

AUGUST 2021

MARKET-LED PROPOSALS GUIDELINE

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The Victorian Government's Market-led Proposals Guideline provides a valuable pathway for business and government to work together to generate innovative proposals that can meet Victoria's service or infrastructure needs and support economic growth.

In most cases, traditional government procurement processes can achieve the best value-for-money solutions to meet our objectives. However, the Government also encourages quality proposals to be brought forward when the private sector sees opportunities to provide public infrastructure or services.

Proposals will only proceed where they meet government objectives, deliver benefits to Victorians, achieve value-for-money and provide a compelling justification to support any exclusive negotiation.

The Market-led Proposals Guideline outlines the process for parties seeking to approach government with new and innovative proposals. The August 2021 version of the guideline has been updated to streamline the assessment and approval process to reduce assessment timeframes. The same high level of probity and disclosure requirements have been maintained, ensuring the framework upholds the Government's commitment to the highest levels of fairness and transparency.

The Government welcomes market-led proposals and looks forward to working with the private sector to develop and implement proposals that meet the needs of Victorians.

Tim Pallas, MP
Treasurer

Overview

Market-led proposals allow the Government to harness private sector investment and entrepreneurship to deliver innovative proposals for the infrastructure or services Victoria needs.

The Market-led Proposals Guideline (guideline) gives a single, consistent and transparent process for private proponents seeking to bring proposals directly to government. It also provides a framework for considering whether market-led proposals benefit Victoria.

The guideline emphasises that proposals will, wherever possible, incorporate competitive downstream tendering as part of the proposal to ensure value-for-money outcomes.

2021 updates

The guideline was released in February 2015 and has had several subsequent updates with this most recent update published in August 2021. The 2021 guideline has been restructured to reduce assessment timeframes, improve the quality of proposals and ensure proposals deliver the best value for Victorians. This has been achieved by reducing the number of assessment stages from five to three, streamlining the assessment criteria and improving governance and approval processes.

The separate process for assessing innovative ideas, which are ideas that have not been fully developed into a commercial proposition, has been incorporated into the assessment process for proposals. Under this change, government will

still be able to negotiate the purchase of intellectual property on a case-by-case basis where it represents value-for-money.

Objectives

In implementing this guideline, the Government's objectives are:

- a) developing and implementing proposals from the private sector that provide benefit to Victorians
- b) supporting economic growth and creating jobs and new skills in Victoria
- c) ensuring a transparent and fair process that maintains the highest level of probity and public accountability.

Audience

This guideline is for proponents seeking to submit a proposal to government and for public sector agencies responsible for assessing proposals. Table 1 outlines the functions and benefits of using this guideline for the intended audiences.

Table 1: How to use this guideline

Audience	Role in the market-led proposal process	Function of the guideline
<p>Private proponents</p>	<ul style="list-style-type: none"> • Develop and submit a market-led proposal that meets the market-led proposal assessment criteria. • Provide government with appropriate information to assess the proposal against the market-led proposal assessment criteria. • Agree the terms of exclusive negotiation, including the requirements of any probity and process deeds. • Submit a final offer (as applicable). 	<ul style="list-style-type: none"> • Informs proponents of government expectations and the type of information required in proposals. • Identifies key tools and guidance that may support the development of a proposal.
<p>Government departments assessing proposals</p>	<ul style="list-style-type: none"> • Support the Department of Treasury and Finance (DTF) to complete filtering and due diligence assessments in stage one. • Undertake the assessment, in consultation with DTF, from stage two onwards. • Confirm funding availability to deliver a proposal. • Plan for and undertake procurement and negotiation. 	<ul style="list-style-type: none"> • Outlines the key steps and processes typically required to assess market-led proposals. • Identifies key milestones and products that should be delivered to support the progression of a market-led proposal. • Identifies key tools and guidance to support the assessment of a proposal.

Scope of market-led proposals included under the guideline

A market-led proposal is a proposal from the private sector to government where government has not requested the proposal. It involves proponents developing an infrastructure project or service specification and then approaching government for support for the proposal.

While market-led proposals are assessed under this guideline, government's Investment Lifecycle and High Value High Risk (HVHR) Guidelines and other procurement guidance products provide practical guidance as to what sort of information and detail may be required during the assessment.

Exclusions from the guideline

Types of proposals that will generally not be considered under the guideline include those that:

- provide widely available goods or services, including proposals for consultancy services or goods or services covered by state purchase contracts, panel arrangements or standard tendering processes¹
- seek to circumvent existing government approval processes
- are early concepts, lack supporting evidence or do not contain sufficient and relevant information to enable assessment

- seek to obtain industry assistance, development or seed funding to further develop a proposal or concept
- relate to a project where the procurement process has started, whether published or not
- are the same or a substantially similar proposal to one that was previously submitted in the last 24 months by the same proponent and did not progress
- have a combined scope, value and risk profile that does not warrant consideration in accordance with this framework
- seek to directly acquire, lease or licence a government land parcel or Crown Land without the proposal having characteristics supporting further consideration
- relate to social and affordable housing.²

The three-stage assessment process

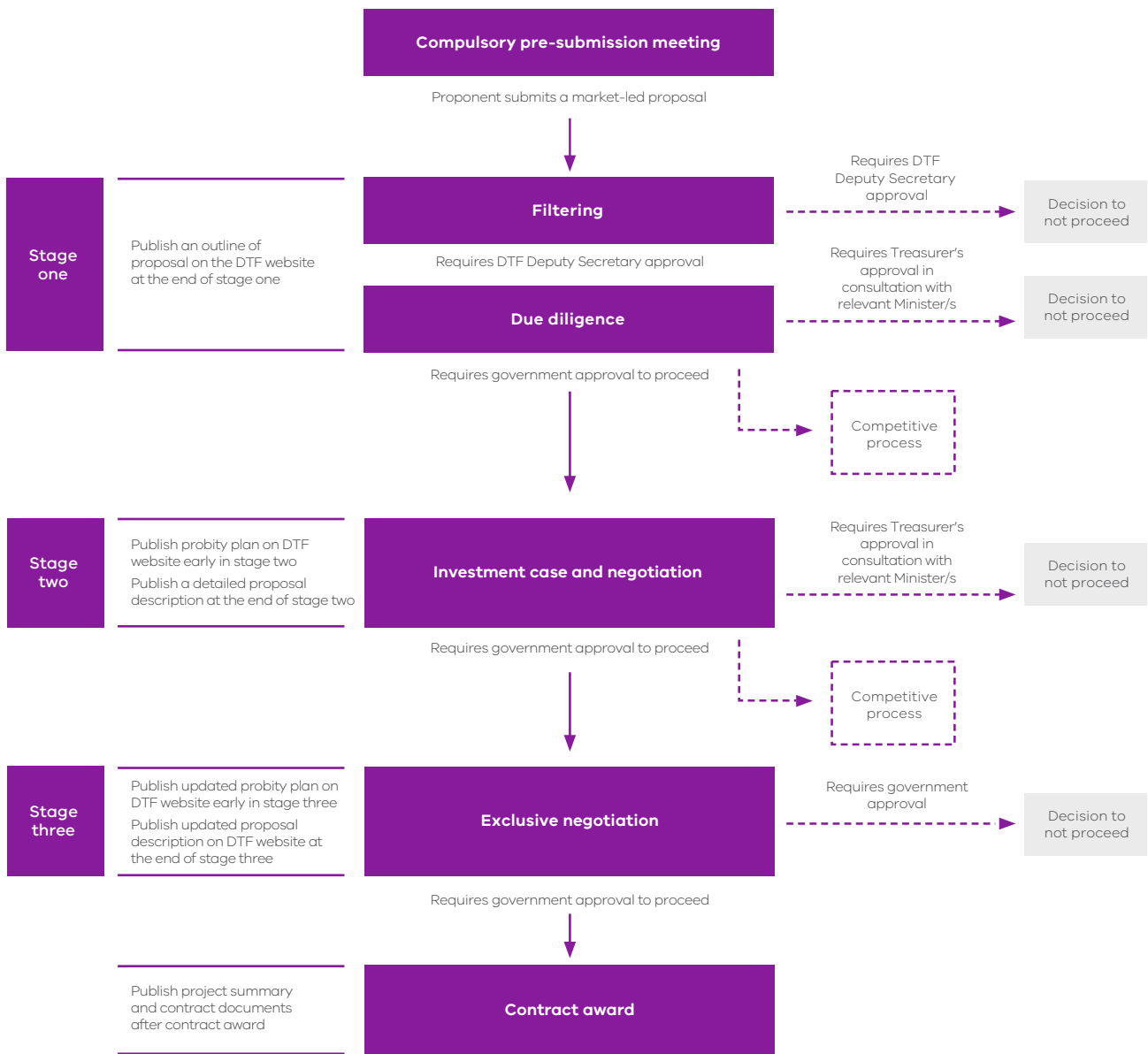
The three-stage process for assessing proposals is outlined in Figure 1. However, government may tailor this assessment process to specific proposals should it deem this to be appropriate.

