre-submission meeting. POS proposals do not undergo an Initial Assessment in the same manner as an unsolicited MLP, as POS processes are publicly advertised.

Proponents are initially invited to provide high-level concepts for consideration, reducing the financial burden of submitting sophisticated designs and detailed plans. Responses are assessed by an evaluation panel who make a recommendation on shortlisting to the MLP Steering Committee. The MLP Steering Committee make a subsequent recommendation to the Treasurer and lead agency minister for a decision on shortlisting and confirmation of the State's preliminary positions on submitted proposals.

Shortlisted proposals may undergo a further discovery phase in Stage 1, with the scope and nature of this phase approved by the MLP Steering Committee. An assessment is undertaken by an evaluation panel with a recommendation provided to the MLP Steering Committee for consideration. POS processes require Cabinet approval at the end of Stage 1 on the recommendation of the lead agency minister.

Proposals that have merit may be invited to provide a more detailed business case and terms for consideration in Stage 2. It is possible for more than one proponent to be invited to Stage 2 of the POS process, and in some instances, be successful in executing contracts with the State. The process for assessing POS proposals in Stage 2 is the same as that for unsolicited proposals as outlined in section 5.5.

The outcome of each POS process and the number of proposals resulting in contracts with the State will depend on the nature of the POS. Each POS process retains the rigour and independence of the evaluation process and probity principles of the Policy.

In contrast to an unsolicited proposal, a POS response is dealt with in the context of a competitive process which potentially considers multiple proposals. The advertised POS and the relevant Stage 2 Agreement will contain detail as to how evaluation will occur and other elements of the process, in addition to that specified in the Guidelines and Terms and Conditions.

The process diagram for POS processes is illustrated in Appendix 2. It may be adjusted to meet the complexity of each process. Any adjustments to the standard process will be published with the advertised POS. The Guidelines provide further details of the POS process, roles and responsibilities, and decision points.

Disclosure of POS process outcomes will occur as follows:

Stage 1 Disclosure (POS)

At the end of Stage 1, the following information will be publicly disclosed:

- the number of responses to the advertised POS; and
- the name of each proponent entity invited to the Stage 2 process.

Further information on proposals that are not invited beyond Stage 1 will not be publicly disclosed. The State may at its discretion choose to disclose further information following the conclusion of the Stage 1 process.

Stage 2 Disclosure (POS)

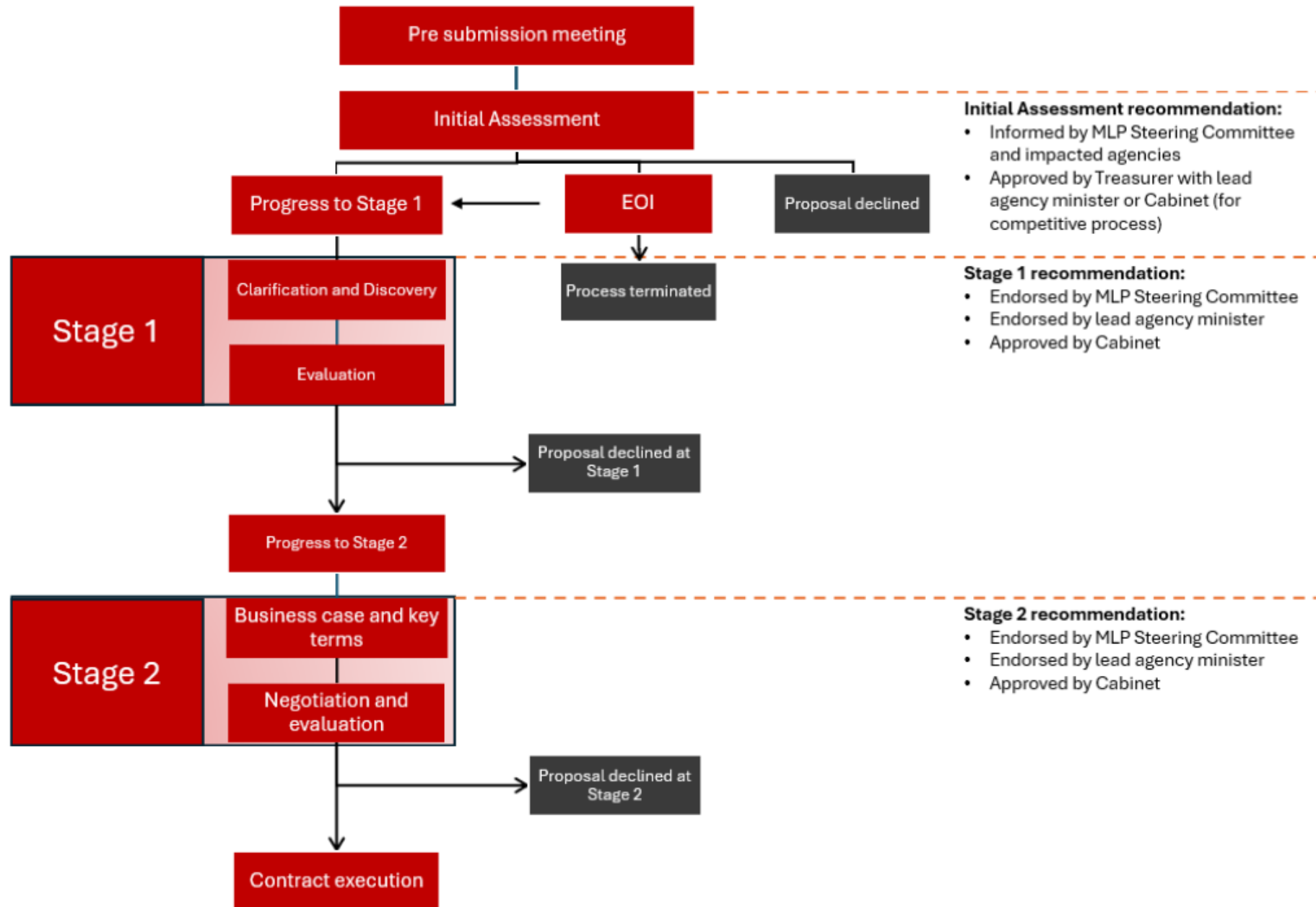
At the end of Stage 2, the following information will be publicly disclosed:

- the name of each proponent entity that participated in the Stage 2 process and the outcome of their proposal; and
- a summary of the successful proposal(s) including the name of the successful proponent entity and a detailed description of the proposal.

Additional disclosures may be made at any time during Stage 2 at the discretion of the State.

Determination on the timing for disclosure at the end of each stage will occur on a case-by-case basis to protect the probity of each process.

Appendix 1 – Unsolicited proposal process



Appendix 2 – Problem and Opportunity Statement process

