

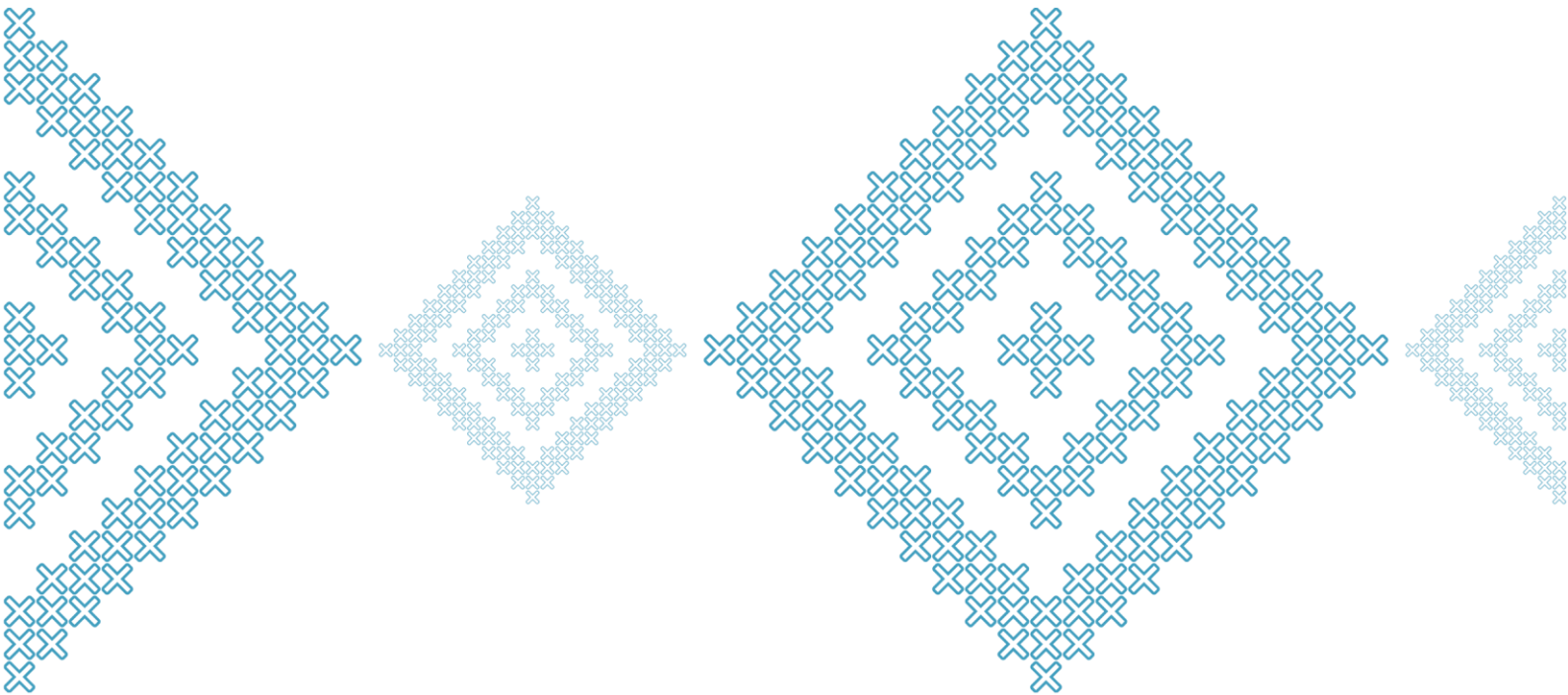


GUIDANCE

Market-led proposals

Guidelines for submission and assessment

November 2024



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<https://www.treasury.govt.nz/publications/guide/market-led-proposals-guidelines-submission-and-assessment>

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1. Foreword

Introduction

The New Zealand Government believes it should be easier to innovate, invest and grow the economy. Through successful collaboration and partnership between government and the private sector, there is the potential to bring forward increased investment in infrastructure or goods or services and deliver value.

High quality infrastructure, or goods and services drive economic growth, boost productivity and enhance the quality of life of all New Zealanders.

In mid-2024, the Government commissioned the Treasury to undertake a review of the existing guidelines for market-led proposals, leading to an approved release of these new guidelines, which now have the settings to encourage world-class, innovative ideas and investment from the private sector.

How did we get here?

New Zealand has not experienced a successful market-led proposal, whereas there are numerous examples across international jurisdictions.

To provide a clear, robust and efficient process for Proponents, the Treasury adopted the following approach to develop these new guidelines:

1. confirm the problems and challenges associated with the existing guidelines
2. develop revised baseline guidelines
3. add improvements and enhancements to the baseline guidelines from:
 - a. other jurisdictions' guidelines, and
 - b. insights gained from consultations, and
4. update the guidelines following cross-government and private sector review.

What's new?

These new guidelines now include the following noticeable enhancements:

- improving the governance arrangements, providing clarity on reporting and decision making processes
- enhancing an overly complicated and ineffective 'uniqueness' test, with a simpler and more effective test that justifies exclusive negotiations
- requiring early engagement for discussion before the Proponent formally submits their proposal, and
- providing more detail and helpful guidance, laid out in a simple and concise manner, that enables Proponents to step confidently through the process.

Alignment with the NZ Infrastructure Commission (Te Waihanga)

For proposals to build infrastructure that do not justify an exclusive negotiation but could be prioritised by Government (with a competitive procurement), the proposal should be submitted with the NZ Infrastructure Commission (Te Waihanga), to be added to the Infrastructure Priorities Programme. See <https://tewaihanga.govt.nz/our-work/infrastructure-priorities-programme>.

2. Introduction

2.1. Definition

A market-led approach is where a Proponent wishes to deal directly with Government with a proposal, where the Government has not requested the proposal.

The Proponent's proposal may be a commercial proposition, project, or developed concept to build infrastructure¹, provide goods or services², or undertake a major commercial transaction ('**market-led proposal**' or '**proposal**').

2.2. Purpose of these guidelines

Market-led proposals can help to stimulate innovation and provide new solutions to community needs. These new guidelines aim to outline a transparent and streamlined process to facilitate collaboration between the public and private sectors, and enhance potential opportunities associated with proposals that include:

- **innovation:** A well-designed market-led proposal process may encourage the private sector to propose innovative solutions. Allowing the private sector to present their ideas may help to generate "smarter", more sustainable, and cost-effective solutions
- **improved identification of projects:** Identifying viable projects requires significant technical, institutional and financial resources. By allowing the private sector to propose ideas, an appropriately designed market-led proposal process can harness the private-sector's interest in identifying, developing and delivering viable project solutions and service outcomes, and
- **improved project delivery efficiency:** The private sector's involvement can drive more efficient project delivery and risk management, leveraging expertise and streamline processes. In some cases, private sector projects can be developed and executed more quickly than traditional public sector projects.

2.3. Government procurement

The Government is continually seeking to deliver better outcomes for the people of New Zealand. Government's Procurement Rules require testing the market, which generally results in the demonstrable achievement of value for money outcomes and provides fair and equal opportunities for private sector participants to do business with Government.

¹ Infrastructure refers to all public infrastructure, including transportation, health, education, utilities, energy, telecommunications, precincts.

² Including information and communication technologies.

In general, Government procures infrastructure, or goods and services by two methods:

- 1. Government-led procurement processes.** This is the predominant form of procurement and is based on competition through tendering in order to achieve value for money in a fair and transparent manner. Such procurement is shaped by five Principles³, the Government Procurement Charter and supported by the Government Procurement Rules. This form of procurement is not covered by this *Market-led proposals: Guidelines for submission and assessment* document (these guidelines). For further information on Government procurement, see <https://www.procurement.govt.nz>.
- 2. Market-led proposals, an approach to Government from the private sector, not solicited by Government through the process described in 1. above.** The private sector includes private individuals, companies, sovereign wealth funds, investment funds (superannuation or otherwise), iwi and Māori trusts and entities, not-for-profit entities and may include (in this context) Local Authorities such as councils. Such proposals are by definition outside the normal planning and procurement processes of Government but may offer opportunities or value for Government. These proposals are administered under these guidelines.

The market-led proposals process is not a substitute for competitive procurement by Government and its Procurement Principles and Rules. Similarly, the market-led proposals process is not designed to replace other Government policy or statutory approval processes (eg, investment management, environmental and planning). If the Government decides to progress a market-led proposal, it will use best endeavours to provide support of the Proponent's planning application process, however this should not be interpreted as any form of explicit planning approval(s).

2.4. Overview of assessment process and criteria

These guidelines set out the processes to be followed by both Government and Proponents in developing market-led proposals. It represents commitment by Government to the allocation of resources to meet its responsibilities as outlined in these guidelines.