¹ Including goods and services as detailed in Part 7A of the Financial Management Act 1994.

² Any such proposal should be directed to Homes Victoria.



Figure 1: Market-led proposal assessment process



Governance and administering the guideline

Governance

The Treasurer is the Minister responsible for the guideline.

DTF receives all proposals and is the primary contact for pre-submission meetings. DTF will lead the assessment of proposals in stage one, in consultation with relevant departments and agencies.

A steering committee will be established if a proposal progresses past filtering into the due diligence assessment in stage one. The steering committee will implement a governance plan outlining key roles and responsibilities. The steering committee will also oversee the assessment, due diligence and negotiation processes for the relevant proposal, and make recommendations that will be presented to government.

DTF will chair the steering committee during the due diligence assessment in stage one. In stages two and three, the steering committee will be chaired by a representative from the government-approved lead department, which could be DTF or the portfolio department or agency. DTF will be represented on the steering committee for all proposals.

A Senior Responsible Owner (SRO) for the project will also be nominated in stage two. The SRO will chair the steering committee. The SRO will be accountable for ensuring that the proposal is appropriately assessed and that senior executives and relevant Ministers of the lead department are briefed throughout the assessment process.

During stages two and three the assessment will be done by the government-approved lead department, which could be DTF but is usually the portfolio department or agency. Where the assessment is led by the portfolio department or agency this will be in consultation with DTF.

Departments will work collaboratively to conduct due diligence and assess proposals.

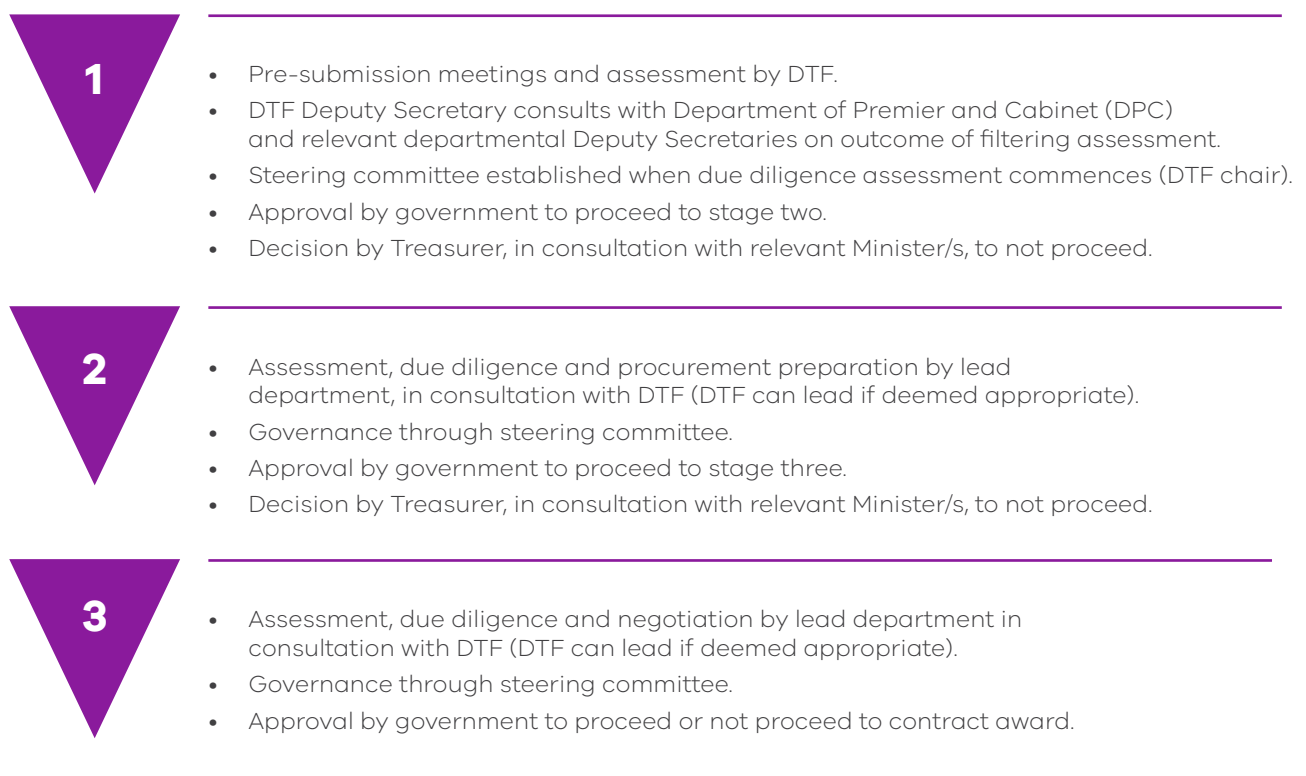
The governance and assessment of proposals is outlined in Figure 2.

Approvals

The Treasurer or the Deputy Secretary, Commercial Division of DTF approves the assessment outcome of a filtering assessment in stage one.

The Treasurer, in consultation with the relevant portfolio Minister/s, is authorised to agree to a recommendation that a proposal not progress at the end of the due diligence assessment in stage one and at the conclusion of stage two. Government approval is required to progress a proposal at the end of each stage, and to not progress a proposal at the end of stage three.

Figure 2: Governance of the market-led proposal assessment process



Market-led proposal assessment criteria

Proposals will be assessed by DTF and/or the lead agency against the market-led proposal assessment criteria outlined in Table 2. Proponents should take note of the criteria when preparing proposals.

Table 2: Market-led proposal assessment criteria

Market-led proposal assessment criteria	Considerations
a) Does the proposal meet a service need aligned with government policy objectives?	<p>The assessment will consider the following issues as appropriate:</p> <ul style="list-style-type: none"> • Does the proposal address a clear service need? • Are there other viable options for addressing the stated need? • Does the proposal align with government policy? • Is the proposal consistent with government’s timeframes?
b) Does the proposal represent value-for-money?	<p>The assessment will consider the following issues as appropriate:</p> <p>Benefits</p> <ul style="list-style-type: none"> • Are the quantitative and/or qualitative benefits clearly define (project specific and wider)? • Are the benefits likely to be achieved and are there any risks to achieving them? • Are there critical dependencies (for government and other parties) to achieving the benefits? <p>Costs</p> <ul style="list-style-type: none"> • How reasonable are the cost estimates given the available information? • Are the costs itemised and evidenced-based? • Do the cost estimates include an appropriate risk allocation and contingency? <p>Value-for-money</p> <ul style="list-style-type: none"> • Are the benefits sufficient when compared to the costs? • How does the proposal compare with other options available to government to achieve the benefits? <p>Note: other options could include government delivering the infrastructure or service, or the broader market being engaged through a competitive process.</p>
c) Is the proposal affordable and a relative priority for budget funding?	<p>The assessment will consider the following issues as appropriate:</p> <ul style="list-style-type: none"> • How much, if any, government funding is required to support the proposal? • Is the proposed funding affordable given competing government budget priorities? • Have realistic, credible alternative funding sources been explored to make the project more affordable?

Market-led proposal assessment criteria

Considerations

d) Is the proposal deliverable?	<p>The assessment will consider the following issues as appropriate:</p> <ul style="list-style-type: none">• Is there a clear commercial proposition?• Is there evidence to support that the proposal can be delivered on time and to budget?• Is the proposed financing of the proposal feasible?• Is the proposal technically feasible?• Does the proponent (and the related supply chain) have the capability and capacity to deliver the proposal?
e) Does the proposal have characteristics that justify exclusive negotiation?	<p>The assessment will consider the following issues as appropriate:</p> <ul style="list-style-type: none">• Can the proposal be readily delivered by other market participants? If yes, then what would be gained by government not conducting a competitive tender process?• Does the proponent have a significant competitive advantage including:<ul style="list-style-type: none">– genuine intellectual property or genuinely innovative ideas – e.g. patents, copyrights or other exclusive rights?– ownership of, or access to, strategic assets – e.g. rights under an existing contract, property, technology or software?• Are timeframes for delivery desirable to government? Note: a proponent may be able to deliver something faster than running a tender process but this is unlikely to be sufficient justification on its own.• Are there any other characteristics material to delivering the proposed outcome to justify exclusive negotiation? <p>Assessing this criterion will depend on the nature of the proposal and the combination of considerations presented. A proposal may not meet all characteristics but may be assessed as meeting the criterion when considered holistically.</p>

Progressive assessment of market-led proposals

The market-led proposal assessment process allows for proponents to refine and further develop their proposal as it progresses through the assessment stages. Initial proposals should include enough information to enable assessment against the market-led proposal stage one assessment criteria.

