

MLP Supplementary Guidance: Frequently Asked Questions

This supplementary guidance note provides answers to some frequently asked questions about Market-Led Proposals (MLPs). Don't hesitate to get in touch with the MLP team if you have questions which are not answered below.

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Q. I have a great idea. Who can I talk to about it?

A. The best place to start is to contact the MLP Team for an informal discussion.

You can get in touch by phone +61 (7) 3035 3133 or email marketledproposals@treasury.qld.gov.au. You'll be matched with a team member who will explain the MLP process and work with you to help give your proposal the best chance of success.

Q. How detailed does my proposal need to be before I get in touch?

A. You don't need to have written a detailed proposal to being discussions, talk to us when you have an idea. We can then help you focus on the information that government needs to assess it.

The MLP Framework is staged to align your time and effort with the level of government commitment. In the early stages we're interested in the concept and do not expect that you have undertaken a significant investment of time or resources. The preliminary assessment stage seeks 1-2 pages of high level information only.

If invited to progress to *Stage 1: Initial Proposal* you will be asked to expand on the information you have previously provided with a focus on four key criteria – government policy, priority and community need, justification for direct negotiation, value for money, and your capacity and capability to deliver the project. At Stage 1 the focus is on articulating the idea and understanding what the offer to government is.

Q. What types of proposals is government looking for?

A. We're interested in hearing about any good ideas that address a government priority or community need, align with government policy and represent value for money. There are no limits on the value or type of proposal that will be considered, or the size or industry of the business submitting the proposal.

It is worth noting that MLPs are well suited to projects which are low cost and low risk to the government and can be funded by the private sector, such as on a user pays basis. If your proposal requires significant government funding and/or requires that government takes most of the risk of a project, it may be more difficult to meet the MLP assessment criteria.

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The MLP framework allows Queensland Treasury and other agencies to work with you to understand what is being proposed and to determine if an exclusive arrangement is justified. If a proposal does not meet the MLP criteria but has merit in other ways, we will try to identify other ways to develop the concept. This could include:

- proceeding with the proposal via a competitive procurement process
- facilitation of discussions with appropriate government agency contacts
- inviting a proponent to meet with the State to discuss or consider other opportunities
- considering the proposal under alternative mechanisms, such as State grant funding programs
- further considering or developing the proposal as part of the ongoing operations of relevant government agencies
- reference to an expert within government (such as the Queensland Government Architect)
- establishment of a cross-agency working group to consider a policy issue identified through the MLP process.

Q. What are the assessment criteria?

A. Successful MLP must satisfy the following assessment criteria.

To progress to *Stage 2: Detailed Proposal*, a proposal must address and meet Criteria 1 – 4:

1. Government policy, priority and community need

The proposal must satisfy a community need and align with government policy and priorities.

2. Justification for direct negotiation

The proposal must demonstrate that the public interest is best served by government negotiating directly with the proponent, rather than by engaging in a competitive process.

3. Value for money

The proposal must deliver a value-for-money outcome to the government, which can be determined in the absence of a competitive market.

4. Capacity and capability of the proponent

A proponent must demonstrate that it has the financial and technical capacity, capability and experience to deliver the outcome successfully.

To progress to *Stage 3: Final Binding Offer*, and ultimately to contact close, a proposal must address and meet these four assessment criteria plus an additional two criteria:

5. Risk and cost allocation

The proposed allocation of costs and risks between the proponent and the government must be acceptable to the government.

6. Feasibility of the proposal

The proposal must be technically, commercially, and practically feasible.

In assessing a proposal, government will generally need to be satisfied that:

- no other proposal addressing the same need, or proposing a similar outcome, is under active consideration by government
- the proposal is a genuine commercial proposition requiring the support of government.

More information about how the criteria are applied in practice, including examples, is provided in the [Supplementary Guidance Note: Assessment Criteria](#).

Q. Who will you tell about my proposal?

A. The MLP Framework is premised on all relevant government agencies considering a proposal so that a single, whole-of-government view can be formed. When you submit your proposal you will be asked to agree for us to share it with relevant Queensland government colleagues. We will seek your further approval before sharing your proposal outside of government.

Speak to your MLP team contact if you have any specific confidentiality requirements.

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Q. How is my intellectual property protected?

A. Government will not use your intellectual property or commercial-in-confidence information without your permission.

Proponents are not usually asked to provide commercial-in-confidence information or to reveal intellectual property during preliminary assessment or Stage 1. During these stages, the focus is on the idea or concept, which is not considered to be intellectual property.

Intellectual property includes artistic works, inventions, original designs and signs distinguishing goods or services. Legislation most commonly protects these types of intellectual property by copyright, patents, and trademarks. Trade secrets, proprietary know-how and other commercially confidential information may be protected with contractual and equitable obligations to maintain confidentiality.

