



Finance
& Services

Market Approaches Guide

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1 A Guide to market approaches

1.1 Introduction

The NSW Government's Procurement Policy Framework states that agencies are responsible for their own procurement and the default open tender model has been replaced with the option of using a broader range of procurement methods.

This Guide assists agencies to identify the approach to market that best fits their procurement needs. It assumes that in all cases the agency is an *informed buyer*. The NSW Procurement Board's *Industry Engagement Guide* explains how agencies can be informed buyers – how to gain an up-to-date understanding of the relevant markets within which an agency may seek to procure.

In deciding how best to approach the market, agencies should consider:

- value for money
- the impact on competition of different approaches (both short and long term)
- promoting and sustaining viable industry in NSW
- transparency and how to ensure probity throughout the procurement process
- agency capacity in managing the approach to market and related procurement activity
- Government policies and the implications for other agencies in approaching the market in a particular manner

This means that in some circumstances an agency may conduct a full open tender, while in more specific and less frequent circumstances, direct negotiation with a supplier may be appropriate. It is important that all agencies are aware of the benefits and risks associated with different approaches.

In deciding on the most appropriate sourcing strategy, agencies are to consider the total life cycle cost of the goods or service being procured. Sustainability of local industry can be enhanced by ensuring that consideration is given to providing opportunities for local business and regional suppliers.



1.2 Procurement Policy Framework and Board Directions

The objective of the Procurement Policy Framework is to ensure that government procurement activities achieve best value for money in supporting the delivery of services.

The [Procurement Policy Framework](#) references the legal, administrative and governance framework regarding the procurement of goods and services.

The Framework sets out the following requirements for agencies in approaches to market:

- ensure maximum competition
- promote viable and sustainable industries in NSW
- conditions of participation in any procurement process are clear and potential suppliers have a reasonable time to respond
- conditions do not preclude potential suppliers on the basis that they have no prior experience in supplying to Government
- ensuring confidentiality as appropriate to protect suppliers' commercial information, such as intellectual property.

The Procurement Board issues Directions which agencies must adhere to in any procurement activity. Directions set specific rules about the way in which agencies can approach the market, depending on factors such as:

- the agency's accreditation status
- the estimated value of the procurement
- the nature of the goods or services being procured
- risks associated with the procurement method
- general approaches to procurement activities, such as limiting the amount of information sought from suppliers and encouraging piggybacking off existing arrangements.

The Agency Accreditation Scheme assures agency capability and capacity to plan and deliver their procurement activities and achieve value for money. Further information is available in the [Agency Accreditation Scheme for Procurement Guidelines](#).

1.3 Scope/applicability

The Market Approaches Guide sets out principles and provides high-level advice on key elements of the different methods available to agencies. The Guide also assists industry in understanding how government approaches markets.



Advice on tender periods and requesting information from the market is also provided in this Guide.

This Guide assumes that agencies are using the Procurement Board's [Industry Engagement Guide](#) where appropriate. Broader industry engagement activities, such as market sounding, bidders' conferences and indicative approaches to market are covered in the [Industry Engagement Guide](#).

2 Market engagement methods

2.1 Overview

Consistent with responsibilities under the Procurement Policy Framework, agencies should ensure that the sourcing strategy and any approach to market is aligned with its business needs and is based on an informed understanding of the market for that good or service.

Agencies may use a variety of methods to approach the market:

- Request for tender (open, multi-stage or limited/selective)
- Request for information
- Request for quote
- Expression of interest
- Complex market engagement methods including direct negotiation
- Strategic commissioning

Factors that can influence an approach to market include complexity, value and timing of the procurement, as well as characteristics of the market itself. For example, the procurement of a commonly purchased good or service may best be handled through a selective tendering process that utilises a prequalification scheme. In these circumstances the market is well understood and suitable suppliers have already been identified through the prequalification process. The approach to market in these circumstances is generally a request for quotes from known providers of that good or service.