DTF and/or the lead department will also progressively assess proposals against the market-led proposal assessment criteria.

The market-led proposal assessment process will vary based on the size and complexity of the proposal. On occasions, a proposal may proceed to the next assessment stage even though further information is required from the proponent to clarify an aspect of the assessment that would normally need to be completed to progress. The additional information would then be expected to be provided during the subsequent stage.

Table 3 outlines the typical approach to assessing proposals against the market-led proposal assessment criteria, noting that:

- a *potential* to meet a criterion means that there is a pathway for a proposal to satisfy that criterion
- a *partially complete* assessment means that based on the substantial available information the proposal is likely to satisfy the criterion, but further information is expected which will need to be analysed to complete the assessment
- a *substantially complete* assessment means that the proposal satisfies this criterion unless new information triggers a reassessment of the criterion
- there is a need to *monitor changes* to the proposal to determine whether it has altered in scope or composition to the extent that assessments that have been substantially completed are compromised or need to be reconsidered.

While Table 3 outlines the progressive approach to assessing proposals, it may also assist proponents determine the level of development and documentation required at each stage of the assessment process.

Table 3: Progressive assessment of market-led proposals

Market-led proposal assessment criteria	Stage one – Filtering	Stage one – Due diligence	Stage two – Investment case and negotiation	Stage three – Exclusive negotiation
a) Does the proposal meet a service need aligned with government policy objectives?	Assess potential	Substantially complete	Monitor changes	Complete
b) Does the proposal represent value-for-money?	Assess potential	Assess potential	Partially complete	Complete
c) Is the proposal affordable and a relative priority for budget funding?	Assess potential	Partially complete	Substantially complete	Complete
d) Is the proposal deliverable?	Assess potential	Partially complete	Substantially complete	Complete
e) Does the proposal have characteristics that justify exclusive negotiation?	Assess potential	Substantially complete	Monitor changes	Complete

HVHR assurance

Government will determine whether an infrastructure related proposal is subject to the HVHR Project Assurance Framework at the end of stage one. Proposals with a total estimated investment above \$250 million, or those deemed to be high risk by government, are subject to the framework.

The HVHR assurance framework aims to increase the likelihood that infrastructure projects will be delivered on time and to budget. While the framework is designed for public sector business cases and projects, it is also relevant for market-led proposals.

Where a proposal is subject to HVHR assurance, the assessment of the proposal will incorporate elements of centralised oversight and Gateway reviews, as detailed in a project specific Project Assurance Plan tailored to the risk profile of the proposal and approved by government at the end of stage one. The application of the HVHR assurance framework to market-led proposal assessments is outlined in Appendix 2.

Intellectual property

Intellectual property (IP) includes inventions, original designs and practical applications of good ideas protected by statute law through copyright, patents, registered designs, circuit layout rights and trademarks. It also includes trade secrets, proprietary know-how and other confidential information to the extent they are protected against unlawful disclosure and use by government through common law or through additional contractual obligations such as confidentiality agreements.

The treatment of IP will be formalised if the proposal progresses to stage two. Where government chooses not to proceed with a proposal past this stage and wishes to use IP, the proponent will be entitled to appropriate compensation subject to government agreement. Any agreement relating to payment for IP will represent value-for-money and cover whether the proponent keeps the right to use IP and the ability of government to own, transfer, licenses or sub license the IP, as required.



Resource commitments

For market-led proposals to progress, the proponent and government will be required to commit resources to the assessment process. The staged approach to assessment seeks to balance requirements and resource input at each stage to reduce the potential for unnecessary expenditure.

The participation of a proponent in any stage of a market-led proposal process or in relation to any matter concerning a proposal, is at the proponent's sole discretion, cost and risk. In select circumstances, government may agree to some proposal cost reimbursement. This will be considered on a case-by-case basis, typically at the start of the stage two assessment.

Where a proposal relates to a particular government department or agency, they will commit appropriate resources to fully participate in the assessment and proposal development processes. The public sector is responsible for the cost of assessing proposals.

Probity

Public sector probity requirements

Public officials will implement probity plans and ensure systems, policies and procedures are in place that maintain the integrity of the decision-making process.

Proposals will be assessed in accordance with DTF's Probity Plan for Stage One Assessments.

A proposal specific probity plan will be developed and implemented for each proposal progressing to stage two.

The probity plan aims to:

- ensure prescribed processes have been followed and adhered to
- ensure the processes are equitable and conducted with integrity
- ensure conformity to processes designed to achieve value-for-money
- provide accountability
- preserve public and proponent confidence in government processes
- ensure defensibility of decisions to potential legal challenge or other external scrutiny.

The probity plan is required to set out proposal governance and decision-making processes and aims to ensure:

- compliance with legal and policy requirements
- fairness and impartiality
- consistency and transparency of process
- security and confidentiality
- identification and declaration of conflicts of interest
- how compliance with the probity plan will be reviewed and assessed.

DTF will seek advice from a probity adviser for stage one assessments, as required. A proposal specific probity adviser will be appointed by the lead department for stages two and three.

Proponent probity requirements

Proponents are encouraged to meet with relevant departments and agencies before submitting a proposal to gain an understanding of the government's service needs and budget capacity.

Proponents must declare any actual or perceived conflicts of interest when submitting a proposal to DTF. During the filtering assessment in stage one, proponents should not enter discussions with public officials from departments and agencies other than the nominated DTF officer, or discuss the proposal with any media organisations unless agreed with DTF.

If a proposal progresses to the due diligence assessment in stage one, proponents are required to sign a formal commitment with respect to confidentiality, communication protocols and conflicts of interest.

Early in stage two, a probity and process deed will be agreed to guide interaction between public officials and proponents. A separate exclusive negotiation deed which includes probity and process requirements will guide negotiation in stage three. Proponents may also need to appoint a probity adviser in stages two and three to advise and represent the proponent in any probity issues that arise (e.g. to support any downstream tendering).

A proponent must not offer any incentive to, or otherwise attempt to, influence any person who is either directly or indirectly involved in any stage of the assessment process. Government may disqualify a proposal from further consideration if it is determined a proponent has not complied with its probity requirements at any stage of the process.

Disclosure

DTF is responsible for coordinating disclosure and advising the Treasurer when information is disclosed.

Proposal details will not be publicly disclosed during the filtering assessment in stage one. However, DTF reserves the right to disclose details of a proposal if a proponent has not complied with its probity requirements and in the circumstances set out in Appendix 3.

All proposals will be publicly disclosed on the DTF website at the end of the due diligence assessment in stage one. This will include the name of the proponent, the proposal title, a proposal description and the outcome of the assessment.

A more detailed proposal description will be published on the DTF website at the end of stage two and updated in stage three as necessary. A project summary and contract will be published following contract award.

Proponents will be notified and consulted when any information is disclosed. The extent and timing of disclosure will depend on the nature of the proposal.

Terms and conditions

This guideline is a general statement of intent on how government will treat market-led proposals, rather than a binding process. Market-led proposals can take various forms and, therefore, government may tailor this process to the specific market-led proposal should it deem this to be appropriate.

Government may consider any other factors it considers relevant to the assessment of a market-led proposal. General terms and conditions relating to the guideline are provided in Appendix 3 and apply notwithstanding anything to the contrary in the guideline.

Pre-submission meeting

Private proponent role

For the pre-submission meeting/s, the proponent will need to:

- complete and submit the pre-submission template providing an outline of the proposal to DTF
- meet with DTF to understand the market-led proposal process and seek feedback on what is proposed.