Proposals will be evaluated in a four-stage assessment process, which has been developed to guide the evaluation. This is outlined in the table below:

Table 1: Overview of market-led proposal ('MLP') assessment process

| Stage | | Assessment |
|-------|---|---|
| 0 | Pre-submission engagement – Proposal review | Indicative – public interest, exclusivity and value for money focus |
| 1a | Initial submission Part a | Preliminary – public interest and exclusivity focus |
| 1b | Initial submission Part b | Strategic – value for money focus |
| 2 | Detailed proposal | Detailed – full criteria |
| 3 | Negotiation of final binding offer | Final terms and alignment with Stage 2 parameters |

³ The five Principles, which apply to all government procurement and provide the foundations of good procurement practice, are (1) Plan and manage for great results, (2) Be fair to all suppliers, (3) Get the right supplier, (4) Get the best deal for everyone; and (5) Play by the rules.

Refer Section 3.4 and Section 4 for detail on assessment criteria and assessment process.

Where the Government assesses a proposal as not meeting the criteria, the Government reserves its usual right to go to market. In this event, the Proponent will be provided with the opportunity to participate in the procurement process should the concept be offered to the market but will have no additional rights beyond those afforded to other market participants.

The market-led proposals assessment process is separate to other Government statutory approvals processes (eg, environmental and planning). However, where appropriate, the assessment of market-led proposals will give consideration to the potential consistency of the proposal with relevant planning and environmental controls, and approvals processes.

Market-led proposals regarding State-owned enterprises (SOEs) should be referred to the Inbound Proposal Manager in the first instance.

2.5. Contact details and proposal submission

Enquiries and requests for pre-submission review meetings (Stage 0) should be emailed to the Inbound Proposal Manager at National Infrastructure Funding and Financing Ltd (NIFF) at marketledproposals@niff.govt.nz⁴.

Should Proponents wish to submit a paper-based proposal (with an electronic copy also sent to the email address shown above), please address it to:

Inbound Proposal Manager
National Infrastructure Funding and Financing Ltd
L10
188 Quay Street
Auckland 1143
NEW ZEALAND

Once a proposal has been submitted, NIFF will formally acknowledge receipt of the proposal and provide details of the Inbound Proposal Manager. This will be the Proponent's point of contact in Government regarding the proposal.

Market-led proposals received by Government departments, agencies or Crown entities will not be accepted and should be forwarded to NIFF for consideration.

Consultation – Proponent and Government responsibilities

It is recognised that there may be numerous discussions at many levels between the Proponent and Government stakeholders in order to ascertain Government needs and to better understand the business environment.

During Stage 0, the Inbound Proposal Manager will facilitate and coordinate interactions between the Proponent and key Government stakeholders, and Local Authorities (as appropriate). It is important for Proponents to engage in all relevant consultation with relevant agencies and stakeholders prior to a formal submission.

⁴ It is recommended that, when the Proponent contacts the Inbound Proposal Manager, they provide brief (high-level) summary information, including where 'YES' has been checked in the checklist shown in Appendix D4 – Stage 0 – Mandatory – Pre-submission review meeting checklist. This will enable a more effective conversation at the pre-submission review meeting.

Once lodged, commencing Stage 1, the proposal is subject to a formal assessment process. Proponents **must not** contact Government Ministers, advisers or officials, in regard to the submitted proposal, outside of the formal assessment process. This includes organisations authorised to act on the Proponent's behalf. Proponents must comply with the lobbying code of conduct administered by the Ministry of Justice at all times. See [Lobbying-code-of-conduct-Discussion-draft-March-2024.pdf](#).

Outcome and feedback

Where the Government is of the view that the proposal is not aligned with the public interest or that there is little prospect of the proposal justifying the exclusive negotiation criterion, or there are other potential issues with other assessment criteria, NIFF will communicate this to the Proponent during the Stage 0 pre-submission review meeting.

In such circumstances, the Government reserves the right not to advance assessment of the proposals to Stage 1a assessment. The Government may refer the Proponent to other relevant agencies, or to consider other schemes.

2.6. A guide to the remaining contents of these guidelines

These guidelines should be read by **both** potential Proponents and officials across Government that may be engaged (or are engaged) in a market-led proposal. The purpose of the rest of this document is to provide clarity on the detailed steps required for a proposal to be delivered and assessed:

- **Principles:** There are core principles assessing the eligibility of a market-led proposal.
- **Governance:** This section provides the necessary outline for Proponents and Government on governance arrangements including working forums, decision making bodies, reporting lines and communication channels.
- **Process:** This section steps through the requirements of each stage of the assessment process.

3. Guiding Principles

3.1. Approach to eligibility

By their nature, market led proposals are unlikely to be the focus of Government's current strategic planning. To encourage ideas, the Government is open to receiving proposals from Proponents that consider public interest and value for money and can justify an exclusive negotiation with Government.

3.2. Public Interest – alignment with Government and community interests

Proposals should be considered in light of the wider benefits and strategic outcomes that they align with or deliver. Proposals must be broadly consistent with Government objectives and with outcomes that are in the best interest of the Crown.

Public interest is a critical principle and consideration for any proposal. Potential questions that may be considered in relation to the public interest include:

- Is the proposal in the best interests of the Government and the community?
- Is the proposal aligned with Government objectives, policies, strategies and priorities?
- Is the proposal aligned with the National Infrastructure Plan?
- Is the level of accountability and transparency appropriate?
- Does the proposal offer public access and equity (where appropriate)?
- Are consumer rights and security protected including privacy?

3.3. Exclusivity – justifying exclusive negotiations with Government

The competitive tender process is a key component of meeting the Government Procurement Principles, especially being fair to all suppliers. To justify an exclusive negotiation with Government, the Proponent must demonstrate how they are the only party that can deliver the outcome of the proposal.

This may include a proposal with characteristics (or a combination of characteristics) such as:

- intellectual property or genuinely innovative ideas that are otherwise unlikely to be defined and provided by the market
- exclusive property rights (including exclusive Treaty of Waitangi redress) that would be otherwise unavailable to Government
- ownership of software or technology offering a unique benefit
- unique contractual arrangements that cannot be offered by other service providers, and
- value for money – combination of scope, budget, risk allocation and time to complete – that cannot be matched by the market.

Refer Appendix B – Testing 'exclusivity' for more detail.

Where justification for exclusivity is not immediately apparent, the Government may seek to test the market (refer to Section 3.7).

3.4. Value for Money

Obtaining optimal value for money is a fundamental principle of the Government – seeking value for money for the taxpayers of New Zealand. This is achieved by fostering an environment in which Proponents can make attractive, innovative proposals with the confidence that they will be assessed on their merits and where Government appropriately considers value.

Overall, value for money assessment is both quantitative and qualitative. The quantitative aspects include the Benefit Cost Ratio (BCR) of the Proposal, budget requirements (including the affordability for Government), the Proponent's expected return on investment (ROI) and other key assumptions used in the Proponent's financial model. Qualitatively, the assessment includes the combination of scope, risk allocation and time to complete.

Benchmarking and confirmation of cash flow estimates will be undertaken during Stage 1b, during which an “open book” approach to negotiations must be adopted. At this stage, an indicative business case will be required.

The approach to demonstrating value for money is outlined further in Appendix A – Assessment criteria descriptions.

3.5. Assessment criteria

Proposals will be initially assessed against the Assessment Criteria in the table below. Assessment will be based on the proposal satisfactorily meeting each of the criterion. The assessment approach will be calibrated to take into account the level of development of the Proposal at each stage of the process.

Once a criterion has been met during the process, the criterion does not need a re-assessment, unless relevant terms have changed at a later stage in the process, which would result in the proposal not meeting that criterion. Additional Criteria relevant to a particular proposal may also be applied at later stages. The Proponent will be informed of the criteria for these to be addressed in its Detailed Proposal during stage 2.

Proponents are encouraged to submit their latest and most developed offer at the earliest possible stage of the assessment process to demonstrate the proposal's value for money and allow Government to accurately assess the proposal.

Table 2: Assessment Criteria

| Stage of Assessment | Assessment criteria |
|-----------------------|--|
| Stage 0 | Indicative – public interest, exclusivity, value for money |
| Stage 1a, and onwards | Public interest |
| | Exclusivity |
| Stage 1b, and onwards | Value for money |
| | Scope and budget |
| | Risk allocation |
| | Capability and capacity |
| Stage 2, and onwards | Value for money |
| | Economic assessment and benefit-cost ratio (BCR) |
| | Affordability |
| | Return on investment |

A description of each of these criteria can be found in Appendix A – Assessment criteria descriptions.

Examples for how the assessment criteria may be satisfied are outlined in the table. These examples are provided for reference only.

Table 3: Satisfying assessment criteria for Stage 1

| Example | Unique idea, asset or scope * | Public interest | Value for money | Exclusivity | Satisfying Criteria |
|------------|-------------------------------|-----------------|-----------------|-------------|---------------------|
| Example #1 | ✗ | ✓ | ✓ | ✓ | ✓ |
| Example #2 | ✗ | ✓ | ✓ | ✗ | ✗ |
| Example #3 | ✓ | ✓ | ✗ | ✓ | ✗ |
| Example #4 | ✓ | ✗ | ✓ | ✓ | ✗ |
| Example #5 | ✓ | ✓ | ✓ | ✓ | ✓ |

Note: * not a criterion.