Sometimes a proposal relates to a specific government-owned property (site) but the proponent does not wish to identify the site without a commitment that government will not tender the opportunity to the broader market. Such a guarantee cannot be provided before Stage 2. In such cases, the MLP team can provide some initial high level advice to the proponent about whether the proposed use of the site is – in principle – in line with government policies. However, the assessment cannot be progressed until the site is identified. This allows the MLP team to provide advice on issues specific to that site e.g. whether government has existing plans for the site or whether there are any environmental or regulatory issues.

Any material that the proponent provides to the State prior to the conclusion of *Stage 1: Initial Proposal* will be provided at the proponent's own risk. However, if the State decides to progress the proposal, such as through a competitive process, and wishes to use a proponent's intellectual property, this would be subject to the approval of the proponent and any terms agreed with the proponent.

The process deed negotiated between the proponent and the government at the beginning of Stage 2 provides for the exchange of intellectual property and commercial-in-confidence information during Stages 2 and 3.

Case study 1 – use of potential intellectual property in a competitive process

A proponent submitted a proposal to redevelop a Police-Citizens Youth Club site.

The proposal was initially assessed as meeting a government priority/community need and potentially offering value for money. However, there wasn't sufficient justification to negotiate directly with the proponent due to the robust market available to undertake the type of proposed redevelopment.

As a result, expressions of interest were sought for the opportunity and responses to the EOI considered.

The idea to re-develop a PCYC site does not constitute "intellectual property"; even if it provides broad suggestions about what the redevelopment might include; such as a gym, car park or child care centre.

However, any work that the proponent might have done as part of the preparation of their Market-Led Proposal – such as the creation of floor plans or commercial viability investigations – would likely be considered intellectual property or commercial in confidence. If government wished to use this type of material then it would have sought the proponent's approval to do so and potentially offered compensation.

Q. Why should I submit an MLP if it might be subject to a competitive tender process?

A. If you don't bring an idea forward for consideration it may never happen at all.

Government recognises the value of innovative ideas and strongly encourages proponents to bring forward proposals for consideration. We'll make every effort to help you prepare your proposal in a way that will meet the MLP criteria. But sometimes it's just not possible to make it fit.

If a proposal is a good idea but does not meet the MLP criteria, it may be progressed in another way. For example:

- proceeding with the proposal via a competitive procurement process
- facilitation of discussions with appropriate government agency contacts
- inviting a proponent to meet with the State to discuss or consider other opportunities
- considering the proposal under alternative mechanisms, such as State grant funding programs
- further considering or developing the proposal as part of the ongoing operations of relevant government agencies
- reference to an expert within government (such as the Queensland Government Architect)
- establishment of a cross-agency working group to consider a policy issue identified through the MLP process.

As noted [in the question above](#), government will only use your intellectual property with your approval. You will be able to participate in any resulting procurement process.

A competitive procurement process can take a range of forms. The government will consider alternative and/or innovative procurement processes which allow a good idea to be developed and delivered faster. More information about this is provided in the [Supplementary Guidance Note: Developing your concept in a competitive process](#).

Q. Does the Right to information Act apply to information provided to government?

A. The *Right to Information Act 2009* (the RTI Act) may apply to the information that a proponent provides in a proposal. Proponents should note that the RTI Act allows members of the public rights of access to documents, including documents containing commercially sensitive or confidential information provided to government by third parties.

If an RTI request is received relating to an MLP, consideration will be given as to whether the information provided is commercially sensitive or confidential. Relevant third parties will be consulted prior to a determination being made on the release of the information.

Q. How long does it take to assess an MLP?

A. We aim to provide preliminary assessment feedback within four weeks, and to complete the Stage 1 assessment and provide advice to the MLP Panel within four months.

However, each proposal is different and it may not be possible to meet these timeframes for an individual proposal. Many proposals are considered under the MLP framework because they are complex or involve a number of different agencies with overlapping interests.

For example, if the proposal is to provide new services to the State, the relevant department may need to undertake an assessment of its needs. Similarly, if there is no existing government policy on an issue then ministerial views may need to be sought. The clock is paused if we ask you for more information about your proposal until that information is received.

At each stage of the process we'll talk to you about likely timelines for your proposal and will keep in touch with you about progress.

If a proposal is approved to progress to Stage 2, the government will work with the proponent to agree timelines and milestones for Stages 2 and 3. Depending on the complexity of the proposal it can take some time to develop the high level concept proposed at Stage 1, finalise the assessment process and reach contractual close.