Public sector role

For the pre-submission meeting/s, DTF will need to:

- determine if sufficient information has been provided in the pre-submission meeting template before arranging a meeting
 - arrange the pre-submission meeting/s and consider whether other departments or agencies should attend
 - provide advice to the proponent on the market-led proposal assessment process and provide feedback to the proponent and comment on a proposal's likely alignment with the market-led proposal assessment criteria.
-

Compulsory pre-submission meeting

Proponents are required to meet with DTF before submitting a proposal.

To arrange a pre-submission meeting, proponents should prepare and submit to DTF a pre-submission meeting template summarising the proposal. Before this meeting, proponents are encouraged to review the Government's priority areas for market-led proposals (available on the DTF website).

The primary purpose of a pre-submission meeting is to support proponents to understand how a proposal should address the market-led proposal assessment criteria, in particular how it demonstrates that it has characteristics that justify exclusive negotiation, meets the service needs of government and aligns with government's policy objectives.

The pre-submission meeting could also be used to test concepts and informally explore whether a potential proposal has a reasonable chance of meeting the assessment criteria before committing significant resources to the development of a formal proposal. Multiple pre-submission meetings may be held, at the discretion of DTF.

Ideally the first meeting would occur early in the proposal development process, which would allow DTF to provide guidance on the proposal's likely alignment with the market-led proposal assessment criteria. Additional meetings could occur when the proponent has developed the concept further, which would allow DTF to provide more detailed feedback to proponents including on the type of information typically required to address market-led proposal assessment criteria. Representatives of other government departments or agencies may be invited by DTF to attend pre-submission meetings.

The pre-submission template and the content of discussions will be kept confidential to government.

Regardless of the nature and extent of feedback provided by DTF in the pre-submission meeting, any decision to proceed with submitting a formal market-led proposal remains solely at the proponent's discretion, cost and risk.

Market-led proposals are one of a range of options for proponents to interact with government. There are other established channels through Invest Victoria and other areas of government. DTF may also refer proponents to other areas of government that may be more appropriate for the proposal.

To request a pre-submission meeting, a copy of the pre-submission template or make enquiries regarding the market-led proposal process, please contact:

Market-led Proposals Secretariat

Commercial Division
Department of Treasury and Finance
Level 5, 1 Treasury Place
Melbourne Vic 3002
email: marketledproposals@dtf.vic.gov.au

STAGE

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Proposal filtering

1.1. Submitting a proposal

Stage one of this guideline starts when a proponent formally submits a market-led proposal to DTF.

All proposals should be submitted to:

Market-led Proposals Secretariat

Commercial Division

Department of Treasury and Finance

Level 5, 1 Treasury Place

Melbourne VIC 3002

email: marketledproposals@dtf.vic.gov.au

1.2. Stage one assessment process

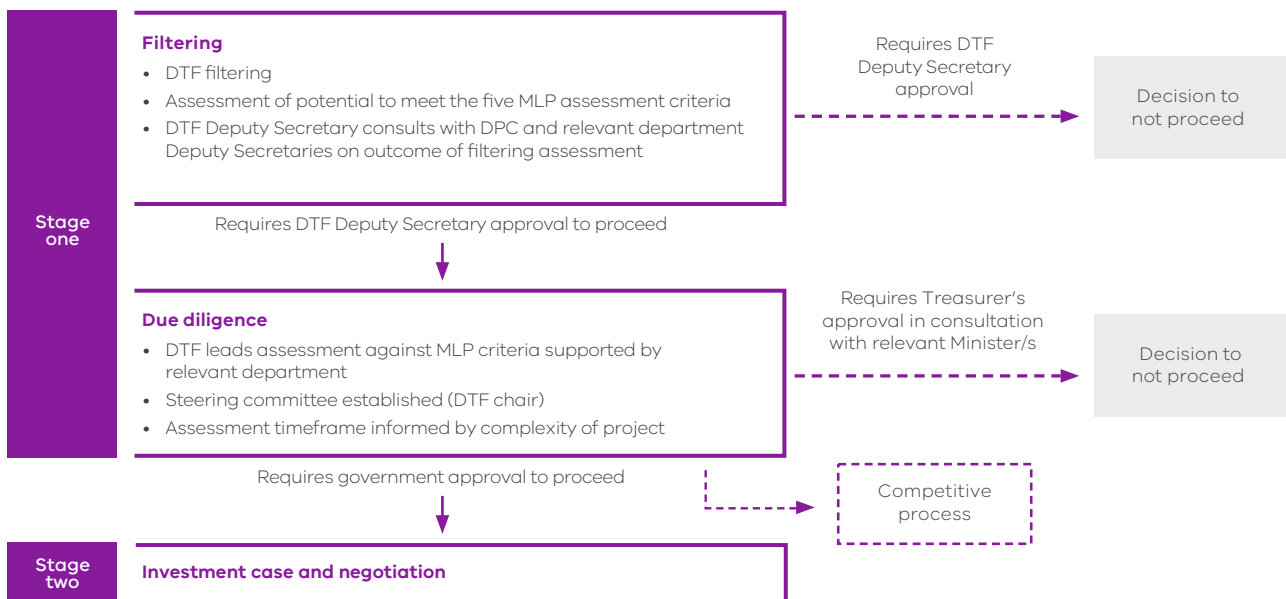
Stage one of the guideline has two parts:

- an initial filtering assessment
- a due diligence assessment.

The filtering assessment considers the potential to meet the market-led proposal assessment criteria, the relevance of the information provided and whether the proposal is within the scope of the guideline.

The due diligence assessment is a more detailed analysis that includes a more rigorous assessment of the proposal against the market-led proposal assessment criteria. If considered suitable to proceed, this assessment will consider whether it should be through exclusive negotiation or a competitive tender process.

Figure 3: Stage one assessment process



1.3. Filtering objectives

The filtering assessment will determine whether the proposal has the potential to meet the market-led proposal assessment criteria.

1.4. Private proponent role (filtering)

During stage one filtering, the proponent will:

- submit an appropriately developed proposal, relative to the proposal's size and complexity, addressing the assessment criteria and requirements in the submission checklist
- provide additional information requested by DTF to support the assessment of the proposal.

1.5. Public sector role (filtering)

DTF, in consultation with the relevant departments and agencies, will conduct a preliminary assessment against the market-led proposal assessment criteria and determine whether the proposal has sufficient information.

1.6. Filtering outcomes

The following outcomes may result from this stage:

- a) the proposal meets the market-led proposal assessment criteria for stage one filtering and proceeds to stage one due diligence
- b) the proposal does not meet the market-led proposal assessment criteria, but the proponent is referred to a competitive process
- c) the proposal does not meet the market-led proposal assessment criteria and does not proceed to stage one due diligence.

1.7. Undertaking filtering

It is important that proposals make a case as to why they should be considered under the guideline instead of through standard procurement or other government processes.

Proposals should be appropriately developed with complete information as DTF does not usually request further information from proponents during the stage one filtering process. However, proposals are not expected to be developed to the same extent as a public sector business case at initial submission. Proponents need to judge the resources required to prepare a market-led proposal with enough information in order to demonstrate evidence against the assessment criteria. Proponents should consider any feedback provided by DTF during the pre-submission meeting when developing their proposal.

A submission checklist to assist in developing proposals can be found in Appendix 1. Proponents should also refer to government's Investment Lifecycle and HVHR Guidelines, in particular the Stage 1: Business case guide.

If a proposal proceeds through subsequent assessment stages, further information is likely to be requested from the proponent as part of the assessment process.

Should government become aware of information that materially affects a proposal, either during a pre-submission meeting or at any other time before government concludes its assessment, government may consider such information regardless of whether it was part of the formal proposal.

1.8. Market-led proposal assessment criteria in stage one (filtering)

The stage one filtering process will involve an assessment of the proposal to determine whether the proposal has the potential to meet the market-led proposal assessment criteria in accordance with Table 4.

DTF will undertake the stage one filtering assessment in consultation with relevant departments and agencies. Each proposal will be considered on the merit of the actual submission. The government may consider other information that it becomes aware of during the assessment at its sole discretion. However, typically when a proponent has engaged with a department, agency or Minister, that engagement will not be considered as part of the assessment.

Table 4: Market-led proposal assessment criteria for stage one – filtering

Market-led proposal assessment criteria	Stage one – Filtering
a) Does the proposal meet a service need aligned with government policy objectives?	Assess potential
b) Does the proposal represent value-for-money?	Assess potential
c) Is the proposal affordable and a relative priority for budget funding?	Assess potential
d) Is the proposal deliverable?	Assess potential
e) Does the proposal have characteristics that justify exclusive negotiation?	Assess potential

1.9. Assessment timeframe

DTF will complete the filtering assessment as quickly as possible, but timeframes for assessments will vary depending on the nature of the proposal and the level of government analysis required. Proponents should keep DTF informed of any critical time elements associated with assessing the proposal.