Some useful messages from the above table are:

- failure of one criterion will result in failure of the overall criteria
- there is opportunity for proposals to satisfy the overall criteria without being unique, and
- although a proposal may satisfy exclusivity, it may not satisfy other criteria such as value for money or public interest. For example, a proposal may satisfy exclusivity as it is a complex and novel structure, however it could be too difficult and resource intensive for Government to administer or level of Government support required may also deem it unaffordable.

Example: a successful market-led proposal

The Proponent currently has 25 years left remaining on a long-term toll road concession with the government's transport agency – to build, operate, maintain and toll a 40km motorway with a posted speed of 110km/hr. At operations commencement, the motorway provided valuable travel time savings. Motorists electronically incur an access charge (or flagfall toll) at various entry points along the motorway and a distance charge, which depends on the motorist's exit point, with a distance cap set at 20km.

15 years after operations commencement, traffic has become heavily congested in one large segment of the motorway due to unforeseen circumstances. The transport agency see a strong policy need to widen the motorway but has not actioned this with the concessionaire (the Proponent).

The Proponent submits a proposal – to build a widening of the motorway, which will alleviate the congestion, and operate and maintain the widened road. In return the Proponent would receive traffic revenue from the widened motorway with an expectation of improved traffic. As the forecast revenue (from the existing concession) would not be sufficient to fund the total cost of construction, the Proponent requests a concession extension. With this approach, the

government does not make any cash contribution and does not require funding from the taxpayer. In effect the additional cost would be borne by the motorists using the road.

In this hypothetical example, the Proponent is the only party that can widen the road, as it holds the concession. The proposal meets the transport agency's policy objectives and public interest in alleviating costly congestion. As long as the value for money criteria is met, this example would be a successful market-led proposal.

Example: an unsuccessful market-led proposal

The Proponent currently holds a 5-year contract to provide maintenance services for Government-owned buildings and has a demonstrated record of delivering quality services to Government and other clients. The Proponent's contract is due to expire in 12 months and the Government is planning to commence the usual open tender process. The Proponent submits a market-led proposal to the Government to extend the existing contract for a further five (5) years without going to tender. The exclusivity quality claimed by the Proponent is demonstrated experience in delivering maintenance services and a good relationship with the relevant Government agency.

It is unlikely this market-led proposal progress will past Stage 1a because there is an established market to provide the required service ie, the Proponent is not the only party that can deliver the outcome. The Government will likely proceed with an open tender process to procure the services.

3.6. Interactive process and response times

To better encourage innovative ideas from the private sector and seek better outcomes for the people of New Zealand, the Government will manage an interactive process with the Proponent at all stages of the proposal assessment, commencing with Stage 0 Mandatory Pre-Submission Review.

During both Stage 0 Mandatory Pre-Submission Review and Stage 1 Assessment this interaction will be limited to clarification of the proposal by Government in order to effectively carry out the assessment. It will not be an opportunity to negotiate the details of the proposal. This opportunity will arise in later stages if the proposal proceeds past the Stage 1 Assessment.

The Government commits to timely interaction and responsiveness to Proponents.

- Subject to receipt of all required information, Proponents can expect a response time of 1 month for the Stage 0: Mandatory Pre-submission Review.
- The length of the period before Stage 1 is completed will depend on the level of engagement the Proponent has with stakeholders across Government – exploring the likelihood of the Proposal to meet the Stage 1a and 1b assessment criteria. As an indication, Stage 1 engagement and response period could take between 3 and 6 months.
- Timeframes for Stages 2 and 3, will be agreed between the Proponent and the Government.

Proponents requiring guidance in relation to the Treasury's *Better Business Case* requirements can seek this guidance from the Inbound Proposal Manager and will be referred to the appropriate department if appropriate.

The Proponent may terminate their Proposal at any time with notice to the Inbound Proposal Manager.

3.7. Market testing

During Stage 1, for Government to accept that the Proponent is the only party that can deliver the proposal outcome(s), external consultation may be required. In this circumstance, Government is not convinced and would otherwise prefer a Government-led competitive process.

An external consultation or market testing process may be in the form of a short EOI tender process (3 months) seeking firm and credible interest from the market.⁵ No such external consultation or market testing process will occur unless approved by the Proponent.

A possible circumstance for this is where a proposal's concept alone may not justify exclusive negotiations, but the Proponent may be the only party who can deliver the concept within the budget, scope, timeframe and risk allocation required by Government.

Government will consider the likelihood that market testing may potentially be required as part of Stage 1 and notify the Proponent as early as possible. It will also consider the potential safeguards and evaluation criteria that may need to be incorporated into any market testing process via discussion and agreement with the Proponent. This will be confirmed via approval from the Proponent.

The market testing process may incorporate a 'right to improve' concept, whereby the Proponent is given an opportunity to improve on any credible, competitive alternative offer that is made through the market testing process.

3.8. Intellectual Property

The approach to the identification, recognition and protection of IP rights will be addressed and agreed with the Proponent during Stage 1 of the process.

If the Government elects to market test the proposal, in such circumstances it will respect any IP owned by the Proponent or whether testing the market will significantly diminish the value of the Proponent's preliminary investment.

In the event a proposal does not meet the criteria, the Government will consider the value of the Proponent's preliminary investment in its IP prior to consideration of a subsequent Government-led market process.

In the event of disclosure of the proposal as it progresses through the stages, any disclosure will include some redactions for commercial sensitivities and IP. The Government will consult with Proponents before disclosing information.

⁵ With bid cost reimbursement for conforming responses.

3.9. Probity

Government seeks to conduct its commercial dealings with integrity. The assessment of market-led proposals must be fair, open and demonstrate the highest levels of probity consistent with the public interest. The assessment of market-led proposals will be conducted through the application of established probity principles that aim to assure all parties of the integrity of the decision-making processes. The probity principles outlined in this section have been developed to ensure that public and Proponent confidence in Government processes is upheld.

Maintaining impartiality

Fair and impartial treatment will be a feature of each stage of the assessment process. The process will feature a clearly defined separation of duties and personnel between the assessment and approval functions.

Maintaining accountability and transparency

Accountability and transparency are related concepts. The demonstration of both is crucial to the integrity of the assessment.

Accountability requires that all participants be held accountable for their actions. The assessment process will identify responsibilities, provide feedback mechanisms and require that all activities and decision making be appropriately documented.

Transparency refers to the preparedness to open a proposal and its processes to scrutiny, debate and possible criticism. This also involves providing reasons for all decisions taken and the provision of appropriate information to relevant stakeholders. Relevant summary information regarding proposals under consideration at Stage 2 will be made publicly available. Further information may be published as appropriate.

Managing conflicts of interest

In support of the public interest, transparency and accountability, the Government requires the identification, management and monitoring of conflicts of interest. Participants will be required to disclose any current or past relationships or connections that may unfairly influence or be seen to unfairly influence the integrity of the assessment process.

Maintaining confidentiality and ensuring appropriate disclosure

In the assessment of market-led proposals there is need for high levels of accountability and transparency. However, there is also a need for some information to be kept confidential, at least for a specified period of time. This is important to provide participants with confidence in the integrity of the process.

The following disclosure principles will apply:

- All proposals submitted will remain confidential at Stage 0 and Stage 1 of the assessment process, except for when required for the purpose of market testing, to be discussed and agreed with the Proponent.
- If a proposal progresses to Stage 2, basic information about the proposal may be publicly disclosed, including the Proponent's name, the proposal's general nature, and the reasons for progression.

- More detailed information may be disclosed as the proposal progresses, subject to the protection of genuine commercial sensitivities and IP.

If a proposal results in a contract, the Government will publish the Detailed Business Case and potentially a public-facing version of the final redacted contract. This will include some redactions for commercial sensitivities and IP. The Government will consult with Proponents before disclosing information.

Probity's role in obtaining value for money

At Stage 1b of the assessment process, the approach to assessing value for money will be confirmed. Where a probity adviser has been appointed, one of their roles is to monitor the evaluation process and ensure that value for money has been considered. It is not the role of the probity adviser to determine whether the proposal meets the required value for money criterion.

3.10. Resource commitments

In order for a market-led proposal to progress, the Government and the Proponent will be required to commit resources. The staged approach to assessment seeks to balance resource input at each stage in order to reduce the potential for unnecessary expenditure.

The Proponent may be required to reimburse the Crown for external costs arising from undertaking due diligence, assessing or negotiating the proposal. This will be subject to an agreed budget during Stage 1 (for subsequent stages). It is assumed and expected that both the Proponent and Government act reasonably in relation to the management of costs.

Should the Proponent reach Stage 3, and the proposal is still aligned with the parameters from Stage 2, but Government rejects the proposal, or the process is concluded at Government's direction (and is unsuccessful), the Proponent's costs to progress the proposal through the process will be reimbursed by the Crown, up to the agreed amount documented in either the Stage 2 Participation Agreement or Stage 3 Participation Agreement (depending on milestones achieved under the respective Participation Agreements entered by both parties). Any Crown reimbursement will be net of external costs incurred by the Crown arising from due diligence, assessments or negotiations.

Note that the Proponent's costs are not reimbursed if the proposal successfully reaches contract award.