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Case study 2 – Transurban – Logan Motorway Enhancement Project

Transurban Queensland spent approximately 11 months developing a detailed proposal for the Logan Motorway Enhancement Project, which included undertaking a competitive bidding process for the design and construction elements. Transurban Queensland and the State liaised closely over that period to ensure that there was a clear understanding of the State's requirements. The State's assessment of the proposal and final contract negotiations during Stage 3: Final Binding Offer took around three months.

Transurban Queensland has noted that the project set a new industry benchmark for how quickly the proposal progressed through the development and assessment phase.

More information about Stage 2, including examples, is provided in the [Supplementary Guidance Note: What to expect in Stage 2](#).

Q. How much does it cost?

A. There is no fee for submitting an MLP. However, all risks and costs of preparing, lodging, developing and negotiating a proposal are to be borne by the proponent.

Government is responsible for its own costs in facilitating and assessing proposals through to the conclusion of Stage 1 unless otherwise agreed between the parties. The proponent is responsible for meeting the government's reasonable costs in Stages 2 and 3 unless otherwise agreed between the parties.

No proponent will have any recourse against the State in relation to the government's decision to not proceed with a proposal.

Please speak to your MLP team contact if you would like to discuss this issue in more detail.

Q. Who can submit an MLP?

A. Any individual and almost any organisation can submit an MLP including small and large businesses; non-governmental organisations such as charities; universities; and local government authorities. The only excluded organisations are Queensland government departments, Queensland government statutory bodies and Queensland government-owned-corporations (except in certain limited circumstances).

Q. Are there any legal issues I need to consider?

A. There are a number of issues you should consider. These include:

Probity

Government will apply established probity principles and protocols when engaging with proponents and in assessment of MLPs to ensure that the following probity objectives are achieved:

- proponents have confidence in the independence, transparency, impartiality, confidentiality, security and accountability of the evaluation and decision making process
- decision-making follows approved frameworks and is capable of withstanding objective and independent scrutiny
- decisions deliver the best outcomes for the government
- public service integrity is maintained
- commercially sensitive and confidential information (e.g. intellectual property of the proponent) is protected
- potential for conflicts of interest, misconduct, fraud and corruption are minimised.

If considered appropriate, government may engage a probity advisor at any point in the assessment process to ensure that the assessment process is conducted in accordance with probity principles.

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A proponent must not offer any incentive to, or otherwise attempt to, influence any person who is either directly or indirectly involved in an assessment or negotiation process. If government determines that a proponent has violated this condition, it may, in its sole and absolute discretion, disqualify the relevant proponent's submission from further consideration.

No contract

By submitting a proposal, a proponent acknowledges that:

- no contract exists or will be implied between the State and a proponent unless and until suitable documentation is executed by the State
- the State has no obligation to consider, evaluate, accept or reject the proposal
- the State intends, and the proponent accepts in making a proposal, that the Stage 1 process merely enables early consideration of the proposal
- no tender, offer or negotiation process is constituted by early consideration of an MLP.

Change in circumstance

Proponents must inform the State promptly in writing of any material change to any of the information contained in the proponent's proposal, and of any material change in circumstance that may affect the truth, completeness or accuracy of any information provided in, or in connection with, the proposal.

Reliance on information

By submitting a proposal, the proponent warrants and represents to the State that the information contained in its submission is true, accurate and complete as at the date on which it is submitted, and may be relied upon by the State in its assessment.

Conflict of interest

Proponents must:

- declare any actual or potential conflict of interest of any proponent and its employees, agents and contractors who will participate in the proposal, any subsequent negotiation and any subsequent project
- comply with all laws in force in Queensland, including the *Competition and Consumer Act 2010* (Cth)
- not make any news releases or responses to media enquiries and questions pertaining to this process without the State's prior written approval.

Other matters

The State reserves the right, in its sole and absolute discretion, at any time during the process to:

- require additional information from a proponent
- perform security and/or financial checks and procedures in relation to each proponent and each party with an interest in the proponent
- change its requirements, including, at any stage, adding to or amending the information, terms, procedures, evaluation process and protocols set out in the MLP Guidelines
- change the basis on which proponents may, or are required to, participate in the process
- publish the names of proponents
- clarify any aspect of a proposal
- discontinue negotiations at any time with any proponent
- subsequently initiate any other procurement process for the same or similar requirements
- seek the advice of external consultants to assist the State in the evaluation or review of responses
- make enquiries of any person, company, organisation or consortium to ascertain information about the proposal, the proponent and any matter related to the response
- revert to public sector delivery of the project
- allow a proponent to change its proposal.

Acceptance of a proposal

The State is not obliged to accept any proposal. No acceptance of a response nor any invitation to negotiate or to make an offer will be effective to constitute a contract or create any legitimate expectation on the part of the proponent unless a formal written contract is executed by both parties.

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