DTF will advise proponents of the status of the filtering assessment in 30 days of receipt of the proposal. DTF will then provide status updates as appropriate until stage one is complete.

1.10. Disclosure

The proposal will not be publicly disclosed during the filtering assessment in stage one. However, DTF reserves the right to disclose details of a proposal if a proponent has not complied with its probity requirements and in the circumstances set out in Appendix 3.

Proponents should be aware that details of the proposal will be publicly disclosed on the DTF website if a proposal progresses to the due diligence assessment in stage one.

STAGE

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Due diligence assessment

1.11 Due diligence objectives

Due diligence assessments are undertaken to identify the potential benefit to government of further consideration and development of the proposal with the proponent.

1.12 Private proponent role (due diligence)

During the stage one due diligence assessment the proponent will:

- have the option to give a presentation to DTF and relevant departments and agencies
- provide additional information if requested by DTF or relevant departments and agencies
- sign a formal commitment at the start of the due diligence assessment relating to confidentiality, communication protocols and conflict of interest.

1.13 Public sector role (due diligence)

During the stage one due diligence assessment, DTF will:

- undertake a due diligence assessment of the proposal against the market-led proposal assessment criteria, in consultation with relevant departments and agencies
- assess procurement options (upstream and downstream) to inform an approach to procurement in stage two, if required
- prepare key supporting documentation to facilitate the stage two assessment, if required
- assess the proposal in accordance with DTF's Probity Plan for Stage One Assessments.

1.14 Due diligence outcomes

The following outcomes may result from this stage:

- a) the proposal meets the market-led proposal assessment criteria for stage one due diligence and proceeds to stage two
- b) the proposal does not meet the market-led proposal assessment criteria, but the proponent is referred to a competitive process
- c) the proposal does not meet the market-led proposal assessment criteria and does not proceed to stage two.

1.15 Undertaking a due diligence assessment

DTF, supported by relevant departments and agencies, will perform due diligence to verify key elements of the proposal and to provide additional evidence to support decision making. The extent of the due diligence during stage one will depend on the nature of the proposal and whether the information in the proposal is sufficient to fully inform and support the stage one assessment.

DTF will interact with proponents through an open communication process. An updated proposal is not usually required from the proponent following the filtering assessment. The stage one due diligence assessment will be based on the original proposal. However, DTF may request further information from the proponent to support decision making. DTF may request modelling or reports and may also undertake workshops with a proponent to clarify aspects of its proposal. DTF may, at its own cost, commission independent advice to support these activities. DTF may also undertake a market sounding exercise to test market appetite to deliver comparable services, in consultation with the proponent.

Each proponent will have the option to present its proposal to representatives from DTF and other relevant departments and agencies during the due diligence assessment.

1.16 Market-led proposal assessment criteria in stage one (due diligence)

DTF, supported by relevant departments and agencies, will then undertake an assessment of the proposal against the market-led proposal assessment criteria outlined in Table 5.

The stage one due diligence assessment seeks to determine whether a proposal meets a service need aligned with government policy objectives and has a suitable justification for exclusive negotiation. It also continues to assess the proposal's potential to represent value-for-money, which at this point typically includes an analysis of the qualitative benefits and an initial quantitative assessment. The due diligence assessment also partially completes the assessment on whether the proposal will be deliverable and is of sufficient relative priority for government investment.

Table 5: Market-led proposal assessment criteria for stage one – due diligence

Market-led proposal assessment criteria	Stage one – Due diligence
a) Does the proposal meet a service need aligned with government policy objectives?	Substantially complete
b) Does the proposal represent value-for-money?	Assess potential
c) Is the proposal affordable and a relative priority for budget funding?	Partially complete
d) Is the proposal deliverable?	Partially complete
e) Does the proposal have characteristics that justify exclusive negotiation?	Substantially complete

The Government may also direct departments or agencies to investigate and consider standard competitive processes for projects that have attracted multiple market-led proposals that are aligned with key government priorities and for which a full competitive market exists.

1.17 Preparation for stage two

If a proposal is recommended to proceed to stage two, the following will be prepared by DTF for the Government’s approval as part of the stage one assessment:

- identification of key further due diligence to be done in stage two
- proposed timeframes for deliverables
- HVHR assessment, including a Project Assurance Plan (if applicable)
- Stage Two Governance Plan, which nominates the lead department and the SRO
- Stage Two Probity Plan.

The proponent may also further refine its proposal to support a stage two assessment if appropriate.

1.18 Assessment timeframe

The due diligence assessment in stage one varies depending on the complexity of the proposal. Timeframes for assessments will vary depending on whether further information is required as part of the assessment, the timeliness of proponent responses and the level of government analysis required.

DTF will provide status updates to the proponent as required.

1.19 Probity requirements

The proposal will be assessed in accordance with DTF's Probity Plan for Stage One Assessments.

Proponents are required to sign a formal commitment at the start of the due diligence assessment relating to confidentiality, communication protocols and conflict of interest.

1.20 Disclosure

All proposals will be publicly disclosed on the DTF website at the end of stage one due diligence. The proposal title, the name of the proponent, a proposal description and the outcome of the assessment.

STAGE 02

Investment case and negotiation

2.1 Stage two objectives

For the proponent and government to work cooperatively in resolving issues identified in stage one and further develop and assess the proposal. This is likely to include a more detailed analysis of value-for-money, preparation for procurement and consideration of funding availability.

2.2 Private proponent role

During stage two, the proponent will:

- agree the terms of a Stage Two Probity and Process Deed to guide interaction during stage two
- provide additional information on the proposal, which could include a revised submission, if requested by the lead department or DTF
- agree the Stage Two Stakeholder Plan, if required
- agree the Stage Three Exclusive Negotiation Deed, if required.

2.3 Public sector role

2.3.1 Lead department role

During stage two, the lead department or agency will:

- implement the Stage Two Governance Plan and Stage Two Probity and Process Deed
- be responsible for seeking approval for any funding allocation required for the proposal, including through the development of a business case, if appropriate
- undertake an assessment of the proposal against the market-led proposal assessment criteria for stage two, in consultation with DTF
- prepare the Stage Three Governance Plan and Stage Three Stakeholder Engagement Plan, if required
- agree the Stage Three Exclusive Negotiation Deed, if required.

2.3.2 Department of Treasury and Finance role

During stage two, DTF will:

- support the lead department to agree the Stage Three Exclusive Negotiation Deed, if required and continue to assess the proposal against the market-led proposal assessment criteria
- complete HVHR assessments and support the lead department to facilitate Gateway Reviews as detailed in the Project Assurance Plan approved by government at the end of stage one.

2.4 Stage two outcomes

The following outcomes may result from this stage:

- a) the proposal meets the market-led proposal assessment criteria for stage two and progresses to stage three
- b) the proposal does not meet the market-led proposal assessment criteria, but the proponent is referred to a competitive process
- c) the proposal does not meet the market-led proposal assessment criteria for stage two and does not progress to stage three.

2.5 Undertaking a stage two assessment

Stage two starts when the lead department and proponent agree to the terms of a Stage Two Probity and Process Deed. A standard deed will be provided to proponents by the lead department at the start of stage two and the terms will only be negotiated if necessary. The deed will encourage an open discussion process and address the following areas:

- confidentiality and approval requirements
- conflict of interest management arrangements
- communication protocols
- information requirements to undertake further due diligence, where necessary
- processes for treatment of IP
- avenues for the proponent to escalate any concerns of time and process
- rights and obligations of each of the parties.

2.6 Market-led proposal assessment criteria in stage two

The lead department will undertake an assessment of the proposal, in consultation with DTF, against the market-led proposal assessment criteria outlined in Table 6.

The stage two assessment seeks to substantially complete the analysis on whether the proposal is affordable and of sufficient relative priority for government to fund and is deliverable. The value-for-money assessment is also further progressed through this stage, with additional focus on the robustness of the proposal's costs. This stage of the assessment includes monitoring any changes to the proposal to determine whether it has altered in scope or composition to the extent that assessments that have been substantially completed are compromised or need to be reconsidered.