3.11. Approvals and agreements

Market-led proposals will take into account relevant processes and approval requirements in related procurement policy documents.

Proposals will be submitted to Government (Cabinet) for approval prior to any progression of a proposal to Stage 2 or 3, prior to the signing of any agreement, and prior to provision of any Government funding.

The required approval process will be described to the proponent. Additional Government (Cabinet) approvals may be required for any changes to previously approved commercial terms or Government funding.

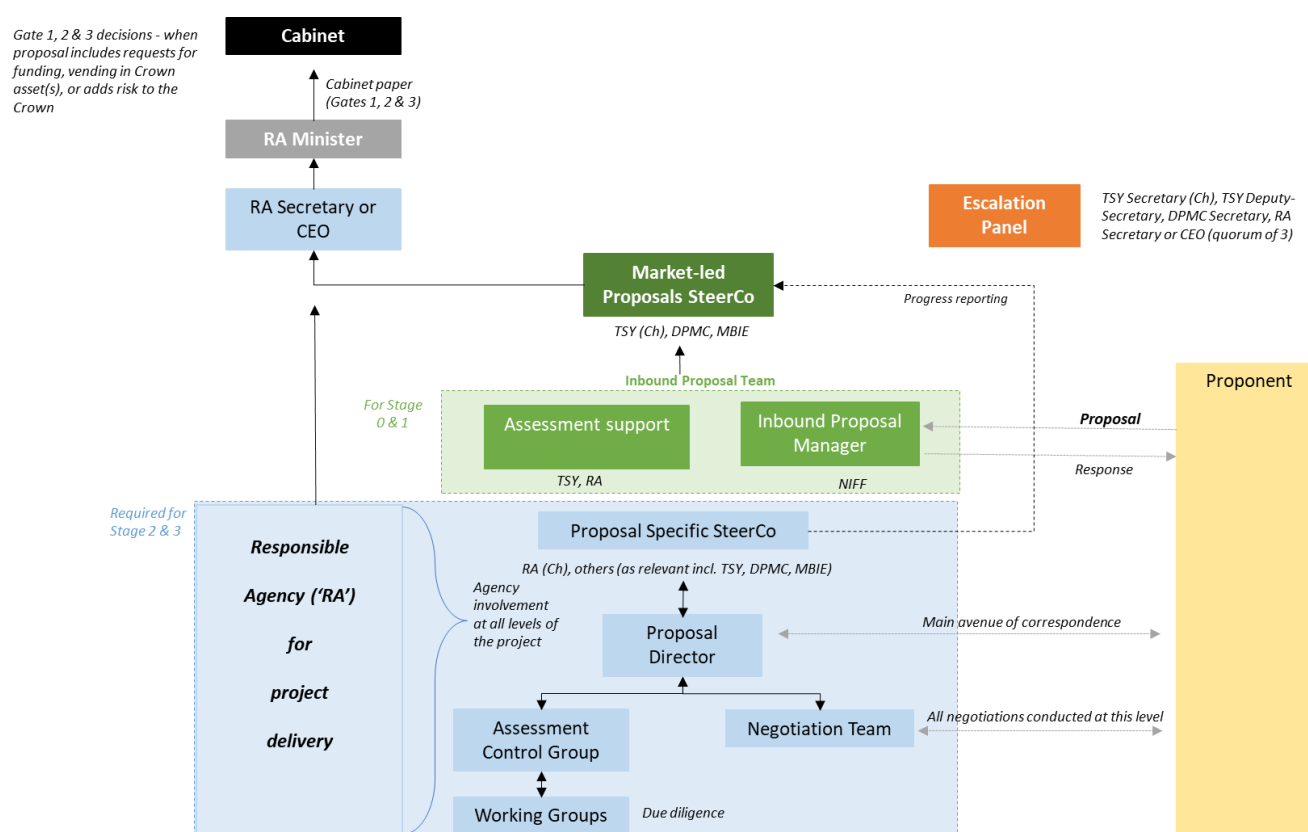
3.12. Governance

Governance arrangements will include whole of Government management and co-ordination through the NIFF, a single, overarching Market-Led Proposals Steering Committee, Proposal Specific Steering Committees where required, proposal specific assessment groups, and a staged approach to assessment, negotiation and contracting.

Once a proposal reaches Stage 2 of the assessment process, the Government will establish appropriate governance arrangements that will detail the membership and responsibilities of the Steering Committee and assessment/technical panels, management of confidentiality and conflict of interest, and provide details of the appointed Proposal Manager and probity adviser. In most circumstances, the Stage 2 Proposal Manager will be the Crown agency with existing responsibility for the subject matter of the Proposal.

The roles and reporting responsibilities of these stakeholders are shown below in Figure 1:

Figure 1: Governance diagram



Refer Appendix C – Roles and Responsibilities.

Market-led proposals will take into account relevant processes and approval requirements in related procurement policy documents. In addition, Proposals will be assessed under the Treasury's *Investment Management System*, where appropriate.

3.13. Participation Agreement

A Participation Agreement provides an agreed framework for Stage 2 and Stage 3 which will be entered into by both the Proponent and the relevant Government department, agency or

Crown entity tasked with leading the proposal. It will outline whether the proposal will be subject to an approval process outlined in another procurement policy document and/or a proposal assurance mechanism.

The purpose of the Participation Agreement is to ensure the alignment of expectations regarding participation in the process.

Stage 2 Participation Agreement

The Stage 2 Participation Agreement will be developed at the beginning of the stage and will contain:

- acknowledgement that a value for money outcome is a requirement for the proposal to proceed
- assessment criteria and other relevant Government requirements
- communication channels, and a prohibition on lobbying
- media enquiries requirements
- resource commitments
- agreement regarding cost reimbursement arrangements
- conflict of interest management arrangements
- confidentiality requirements
- commitment to following an open book approach to discussions, pricing and project information
- target timeframes
- agreed approach to IP rights
- escalation process – for both Proponent and Government, and potential interactions
- approval requirements, including planning and environmental approvals, and
- Stage 1 (high level) Terms Sheet – developed in Stage 1.

During this period of exclusive assessment and preliminary negotiation, the Government will not grant similar rights to the Proponent to another proposal (or Proponent) with substantially the same subject matter of the proposal.

Stage 3 Participation Agreement

A Stage 3 Participation Agreement provides an agreed framework for participation in Stage 3 which will be entered into by the Proponent and the relevant Government department, agency or Crown entity tasked with leading the proposal in order to ensure alignment of expectations.

The Stage 3 Participation Agreement will be developed at the beginning of the stage and will contain (but not be limited to):

- Inclusion of Stage 2 Participation Agreement terms, with more detail – where relevant for Stage 3.
- Additions (and if required, amendments) to Stage 2 Participation Agreement terms, including:
 - approval requirements, including planning and environmental matters where relevant. Except where otherwise approved, the Government will require proposals to have secured relevant planning consents as part of the market-led proposal agreement
 - outline of any conditions arising from Cabinet's consideration of the Detailed Proposal
 - Stage 2 Terms Sheet – developed in Stage 2
 - schedule of items for negotiation

- process and protocols for negotiation, and
- a schedule of items and issues to be negotiated (this may be provided separately to the Stage 3 Participation Agreement).

During this period of exclusive negotiation, the Government will not grant similar rights to the Proponent to another proposal (or Proponent) with substantially the same subject matter of the proposal.

3.14. Monitoring

As steward of these guidelines, the Treasury will establish a structured periodic review to assess the effectiveness of the approach to dealing with market-led proposals. These guidelines will be periodically reviewed to ensure they are fit-for-purpose.

3.15. Disclosure

Non-live proposals

NIFF will publish aggregate data annually on market-led proposals received, including its reasons for declining proposals. The data will be presented in such a manner as to promote transparency in the market-led proposal assessment process while maintaining Proponent confidentiality.

Live proposals

Information on all market-led proposals that progress to Stage 2 will be published on the www.nationalinfrastructure.govt.nz website. This may include details of the Proponent and proposal, the governance structure, the probity adviser appointed and reasons why the proposal has progressed. Further information may be published as appropriate. The Government will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

Generally, the Government seeks to disclose all proposals in this stage. In some cases, Proponents may request that proposals are not listed, if this would pose significant risks to commercial negotiations or IP. The Government considers each request and may agree not to disclose a proposal. The ability to undertake an assessment in confidence is considered essential to creating a receptive environment to elicit innovative private sector proposals.

At the end of Stage 2, the www.nationalinfrastructure.govt.nz website will be updated with the assessment outcome. Other information will also be published, such as the governance structure for Stage 3 and the probity adviser appointed.

Further information may be published as appropriate. The Government will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

Successful proposals

At the end of Stage 3, the www.nationalinfrastructure.govt.nz website will be updated with the assessment outcome. Further information may be published as appropriate.

Subject to the nature of the proposal, where a Final Binding Offer has been accepted, the Responsible Agency will comply with the Government's standard public disclosure requirements, such as those described in the *Official Information Act 1982*.