However in other circumstances, it may not be readily apparent that a market (competitive or otherwise) exists, or who the potential suppliers may be, for the goods or service required by the agency. In this situation, the approach to market may look very different. For example, the agency may decide to test the market and issue an Expression of



Interest which will allow that agency to determine whether there are suppliers able to meet the supply requirements.

In making the decision on how to approach the market, agencies should consider factors including:

- Any special requirements of the work, products or services
- The work capacities/current commitments of suppliers in that market
- The ability of the agency to monitor and assess supplier performance

This Guide sets out the various market approaches and the circumstances in which they may best be utilised. The [NSW eTendering](#) system provides a secure online site for the advertising, distribution, lodgement and opening of tenders. It delivers a single entry point for all Government organisations and suppliers to notify, access and respond to Government business opportunities.

3 Types of approaches

3.1 General

The sourcing strategy, approach to market and the decision to engage are related but separate events.

This section links various approaches to market with the following main sourcing strategies:

- Open tendering
- Selective tendering
- Limited tendering

3.1.1 Request for Tender (RFT)

The market approach for a tender process involves the issuing a written invitation to tender – typically called a Request for Tender. In an open RFT process there is no restriction placed on who may submit a tender. Tenderers must demonstrate in their tenders how they satisfy the evaluation criteria and how they meet the specific RFT requirements.

Requests for tender are an effective way of assuring best value for money, particularly in the absence of accurate market price knowledge or awareness of available competent



tenderers. It increases competition and provides all potential suppliers the chance to compete for Government business.

The RFT approach to market is typically used where:

- there is a broad competitive market
- the market is dynamic and subject to change
- the value of the contract is high
- it is likely that there will be a high level of interest from the market.

3.1.2 Selective request for tender (multi-stage tendering)

Selective tendering is often referred to as multi-stage tendering as it works off an initial process that identifies suitable prospective suppliers. Prospective suppliers may be identified through an Expression of Interest process or may already be prequalified as eligible for Government work.

The agency then short lists interested service providers based on their demonstrated ability to fulfil the particular contract. These prequalified service providers are invited to tender in the second stage for either a specific contract or for several contracts in an ongoing work program. This type of market approach can reduce the cost of tendering to industry and government.

Multi-stage tendering may be used to identify the several best service providers in a mature supplier market. It enables the number of final tenderers to be limited to those that can demonstrate the best capability to perform the contract.

Multi-stage tendering can be used to:

- a) establish a panel of service providers for several contracts in an ongoing work
- b) establish potential service providers for a single contract
- c) identify respondents with the best proposals, usually for more complex or unusual procurements

In the second stage, tenders are sought for a particular contract from a limited number of pre-qualified suppliers. As far as practical, and except for very small value contracts or in special cases, at least three tenderers from the relevant pre-qualified list should be invited to tender in order to provide reasonable competition. Tenderer panels should be sized appropriately for the potential number of tendering opportunities.

Distribution of opportunities to tender should take account of factors such as:



- relative past performance as a service provider under similar contracts in (though not necessarily as a service provider to the NSW Government) or outside of NSW
- previous tendering opportunities
- special requirements of the work, product or service
- relative capacity, ability and skill of the service provider to deliver the work, product or service
- current contract commitments of the service provider
- results in a system for service provider performance measurement and reporting
- location of the work or service relative to service providers' preferred areas of operation.

3.1.3 Request for Quote (RFQ)

A request for quote (RFQ) is an invitation to potential suppliers to provide a price quote for a specific good or service. An RFQ is typically used on lower to medium sized value contracts, for goods and services that are well defined and available and often subject to standard terms and conditions.

RFQs are often used to elicit quotes from a pool of suppliers on an existing NSW Government contract or prequalification scheme, and where an agency is satisfied that any risks associated with the procurement are managed adequately.