Table 6: Market-led proposal assessment criteria for stage two – investment case and negotiation

Market-led proposal assessment criteria	Stage two – Investment case and negotiation
a) Does the proposal meet a service need aligned with government policy objectives?	Monitor changes
b) Does the proposal represent value-for-money?	Partially complete
c) Is the proposal affordable and a relative priority for budget funding?	Substantially complete
d) Is the proposal deliverable?	Substantially complete
e) Does the proposal have characteristics that justify exclusive negotiation?	Monitor changes

2.7 Consideration of the investment case

2.7.1 Consideration of value-for-money

Value-for-money is progressively assessed throughout the market-led proposal assessment process. This recognises that the information to support a value-for-money assessment may only become available to the proponent or the lead agency when details of a proposal have been further investigated. Significant analysis on whether a proposal represents value-for-money typically occurs at stage two.

Value-for-money assessments will vary depending on the size and complexity of the proposal and include qualitative and quantitative considerations. Stage two and three assessments may be used to evaluate value-for-money propositions for some proposals while others will need to be presented to government through a business case or interim business case that compares the proposal to other options available to government.

When undertaking value-for-money assessments, DTF and the lead department will have regard to DTF's Economic Evaluation Technical Supplement to the Investment Lifecycle Guidelines (available at www.dtf.vic.gov.au) and other government investment and procurement guidance.

As part of a value-for-money assessment, the lead department may develop an appropriate benchmark, which will be used as a comparison to the proposal as part of value-for-money considerations. The benchmark will be developed where the scope of a proposal can be procured using traditional approaches, there is an equivalent reference project and budget funding is required.

Where proposals cannot be procured using traditional approaches, do not have an equivalent reference project or budget funding is not required, a realistic alternative is to be developed by the lead department. The realistic alternative estimates the public sector costs to deliver the benefits of the proposal.

In stage three, the benchmark or realistic alternative will be finalised to consider the outcome of exclusive negotiation.

As part of the value-for-money assessment and to confirm deliverability, the lead department and DTF will also need to confirm that relatively robust cost and budget estimates have been prepared. The proponent may also be asked to provide the lead department or its advisor with full access to pricing information at this stage.

2.7.2 Consideration of funding availability

During stage two or as part of finalising the stage two assessment, the lead department will be responsible for seeking government approval of a funding remit for the proposal to finalise exclusive negotiation in stage three. It is important to note that even when proposals are deemed to represent value-for-money, the decision on whether to provide funding is considered in the context of government's budget capacity, other options to achieve similar policy outcomes, and other existing budget priorities. This also applies to proposals which may not require immediate budget funding but have an impact on the State's balance sheet.

The level of detail required to support the lead department's funding remit request will vary depending on the nature of the proposal. The lead department may develop a business case or an interim business case to inform decision making which could outline other options for government around financing, funding and scope to achieve similar benefits of what is proposed. Any submission to government from the lead department requesting funding would need to provide reasonable information to demonstrate that the investment can be delivered on time, to budget and with the intended benefits. At a minimum, the assessment will include a baseline against a do-nothing option.

In considering what other options are viable and credible, government will be mindful that the market-led proposal is in the nature of an offer. Options that seek changes to the market-led proposal require both parties to acknowledge the risk that agreement might not be reached.

2.8 Preparation for procurement and negotiation

2.8.1 Preparation for procurement

Even though market-led proposals are procured through a sole source arrangement, a range of procurement activities may need to be done by the proponent and/or the lead department to ensure the procurement approach is appropriate and well planned.

Preparation for procurement can occur progressively over stages two and three of the guideline. For market-led proposals, unlike other standard infrastructure investments or procurement of goods and services, procurement activities can occur concurrently with the assessment of the investment case and before a Government decision to invest.

Depending on the type of investment, the following procurement and planning activities could be done by the lead department, or proponent, during stages two and three:

- developing a procurement strategy which assesses procurement options to confirm the most appropriate procurement methodology to deliver the market-led proposal
- preparing design documentation
- preparing material to satisfy other government procurement requirements such as the Victorian Local Jobs First policy
- developing market sounding and tender documentation (including for any downstream tendering)
- undertaking asset condition assessments or further due diligence
- contracts and contract evaluation documentation.

2.8.2 Agreeing to Stage Three Exclusive Negotiation Deed

The lead department and proponent will agree and formalise the terms of stage three exclusive negotiation through a Stage Three Exclusive Negotiation Deed. The deed will be approved by the Government and signed by both parties if the proposal progresses to stage three. The deed will encourage an open discussion process and address the following areas:

- information required from the proponent
- process for development and submission of the proponent's final offer including:
 - interaction protocols
 - the delivery by government of any request for proposal
 - key terms including those agreed and those to be negotiated in stage three
 - commercial principles for the contractual arrangements of the proposal
 - draft contracts.
- how competition will be incorporated and maximised e.g. competitive tender for downstream procurement (such as construction and debt components) and the role of government in these processes
- agreement on key elements of the proposal that would not be subject to competition and a process for determining and minimising these project costs e.g. open book, benchmarking, independent valuation
- the assessment criteria including a process for determining value-for-money
- timeframes for completion of the negotiation
- termination and exit arrangements

- the extent and timing of any cost reimbursement
- treatment of IP
- relevant aspects of the Stage Two Probity and Process Deed.

2.9 Preparation for stage three

If a proposal is recommended to proceed to stage three, the Government will be provided with the agreed Stage Three Exclusive Negotiation Deed to consider as part of the stage two assessment. This enables exclusive negotiation to begin in stage three, subject to Government approval.

A decision to proceed to exclusive negotiation does not commit government to enter into a contract with the proponent. The Government will decide whether to enter into a contract with the proponent at the end of stage three.

The following will also be prepared by the lead department for the Government's approval as part of the stage three assessment:

- proposed timeline for deliverables
- Stage Three Exclusive Negotiation Deed
- Stage Three Governance Plan
- Stage Three Stakeholder Engagement Plan, if required.

2.10 Assessment timeframe

The stage two assessment timeframe will vary depending on the nature of the proposal and the level of government analysis required.

2.11 Disclosure

The Stage Two Probity Plan will be publicly disclosed on the DTF website early in stage two.

A detailed proposal description will be publicly disclosed at the end of stage two. This will provide an overview of the proposal, the proposed scope and benefits and the reasons an exclusive negotiation is being pursued.

The Government will consult with the proponent on the content to be released and will not disclose proposal detail that poses a risk to the negotiation process or any competitive tender processes.

2.12 Intellectual property

Where government chooses not to proceed with a proposal past this stage and wishes to use IP, the proponent will be entitled to appropriate compensation subject to government agreement. Any agreement relating to payment for IP will represent value-for-money and cover whether the proponent keeps the right to use IP and the ability of the Government to own, transfer, licence or sub licence the IP, as required.

2.13 Cost reimbursement

The process for any potential cost reimbursement will be agreed through the Stage Two Probity and Process Deed. Cost reimbursement will be decided by government on a case-by-case basis.

STAGE

03

Exclusive negotiation

3.1 Stage three objectives

To complete exclusive negotiation and finalise all outstanding issues with a view to being ready to enter into a binding agreement.

3.2 Private proponent role

During stage three, the proponent will:

- interact with government in accordance with the Stage Three Exclusive Negotiation Deed
- undertake negotiations with the lead department, in consultation with DTF
- undertake any procurement activities agreed with the lead department
- submit a final offer to government.

3.3 Public sector role

During stage three, the lead department will:

- interact with the proponent in accordance with the Stage Three Exclusive Negotiation Deed
- participate in downstream competitive processes, if required
- participate in any procurement activities agreed with the proponent
- undertake negotiations with the proponent
- prepare any contractual and supporting documentation, if required
- assess the proponent's final offer against the market-led proposal assessment criteria for stage three.

3.4 Stage three outcomes

The following outcomes may result from this stage:

- the proposal meets the market-led proposal assessment criteria and proceeds to contract award
- the proposal does not meet the market-led proposal assessment criteria and does not proceed to contract award.

3.5 Undertaking exclusive negotiation

Exclusive negotiation will be based on the approved Stage Three Exclusive Negotiation Deed.

The proponent should provide a final offer to government after exclusive negotiation concludes. The final offer should confirm the proposed scope, cost to government, risk allocation and benefits.