If the proposal involves a PPP, a Proposal Summary will be publicly released within 90 days after the contract becomes effective. Proposal summaries are placed on the Treasury website.

The Government will consult with the Proponent before any information is disclosed to ensure that commercially sensitive information remains confidential.

3.16. Contract award and management

Contract award to Proponent

Following the conclusion of Stage 3 if approved by the Government, the Crown and the Proponent will enter into binding contractual agreements.

Contract award is based on the final offer and the terms and conditions approved by the Government at the end of Stage 3. The Minister of Finance, along with the relevant portfolio Minister, may be required to approve its execution.

Contract management

Contract execution will be arranged by the Responsible Agency in consultation with NIFF.

Governance after contract award will be in accordance with the governance structure approved by the Government as part of the Stage 3 assessment consideration and included in the contract management arrangements between the Proponent and Government.

3.17. Contract publishing

As per Rule 48 (of the Government Procurement Rules), the Responsible Agency will publish a contract award notice on GETS within 30 days of contractual or financial close. The contract is to be published in full with limited exceptions from disclosure, guided by the criteria of the *Official Information Act 1982* and taking into consideration any IP rights.

4. The process

4.1. Introduction

This Section 4 outlines the four-stage assessment process for the consideration of market-led proposals and key elements of the process. It is recognised that the stages may be refined to more effectively manage the assessment of proposals on a case-by-case basis. Any milestones or changes to the stages will be discussed and agreed with the Proponent at the commencement of each stage.

Proposals will be assessed against the assessment criteria shown in Section 3.4. For the relevant stage, there should be sufficient information provided to enable Government to assess against these criteria.

4.2. Process flowchart

A summary of the key steps at each stage in the consideration of market-led proposals are outlined below.

| Stage | Objectives | Responsibilities |
|--|--|--|
| Stage 0 – Mandatory pre-submission review | <ul style="list-style-type: none"> to explore whether the proposal is likely to meet the Stage 1 assessment criteria to guide Proponents in their decision regarding whether to lodge their proposal. | Proponent: <ul style="list-style-type: none"> Complete the pre-submission review checklist. Arrange a pre-submission review meeting(s) with the Inbound Proposal Manager (prior to committing substantial resources for the development of the proposal). Government: <ul style="list-style-type: none"> Ensure engagement with likely RA to test concepts against public interest criteria. Provide feedback on the proposal and guidance against assessment criteria and guidelines. <p>Note it is the Proponent's decision as to whether it proceeds with making a formal Stage 1 submission.</p> |
| Stage 1a – Initial submission and preliminary assessment (public interest and exclusivity) | <ul style="list-style-type: none"> for Government to undertake an indicative assessment of the proposal | Proponent: <ul style="list-style-type: none"> Prepare an initial submission in accordance with the Information requirements for Stage 1. Government: <ul style="list-style-type: none"> Undertake a proposal compliance check. Establish an Inbound Proposal Team with assessment support to the Inbound Proposal Manager Undertake a preliminary assessment of the proposal. the MLP Steering Committee ultimately approves progression to Stage 1b. inform Proponent that the submission will either not be considered further, is referred to another process (or scheme). |
| Stage 1b – Strategic assessment of initial assessment (VfM) | <ul style="list-style-type: none"> for Government to undertake a comprehensive initial assessment of the proposal to identify the potential benefit to Government of further consideration and development with the Proponent | Proponent: <ul style="list-style-type: none"> If required, provide additional information to enable Stage 1b assessment. Government: <ul style="list-style-type: none"> Undertake a formal assessment of the indicative business case. Preparing an Assessment Report for approval by the MLP Steering Committee. Determining whether other procurement policy documents and/or a proposal assurance mechanism should be applied. Government (Cabinet) approval required to progress to Stage 2 Notify the Proponent of the assessment outcome, making reasonable endeavours to provide timely feedback. |

4.3. Summary of information requirements

The table below outlines the schedule of information requirements, which is cumulative as the proposal progresses through each stage of assessment, with information provided building on the information provided in previous stages. Refer Appendix D - Schedule of information requirements for details of the information required to be submitted by the Proponent at each stage.

Table 4: Overview of information requirements

| Stage | Stage 0 – | Stage 1 – Initial submission | | Stage 2 – | Stage 3 – |
|----------------------------------|-----------------------------------|--------------------------------|---|--|--|
| | Mandatory – Pre-submission review | 1a – Preliminary assessment | 1b – Strategic assessment | Detailed proposal | Negotiation of final binding offer |
| Level of detail required | High level | Indicative | Indicative | Detailed, with due diligence undertaken | Due diligence finalised |
| Agreement between parties | n/a | n/a | Indicative (high level) term sheet, forming part of the Stage 2 Participation Agreement | Detailed proposal, with term sheet, forming part of the Stage 3 Participation Agreement | Final binding offer, and proposal document(s) |
| Business Case⁶ | n/a | n/a | Indicative business case | Detailed business case | Implementation business case |
| Criteria | Indicatively Stage 1 criteria | Public interest Exclusivity | Public interest Exclusivity Value for money Scope & Budget Risk Allocation Capability & Capacity | Public interest Exclusivity Value for money Scope & Budget Risk Allocation Capability & Capacity BCR Affordability ROI | Public interest Exclusivity Value for money Scope & Budget Risk Allocation Capability & Capacity BCR Affordability ROI |
| Target Timeframe | 1 month ⁷ | 3-6 months | | | |

⁶ The relevant department, agency or Crown entity will provide assistance to the Proponent who is responsible in completing the relevant business case.

⁷ Commencing once Proponent has had satisfactory early engagement with stakeholders across Government.

Appendices

Appendix A – Assessment criteria descriptions

| Stage that criteria is assessed | Assessment criteria | Description and potential questions |
|---------------------------------|------------------------------------|---|
| Stage 0 | Indicative Stage 1 criteria | The purpose of Stage 0 is to provide Proponents an indication of the proposal's likelihood in meeting the Stage 1a and 1b assessment criteria, and to guide Proponents in their decision regarding proposal submission. |
| Stage 1a, and onwards | Public interest | <ul style="list-style-type: none"> • Is the proposal in the best interests of the Government and the community? • Is the proposal aligned with Government objectives, policies, strategies and priorities? • Is the proposal aligned with the National Infrastructure Plan? • Is the level of accountability and transparency appropriate? • Does the proposal offer public access and equity (where appropriate)? • Are consumer rights and security protected including privacy? |
| Stage 1a, and onwards | Exclusivity | Demonstrate that the Proponent is the only party that can deliver the Proposal outcome(s). Refer Section 3.3 and Appendix B – Testing 'exclusivity' for more detail. |
| Stage 1b, and onwards | Value for money | <p>Does the proposal deliver value for money to the tax payers of New Zealand?</p> <ul style="list-style-type: none"> • What is the opportunity cost for Government if it were to proceed with the proposal? <p>While value for money will be tested appropriately in the context of each specific proposal, factors that will be given consideration are likely to include:</p> <ul style="list-style-type: none"> • The quality of all aspects of the proposal, including: achievable timetable, clearly stated proposal objectives and outcomes, design, community impacts, detailed proposal documentation and appropriate commercial and/or contractual agreements (including any key performance targets), and a clearly set-out process for obtaining any planning or other required approvals. • The proposal must also demonstrate that it is likely to possess commercial value or utility in the market. • Innovation in service delivery, infrastructure design, construction methodologies, and maintenance. • Competitively tendering aspects of the proposal where feasible, or likely to yield value for money. • Cost efficient delivery of Government priorities. • Optimal risk allocation. |

| Stage that criteria is assessed | Assessment criteria | Description and potential questions |
|--------------------------------------|--------------------------------|--|
| | | <p>Evaluation of value for money may also include, but not be limited to the following quantitative analysis:</p> <ul style="list-style-type: none"> • Interrogation of the Proponent's financial models to determine the reasonableness of any capital, land acquisition, service and maintenance cost estimates and, if relevant, revenue estimates (including the appropriateness of any user fees or prices and estimates of quantity levels). • This evaluation may include the use of independent experts or valuers, benchmarking analysis, sensitivity testing, and where appropriate, the use of comparative financial models, based on a Reference Project. • Return on Investment. <p>Proposals that quote a cheaper cost structure, such as low construction, operating, or financing costs, is not sufficient unless there is demonstration that these savings are passed onto Government.</p> <p>Note: A high-level indicative value for money assessment will occur at Stage 1b. A more detailed assessment of value for money will occur at Stage 2 and beyond.</p> |
| Value for money sub-criteria: | | |
| Stage 1b, and onwards | Scope and budget | <ul style="list-style-type: none"> • Is the scope defined? Is the scope supported by the likely Responsible Agency for project delivery? • What is the P90 cost estimate to complete the project? • Does the proposal provide financial benefits/savings that will not otherwise be achieved? • Consideration will be given to whether the proposal will require Government to re-prioritise and re-allocate funding. Is this within Government's budget? |
| Stage 1b, and onwards | Risk allocation | <ul style="list-style-type: none"> • What risks are to be borne by the Proponent and by the Government? • Appropriate risk allocation and quantification may also be considered under the value for money criterion. • If planning approvals are required, has the process been appropriately considered, including whether the Government or Proponent bears the risks associated in obtaining the approvals? |
| Stage 1b, and onwards | Capability and capacity | <ul style="list-style-type: none"> • What is the realistic time to complete? • Does the proposal provide time savings that will not otherwise be achieved? • Does the proposal require environmental and planning approvals? • Does the Proponent have the experience, capability and capacity to carry out the proposal? What reliance is there on third parties? • Where appropriate, the Proponent should provide referees in relation to working with Government. • Does the proposal have the potential to achieve planning approval, taking into account relevant planning and environmental controls? |