3.1.4 Expression of Interest (EOI)

An EOI is a process where an indication of the interest of potential service providers, capable of undertaking specific work, is sought by an agency. Where the supplier market or products and services are dynamic or not well known, this method can provide an opportunity to test the market to determine if the products or services required are available and which suppliers provide the required services.

The EOI process can be particularly useful in circumstances where the agency may not have a complete set of specifications for the good or service to be procured. In this sense the EOI is a real test of the market's ability to supply.

EOIs can limit tendering costs for industry as a whole in that only those potential suppliers short listed after an EOI process are invited to tender. The associated costs to agencies are also lower through the reduced number of tenders to evaluate, compared with open tenders.

Pricing is not sought at the EOI stage of the procurement process nor is a contract formed.



EOIs enable the capabilities of applicants to be assessed in relation to a range of non-price evaluation criteria. An Evaluation Committee evaluates the suitability of each applicant and recommends a short-list of the most suitable tenderers to be invited to provide priced tenders or detailed proposals in the next stage.

3.1.5 Request for proposal (RFP)

This approach to market is designed to elicit a detailed response on a specific proposal or idea for a business solution. Evaluation criteria relating to service provider's capacity, expertise and experience to deliver the service, product or works are also included. An RFP process can also be used where the final product or service is and has been well defined, however potential suppliers may be invited to submit proposals on how the end result can be achieved. An RFP process can be an effective way of tapping into new and potentially innovative approaches and solutions.

Similar to an EOI process, RFPs are multi-staged approaches to procurement. Short listed tenderers are invited to tender for the contract or, where a best solution is sought, negotiation with the preferred service provider on the final requirements and price.

3.1.6 Limited Tendering

Limited tendering is procurement activity that does not involve a publicly released request for tender. It can refer to selective tendering, set out in the previous section. In this section however limited tendering refers to the situation where RFT documents are issued to the known available service providers assessed as the most capable of delivering the work, product or service required, as detailed in the procurement strategy. This may include those on pre-qualified tenderer lists, including lists of other agencies, and service providers contracted on a standing offer basis.

Limited tendering is generally used:

- (i) in emergency situations
- (ii) for specialist work
- (iii) in special circumstances where only one or a limited number of service providers are known to be able to carry out the work, or
- (iv) for low value, low risk, off-the-shelf procurement

Limited tendering includes Request for Quotes (see previous section). It can also mean that only one service provider is requested to tender. Single invited tenders may also be justified when a previous open RFT has resulted in:



- no tender being submitted
- no tender submitted that conformed to the essential requirements in the RFT documents
- no tenderer satisfying the conditions for participation, and where the agency does not wish to modify these essential requirements.

3.1.7 Best and Final Offers

The second stage or any additional stage may include an invitation for Best and Final Offers (BAFO), which allows tenderers to further develop their proposals based on amended requirements from the agency. If an agency is considering using a BAFO process, it should be foreshadowed in the approach to market documents.

3.2 Complex market engagement methods

At times a government agency may wish to use a market engagement method that has typically been characterised as 'complex' or higher risk than traditional methods of government procurement. These may include reverse auctions, direct negotiations or managed services contracts. Specific requirements that apply to the use of these methods are available on [ProcurePoint](#).

Prior to adopting a complex market procurement method, agencies must:

- ensure that the procurement strategy addresses in detail the justification and suitability of the selected procurement method. In the case of direct negotiations/sole sourcing arrangements, this should include a comprehensive risk assessment and analysis of the market including all relevant factors sufficient to demonstrate that a competitive process need not be conducted
- follow their internal delegations process, which will ordinarily involve obtaining the approval of a person exercising the functions of the agency's chief procurement officer and in some instances may also require the approval of a more senior person in the agency, depending on the nature or value of the procurement

3.2.1 Direct negotiation

Special circumstances may warrant entering into direct negotiations with a single selected service provider, without any prior competitive tendering process. Direct negotiation may be appropriate for example in a situation where an earlier tender resulted in non-conformance gaps such that a contract could not be awarded. Such an approach requires high-level authorisation and should only be used in clear and unambiguous circumstances



that indicate such direct negotiation will result in the best value for money outcome for Government. Refer to ICAC's [Direct negotiations - guidelines for managing risks in direct negotiations](#) for further information.