The lead department, in consultation with DTF, may build up the necessary sections of any business case documentation to sufficiently inform government decision making. The lead department will participate in downstream competitive processes as agreed in the Stage Three Exclusive Negotiation Deed as this may impact on price and risk allocations agreed as part of the exclusive negotiation with the proponent. The lead department will also consider if the proposal has incorporated any relevant feedback from stakeholders.

3.6 Market-led proposal assessment criteria in stage three

The lead department, in consultation with DTF, will then assess the final offer(s) against the market-led proposal assessment criteria in Table 7.

The stage three assessment focuses on confirming value-for-money by finalising exclusive negotiation and the proponent presenting a final offer for government to consider. As with stage two, it also includes monitoring changes to the proposal to determine whether previous assessments are compromised or need to be reconsidered.

Table 7: Market-led proposal assessment criteria for stage three – exclusive negotiation

Market-led proposal assessment criteria	Stage three – Exclusive negotiation
a) Does the proposal meet a service need aligned with government policy objectives?	Complete
b) Does the proposal represent value-for-money?	Complete
c) Is the proposal affordable and a relative priority for budget funding?	Complete
d) Is the proposal deliverable?	Complete
e) Does the proposal have characteristics that justify exclusive negotiation?	Complete

3.7 Value-for-money assessment

Value-for-money assessments will usually begin in stage one with an initial analysis and continue through stage two with the development of a stage two market-led proposal evaluation and/or business case. In stage three, the value-for-money assessment is completed to ensure the Government secures appropriate value from exclusive negotiation. This may include refined cost and risk allocations based on any downstream tendering.

As noted in stage two, while the approach to assessing value-for-money for a market-led proposal will vary from proposal to proposal, it would often involve developing an appropriate benchmark or realistic alternative to compare the proponent's offer against other options available to government.

Value-for-money assessments will have regard to the:

- Business Case Investment Lifecycle and HVHR Guideline
- Economic Evaluation Technical Supplement to the Investment Lifecycle Guidelines (e.g. to inform the development of a Benefit Cost Ratio if appropriate)
- other investment and procurement guidance available on the DFT website.

3.8 Additional requirements for exclusive negotiation

The value-for-money assessment should also be supported by tests to ensure the proposal's costs are reasonable, including, where appropriate:

- appointing an independent third party to review and verify the proposal's costs
- requiring proponents to give the lead department open book and full access to all documentation and pricing information for the lead department to assess the proposal.

3.9 Preparation for contract award

When a proposal is recommended to progress to contract award, the Government will be presented for consideration:

- the stage three assessment
- a project governance plan to guide the project delivery phase
- a contract that is capable of award by the State and execution between both parties.

3.10 Assessment timeframe

The stage three assessment timeframe will vary depending on the nature of the proposal and the level of government analysis required.

3.11 Disclosure

The Stage Three Probity Plan will be publicly disclosed on the DTF website at the start of stage three.

The previously disclosed detailed proposal description will be updated at the conclusion of stage three. The Government will consult with the proponent on the content to be released.

3.12 Intellectual property

Where the Government chooses not to proceed with a proposal past this stage and wishes to use IP, the proponent will be entitled to appropriate compensation subject to government agreement. Any agreement relating to payment for IP will represent value-for-money and cover whether the proponent keeps the right to use IP and the ability of the Government to own, transfer, licence or sub licence the IP, as required.

3.13 Cost reimbursement

The process for potential compensation will be agreed through the Stage Three Exclusive Negotiation Deed.

Cost reimbursement will be decided by the Government on a case-by-case basis.

Contract award

Contract award to private proponent

Following the conclusion of stage three if approved by the Government, the State and the proponent enter into binding contractual arrangements.

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

Governance requirements

Contract execution will be arranged by the lead department, in consultation with DTF.

Project governance after contract award will be in accordance with the governance structure approved by the Government as part of the stage three assessment consideration.

Disclosure

Proposal summary

A project summary will be prepared by the lead department, in consultation with the proponent and DTF, and released within 60 days of contractual or financial close. The project summary will provide an overview of:

- Government's rationale for progressing the project as a market-led proposal
- the assessment process
- the financial impact and what value-for-money was achieved
- a description of the stakeholder engagement plan
- an assessment of a proposal's compliance with its probity plan.

Content of the proposal summary is determined according to each proposal's circumstances and characteristics. A proposal summary template is available at dtf.vic.gov.au.

The Treasurer and the responsible portfolio Minister must approve the proposal summary. The approved proposal summary will be publicly available on the DTF website.

Contract publishing

The executed contract must be published on the Victorian Government Tenders website within 60 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 *Victorian Freedom of Information Act 1982* and taking into consideration any IP rights.

Appendix 1: Submission checklist

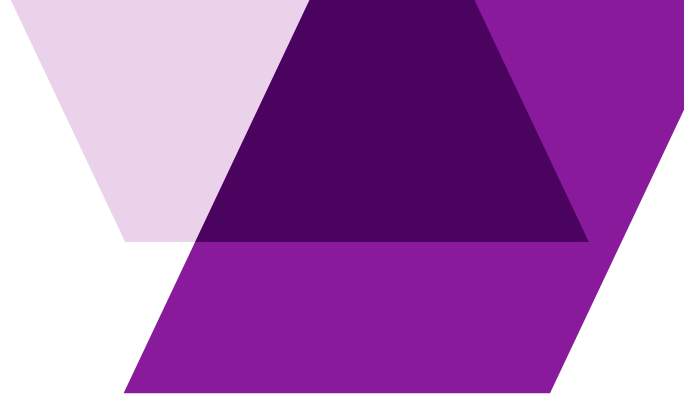
Type of information	Checklist	Proposal
Pre-submission meeting	Have you completed and submitted a pre-submission meeting template to DTF?	✓
	Have you had a pre-submission meeting with DTF to discuss the concept of your proposal and its potential to meet the guideline requirements?	✓
Scope of guideline	Is the proposal in the scope of the guideline?	✓
Investment Lifecycle and HVHR Guidelines	Have you read these guidelines to help understand government's project development process and inform development of your proposal?	✓
Assessment criteria	Have you addressed the key assessment criteria?	
	a) Does the proposal meet a service need aligned with government policy objectives?	✓
	(b) Does the proposal represent value-for-money?	✓
	(c) Is the proposal affordable and a relative priority for budget funding?	✓
	(d) Is the proposal deliverable?	✓
	(e) Does the proposal have characteristics that justify exclusive negotiation?	✓
	In addressing the key assessment criteria, have you provided appropriate supporting information:	
	– An overview of the proposal including a detailed description, objectives and intended outcomes?	✓
	– Have you clearly articulated what support is being requested of government – financial, regulatory or other?	✓
	– How the proposal will be funded and evidence to support that approach?	✓
– Evidence of financial capacity where the proposal will be privately financed?	✓	
– The commercial aspects including contractual/ sub-contracting strategy and key risks and risk allocation?	✓	



Type of information	Checklist	Proposal
	<ul style="list-style-type: none"> - How competition will be incorporated into the proposal through downstream tendering? - Evidence of capability to deliver what is proposed technically? - An outline of the proposed timelines and key milestones? 	<ul style="list-style-type: none"> ✓ ✓ ✓
Sufficient information	Does the proposal contain enough information to be assessed?	✓
Other information	<ul style="list-style-type: none"> - Have you indicated if this proposal has been previously considered by government? - Does the proposal include details of consultation undertaken with key stakeholders? 	<ul style="list-style-type: none"> ✓ ✓
Declarations, disclosure and intellectual property	<ul style="list-style-type: none"> - Have you declared any potential or actual conflicts of interest, including all contact between proponents and the Government and/or public officials in respect of the proposal? - Have you acknowledged that some proposal details will be published if the proposal progresses to a due diligence assessment or before if you do not comply with the probity requirements and the circumstances in Appendix 3? - Is there content that could not be publicly disclosed in stages one and two? - Have you clearly identified any parts of the proposal considered as IP? - Has sign-off been provided from the appropriate senior representative of your organisation? 	<ul style="list-style-type: none"> ✓ ✓ ✓ ✓ ✓
Administrative	<ul style="list-style-type: none"> - Have you clearly identified the name of the proponent and included contact details? 	<ul style="list-style-type: none"> ✓

Appendix 2: Application of High Value High Risk (HVHR) Project Assurance Framework