| Stage that criteria is assessed | Assessment criteria | Description and potential questions |
|---------------------------------|--|---|
| Stage 2, and onwards | Economic assessment and benefit-cost ratio (BCR) | <ul style="list-style-type: none"> Where Crown funding, financing or assets are required, either explicitly or implicitly, the Government will require the Proponent to undertake a Detailed Business Case including an economic appraisal at Stage 2 (where appropriate), consistent with the Treasury's <i>Better Business Case requirements</i>. Does the proposal provide a clearly defined base case (i.e. status quo)? Does the proposal provide a clearly defined Project case, suitable for economic assessment? What are the net economic benefits of the proposal, and which of these benefits are able to be realised? Does the proposal have any economic disbenefits that may be realised and require monetisation? What is the cost of the proposal to Government? What is the project BCR? Sensitivity and scenario testing should be undertaken. |
| Stage 2, and onwards | Affordability | <ul style="list-style-type: none"> Does the proposal require Government funding, or for the Government to purchase proposed services? Does the Government have these funds available or budgeted and if not, what source will be proposed? Regardless of the outcome of the proposal's economic appraisal and BCR, the proposal still needs to be affordable in the context of the Government's other priorities, and to be considered as part of the New Zealand Budget process. |
| Stage 2, and onwards | Return on investment | <ul style="list-style-type: none"> Is the proposed Return on Investment to the Proponent proportionate to the Proponent's risks, and industry standards? Where feasible, the proposed rate of return may be subject to independent review or benchmarking. |

Appendix B – Testing ‘exclusivity’

Questions that can justify exclusion negotiations, ie, testing whether the Proponent is the only party that can deliver the outcome(s) of the proposal:

- a) can this project be readily delivered by competitors?
 - if the answer is yes, then what, if any, justification will the Government have to the public for not seeking best value through a competitive tender process?
 - what benefit(s) will the Government gain for dealing with a Proponent on an exclusive basis?
- b) does the Proponent own something that will limit the Government from contracting with other parties if the Government goes to tender? This will include IP, real property and other unique assets.
- c) are there other attributes which may not necessarily stand alone as unique but, when combined, create a “unique” proposal? This may include:
 - ability to deliver a required combination of scope, budget, risk allocation and time to complete that cannot be matched by the market
 - genuinely innovative ideas, or
 - unique contractual arrangements or commercial solutions.
- d) is the proposal concept new and not in the public domain?
- e) does the proposal involve genuine existing IP, without which the proposal cannot proceed to implementation?

The justification for exclusivity will depend on the nature of the proposal and the combination of considerations presented. A proposal may not meet all individual considerations, but may be assessed as justifying exclusivity when considered holistically.

Types of proposals that will NOT justify exclusive negotiations

Proposals that will not justify exclusive negotiations, or are unlikely to be progressed through the MLP process include, but are not limited to:

- a) proponents seeking to directly purchase or acquire a Government-owned entity or property.
 - unless the Proponent is the only party that can deliver the outcome(s), the Government is unlikely to enter into such an arrangement without an open tender process.
 - standard land transaction proposals will be referred to the Ministry of Housing and Urban Development or the owner agency for consideration.
- b) proponents with an existing Government contract seeking to bypass a future tender process.
- c) proposals seeking solely to extend or vary an existing arrangement.

- d) proposals seeking to develop specific land (as a property development) that is not owned by the Government or the Proponent. Greenfield infrastructure projects that may require acquisition of non-Government land is not part of this exclusion.
- e) proposals that do not contain a commercial proposition for the Government.
- f) proposals that identify the Proponent's skills or workforce capability as the only unique characteristic are unlikely to progress past Stage 1a unless there is evidence that demonstrates broader or superior value to Government or the community because of this.
 - without evidence, 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. For example, a proposal to deliver niche healthcare services to a local community will need to demonstrate that the claimed skills cannot be procured or developed elsewhere in the market.
- g) proposals seeking only to change Government policy that have no associated project.
- h) proposals for projects where the tender process has formally commenced, whether published or not.
- i) proposals that are developed concepts, but have had limited investment and present questionable, or limited value for money.
- j) proposals seeking grant funding (eg, scientific research).
- k) proposals seeking Government support for a "pilot" program.
- l) proposals seeking to stop or suspend another Government process (eg compulsory acquisition).
- m) proposals seeking an exclusive mandate, or exclusive rights over a Government asset, for a period of time so the Proponent can develop a feasibility study.
- n) proposals seeking exclusivity based on effort alone, no matter how much the Proponent has invested in time and resources.

Appendix C – Roles and Responsibilities

Proponent

The Proponent is required to:

- meet with the Inbound Proposal Manager to discuss proposal characteristics, alignment with public interest and other key principles, prior to submitting a formal proposal in Stage 1
- for Stage 1, prepare and lodge the information as set out in D1 – Information requirements for Stage 1 – with the Inbound Proposal Manager
- if recommended to proceed to Stage 2, enter into a Participation Agreement with agency tasked with leading the Proposal
- at the conclusion of Stage 2; provide a Detailed Proposal, and
- at the conclusion of Stage 3, the Proponent is required to provide a Binding Offer.

Government (Cabinet)

Proposals will be submitted to Government (Cabinet) for approval prior to any progression of a proposal to Stage 2 or 3, prior to the signing of any agreement, and prior to commitment or provision of any Government funding.

Additional Government (Cabinet) approvals may be required for any changes to previously approved commercial terms or Government funding.

The required approval process will be described to the Proponent at the commencement of each stage.

National Infrastructure Funding and Financing Ltd (NIFF)

NIFF will take the lead role in the receipt and coordination of the consideration of market-led proposals as the **Inbound Proposal Manager** during Stage 0 and 1. This will include appointing specific Inbound Proposal Managers within NIFF. Involvement of the likely Responsible Agency for delivery of the Proposal will be managed by the Inbound Proposal Manager.

Subject to Stage 2 progression, NIFF will provide financial and commercial advice to the Responsible Agency for delivery of the proposal as appropriate.

During Stage 0 and 1 the **Inbound Proposal Manager** has the following responsibilities, unless otherwise documented in the Governance Plan:

- receive market-led proposals
- undertake an initial compliance check
- ensure necessary confidentiality agreements are executed
- establish Inbound Proposal Team with assessment support from the Treasury and the likely Responsible Agency for delivery of the proposal's project

- facilitate the assessment teams and MLP Steering Committee/Proposal Specific Steering Committee (as appropriate)
- act as point of contact for Proponents
- facilitate interactions between the Proponent and Government
- facilitate and coordinate interactions between the Proponent and key stakeholders, including Local Authorities
- facilitate the preparation of information provided to the Proponent
- coordinate assessment, including input from advisers
- coordinate preparation of assessment reporting
- provide assistance to Government agencies with a responsibility for assessing market-led proposals, and
- manages feedback to Proponent on outcomes of Stage 0 and Stage 1 assessments, at the direction of Market-led Proposals Steering Committee.

Steering committees

Market-led Proposals Steering Committee ('MLP Steering Committee')

An overarching MLP Steering Committee has been established to review recommendations made on all inbound proposals and provide strategic oversight and direction to the process. This Committee is comprised of senior representatives with necessary expertise from agencies listed below:

- The Treasury (Chair).
- Department of Prime Minister and Cabinet.
- Ministry of Business Innovation and Enterprise.
- NIFF will act as Secretariat to the MLP Steering Committee.
- Representatives of other agencies may be required to provide experienced resources to assist in decision-making. Membership of the Steering Committee may change from time to time and may include an independent member.

Table 5: MLP Steering Committee responsibilities

| MLP Steering Committee |
|---|
| Consider recommendations made by the Inbound Proposal Team at Stage 0 and agree on proposed course of action. |
| Consider recommendations made by the Inbound Proposal Team at Stage 1 and agree on proposed course of action. |
| Confirm whether the proposal is aligned with public and Government interests. |
| Confirm the proposal justifies exclusive negotiations and agree on the approach to managing IP. |
| Approve the membership of the assessment support to the Inbound Proposal Manager. |
| Agree on feedback to be provided to Proponents at Stage 0 and 1. |
| Provide policy and inter-agency input to deliberations. |
| Monitor and report on progress of assessments. |
| Make recommendations to Government (Cabinet) for the proposal to progress from Stage 1 to Stage 2. |
| Determine that proposal does not meet the criteria for progression and inform the Proponent and Government (Cabinet). |

Proposal Specific Steering Committee

For certain proposals the MLP Steering Committee or Government (Cabinet) may direct a Proposal Specific Steering Committee be established to oversee assessment of that proposal, typically as Proposals proceed to Stage 2 of the assessment process, with Committee representation that has the necessary capability and experience to provide oversight and guidance to the proposal.