3.3 Non-traditional approaches to procurement

The NSW Government Procurement Board encourages agencies to consider non-traditional approaches to procurement.

Adopting procurement processes that are open to, and encourage, innovation, gives the market the opportunity to offer solutions that may be more productive, a better fit for government needs and, in some cases, more cost and resource efficient.

3.4 Strategic commissioning

Increased competition and innovation in public service provision can deliver significant benefits. Strategic commissioning is an effective way to realise benefits, such as achieving better value for money while improving service quality, creating contestability and incentives to innovate, and increasing accountability and transparency. As part of this, consideration is to be given to the long term benefits of viable, sustainable and competitive NSW based industries.

Strategic commissioning can also facilitate the introduction of outcomes-based contracts (rather than output-based contracts) that will allow agencies to simplify the tendering process, since they will focus on the outcome of the contract instead of the process. This will also allow service providers to decide how they will deliver on agency requirements, encouraging innovative methods for the agencies to achieve their desired result. Further advice for agencies on strategic commissioning will be made available.

3.5 Unsolicited proposals

The [Guide for Submission and Assessment of Unsolicited Proposals](#) outlines a transparent and streamlined approach that facilitates the NSW Government and private sector to work together to develop and deliver innovative ideas.

3.6 Guidance on tendering periods

Agencies:

- (i) must ensure that tender periods allow sufficient time for prospective suppliers to price and prepare their submissions/bids for the work



- (ii) wherever possible publish tenders electronically and allow tenderers to lodge tender submissions electronically.

Minimum tender period for contracts valued up to \$100 million

Minimum period	Situation
No set period	Where the agency determines there is a genuine urgent need attached to the procurement (including in response to a critical issue or emergency).
10 calendar days	Where the tender has been included in an agency’s published procurement plan on the eTenders website with details of the procurement, the timing of the approach to market and advice on how to obtain tender documentation.
	Where the goods and services being sought are available through a panel contract, standing offer or prequalification scheme recognised by the NSW Government.
	Where the approach to the market is part of recurring procurement arrangements undertaken by the agency.
25 calendar days	In all other cases where the tender is published on the eTenders website.
30 calendar days	In all cases where the tender is not published on the eTenders website.

3.6.1 Minimum tender periods for high value and complex contracts

Complex and/or high value tenders for example for construction works that involve significant elements of design, may warrant longer tender periods. For example, when procuring high value projects in excess of \$100M that involve a design and construct, public private partnership or alliance type delivery model, agencies should consider the timing recommended by [Infrastructure Australia](#).

3.6.2 Extending the tender period

A tender period should only be extended under special circumstances. A request from one or more tenderers for an extension of the period is not a special circumstance. Extensions of time for tender submissions must apply to all prospective tenderers.

3.6.3 Tender addenda

Generally an addendum should not be issued less than five working days before the tender closing date. If this is not possible, consideration should be given to extending the tender period to provide at least five working days.

3.6.4 Late submissions



A late submission must not be accepted unless it is late as a consequence of an action (or failure to act) by an agency, or the agency considers that no other tenderers have been disadvantaged by the acceptance of the late submission.

3.7 Guidance on number of quotes or tenders recommended

Arrangements for goods and services, including recommended numbers of quotes are set out in [Procurement Board Direction 2013-03](#), *Approved Procurement Arrangements*. If you are sourcing from a NSW Government Prequalification Scheme, you should follow the recommended numbers of quotes in the scheme guidance.

In relation to high value and prescriptive contracts agencies should use their discretion to ensure an appropriate level of competitive tension to achieve value for money.