Market-led Proposals Guideline	HVHR Project Assurance Framework		Gateway review process ³	Government decision
<p>Stage one – Proposal filtering and due diligence</p>	<p>HVHR classification At the end of stage one, DTF will advise the Government on whether the proposal should be classified as HVHR.</p>			<p>Seek government approval of strategic assessment, including HVHR classification and the Project Assurance Plan.</p>
Government proceeds				
<p>Stage two – Investment case and negotiation</p>	<p><i>Business case approval</i> DTF will apply elements of a Business Case Deliverability Assessment including assessment of ability to deliver on time, to budget and achieve stated benefits, risk management approach, project management strategies as well as procurement approach and documentation. DTF will monitor projects and report to Government consistent with existing quarterly reporting processes.</p>	<p><i>Project tendering</i> Consistent with the HVHR framework, DTF will assess and seek the Treasurer's approval of relevant procurement documentation, the preferred bid and contracts before finalisation.</p>	<p>Gate 1 – Concept and Feasibility</p> <p>Gate 2 – Business Case</p> <p>Gate 3 – Readiness for market</p> <p>Gate 4 – Tender decision</p>	<p>Seek the Government's approval of procurement approach and funding availability incorporating elements of HVHR assessments and consideration of Gateway Review recommendations.</p> <p>Seek the Government's approval of final binding offer, funding requirement and contract including consideration of Gateway Review recommendations.</p>
<p>Stage three – Exclusive negotiation</p>				



Market-led Proposals Guideline	HVHR Project Assurance Framework	Gateway review process ³	Government decision
Government proceeds and market-led proposal process concludes			
Contract award and delivery	<p>Project implementation</p> <p>Lead department will seek Treasurer approval before any material contract variations consistent with the HVHR Framework.</p> <p>DTF will monitor projects and report to the Government consistent with existing quarterly reporting processes.</p>	<p>Gate 5 – Readiness for service</p> <p>Project Assurance Review</p>	<p>Seek the Government's approval for any material contract variations.</p>
		Gate 6 – Benefits realisation	

³ The application of the Gateway review process to market-led proposals will be tailored and gates combined as appropriate. This will be recorded in the proposal's Project Assurance Plan.

Appendix 3: Terms and conditions

References to the State

In this guideline a reference to the 'State' is a reference to the Crown in right of the State of Victoria.

Exclusion of process contracts

The guideline is not an offer document and is not intended to give rise to any contractual relationship. No binding contract (including without limitation a process contract) or other understanding (including without limitation any form of contractual, quasi-contractual, restitutionary rights, or rights based on similar legal or equitable grounds) will exist between the State and a proponent in relation to the information given during a market-led proposal process (including without limitation in the guideline). This paragraph does not apply to the requirements set out in the Introduction of the guideline, or to a process deed, probity deed or other written agreement (in each case) entered into by the proponent in relation to the guideline or its proposal as required by the State from time to time.

Broad reservation of rights

In addition to the other rights detailed in the guideline, without limiting its rights at law or otherwise but subject to any written agreement between the State and the proponent in relation to the proposal (including without limitation any probity deed or process deed referred to in the guideline), the State may (without limitation) at any stage of a market-led proposal process:

- a) reject or refuse to consider, or to accept, any proposal that does not comply with the requirements of the guideline or which is otherwise incomplete
- b) suspend or terminate the market-led proposal process
- c) elect not to further consider any proposal that fails to satisfy the assessment criteria in the guideline or other relevant assessment criteria
- d) reject or accept any proposal
- e) accept or reject the whole or part of any acceptance, that part of the proposal is capable of such partial acceptance
- f) suspend or terminate a proponent's participation in the market-led proposal process if the State forms the view that the proponent has not complied with the guideline
- g) require, request, receive or accept (whether requested or not) additional information, material, clarification or explanation from a proponent relating to a proposal at any time and the State may, at its sole discretion, take such information, material, clarification or explanation into consideration in its assessment of a proposal
- h) consider and accept a proposal regardless of whether a proponent has not complied with the guideline
- i) amend, vary or supplement the guideline
- j) change the timing, order or application of any phase or process in the market-led proposal process or supplement, remove, add to or vary any part of the market-led proposal process

- k) accept or reject any clarification question or request for a meeting that is lodged by a proponent
- l) extend any time or date specified in the guideline
- m) negotiate with any proponent on any matter the State may determine
- n) suspend or terminate negotiations with any proponent
- o) allow any proponent to clarify, alter, amend, add to or change its proposal at any time
- p) in assessing any proposal, have regard to:
 - i) the State's and its associates' knowledge and previous experience and dealings with any proponent or any of their respective associates
 - ii) information concerning a proponent or any of their respective associates that is in the public domain or which is obtained by the State or its associates through its or their own investigations
- q) require the proponent to submit a best and final proposal
- r) not attribute any reasons for any actions or decisions taken, including without limitation in respect of the exercise of any or all of the above-mentioned rights including when a proposal does not proceed but the State does (through, for instance, a competitive procurement process) proceed with a project the subject of the proposal
- s) require the proponent or any associate of the proponent to enter into exclusive negotiation and/or probity and process deeds with the State including when a proposal does not proceed but the State does (through, for instance, a competitive procurement process) proceed with a project the subject of the proposal
- t) otherwise take any such other action as it considers appropriate in relation to the market-led proposal process.

Exclusion of liability

To the extent permitted by law, neither the State nor its officers, employees or advisers will be liable to any proponent on the basis of any promissory estoppel, quantum meruit or on any other contractual or restitutionary ground or any rights with a similar legal or equitable basis whatsoever or in negligence as a consequence of any matter or thing relating or incidental to a proponent's participation in a market-led proposal process, including without limitation instances where:

- a) the State decides not to proceed with any or all parts of a proposal
- b) the State suspends or terminates a market-led proposal process
- c) the State exercises or fails to exercise any of its other rights under or in relation to the guideline or a market-led proposal process (whether or not the State has informed a proponent of its exercise of the rights).

Decision making

The State has sole and absolute discretion in connection with any and all decisions or actions made or taken, refused to be made or taken, or required to be made or taken, by it in connection with the guideline or a market-led proposal process. The State has no liability to any proponent for any such decision, action or refusal.

Disclosure

Each of the State, government and DTF may disclose any information arising from or in connection with any proposal (including without limitation any confidential information) in the following circumstances:

- a) where that information is required or authorised to be disclosed under any law or its disclosure is reasonably necessary for the enforcement of the criminal law
- b) to satisfy the disclosure requirements of the Victorian Auditor-General, to disclose that information to the Ombudsman or for a purpose in relation to the protection of public revenue
- c) to any person for any purpose including (without limitation) to the extent the State, government or DTF deems necessary for any purpose arising from or in connection with the proposal, the guideline, maintaining confidence in or the integrity or the reputation of the market-led proposal process, the guideline, the State, Minister, Department or the government or where a proponent or any officer, agent, adviser, consultant, representative, contractor or employee (Associate) of that proponent or any of their Associates has not complied with the guideline in relation to the relevant proposal
- d) to satisfy the requirements of Parliamentary accountability or to report to the Legislative Assembly or Legislative Council or any of its committees
- e) if the disclosure is in the course of the official duties of the responsible Minister, the Treasurer of Victoria or the Attorney General.

Additional guidance material

Gateway Review Process

dtf.vic.gov.au/infrastructure-investment/gateway-review-process

Government's priority areas for market-led proposals

dtf.vic.gov.au/infrastructure-investment/market-led-proposals

Investment Lifecycle and HVHR Guidelines

dtf.vic.gov.au/infrastructure-investment/investment-lifecycle-and-high-value-and-high-risk-guidelines

Major Projects Skills Guarantee

localjobsfirst.vic.gov.au/agency-guidance/major-project-skills-guarantee

Market-led Proposals Guideline

dtf.vic.gov.au/infrastructure-investment/market-led-proposals

Ministerial Directions and Instructions for Public Construction Procurement

dtf.vic.gov.au/public-construction-policy-and-resources/ministerial-directions-and-instructions-public-construction-procurement

High value high risk project assurance framework

dtf.vic.gov.au/infrastructure-investment/high-value-high-risk-framework

Homes Victoria

vic.gov.au/homes-victoria

Value Capture and Creation Framework

dpc.vic.gov.au/index.php/news-publications/value-creation-and-capture-framework

Victorian Government Land Transactions Policy and Guidelines

land.vic.gov.au/government-land/victorian-government-land-monitor/policy-and-guidelines

Victorian Government Purchasing Board

buyingfor.vic.gov.au/

Victorian Government Tenders

tenders.vic.gov.au

Victorian Industry Participation Policy

localjobsfirst.vic.gov.au/

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