This Proposal Specific Steering Committee will report to update the MLP Steering Committee on progress only.

Membership of the Proposal Specific Steering Committee will typically include the lead Government agency (Chair) and a range of other agencies such as Treasury, DPMC, MBIE and other relevant agencies or Local Authorities, as appropriate and if directed by the MLP Steering Committee.

Table 6: Proposal Specific Steering Committee responsibilities

| Proposal Specific Steering Committee |
|--|
| Approve the Governance Plan to be applied to Stages 2 and 3. |
| Approve the membership of the Assessment Control Group (and commercial/technical teams) and Negotiation Team for Stages 2 and 3. |
| Confirm the approach to assessing value for money. |
| Ensure relevant policy and proposal assurance processes are adhered to, where appropriate. |
| Seek advice from the Treasury and MBIE about whether a market-led proposal should be subject to other procurement policies or <i>Investment Management System</i> . |
| Provide policy and inter-agency input to deliberations. |
| Consider recommendations from the Assessment Control Group at Stages 2 and 3. |
| Endorse binding negotiation conditions prior to Stage 3. |
| Make recommendations to Government (Cabinet) to progress or not progress from: <ul style="list-style-type: none"> • Stage 2 to Stage 3, and • Stage 3 to entering final transaction documents. |
| Agree feedback to be provided to Proponents |

Escalation Panel

The role of the Escalation Panel is to provide guidance to the Market-led Proposal Steering Committee and the Proposal Specific Steering Committee on all matters that is directed to it, when matters cannot be agreed, as well as extension of time for Proposals (past the required timeframes to complete against Stage 2 or 3 Participation Agreement).

Membership will include senior stakeholders from the Treasury and DPMC, and the Responsible Agency once the Proposal has past Stage 1. It is expected that membership of the Escalation Panel may include:

- Treasury Secretary (Chair)
- Treasury Deputy-Secretary
- DPMC Secretary, and
- the responsible agency's Secretary or CEO.

A quorum of three is required for the panel meeting to proceed. The Panel will only meet as and when required.

Proposal Director

A Proposal Director is appointed once a proposal reaches Stage 2 of the assessment process. In most circumstances, the Proposal Director will be a representative of the Government agency with existing responsibility for the subject matter of the proposal.

A proposal may be referred to the most appropriate Government department, agency or Crown entity at Stage 2 to lead the assessment, resulting in a new Proposal Director being appointed to act as a central point of contact for the Proponent. When a proposal is referred to a particular agency, that agency will commit appropriate resources to fully participate in the proposal development and assessment processes.

For example, for a market-led proposal about transport infrastructure, the Proposal Director may be appointed by the New Zealand Transport Agency.

Assessment Control Group

An Assessment Control Group comprising appropriately qualified representatives will be established to undertake the proposal assessment. The involvement of the Assessment Control Group for Stage 2 will vary depending on the nature of the proposal.

The membership will be approved by the Proposal Specific Steering Committee and may involve representatives from a range of agencies including the lead Government agency, the Treasury, DPMC, NIFF and other relevant agencies.

The Assessment Control Group will:

- report to the Proposal Specific Steering Committee
- participate in meetings with the Proponent, where appropriate
- assess the Initial Submission and Detailed Proposal against the Assessment Criteria
- prepare recommendations to be made to the Proposal Specific Steering Committee
- prepare Assessment Reports as required by the Proposal Specific Steering Committee
- consider issues raised by the Proposal Specific Steering Committee, and
- prepare a proposed schedule of items for negotiation during Stage 3 (to be approved by the MLP Steering Committee/Proposal Specific Steering Committee (as appropriate) and/or Government (Cabinet), if required).

Negotiation Team

This team is similar in membership and establishment procedure to the Assessment Control Group.

Members of the Negotiation Team should not be a Steering Committee member, and will have suitable capability and experience in negotiating required contractual terms, including collective expertise in the following areas:

- legal
- commercial, and
- technical.

In accordance with its broader mandate, NIFF will provide financial and commercial expertise and advice to the relevant Government Agency or Crown entity as appropriate. The Proposal Specific Steering Committee may appoint external advisers to provide necessary subject matter expertise and support, including an independent expert negotiator to lead the Negotiation Team.

Agencies

The Responsible Agency for delivery of the proposal's project – where a proposal affects a particular department, agency or Crown entity – will commit appropriate expertise and experienced resources to fully participate in the assessment and proposal development processes.

At Stage 2 of the assessment process, proposals may be referred to Responsible Agency to lead the assessment and interactive proposal development with the Proponent.

For proposals where the Responsible Agency lacks project delivery capability, the Agency will work with Crown Infrastructure Delivery Ltd to perform the delivery agency role.

The Agency will provide assistance to the Proponent who is responsible in completing the relevant business case.

Local Authorities

Where Local Authorities such as councils have been identified as a critical stakeholder in the proposal, they may have representation in the governance structure. The engagement with Local Authorities will be coordinated via the Inbound Proposal Manager during Stage 0.

Appropriate governance arrangements will be agreed with the MLP Steering Committee and representatives of the Local Authority prior to commencement of Stage 1, and at commencement of each subsequent stage to ensure appropriate expertise and experienced resources are able to participate in the assessment and decision-making processes.

In the case that a Local Authority is a Proponent or forms part of a Proponent's consortia, a clear separation of responsibilities must be defined and maintained throughout the assessment process, and clearly documented and disclosed should the proposal progress to Stage 2.

Advisers

Advisers may provide expert advice to the Inbound Proposal Team, the Assessment Control Group and MLP Steering Committee or Proposal Specific Steering Committee (as needed and as appropriate). The following key advisers may be appointed to provide specialist expertise to assist in project scoping and assessment:

- legal
- financial and commercial
- technical, and
- environmental.

Other advisers may be appointed where specialist input is required. Advisers are to follow all proposal governance and probity requirements.

A specialist Proposal Director may be appointed from Stage 2, particularly for large and/or complex proposals.

Probity adviser

At Stage 1, a probity adviser will be appointed for proposals where the Steering Committee considers that the probity risk is sufficient to warrant appointment. Probity advisers will otherwise be appointed at Stages 2 and 3 of the assessment process.

The role of the probity adviser is to monitor and report on the application of the probity fundamentals during the assessment process. The probity adviser will:

- assist in the development of a Governance Plan (where applicable)
- provide a probity report at the end of each stage to be considered by the MLP Steering Committee or Proposal Specific Steering Committee (as appropriate) before the decision to proceed to the next stage (or otherwise). The probity adviser may provide interim reports at key milestones of the assessment or at the behest of the MLP Steering Committee or Proposal Specific Steering Committee (as appropriate), and
- report to the chair of the MLP Steering Committee or Proposal Specific Steering Committee (as appropriate) and will be available to Proponents to discuss probity related matters.

If the probity adviser has identified probity concerns for the proposal, this may be escalated to the Secretary to the Treasury or to the “escalation point of contact”, where one has been provided. An escalation point of contact is provided by the Government and the Proponent at Stages 2 and 3.

In the absence of a probity adviser, this role will be undertaken by the Inbound Proposal Manager.

Proponents are able to request the appointment of a probity adviser.

Appendix D – Schedule of information requirements

D1 – Information requirements for Stage 1

This form is to be completed by the Proponent for Stage 1

| | | | |
|---|---|------------------------------|---|
| Organisation Name: | | Address: | |
| Identity: | [Individual, sole trader, company, etc, including consortium members if Proponent is a consortium]. | Type of organisation: | [profit/ non-profit, educational, small business, etc.] |
| Contact Person(s) details for evaluation purposes: | | Date of submission: | |
| Concise title and summary of proposal (10-15 pages) | | | |
| <p>Short Title:</p> <p>Summary:</p> <p>Content preferably to include:</p> <ol style="list-style-type: none">1. Objectives of the proposal2. Method of approach, including preferred contractual arrangements3. Nature and extent of anticipated outcome(s)4. How the proposal will meet the assessment criteria for Stage 15. Short form Indicative Business Case, which includes a Risk profile & Strategic Assessment6. Intellectual Property and its potential commercial value on a credible basis | | | |

This proposal is to be signed by a representative of the Proponent authorised to represent the Proponent.