Agencies are encouraged to ensure that all approaches to market maximise opportunities for Small and Medium Enterprises (SMEs) to participate. Agencies should look to invite at a minimum, one SME to tender as appropriate.

3.8 Tendering costs

The cost of responding to an approach to market issued by an agency is borne by the prospective tenderers. However, where an agency decides that there are exceptional circumstances which warrant reimbursing part or all tendering costs, it may offer assistance as part of the documentation released in the approach to market. Reimbursement of tendering costs should only be considered in high cost procurements or where there are other extenuating circumstances, and should be approved by the agency head.

3.9 External involvement

Expert advisors are commonly engaged by agencies to help prepare RFT documents. To avoid the potential of a conflict of interest, expert advisors engaged in this preparatory work would generally be precluded from tendering.

3.10 Disclosure

[Premier's Memorandum 2007-01](#), Public Disclosure of Information Arising from NSW Government Tenders and Contracts, sets out the requirements for disclosing tender information. This disclosure is to be on <https://tenders.nsw.gov.au>. Part 3, Division 5 of the [Government Information \(Public Access\) Act 2009](#) sets out disclosure requirements for contracts valued at \$150,000 or above.



[Procurement Board Direction 2013-06](#), Publishing Procurement Plans on the eTendering Website, directs each NSW government principal department to publish progressively a *Strategic Procurement Outlook Statement* and *Procurement Contact Information* on the NSW Government's [eTendering](#) website.

4 Requesting information from the market

4.1 General procurement principles

Agencies should refer to the [Procurement Policy Framework](#), which provides advice on all aspects of the procurement process.

4.2 Principles applying to all market approaches

Prior to engaging with the market, agencies must have:

- the intention, commitment and authority to proceed
- an approved and adequate budget
- arrangements in place to manage all stages of the process and outcome.

In determining how to approach the market, agencies must ensure that the method selected will achieve value for money and is fair and transparent.

4.3 Principles applying to information sought

At all times in the procurement cycle, agencies should minimise the type and amount of information sought from potential suppliers and contracted suppliers.

This means that agencies will:

- (i) as early as possible indicate in contracting documents and communications, the type and amount of information being sought from suppliers throughout the procurement process, including after the award of a contract
- (ii) only require information which is necessary for the active assessment of a proposal
- (iii) ask for information at the latest possible stage of the contracting process and from only those suppliers remaining under consideration
- (iv) not ask for the same or similar information at more than one stage of any multi-stage procurement process (but may ask a supplier which has supplied information to confirm that it remains current or to supply additional information)



- (v) not ask for information to be supplied which is already available publicly unless it is necessary for the supplier to confirm its accuracy or validity

When asking for information agencies should where possible:

- (vi) give suppliers options as to the formats in which the information may be supplied
- (vii) use industry standards (or commonly used terminologies) applying to the information being sought
- (viii) typically only ask for financial information at the contracting stage on lower value procurements
- (ix) not ask suppliers to submit financial information at prequalification or when creating standing offers
- (x) inform suppliers that any information supplied may be released publicly or to other agencies

When preparing contracts, agencies will:

- (xi) describe the information likely to be required, the formats in which it can be supplied and the frequency with which it will be requested
- (xii) not ask for information unless it is:
 - a. required by law
 - b. being used to assess the delivery of goods or services under the contract and/or
 - c. being used to assess the contracted business's performance, and
- (xiii) as an alternative to obtaining information directly from the business, seek the business's concurrence to access information held elsewhere in the NSW Government.

5 Further Information

The NSW Procurement Client Support Centre can provide assistance and information on a wide range of procurement services, contracts and products. The Client Support Centre is available at 1800 679289 or email nswbuy@finance.nsw.gov.au.



6 Document Control

6.1 Document Version Control

Version	Status	Date	Comments
1.0	Approval draft	20 March 2015	For Procurement Board approval 1 April 2015
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6.2 Review Date

This Guideline will be reviewed after April 2016.