Name: _____

Position: _____

Signature: _____

Date: _____

D2 – Links to the Better Business Case requirements

In accordance to the Treasury's *Better Business Case* requirements (aligning with Cabinet Office Circular (23) 9⁸), development of a business case is required from Stage 1 onwards. Guidance on the preparation of businesses cases can be found here:

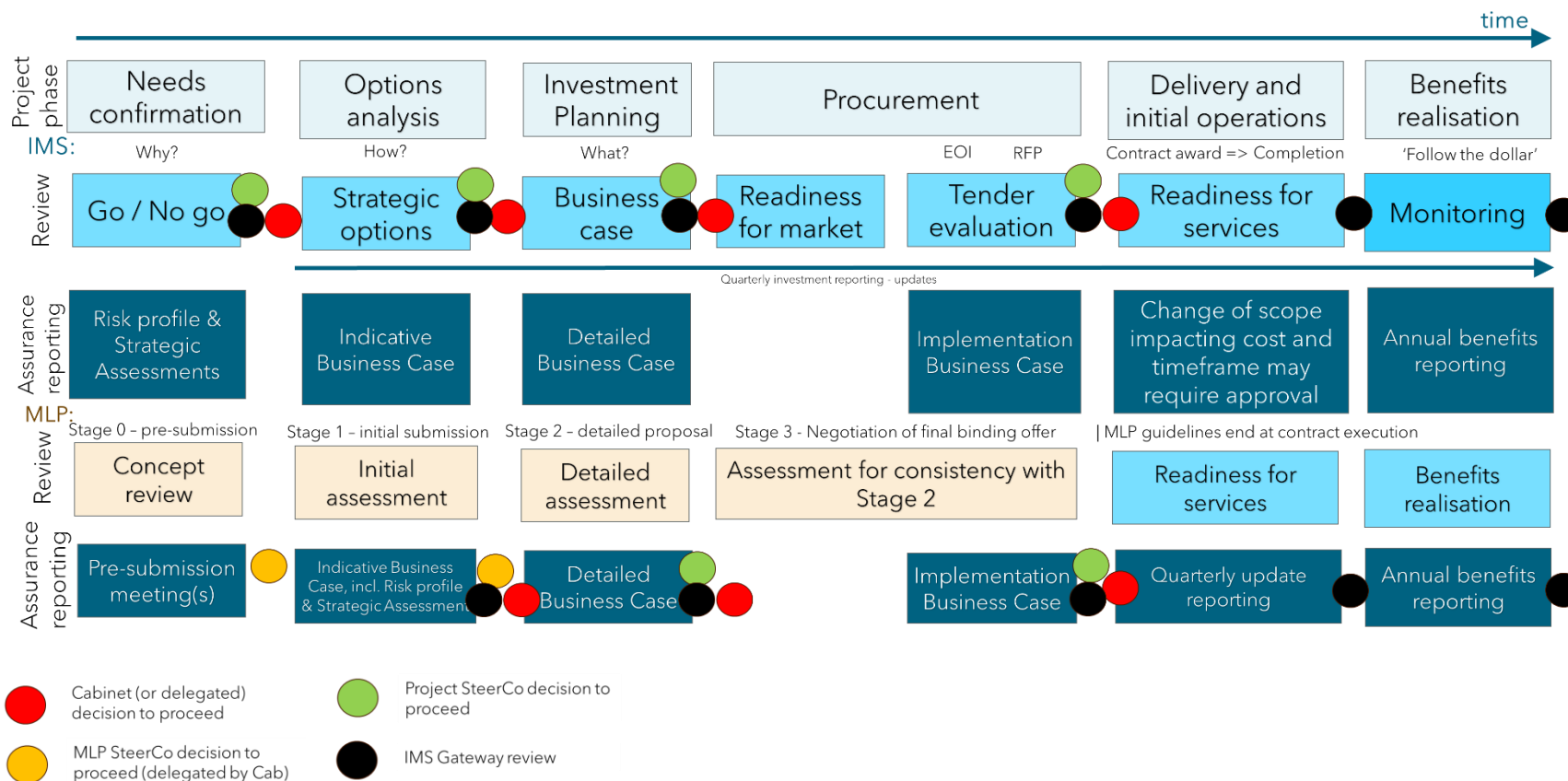
- Indicative business case: <https://www.treasury.govt.nz/information-and-services/state-sector-leadership/investment-management/better-business-cases/indicative-and-programme-business-cases>
- Detailed business case: <https://www.treasury.govt.nz/information-and-services/state-sector-leadership/investment-management/better-business-cases/detailed-business-case>
- Implementation business case: <https://www.treasury.govt.nz/information-and-services/state-sector-leadership/investment-management/better-business-cases/implementation-business-case>

The relevant department, agency or Crown entity will provide assistance to the Proponent who is responsible in completing the relevant business case.

⁸ Refer link: CO (23) 9: Investment Management and Asset Performance in Departments and Other Entities - 18 September 2023 - Cabinet Office

D3 – Aligning MLPs with Government’s assurance process for high-risk projects

For Government, it is optimal to align the assurance reporting requirements for the new MLP process with the assurance framework that has been developed for traditional delivery – the Investment Management System (IMS) for major or high-risk⁹ projects. The diagram below shows how this can be achieved, comparing the two processes:



⁹ As determined from the Risk Profile Assessment (refer <https://www.treasury.govt.nz/information-and-services/state-sector-leadership/investment-management/investment-planning/risk-profile-assessment-and-strategic-assessment>)

D4 – Stage 0 – Mandatory – Pre-submission review meeting checklist

The following checklist should be completed prior to the formal pre-submission review meeting with the Inbound Proposal Manager.

| Item | | YES | NO |
|------|--|--------------------------|--------------------------|
| 1 | Do have any potential or actual conflicts of interest, including all contact between Proponents and the Government and/or public officials? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 | Do you have indicative information relating to, or can clearly articulate how you can complete the form – for D1 – Information requirements for Stage 1? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 | Are you the only party that can deliver the outcome(s) of your proposal? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4 | You acknowledge that summary details of the proposal will be published if the proposal progresses to Stage 2 and Stage 3 in line with probity protocols. | <input type="checkbox"/> | <input type="checkbox"/> |

Note: it is recommended that, when the Proponent contacts the Inbound Proposal Manager, they provide brief (high-level) summary information, including where 'YES' has been checked above. This will enable a more effective conversation at the pre-submission review meeting.

Appendix E – Glossary of terms

Table 7: Glossary of terms

| Title | Meaning |
|--|---|
| Assessment Criteria | The criteria against which market-led proposals will be assessed. |
| Assessment Control Group | A panel of Government representatives established to assess a market-led proposal (this may include specialist advisers). |
| Cabinet | The forum of Government Ministers who deliberate upon and decide major policy for the Government. For the purposes of this guide, this includes the relevant sub-committees of the Cabinet. |
| Developed concept | Developed concepts is where the Proponent has developed an idea to a satisfactory level where the Proponent: <ul style="list-style-type: none"> has considered feasibility indicating genuine commercial value or utility in the market, and has made demonstrable investment in the development and has been stress tested. |
| Detailed proposal | A submission by a Proponent to Government at the conclusion of Stage 2. |
| Established Meeting | The first meeting between Government and the Proponent held at the commencement of Stage 2. |
| Final Binding Offer | A formal proposal submitted by a Proponent at the conclusion of Stage 3 which is capable of acceptance by Government. |
| Government | This refers to the New Zealand Government, and includes departments, agencies, crown entities and Cabinet of the New Zealand Government. Where possible, specific reference to Cabinet is made throughout the guidelines. |
| Government Website | https:// www.nationalinfrastructure.govt.nz |
| Inbound Proposal Manager | The person with responsibility for coordinating Government receipt and assessment of a market-led proposal. |
| Initial Submission | A submission by the Proponent during Stage 1 which provides an overview of the market-led proposal (in accordance with Appendix). |
| Initial Schedule of Information Requirements | Information to be prepared by a Proponent in preparation for pre-submission review meeting with the Inbound Proposal Manager. |
| Intellectual Property | Inventions, original designs and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks; also trade secrets, proprietary know-how and other confidential information protected against unlawful disclosure by common law and through additional contractual obligations such as Confidentiality Agreements. |
| Market-led proposal | A market-led approach is where a Proponent wishes to deal directly with Government with a proposal, where the Government has not requested the proposal. |

| Title | Meaning |
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| | The Proponent's proposal may be a commercial proposition, project, or developed concept to build infrastructure ¹⁰ , provide goods or services ¹¹ , or undertake a major commercial transaction. |
| Market-led Proposal Steering Committee | A committee of senior Government representatives with responsibility for oversight of Government consideration of market-led proposals. A Proposal Specific Steering Committee may be established to oversee the assessment of a proposal as it proceeds to Stage 2, reporting progress to the Market-led Proposal Steering Committee. |
| Outcome(s) | Outcomes provided by the proposal, as defined by the Proponent (and approved by Government). |
| Participation Agreement | An agreement signed by Government and a Proponent at the commencement of the relevant Stage. |
| Proposal Director | A proposal may be referred to the most appropriate Government department, agency or Crown entity at Stage 2 to lead the assessment, resulting in a new Proposal Director from that agency being appointed to act as a central point of contact for the Proponent. |
| Proponent | Person, organisation, or consortium that submits a market-led proposal. |
| Proposal development workshop | Interactive meeting held between Government and a Proponent with the aim of progressing proposal development. |
| Value for money | The overall value of a proposal to Government (refer to Section 3.4 for further details). |

¹⁰ Infrastructure refers to all public infrastructure, including transportation, health, education, utilities, energy, telecommunications, precincts.

¹¹ Including information and communication technologies.